

# Constitutional Court rules against lockouts

 By [Aadil Patel](#)

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In the case of the Transport and Allied Workers Union of South Africa (TAWUSA) vs Putco, the Constitutional Court has ruled that the Labour Relations Act does not permit an employer to lockout the members of a trade union that are not a party to a bargaining council, where the dispute has arisen and has been referred for conciliation.



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In the matter before the court, two unions issued a strike notice after industry wage negotiations gridlocked at the bargaining council. In response to this, Putco gave notice of its intention to lockout all employees in the bargaining unit, which included Transport and Allied Workers Union of South Africa (TAWUSA) members, who were not a party to the negotiations at the bargaining council.

TAWUSA approached the Labour Court seeking an order interdicting Putco from locking out TAWUSA members in its employ.

The Labour Court held that TAWUSA was not a party to the dispute giving rise to the lockout, as it was not a member of the bargaining council where the dispute arose. The Labour Court found that the lockout was not permissible. On appeal, the Labour Court's finding was set aside.

TAWUSA then approached the Constitutional Court and argued that it was not a member of the bargaining council in which the dispute arose and therefore not a party to the dispute that gave rise to the lockout. TAWUSA argued that there was no dispute between the parties, no demand by Putco and that its members could not be locked out.

The Constitutional Court held that the purpose of a lockout is to compel employees to accept an employer's demand and that before an employer institutes a lockout there must be a dispute between the employer and employees or their trade union. As TAWUSA was not a member of the bargaining council, it was not a party to the dispute and in the absence of a dispute, a lockout of its members was not permitted.

## ABOUT AADIL PATEL

Aadil Patel is a director and national practice head of the employment practice at Cliffe Dekker Hofmeyr. Aadil has broad experience in employment law and has acted extensively for various employers, both public and private entities. Aadil also has experience in the areas of public sector, employee benefits, administrative, constitutional and Islamic Finance law. Email him at [aadil.patel@dlacdh.com](mailto:aadil.patel@dlacdh.com)

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