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THE RIGHTS/INTERESTS DISTINCTION: NEW LESSONS FROM *SACCAWU V PHALA* (JA136/23) [2024] ZALAC 62 (27 NOVEMBER 2024)

SUMMARY

This case discussion examines the significance and application of the distinction between rights disputes and interests disputes in labour law, using the recent ruling in *SACCAWU v Phala* (JA136/23) [2024] ZALAC 62 (27 November 2024) (*Woolworths* case) as a focal point. The study traces how this fundamental dichotomy has shaped labour relations development from the Industrial Court era to the current *Labour Relations Act* framework. It demonstrates how the *Woolworths* case exemplifies this distinction's continuing utility and growing complexity. The case originated from Woolworths' strategic shift from full-time to flexi-time employment, leading to disputed retrenchments and ultimately a Constitutional Court ruling of unfair dismissal. The subsequent Labour Appeal Court judgment mainly illuminates how modern workplace disputes often resist simple categorisation as either rights or interests disputes.

The analysis reveals that while the *Labour Relations Act* does not explicitly codify the distinction, it effectively operationalises it through its regulatory framework and dispute-resolution mechanisms. The research concludes that this distinction remains valuable for determining appropriate dispute resolution methods but requires increasingly nuanced application in contemporary contexts. It furthermore recommends more explicit legislative guidance with a view on addressing hybrid disputes and suggests developing specialised mechanisms for cases that contain elements of both rights and interests disputes.

Keywords: Rights disputes, Interests disputes, Labour relations, Dispute resolution



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1. INTRODUCTION

The distinction between rights disputes and interests disputes has long served as a foundational principle in labour law, helping to determine both the appropriate mechanisms for dispute resolution and the permissibility of industrial action. Rights disputes concern the application, interpretation or violation of existing laws, contracts and agreements that already regulate employment relationships. These disputes are typically adjudicable

through judicial processes because there are established standards against which claims can be evaluated. In contrast, interests disputes involve matters not yet covered by existing agreements or law, typically arising during negotiations for new terms and conditions of employment. These disputes cannot be adjudicated in the same way as rights disputes since there are no pre-existing standards to apply and they are often resolved through collective bargaining mechanisms including industrial action when necessary. This dichotomy continues to shape contemporary labour relations despite significant changes in employment relationships and regulatory frameworks. In South Africa, the distinction has played a particularly crucial role in developing labour law, evolving from its initial application in the Industrial Court's unfair labour practice jurisdiction to its current manifestation in the *Labour Relations Act (LRA)*.¹

The recent *Woolworths* case provides a compelling lens to examine this distinction's contemporary relevance and complexity. The case, which began with Woolworths' strategic shift from full-time to flexi-time employment and culminated in a significant Labour Appeal Court judgment, illustrates the enduring utility of the rights/interests dichotomy and the challenges that arise when applying it to modern workplace disputes. The court's treatment of various contested issues—from changes in working hours to modifications in benefit schemes—demonstrates how the traditional binary distinction between rights and interests may require more nuanced application in contemporary contexts.

This discussion examines the theoretical foundations, historical development, and current application of the rights/interests distinction in South African labour law. Through analysis of key cases, legislative provisions, and scholarly commentary, it explores how this fundamental dichotomy continues to influence dispute resolution while adapting to meet evolving workplace challenges. Particular attention is paid to how the *LRA*, while not explicitly codifying the distinction, effectively operationalises it through its regulatory framework and dispute resolution mechanisms.

The analysis considers several key questions: How has the conceptualisation of rights and interests disputes evolved? What role does this distinction play in determining appropriate forums and methods for dispute resolution? How do courts and tribunals navigate cases that contain elements of both rights and interests? What specific difficulties arise when applying the traditional rights versus interests dichotomy to contemporary workplace arrangements and emerging forms of employment? By addressing these questions, the paper aims to contribute to our understanding of how this fundamental principle can best serve the needs of contemporary labour relations while maintaining its essential function in promoting orderly collective bargaining and effective dispute resolution.

1 66/1995.

2. FACTS OF THE CASE

This case originated from Woolworths' strategic shift from full-time employment to a flexi-time model. By 2012, this transformation had resulted in a workforce comprising 16,400 flexi-time employees and only 590 full-time employees.² When Woolworths attempted to convert its remaining full-time employees to flexi-time contracts, citing operational requirements, the process led to retrenchments that 44 employees legally challenged.³

The Constitutional Court ultimately vindicated these employees in 2018, finding their dismissal substantively unfair and ordering reinstatement.⁴ This was due to Woolworths failing to meet two key requirements under section 189A(19) of the *LRA*. First, the dismissals were not operationally justifiable on rational grounds because Woolworths' stated reason—the need for flexible working arrangements—had been met when the employees agreed to work flexible hours.⁵ The court rejected Woolworths' attempt to retrospectively add cost efficiency and equity as additional reasons for the retrenchments, noting these were merely intended benefits of flexibility rather than standalone justifications.⁶ Secondly, Woolworths failed to consider alternatives to retrenchment properly. The court found that Woolworths did not adequately explore SACCWU's proposal for an 11% salary reduction, nor did it consider other alternatives such as natural attrition, wage freezes, or ring-fencing. Since Woolworths had successfully phased out full-time positions since 2002, the court found it inexplicable why this gradual approach could not have continued.⁷

The Constitutional Court found that reinstatement was the appropriate remedy in this case and overturned the Labour Appeal Court's 12 months' compensation award. The court emphasised that reinstatement is the primary remedy afforded by the *LRA* to employees whose dismissals are found to be substantively unfair.⁸ The court explained that reinstatement means putting employees back in the same position they occupied before dismissal, on the same terms and conditions, to place them in the position they would have been in had the unfair dismissal not occurred.⁹ Notably, the court noted that a significant time lapse between dismissal and judgment should not prevent reinstatement where the employee has not unduly delayed pursuing litigation.¹⁰

In addressing Woolworths' argument that reinstatement was not "reasonably practicable", the court emphasised that this requires more than mere inconvenience and demands evidence of a compelling operational

2 SACCWU v Phala (JA136/23) [2024] ZALAC 62 (27 November 2024):par. 5.

3 SACCWU v Phala (JA136/23) [2024] ZALAC 62 (27 November 2024):par. 7.

4 SACCWU v Woolworths (Pty) Ltd (2019) 40 ILJ 87 (CC). For a critique of this judgment in general and the Constitutional Court's failure to engage with arguments about the procedural fairness in this matter see Le Roux 2019:1424.

