



RULING **(Default Picketing Rules)**

In the matter between

National Union of Metalworkers of South Africa (NUMSA)- Union

And

**Retail Motor Industry and Fuel Retailers Association (RMI)- Employers
Organisation**

And

Fuel Retailers (Association)- Employers Organisation

ESTABLISHMENT OF DEFAULT PICKETING RULES

Established in terms of section 69 (5) of the Labour Relations Act 66 of 1995 (“the LRA”)

1. Background and Representation

2. The parties were allowed to make written presentations and an opportunity was given to all parties to make further presentations. A hearing was held on 13 September 2022 in terms of s69 (5) of the LRA. The parties were represented at the above hearing by the heads of their negotiations teams and 4 non-member employers were in attendance as per the register.
3. The non-member employers who were present confirmed that they had no presentations or submissions to make with regards to Picketing Rules and were present to observe the process. I will take into account any written representation made.
4. In an attempt at establishing the Picketing Rules, the following circumstances of the workplace or other premises where pickets are intended to be held, have been taken into account;
5. The Industry constitutes some 23 507 employer members across 7 sectors and 295 809 employee (as at 30 August 2022), which in effect means 23 000 possible sites for picketing.
6. The employers businesses and facilities, all vary in terms of size, sector, operations, the numbers of employees employed at each site, location and sites. The sectors are made up of the Fuel Retail Stations, Retail Motor Outlets, Component manufacturing and Auto Repair workshops. These enterprises differ in size and nature. They are located throughout the country and in premises which are either stand alone, in shopping malls, industrial parks etc. and are all differing in nature however some similarities in the Fuel Retail stations. I have taken into account what constitutes the industry as defined in section 2 of the Constitution and listed below;

"Motor Industry" or "Industry", without in any way limiting the ordinary meaning of the expression and subject to the provisions of any demarcation determination made in terms of section 62 of the Labour Relations Act, 1995, includes G11-064227-C 34 No. 34552 GOVERNMENT GAZETTE, 26 AUGUST 2011 (a) assembling, erecting, testing, remanufacturing, repairing, installing, adjusting, overhauling, wiring, re-wiring, upholstering, spraying, painting and/or reconditioning carried on in connection with - (i) chassis and/or bodies of motor vehicles; (ii) internal combustion engines and transmission components of motor vehicles; (iii) all electrical and electronic equipment and/or devices mainly or exclusively connected with motor vehicles; (b) automotive engineering; (c) auto valet establishments; (d) repairing, vulcanising and/or retreading tyres; (e) repairing, servicing and/or reconditioning batteries for motor vehicles; (f) the business of parking and/or storing motor vehicles; (g) the business conducted by filling and/or service stations including ancillary activities forming part of a filling station linked to the convenience store environment inclusive of the preparing, serving and selling of food/beverages to customers but excluding activities of separately registered establishments whose sole activities relates to the restaurant, tea room and catering environment. (h) the business carried on mainly or exclusively for the sale of motor vehicles or motor vehicle parts and/or spares and/or accessories (whether new or used) pertaining thereto, whether or not such sale is conducted from premises which are attached to a portion of an establishment wherein is conducted the assembly of or repairs to motor vehicles; (i) the business of motor graveyards; (j) the business of manufacturing establishments wherein are fabricated motor vehicle parts and/or spares and/or accessories and/or components thereof; (k) vehicle body building; (l) the sale of tractors, agricultural and irrigation equipment (not connected with the manufacture thereof) in the Republic of South Africa, but excluding the Magisterial District of Kimberley, in respect of the sale of: STAATSKOERANT, 26 AUGUSTUS 2011 No.34552 35 (i) agricultural and irrigation equipment; and (ii) tractors, except when undertaken by establishments substantially engaged in the sale and/or repair of other motor vehicles.

