



## CONSTITUTIONAL COURT OF SOUTH AFRICA

### South African Transport and Allied Workers Union v Lebogang Moloto & Another

Case no.: CCT 128/11

Date of Hearing: 10 May 2012

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#### MEDIA SUMMARY

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*The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.*

On 10 May 2012 the Constitutional Court will hear a case about whether the Labour Relations Act (LRA) requires every employee who goes on strike to give notice of that strike to the employer beforehand.

In November 2003 the South African Transport and Allied Workers Union (the Union), the majority union for employees of Equity Aviation Services (Pty) Ltd (Equity), referred a wage dispute to the Commission for Conciliation, Mediation and Arbitration (CCMA), but no resolution was reached. The Union served Equity with a strike notice as required by the LRA. The Union members embarked on a strike in which other employees who did not belong to the Union and had not given a strike notice also participated. Equity took the view that the participation of the latter group of employees in the strike was unlawful and requested them to return to work. They did not and Equity dismissed them for unauthorised absenteeism during the strike.

The Labour Court held in favour of the workers and found that the dismissals were automatically unfair because the dismissed employees were not required to be members of the Union or to give notice to strike lawfully. The majority in the Labour Appeal Court held that where a union has given the requisite notice on its members' behalf and embarked on a strike, other employees who are not members of that union need not give notice for their strike action to be lawful. Equity appealed to the Supreme Court of Appeal, which reversed this decision holding that a separate notice must be given by non-union members for their strike to be protected. The Supreme Court of Appeal concluded that the dismissals were therefore not automatically unfair.

In the Constitutional Court, the Union challenges the SCA's purposive interpretation of the relevant section of the LRA, while Equity argues in favour of it. The Union submits that the majority in the Labour Appeal Court was right and that no notice by non-member employees is required. Equity argues that the Supreme Court of Appeal was correct in holding that notice is required.