5 SACCWU v Woolworths (Pty) Ltd (2019) 40 ILJ 87 (CC):par. 32.

6 SACCWU v Woolworths (Pty) Ltd (2019) 40 ILJ 87 (CC):par. 33.

7 SACCWU v Woolworths (Pty) Ltd (2019) 40 ILJ 87 (CC):paras. 34-37.

8 SACCWU v Woolworths (Pty) Ltd (2019) 40 ILJ 87 (CC):par. 43.

9 SACCWU v Woolworths (Pty) Ltd (2019) 40 ILJ 87 (CC):paras. 43-44.

10 SACCWU v Woolworths (Pty) Ltd (2019) 40 ILJ 87 (CC):par. 47.

burden.¹¹ The court rejected Woolworths' contention that the positions no longer existed, noting that the cashier positions still existed—only the conditions of employment had changed.¹² Significantly, the court determined that while the employees had proposed working flexi-time before their dismissal, they were not legally bound by this rejected proposal made years before.¹³ The court therefore ordered reinstatement based on their original full-time contracts while emphasising that the parties would be free to resume discussions about implementing flexi-time arrangements following reinstatement.¹⁴ The court also ordered that the reinstatement be retrospective to the date of dismissal. This decision was based on several factors: the dismissal was substantively unfair, a "no-fault dismissal" rather than misconduct, the employer was at fault for misunderstanding the employees' proposal, and the employees had not been dilatory in pursuing their rights.¹⁵

Following this reinstatement, negotiations resumed regarding their conversion to flexi-time contracts. While the employees expressed willingness to transition to flexi-time arrangements in principle, they contested specific changes to their terms and conditions.¹⁶ The disputed areas included a proposed reduction in working hours from 45 to 40 hours weekly, changes to their medical aid scheme, retirement age modifications, and alterations to long service awards.¹⁷ When negotiations reached an impasse, Woolworths implemented a lockout to compel acceptance of their terms.¹⁸ SACCAWU's attempt to obtain an urgent interdict against this lockout was unsuccessful, with Justice Mahosi ruling that these constituted matters of mutual interest should be resolved through power play rather than legal intervention.¹⁹

The union then pursued an alternative strategy, referring the matter to the CCMA as an unfair labour practice dispute. This raised a crucial jurisdictional question: whether the CCMA could adjudicate an unfair labour practice dispute when the contested issues were already subject to a lockout process.²⁰ The Labour Court, through Justice van Niekerk, determined that the CCMA lacked jurisdiction, characterising these as matters of mutual interest that should be resolved through power play rather than unfair labour practices.²¹ This ruling prompted SACCAWU's appeal to the Labour Appeal Court.

11 *SACCAWU v Woolworths (Pty) Ltd* (2019) 40 ILJ 87 (CC):paras. 43-44.

SACCAWU v Woolworths (Pty) Ltd (2019) 40 ILJ 87 (CC):par. 49.

12 *SACCAWU v Woolworths (Pty) Ltd* (2019) 40 ILJ 87 (CC):par. 52.

13 *SACCAWU v Woolworths (Pty) Ltd* (2019) 40 ILJ 87 (CC):par. 55.

14 *SACCAWU v Woolworths (Pty) Ltd* (2019) 40 ILJ 87 (CC):paras. 56-58.

15 *SACCAWU v Woolworths (Pty) Ltd* (2019) 40 ILJ 87 (CC):par. 57.

16 *SACCAWU v Phala* (JA136/23) [2024] ZALAC 62 (27 November 2024):par. 16.

17 *SACCAWU v Phala* (JA136/23) [2024] ZALAC 62 (27 November 2024):par. 37.

18 *SACCAWU v Phala* (JA136/23) [2024] ZALAC 62 (27 November 2024):par. 18.

19 *SACCAWU v Phala* (JA136/23) [2024] ZALAC 62 (27 November 2024):par. 17.

20 *SACCAWU v Phala* (JA136/23) [2024] ZALAC 62 (27 November 2024):par. 1.

21 *SACCAWU v Phala* (JA136/23) [2024] ZALAC 62 (27 November 2024):par. 19.

3. FINDINGS OF THE LABOUR APPEAL COURT

The Labour Appeal Court considered whether the CCMA had jurisdiction to arbitrate an unfair labour practice dispute when the issues were already subject to a lockout. The case arose after Woolworths had complied with the Constitutional Court's reinstatement order by reinstating 44 employees to their full-time contracts but continued negotiations regarding their conversion to flexi-time contracts.²²

While the employees agreed to convert to flexi-time in principle, they disputed Woolworths' proposed changes to their terms and conditions. This led to a deadlock, and Woolworths implemented a lockout.²³ The union then attempted to refer the matter to the CCMA as an unfair labour practice dispute, particularly regarding changes to medical aid schemes and other benefits.²⁴

The Labour Appeal Court subsequently found that the Constitutional Court's reinstatement order meant restoring employees to their previous positions with the same terms and conditions, manifesting a return to the *status quo ante*. However, this restoration was subject to negotiations about implementing flexi-time arrangements.²⁵

Significantly, the court ruled that the dispute over the flexi-40 and 45-hour week constituted a remuneration issue that was a matter of mutual interest, appropriately addressed through industrial action rather than unfair labour practice proceedings.²⁶ The court affirmed that while "benefits" can include both contractual entitlements and discretionary benefits, the issues, in this case, had not yet become acquired rights but were instead demands to be incorporated into the flexi-40 hour contract.²⁷ The court clarified the legal framework regarding "benefits" under section 186(2)(a) of the *LRA*, drawing from the *Apollo Tyres* case.²⁸ According to this framework, benefits can arise in two ways: first, as rights or entitlements derived from contracts, legislation, or judicial orders, and second, as discretionary benefits that employers may grant.²⁹

The court addressed this distinction in the context of two specific issues. First, regarding the Wooltru Medical Aid scheme, which existed under the pre-existing contracts, Woolworths successfully argued that it had become impossible to reinstate this benefit since other employees were now under Discovery Medical Aid.³⁰ Secondly, concerning the extended retirement age

22 *SACCAWU v Phala* (JA136/23) [2024] ZALAC 62 (27 November 2024):par. 15.