7. A generic centralised demarcation of picketing areas is near impossible given the nature of each enterprise. The will be difficult to impose from a centralised level without having information regarding what workplaces in the industry look like. This will also be difficult to implement as the generic demarcation of location could lead to ambiguity, disputes and other unintended consequences.
8. I have taken into account the submission by the parties with respect to the actual location for picketing and the information provided by the parties in this regard did not assist me in identifying the locations for picketing at workplaces or areas where picketing could be held or to provide information regarding the nature of the different workplaces and any other relevant requirements.
9. I have taken into account the issues raised in the employer's submissions with regard to allowing for parties who control premises where employers operate (where excess to the premises which are not controlled by them), however given the logistical problems this would create as stated above where hundreds if not thousands of possible such submissions could be made which could be very time consuming and immensely costly for the parties and council.
10. I have been appointed to establish picketing rules in the above environment and believe that I should not approach this task with any haste as the consequence of not having clear rules and location could have far reaching implications for the parties and society given the importance of some of the sectors which fall under the motor industry.

10.1 The fundamental purpose of a Picket:

PURPOSE OF THE PICKET

The only purpose of the picket is to approach and peacefully seek to persuade the following persons to support the strike or oppose the lockout by temporarily withholding their services from, supplying goods and materials to, or working for the employer/s:

10.1.1 service providers, clients and customers of the employer;

10.1.2 members of the public; and

10.1.3 Employees who are not on strike (other than essential or minimum service employees) and replacement workers.

11. I have also taken into account the Code of Good Practice on Collective Bargaining and this regard, item 29, which reads as follows:

(1) This Part of the Code is intended to provide practical guidance on picketing in support of any protected strike or in opposition to any lockout. It is intended to be a guide to those who may be contemplating, organising or taking part in a picket and for those who as employers or employees or members of the general public that may be affected by it.

- (2) *Section 17 of the Constitution recognises the right to assemble, to demonstrate, to picket and to present petitions. This constitutional right can only be exercised peacefully and unarmed. Section 69 of the Act seeks to give effect to this right in respect of a picket in support of a protected strike or a lockout.*
- (3) *Any person interpreting or applying the Act in respect of any picket must take this Part of the Code into account. This is the effect of section 203 of the Act. This applies to employers and their employer organisations, employees and their trade unions, the Commission, Labour Court, the Labour Appeal Court, private security services and the South African Police Services.(include supporters and landlord)*
- (4) *This Part of the Code does not apply to all pickets and demonstrations in which employees and trade unions may engage. It applies only to pickets held in terms of section 69 of this Act. That section has four elements:*
 - (a) *The picket must be authorised by a registered trade union;*
 - (b) *Only members and supporters of the trade union may participate in the picket;*
 - (c) *The purpose of the picket must be to peacefully demonstrate in support of any protected strike or in opposition to any lockout;*
 - (d) *The picket may only be held in a public place outside the premises of the employer or, with the permission of the employer, inside its premises. The permission of the employer may be overruled by the CCMA, if the permission is unreasonably denied. The factors to be taken into account to determine whether permission is unreasonably denied are set out in clause 29 of this Code.*
 - (5) *If the picket complies with these four elements then the ordinary laws regulating the right of assembly do not apply. These laws include the common law, municipal by-laws and the Regulation of Gatherings Act, 205 of 1993.*
 - (6) *A picket conducted by an unregistered trade union or for purposes other than to demonstrate in support of a protected strike or a lockout is not protected by section 69 of the Act. The lawfulness of that picket or demonstration will depend on compliance with the ordinary laws regulating public gatherings referred to in sub-clause (5).*

12. Given the above , I therefore direct the parties as follows:

12.1 The representative of each party (Employer /representative and the Employees/representative/shopsteward) to meet within 7 days of this ruling and no later than the 29 September 2022 , in order to seek to agree on:

- 12.1.1 the location for picketing;
- 12.1.2 The number of picketers to be allowed at each location; and
- 12.1.3 The times during which picketing will be held;
- 12.1.4 Allowing employers who do not have control over the access to the premises to consult landlords/property owners before agreeing on any picketing location;
- 12.1.5 A list of names of Co-ordinators, Marshalls, Officials responsible for each site, region, province and national to be provided to the Commissioner;
- 12.1.6 The provision of ablution facilities (Toilets and Water) and access to such if on employer's premises;

13. A copy of such an agreement is to be forwarded to the Council for records. Should no agreement be reached, the matter will thereafter be addressed in the final default rules to be issued.