23 *SACCAWU v Phala* (JA136/23) [2024] ZALAC 62 (27 November 2024):par. 16.

24 *SACCAWU v Phala* (JA136/23) [2024] ZALAC 62 (27 November 2024):paras. 18-19.

25 *SACCAWU v Phala* (JA136/23) [2024] ZALAC 62 (27 November 2024):paras. 25-26.

26 *SACCAWU v Phala* (JA136/23) [2024] ZALAC 62 (27 November 2024):par. 34.

27 *SACCAWU v Phala* (JA136/23) [2024] ZALAC 62 (27 November 2024):par. 40.

28 *Apollo Tyres South Africa (Pty) Ltd v CCMA* (2013) 34 ILJ 1120 (LAC).

29 *SACCAWU v Phala* (JA136/23) [2024] ZALAC 62 (27 November 2024):par. 34.

30 *SACCAWU v Phala* (JA136/23) [2024] ZALAC 62 (27 November 2024):paras. 32, 40.

of 63, which had been introduced during the employees' dismissal period, the court found this represented a discretionary benefit that Woolworths had granted to other employees during the affected employees' absence.³¹

However, the court emphasised that these matters and other demands like salary adjustments and long service awards formed part of ongoing negotiations regarding the flexi-40 hour contract. As such, they constituted matters of mutual interest to be resolved through collective bargaining rather than unfair labour practice proceedings.³² The court determined that these benefits had not crystallised into acquired rights that could be enforced through the CCMA's unfair labour practice jurisdiction but instead remained demands that needed to be negotiated as part of the broader transition to flexi-time arrangements.³³ This distinction was crucial to the Court's ultimate finding that the CCMA lacked jurisdiction to arbitrate these issues, as they remained matters for negotiation rather than enforcement of existing rights.³⁴

The court ultimately upheld the Labour Court's finding that the CCMA lacked jurisdiction to entertain the unfair labour practice claim. It accepted Woolworths' argument that it was impossible to reinstate the previous medical aid scheme. It found that the Constitutional Court had anticipated that its reinstatement order would only last until a new agreement could be reached regarding flexi-time arrangements.³⁵ The appeal was accordingly dismissed with no order as to costs.³⁶

4. INTERESTS DISPUTES AND RIGHTS DISPUTES

4.1 Conceptualisation

The distinction between rights disputes and interests disputes represents a fundamental dichotomy in labour relations, as outlined by Spielmans as far back as 1939.³⁷ Rights disputes concern applying, interpreting or violating existing laws and agreements that regulate industrial relations.³⁸ These disputes ensue when disagreements about how to implement or interpret established rules arise, whether these are contained within collective agreements or statutory law. For example, a dispute of rights might involve whether an employer has correctly followed agreed-upon dismissal procedures or whether workers have been paid according to the terms of their contract. In contrast, interests disputes involve issues not yet covered by any

31 *SACCAWU v Phala* (JA136/23) [2024] ZALAC 62 (27 November 2024):paras. 31, 35.

32 *SACCAWU v Phala* (JA136/23) [2024] ZALAC 62 (27 November 2024):par. 37.

33 *SACCAWU v Phala* (JA136/23) [2024] ZALAC 62 (27 November 2024):paras. 40-41.

34 *SACCAWU v Phala* (JA136/23) [2024] ZALAC 62 (27 November 2024):par. 42.

35 *SACCAWU v Phala* (JA136/23) [2024] ZALAC 62 (27 November 2024):paras. 40-42.

36 *SACCAWU v Phala* (JA136/23) [2024] ZALAC 62 (27 November 2024):par. 43.

37 Spielmans 1939:229-312.

38 Spielmans 1939:300.

existing agreement or law.³⁹ These disputes typically arise during negotiations for new contracts or when parties seek to establish new terms and conditions of employment. As Spielmans notes, in environments with functioning trade unionism, interests disputes primarily concern the employment terms to be adopted for new agreements.⁴⁰

A crucial distinction between these types of disputes is how they can be resolved. Rights disputes are adjudicable, meaning they can be settled through judicial or quasi-judicial processes because there are existing rules or agreements against which claims can be evaluated.⁴¹ The adjudicator's role is to interpret and apply these established standards to determine which party is correct under the existing framework. Interests disputes, however, cannot be adjudicated similarly because there are no pre-existing standards to apply.⁴² While they may be arbitrable in some cases, this represents a quasi-legislative rather than quasi-judicial function, as the arbitrator must create new rules rather than interpret existing ones.⁴³ Some interests disputes may be fundamentally non-arbitrable, particularly when they involve core principles rather than specific terms.⁴⁴

Spielmans argues that this distinction has important implications for industrial relations systems. Spielmans suggests that rights disputes should ideally be settled through judicial methods rather than through strikes or lockouts since they involve the application of established rules.⁴⁵ However, interest disputes may legitimately require using economic pressure tactics when compromise cannot be reached, as they involve fundamental conflicts over new terms rather than the interpretation of existing ones.⁴⁶

It is important to consider the difference in the dichotomy between rights disputes and interests disputes on the one hand and individual labour law and collective labour law on the other, as these two dichotomies represent distinct ways of categorising labour disputes. Even so, they can still intersect in important ways. The rights versus interests dichotomy focuses on the nature of the dispute itself. Rights disputes concern the application or interpretation of existing rules, whether these are found in individual contracts, collective agreements or statutory law.⁴⁷ Interests disputes, by contrast, involve conflicts over issues not yet regulated by any existing agreement or law, typically arising during negotiations for new terms.

On the other hand, the individual versus collective labour law dichotomy centres on the parties involved and the scope of the relationship. Individual labour law governs the relationship between a single worker and their employer. In contrast, collective labour law deals with relationships involving groups of

39 Spielmans 1939:300.

40 Spielmans 1939:300.

41 Spielmans 1939:299.

42 Spielmans 1939:302.

43 Spielmans 1939:302-303.

44 Spielmans 1939:303.

45 Spielmans 1939:301.

46 Spielmans 1939:303.

47 Spielmans 1939:300.

workers, typically represented by trade unions and their employers.⁴⁸ The key difference between these dichotomies lies in their fundamental organising principle. The rights versus interests distinction focuses on the nature and subject matter of the dispute, regardless of whether it affects one worker or many. However, the individual versus collective distinction focuses on the scope of the employment relationship and the parties involved, regardless of whether the dispute concerns existing rights or new interests.⁴⁹

These distinctions serve different purposes in labour relations systems. The rights versus interests dichotomy helps determine appropriate dispute resolution mechanisms, with rights disputes being suitable for adjudication, while interest disputes often require negotiation or mediation.⁵⁰ The individual versus collective dichotomy helps structure the broader framework of labour law and determines which legal principles and procedures apply to a given situation. Understanding both dichotomies is crucial for effective labour relations as they intersect in practice. A dispute might simultaneously be individual (affecting one worker) and about rights (interpreting an existing agreement), or it might be collective (involving all workers) and about interests (negotiating new terms). The appropriate handling of any labour dispute requires consideration of both dimensions.

4.2 The development of the rights/interests distinction in South Africa

The use of the dichotomy between rights disputes and interests disputes relates to the establishment of the unfair labour practice jurisdiction through the Industrial Court as it emerged as part of broader reforms to South Africa's labour relations system in the late 1970s and early 1980s. Several factors necessitated these reforms. By the late 1970s, the dual industrial relations system had become practically unworkable. The statutory structures established for African workers were largely ignored, while plant-level bargaining by unregistered unions operated without regulation.⁵¹ This created significant instability in the industrial relations system.

The Wiehahn Commission, appointed in 1977 to investigate labour legislation, recommended fundamental changes to address these challenges. One of its key proposals was replacing the industrial tribunal with an Industrial Court with extensive unfair labour practice jurisdiction.⁵² This recommendation was part of a broader set of reforms that included allowing African workers to join registered trade unions and participate directly in industrial councils.

The unfair labour practice jurisdiction was established to provide a legal framework for resolving disputes in a system transitioning from racial exclusion to greater inclusion. The Industrial Court was given remarkably wide

48 Dimitriu 2019:553.

49 Bogg 2017:78 ao.

50 Spielmans 1939:301.

51 Du Toit 2023:12.

52 Du Toit 2023:12.

discretion in interpreting what constituted an unfair labour practice. Initially, it was defined simply as “any labour practice which in the opinion of the Industrial Court is an unfair labour practice”.⁵³ Even after this definition was amended, it remained extremely open-textured, giving the court considerable latitude in developing its jurisprudence.

The court’s approach to this broad mandate was anchored in the fundamental distinction between rights disputes and interests disputes. This distinction helped determine which matters the court would adjudicate under its unfair labour practice jurisdiction and which it would leave to resolution through collective bargaining or industrial action. The court’s treatment of bargaining levels illustrates how this distinction shaped its unfair labour practice jurisprudence. While the court established that employers had a broad duty to bargain in good faith, it refused to dictate the forum where bargaining should occur. When employers and unions were already parties to an industrial council, the court generally declined to compel additional plant-level bargaining, viewing such matters as disputes of interest that should be resolved through the exercise of power rather than judicial intervention.⁵⁴

This approach reflected the court’s understanding that while it could intervene to protect established rights or enforce the collective bargaining process, it should not adjudicate matters that essentially involved negotiations over new terms and conditions of employment. The court would thus protect the right to bargain but would not prescribe the level at which bargaining should take place, considering the latter a matter of interest to be determined by the parties themselves.⁵⁵ Through this rights/interests distinction, the court developed an extensive body of case law addressing individual employment rights and collective labour law issues.⁵⁶ This contributed significantly to the emergence of a coherent labour law system in South Africa during the 1980s while preserving space for collective bargaining and exercising industrial power in appropriate cases.

The distinction thus served as a crucial tool for defining the boundaries of the court’s unfair labour practice jurisdiction. It helped establish when judicial intervention was appropriate and when matters should be left to resolution through collective bargaining or industrial action, providing a framework that balanced legal protection with industrial autonomy. This broad jurisdiction allowed the court to develop a coherent body of labour law principles during a significant transition. Through its unfair labour practice jurisdiction, the court addressed individual employment rights and collective labour law issues. This helped establish consistent standards and protections in what had previously been an unregulated or poorly regulated environment, particularly regarding the rights of African workers who had previously been excluded from the formal industrial relations system.

53 Sec. 1(f) of the *Industrial Conciliation Amendment Act* 94/1979.

54 Du Toit 2023:15.

55 Du Toit 2023:15.

56 Du Toit 2023:13-14.

This jurisdiction thus represented a crucial step in reforming South Africa's labour relations system, providing a legal mechanism to address workplace inequities and establish more equitable labour practices during significant social and political change. Following the advent of constitutionalism in South Africa, a new set of labour legislation was adopted. Many of the provisions therein codified numerous of the "fair labour practices" which had evolved from the application of the injunction to strike down unfair labour practices and, therefore, from the former Industrial Court's use of the dichotomy between rights disputes and interests disputes to make such a determination.⁵⁷

The question which arose at the time of constitutionalisation was, however, what role, if any, the distinction between rights disputes and interests disputes were to play in a new labour law regulatory regime. The unions proposed removing the prohibition of strike action over disputes of right (including unfair dismissals), except where the parties agreed to arbitration to resolve a particular dispute.⁵⁸ It should be noted that the unions considered the prohibition on the right to strike in interests disputes as an undue infringement of their right to strike and instead called for the right to strike to be permitted on "all matters on mutual interest to employers and workers".⁵⁹ Unions opposed the removal of a duty to bargain and demanded a statutory duty on employers "to bargain on all matters of mutual interest with trade unions who meet certain thresholds, at the highest level at which bargaining takes place".⁶⁰

It is worthwhile to pause and reflect on what the Labour Appeal Court meant with the phrase "all matters on mutual interest to employers and workers". This is the same terminology which the *LRA* uses. Section 1(c)(i) of the *LRA* states that, among others, the object of the *LRA* is "to provide a framework within which employees and their trade unions, employers and employers' organisations can collectively bargain to determine wages, terms and conditions of employment and other *matters of mutual interest*".⁶¹

187(1)(c) of the *LRA* also provides that a dismissal is automatically unfair if the reason for the dismissal is "a refusal by employees to accept a demand in respect of any matter of mutual interest between them and their employer". The *LRA*'s evolution and interpretation of section 187(1)(c) provides a significant illustration of how the *LRA* navigates the distinction between rights and interest disputes. This section demonstrates the interplay between collective bargaining (traditionally the domain of interest disputes) and operational requirements dismissals (which involve rights disputes).

57 Landman 2004:807.

58 Du Toit 2023:28.

59 Congress of South African Trade Unions *Labour memorandum on the Labour Relations Act Bill* (6 June 1995; unpublished).

60 Congress of South African Trade Unions, National Congress of Trade Unions and Federation of South African Labour Proposals on the Draft Labour Relations Bill: Summary of COSATU, NACTU and FEDSAL proposals (1 May 1995).

61 Emphasis added.

The original formulation of section 187(1)(c) prohibited employers from dismissing employees to “compel” them to accept a demand relating to a matter of mutual interest.⁶² This created a complex legal question about distinguishing between dismissals aimed at compelling acceptance of new terms (part of the interest dispute framework) and dismissals based on operational requirements (part of the rights dispute framework).⁶³ The distinction became particularly problematic in cases involving employers’ demands for changes in working practices arising from operational changes. The Labour Appeal Court attempted to resolve this complexity in *Fry’s Metals (Pty) Ltd v NUMSA* by ruling that a final and irrevocable dismissal does not constitute a dismissal for compelling employees to comply with an employer’s demand.⁶⁴ This interpretation effectively drew a line between interest disputes (where conditional dismissals to force acceptance of demands were prohibited) and rights disputes (where final dismissals based on operational requirements were permitted). However, this distinction was criticised for creating a paradoxical situation where permanent termination was permitted while temporary or conditional termination was penalised.⁶⁵

Fry’s Metals therefore rejects the notion put forward by Thompson that a dispute may be said to “migrate” from the sphere of collective bargaining (where dismissal is prohibited) to the sphere of “rights” (where dismissal for operational reasons is permitted). Under his view, while a dispute might begin in the collective bargaining sphere where dismissal is prohibited, it could transform into a rights dispute if operational requirements became compelling enough, making dismissal permissible.⁶⁶ However, *Fry’s Metals* fundamentally rejected this nuanced approach. The Labour Appeal Court instead adopted a more binary distinction: if a dismissal was final and irrevocable, it could not constitute a dismissal to compel acceptance of a demand. The court effectively held that the nature of a dispute is determined by the employer’s intention at the time of dismissal—if the dismissal is final, it is an operational requirement matter; if it is conditional on accepting changes, it falls under collective bargaining. This rejected Thompson’s more fluid concept, where a dispute could evolve from one category to another based on changing circumstances.

This rejection had significant implications. Under Thompson’s theory, employers would need to exhaust collective bargaining before they could claim operational requirements necessitated dismissals. The *Fry’s Metals* approach allowed employers to bypass this by simply making dismissals final rather than conditional, regardless of whether genuine operational requirements existed.⁶⁷ This created what Thompson had warned against, namely the possibility of using operational requirements dismissals to circumvent collective bargaining protections.

62 Du Toit 2023:507.

63 Du Toit 2023:507.

64 *Fry’s Metals (Pty) Ltd v NUMSA* [2003] 2 BLLR 140 (LAC).

65 Du Toit 2023:508.

66 Thompson 1999:760.

67 Du Toit 2023:508-509.

The 2014 amendment to section 187(1)(c) attempted to address this anomaly by making any dismissal automatically unfair if the reason is “a refusal by employees to accept a demand in respect of a matter of mutual interest”. This amendment reinforced the distinction between interests and rights disputes in two crucial ways. First, it protected the integrity of collective bargaining (an interest dispute process) by preventing employers from using dismissal as a bargaining tool. Second, it preserved employers’ right to dismiss for operational requirements (a rights dispute) provided they followed the proper consultation process under section 189, independent of any collective bargaining process.

The distinction is further refined in the context of unilateral changes versus disputes over matters of mutual interest. The prohibition on dismissal applies when the dispute relates to “interests” rather than “rights”—for example, it would include dismissal for refusing to accept unilateral changes to conditions of employment but not dismissal for refusing to perform contractual duties.⁶⁸ This interpretation maintains the fundamental distinction between disputes over existing rights (where dismissal may be permissible) and disputes over creating new rights or changes to existing ones (where dismissal is prohibited).

This framework demonstrates how the *LRA* balances the need to protect collective bargaining processes while preserving employers’ rights to make operational changes. It shows that while interest disputes must be resolved through collective bargaining without the threat of dismissal, rights disputes may legitimately result in dismissal if proper procedures are followed.

The *LRA* identifies two primary categories of disputes that may be referred to the Commission for Conciliation, Mediation and Arbitration (CCMA): disputes referred “in terms of the *LRA*” (commonly known as rights disputes) and disputes about matters of mutual interest.⁶⁹ While practitioners often distinguish between “rights disputes” and “interest disputes”, it is essential to note that the *LRA* does not employ this terminology. Instead, “matters of mutual interest” functions as a residual category, encompassing all disputes that do not fall within the specific provisions for disputes referred “in terms of the *LRA*”.⁷⁰

In *Faure v Marais*, the court demonstrated the breadth of this concept by holding that even the right to occupy land, including agreements to vacate premises, could constitute a matter of mutual interest when it forms part of the employment relationship.⁷¹ This interpretation shows how the category can extend beyond traditional employment issues to encompass any aspect that affects the employer-employee relationship.

The significance of this residual category lies in its ability to capture disputes about employment rights that do not arise directly from the *LRA*, as well as claims that cannot be referred to the CCMA under any specific

68 Du Toit 2023:509.

69 Sec. 133(1)(a) read with sec. 134 of the *LRA*.

70 Du Toit 2023:145.

71 *Faure v Marais* [1999] 7 BLLR 663 (LC):par. 16.

provision of the *LRA*. This ensures that employees and employers can access dispute resolution mechanisms even for issues not explicitly covered by the *LRA*'s provisions for rights disputes, thereby providing a comprehensive framework for addressing workplace conflicts.

This understanding of matters of mutual interest reflects the *LRA*'s broader objective of providing effective dispute-resolution mechanisms for all aspects of the employment relationship, whether they arise from specific legal rights or the wider context of workplace relations. It ensures that no significant employment-related dispute falls outside the scope of the *LRA*'s dispute resolution framework.

According to section 213 of the *LRA*, the subject matter of a collective agreement is defined as "terms and conditions of employment or any other matter of mutual interest" between registered trade unions and employers or employers' organisations. The exact section defines a strike as:

The partial or complete concerted refusal to work, or the retardation or obstruction of work, by persons who are or have been employed by the same employer or by different employers, for the purpose of remedying a grievance or resolving a dispute *in respect of any matter of mutual interest* between employer and employee, and every reference to 'work' in this definition includes overtime work, whether it is voluntary or compulsory.⁷²

Three essential criteria must be met to qualify as a matter of mutual interest in the bargaining context. First, it must be a matter in which both the trade union and employer parties have a material and simultaneous interest. Second, the matter must be related to the employment relationship. For example, as demonstrated in *Itumele Bus Lines (Pty) Ltd v TAWU*,⁷³ even employees' demands for equity shareholding in the employer's business could constitute a matter of mutual interest. Third, the issue must be capable of being reduced to or regulated by a collective agreement.⁷⁴ The courts have consistently interpreted the phrase in the broadest possible sense. In *Rand Tyres & Accessories v Industrial Council for the Motor Industry (Transvaal)*, the former Supreme Court held as follows:

Whatever can be fairly and reasonably regarded as calculated to promote the well-being of the trade concerned, must be of mutual interest to them; and there can be no justification for restricting in any way powers which the Legislature has been at the greatest pains to frame in the widest possible language.⁷⁵

⁷² Emphasis added.

⁷³ *Itumele Bus Lines (Pty) Ltd v TAWU* (2009) 30 ILJ 1099 (LC).

⁷⁴ Du Toit 2023:326.

⁷⁵ *Rand Tyres and Accessories (Pty) Ltd and Appel v Industrial Council for The Motor Industry (Transvaal), Minister for Labour, and Minister Justice* 1941 TPD 108 at 115.

Even within the context of the new *Labour Relations Act*, it was held that the term “matters of mutual interest” must be given a wide meaning to include all matters relevant to the employment relationship and cannot be confined to matters concerning the enterprise’s well-being.⁷⁶ The historical development of this concept is significant. Under the previous Industrial Court system, matters of mutual interest were generally confined to topics where the court believed the freedom to strike should be protected. An employer’s failure to bargain on such topics could constitute an unfair labour practice. However, this did not extend to demands that were unlawful, unreasonable, “illegitimate” or “unconscionable” to indicate no genuine intention to bargain in good faith.⁷⁷

While the current *LRA* does not permit similar judicial intervention in determining bargaining topics, certain limitations remain. As established in *SANDU v Minister of Defence*, the constitutional right to engage in collective bargaining does not entitle unions to bargain on “any issue at large” but guarantees the right to engage in bargaining on “legitimate labour issues”.⁷⁸ Any limitation on the scope of bargaining rights must be justifiable under section 36 of the *Constitution*.⁷⁹

Importantly, the modern understanding of matters of mutual interest has moved beyond the traditional distinction between “disputes of right” and “disputes of interest”. The contemporary approach allows various statutory rights to be regulated by a collective agreement, subject to limitations stipulated in the *LRA*, *Bill of Rights* and common law. This broader interpretation enables a more comprehensive approach to collective bargaining while maintaining necessary legal boundaries.⁸⁰

In *NUMSA v SAA SOC Ltd*,⁸¹ the Labour Appeal Court explained why the phrase “any other matter of mutual interest” encompasses both interest and rights disputes. The court rejected any artificial limitation of this phrase, stating explicitly that “there is nothing in the definition in section 213 of the *LRA* that suggests that the words ‘any other matter of mutual interest’ should be limited”.⁸² The court elaborates on this interpretation by clearly defining what constitutes a matter of mutual interest. It is defined as “one in which the Trade Union and the employer parties have a material and simultaneous interest related to the employment relationship”.⁸³ This broad definition deliberately avoids distinguishing between existing rights and the creation of new ones, allowing for both to fall within its scope. The judgment addresses and dismisses the appellant’s attempt to create an artificial distinction between “matters of mutual interest” and “rights disputes”.⁸⁴ The court identifies this

76 *Vanachem Vanadium Products (Pty) Ltd v National Union of Metalworkers of South Africa and others* [2014] 9 BLLR 923 (LC).

77 Du Toit 2023:326.

78 *SANDU v Minister of Defence* [2007] 9 BLLR 785 (CC).

79 *Constitution of the Republic of South Africa, 1996*.

80 Du Toit 2023:327.

81 *NUMSA v SAA SOC Ltd* [2017] JOL 39187 (LAC).

82 *NUMSA v SAA SOC Ltd* [2017] JOL 39187 (LAC):par. 33.

83 *NUMSA v SAA SOC Ltd* [2017] JOL 39187 (LAC):par. 33.

84 *NUMSA v SAA SOC Ltd* [2017] JOL 39187 (LAC):par. 31.

as a fundamental misconception, noting that the appellant erroneously tried to confuse the term “mutual interest” with two separate concepts: “interest dispute” and “rights dispute”.⁸⁵ This attempted distinction is rejected as artificial and inconsistent with the *Labour Relations Act*’s purposes.

The court’s broad interpretation is further supported by its reference to previous case law, particularly the *Pikitup*⁸⁶ case, where it had “favoured a broad meaning to the term ‘a matter of mutual interest’”.⁸⁷ In that case, the court had extended the interpretation to include even health and safety issues, demonstrating the expansive scope of the term. This precedent reinforces the court’s position that the phrase should not be artificially restricted. The practical implications of this broad interpretation are demonstrated through the court’s observation that “issues covered in section 189(2) of the *LRA* are manifestly mutual interest issues”.⁸⁸ This shows that procedural rights in retrenchment processes, which might traditionally be considered “rights” issues, fall squarely within the broader category of mutual interest.

Nevertheless, the *Labour Relations Act* does, for all practical purposes, distinguish between rights disputes and interests disputes. While not explicitly labelling disputes as rights or interest disputes, the *LRA* effectively creates and maintains this distinction through its regulatory framework. This distinction manifests primarily through the *LRA*’s treatment of dispute resolution mechanisms and its limitations on industrial action. The foundational principle underlying this distinction is the assumption that certain disputes involving existing rights are better suited to third-party determination through arbitration or adjudication, while others—those involving creating new rights or terms—are appropriately resolved through industrial action.⁸⁹ This distinction is primarily operationalised through section 65(1)(c) of the *LRA*, which prohibits industrial action in cases where the dispute can be referred to arbitration or adjudication.

The *LRA*’s treatment of different categories of disputes demonstrates this bifurcation. Rights disputes, which typically involve interpreting or applying existing entitlements, are channelled towards arbitration or adjudication. These include disputes over dismissals, unfair labour practices, and the interpretation of collective agreements.⁹⁰ Conversely, interest disputes, which arise from failure to agree on new terms and conditions of employment, are permitted to be resolved through industrial action, reflecting their nature as negotiation matters rather than interpretation.

The distinction is further reinforced through the *LRA*’s treatment of collective agreements. Section 65(3)(a)(i) prohibits industrial action while parties are bound by a collective agreement that regulates the issue in dispute. This provision reflects the policy consideration that parties should not use power to

85 *NUMSA v SAA SOC Ltd* [2017] JOL 39187 (LAC):par. 32.

86 *NUMSA v SAA SOC Ltd* [2017] JOL 39187 (LAC):par. 33.

87 *NUMSA v SAA SOC Ltd* [2017] JOL 39187 (LAC):par. 33.

88 *NUMSA v SAA SOC Ltd* [2017] JOL 39187 (LAC):par. 33.

89 Du Toit 2023:411.

90 Du Toit 2023:411.

modify agreed terms and conditions during the currency of their agreement.⁹¹ However, employers and employees may take industrial action over issues not regulated by the agreement, demonstrating how *the LRA* preserves the space for interest-based bargaining while protecting established rights.

The complexity of this distinction is particularly evident in the *LRA's* treatment of wages and benefits. As demonstrated in cases like *Cape Gate (Pty) Ltd v NUMSA*, strikes over wages already fixed by a collective agreement are unprotected as they attempt to "re-open a matter already regulated".⁹² However, where a collective agreement sets only minimum wages, employees may strike for improved or "actual" wages, as demonstrated in *PSA v Minister of Justice and Constitutional Development*, where a demand for a once-off pay increase was deemed separate from an annual salary increase regulated by collective agreement.⁹³

The distinction becomes more nuanced in cases involving multiple issues or where the characterisation of the dispute is contested. In *Ceramic Industries Ltd t/a Betta Sanitary Ware v NCBAWU*, the Labour Appeal Court established that the true nature of a dispute must be determined by examining its substance rather than its form. The court emphasised that parties cannot simply convert a rights dispute into a strikable issue by adding demands for remedies not provided in the *LRA*.⁹⁴

The *LRA* also creates specific exceptions to this general framework, demonstrating its nuanced approach to the rights/interests distinction. For instance, section 65(2)(a) permits strike action over organisational rights disputes despite the availability of arbitration, except for disputes about disclosure of information. Similarly, section 189A(2)(b) allows strike action over certain retrenchment disputes despite their typically being subject to adjudication.

This carefully constructed framework reflects the *LRA's* broader policy objectives of promoting orderly collective bargaining while ensuring appropriate forums for dispute resolution. The distinction between rights and interest disputes serves as a crucial organising principle, determining both the permissible methods of dispute resolution and the limitations on industrial action. While not always maintaining bright-line distinctions, the *LRA's* approach provides a practical framework for categorising and resolving different types of labour disputes reflecting their fundamental nature.

91 Du Toit 2023:411.

92 *Cape Gate (Pty) Ltd v NUMSA & others* [2007] 5 BLLR 446 (LC):par. 40.

93 *Public Servants Association of South Africa v Minister of Justice and Constitutional Development & Others* [2001] 11 BLLR 1250 (LC).

94 *Ceramic Industries Ltd t/a Betta Sanitary Ware v NCBAWU* (1997) 18 ILJ 716 (LC).

4.3 The distinction in the Labour Appeal Court

The Labour Appeal Court's judgment carefully upholds the fundamental distinction between rights disputes and disputes of interest through its analysis of the issues at hand. As to rights disputes, the court acknowledged that certain benefits could be enforced through the CCMA's unfair labour practice jurisdiction—specifically those that arise from existing contracts, legislation, judicial orders or established discretionary practices.⁹⁵ This aligns with Spielman's concept of rights disputes, which concern the interpretation and application of existing rules and agreements. However, the court found that the core issues in this case—including changes to working hours, medical aid schemes, retirement age and long service awards—were matters of mutual interest that needed to be resolved through collective bargaining rather than adjudication.⁹⁶ These issues represented negotiations over new terms and conditions, making them classic disputes of interest, as described by Spielman's.

The court's approach was particularly evident in its treatment of the medical aid issue. While the previous Wooltru Medical Aid scheme was part of the employees' existing rights, Woolworths successfully argued that reinstating this specific scheme had become impossible. Therefore, the negotiation of a new medical aid arrangement became part of the broader interest dispute regarding the transition to flexi-time.⁹⁷ The court ultimately upheld this distinction by confirming that these matters should be resolved through "power play"—the industrial relations mechanisms of strikes and lockouts—rather than through the CCMA's adjudicative process.⁹⁸ This directly reflects Spielman's view that disputes of interest may legitimately require economic pressure tactics when compromise cannot be reached, as they involve establishing new terms rather than interpreting existing ones. By dismissing the appeal and affirming that the CCMA lacked jurisdiction to arbitrate these issues, the court maintained the crucial separation between the adjudication of existing rights and the negotiation of new terms and conditions through collective bargaining.⁹⁹

The *Woolworths* case illustrates how the characterisation of a dispute can evolve over time, even within the same broader conflict. After the Constitutional Court's judgment ordering reinstatement, the matter initially crystallised into a dispute of right—specifically the employees' right to be reinstated on their original terms and conditions. However, the dynamic nature of employment relationships means that even established rights can become subject to renegotiation through legitimate processes.¹⁰⁰ Once Woolworths complied with the reinstatement order, restoring the *status quo ante within the*

95 *SACCAWU v Phala* (JA136/23) [2024] ZALAC 62 (27 November 2024):par. 34.

96 *SACCAWU v Phala* (JA136/23) [2024] ZALAC 62 (27 November 2024):par. 37.

97 *SACCAWU v Phala* (JA136/23) [2024] ZALAC 62 (27 November 2024):paras. 32 and 40.

98 *SACCAWU v Phala* (JA136/23) [2024] ZALAC 62 (27 November 2024):par. 42.

99 *SACCAWU v Phala* (JA136/23) [2024] ZALAC 62 (27 November 2024):par. 43.

100 *Monyela & others v Bruce Jacobs t/a LV Construction* (1998) 19 ILJ 75 (LC):82C-E. See Van Niekerk & Smit 2024:108.

realm of possibility, the subsequent negotiations over converting employees to flexi-time contracts transformed the matter back into a dispute of interest. This transformation was legitimate because employment relationships are not immutably fixed—parties remain free to negotiate changes to established terms and conditions through proper collective bargaining processes. The key distinction is that while Woolworths could not unilaterally impose changes to undermine the employees' reinstated rights, it could seek to negotiate such changes through the collective bargaining framework, where both parties could exercise their respective economic power through protected industrial action. This fluidity between rights and interests disputes reflects the reality that labour relations must balance the protection of established rights with the need for workplace arrangements to adapt to changing circumstances through collective bargaining.

5. CONCLUSION AND RECOMMENDATIONS

The distinction between rights disputes and interests disputes remains a fundamental organising principle in South African labour law, though its application has evolved significantly since its initial development through the Industrial Court's unfair labour practice jurisdiction. While the *Labour Relations Act* does not explicitly codify this dichotomy, it effectively operationalises the distinction through its regulatory framework, particularly in treating dispute resolution mechanisms and limitations on industrial action.

The *Woolworths* case demonstrates this distinction's enduring utility and increasing complexity in modern labour relations. The court's handling of the case reveals how the rights/interests dichotomy continues to serve as a crucial tool for determining appropriate dispute resolution mechanisms while highlighting the challenges that arise when disputes contain elements of both categories. The court's careful delineation between matters suitable for CCMA adjudication and those requiring resolution through collective bargaining reflects the ongoing relevance of Spielman's original conceptualisation.

However, the contemporary application of this distinction has evolved beyond its traditional binary formulation. As evidenced by cases like *NUMSA v SAA SOC Ltd*, modern labour law recognises that "matters of mutual interest" can encompass disputes regarding rights and interests, suggesting a more nuanced approach is necessary. This evolution reflects the increasing complexity of employment relationships and the need for flexible dispute-resolution mechanisms to accommodate this complexity.

Based on this analysis, several key recommendations emerge for improving the application of the rights/interests distinction in contemporary labour law. The current implicit treatment of the distinction in the *Labour Relations Act* would benefit from more explicit legislative guidance on categorising hybrid disputes that contain elements of both rights and interests, which could help prevent jurisdictional confusion and ensure more consistent treatment of similar

cases. The CCMA and Labour Courts should develop more detailed guidelines for handling cases where the distinction is not immediately apparent, including specific criteria for determining when a matter has sufficiently “crystallised” into a right to fall within CCMA jurisdiction versus when it remains a matter for collective bargaining.

Given the increasing complexity of labour disputes, developing alternative dispute resolution mechanisms designed explicitly for hybrid cases could prove valuable. These mechanisms could better handle disputes that do not fit neatly into either category, potentially through specialised mediation processes. Additionally, employers and unions should be encouraged to explicitly address the rights/interests distinction in their collective agreements, particularly regarding the transformation of interest disputes into rights disputes over time, which could help prevent future jurisdictional challenges and provide clearer guidance for dispute resolution.

Looking forward, the rights/interests distinction will face further challenges as employment relationships evolve, and new forms of work emerge. Future research should examine how this fundamental dichotomy can be maintained while accommodating these changes, particularly in non-traditional employment relationships. The goal should be to preserve the practical benefits of this distinction while ensuring it remains relevant and applicable to contemporary workplace disputes.

The enduring value of the rights/interests distinction lies in its ability to guide appropriate dispute resolution mechanisms while preserving space for collective bargaining. However, its continued utility depends on maintaining sufficient flexibility to accommodate the complexity of modern labour relations while providing clear guidance for practitioners and adjudicators. Through careful attention to legislative reform, procedural improvements and enhanced training, the labour relations system can better leverage this distinction to promote procedural clarity and substantive fairness in dispute resolution.

BIBLIOGRAPHY

BOGG A

2017. “Individualism” and “collectivism” in collective labour law. *Industrial Law Journal* 46(1):72-108. <https://doi.org/10.1093/indlaw/dww045>

DIMITRIU R

2019. Workers' rights. A new perspective. *Tribuna Juridica* 9(3):549-558.

DU TOIT D (ED.)

2023. *Labour relations law – a comprehensive guide*. 7th edition. Durban: LexisNexis.

LANDMAN AA

2004. Fair labour practices – the Wiehahn Legacy. *Industrial Law Journal* 25(1):805-812.

LE ROUX R

2019. A recipe for procedural success in the case of large-scale retrenchments: Woolies times three, with a pinch of *Edcon* and *Steenkamp* for taste. *Industrial Law Journal* 40(3):1421-1440.

SPIELMANS JV

1939. Labor disputes on rights and on interests. *The American Economic Review* 29(2):229-312.

THOMPSON C

1999. Bargaining, business restructuring and the operational requirements dismissal. *Industrial Law Journal* 20(2) 755-771.

VAN NIEKERK A & SMIT N (EDS.)

2024. *Law@work*. 6th edition. Durban: LexisNexis.