14. The following guidelines are issued to the parties in order to assist the parties in finding agreement on the location for picketing.
- 14.1 The location of all Picketing must be outside of the employer's premises however within a reasonable distance from the actual physical premises.
- 14.2 Picketing shall be held around the perimeters of the enterprise boundaries and at least two/three meters away from any entrance and exit to such businesses. The picketers should not constitute more 50% of the employees in the picket at any one time.
- 14.3 Parties must consider demarcating an area where employees who are not on picket, could gather or rest.
15. I have also attached the default picketing rules that will be applied once all the relevant information regarding the location, times, numbers and contact details of the listed persons are provided.
16. All and any submissions to be submitted in writing to the commissioner by no later than the 29th September'22. This should include a list of all workplaces where picketing is intended to be held. A final set of Picketing Rules will be issued thereafter.

Done And Signed at

On This 21st __ Day Of September 2022.

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Commissioner M.D.Ally

ESTABLISHMENT OF DEFAULT PICKETING RULES¹

1 PARTIES TO THE dispute

1.1 The parties to the dispute giving rise to the strike/lockout² are:³

NUMSA

and

Retail Motor Industry and Fuel Retailers Association

and

Fuel Retailers Association

2 BINDING NATURE

2.1 These Rules are binding on the parties to the dispute and their officers, officials, members and supporters.

2.2 Nothing in these Rules prevents the parties to the dispute agreeing to their own rules to replace or amend these Rules.

2.3 These Rules must be interpreted in accordance with-

2.3.1 sections 17, 18 and 23 of the Constitution;

2.3.2 section 69 of the Labour Relations Act, 66 of 1995 (Act);

2.3.3 The Code of Good Practice: Picketing (Code)

2.4 Where these Rules are silent, the relevant provisions of the Act and the Code apply.

3 PURPOSE OF THE PICKET

3.1 The only purpose of the picket is to approach and peacefully seek to persuade the following persons to support the strike or oppose the lockout by temporarily withholding their services from, supplying goods and materials to, or working for the employer/s:

¹ Picketing may only take place in terms of s69. Gatherings related to unprotected strikes are subject to the provisions of the Regulation of Gatherings Act.

² Delete whichever is not applicable unless both a strike and a lockout are in place.

³ Commissioner to fill in the names of the parties to the dispute giving rise to the strike.

- 3.1.1 service providers, clients and customers of the employer;
- 3.1.2 members of the public; and
- 3.1.3 employees who are not on strike (other than essential or minimum service employees) and replacement workers.

4 LOCATION OF PICKET AND NUMBER OF PICKETERS

(⁴TO BE FINALISED AFTER FINAL SUBMISSIONS)

- 4.1 A picket may *only* be held at the places designated in Annexure A.
- 4.2 Only members and supporters of the strike may take part in the picket.
- 4.3 A picket at any designated location may not exceed the maximum number of members or supporters determined by the Commissioner in that Annexure.

5 DURATION AND TIME OF PICKET (TO BE FINALISED AFTER SUBMISSIONS)

- 5.1 The picket may only commence at or after the commencement of the strike or lockout.
- 5.2 The picket may only take place during daylight hours.⁵

6 NATURE AND CONDUCT OF PICKET

- 6.1 Picketers must at all times conduct themselves in a peaceful, unarmed and lawful manner and not interfere with the constitutional rights of other persons
- 6.2 Subject to clause 6.3, picketers may for the purposes of the picket –
 - 6.2.1 carry placards;
 - 6.2.2 hand out pamphlets;
 - 6.2.3 chant slogans, sing and dance;
 - 6.2.4 be addressed by union officials and supporters; and
 - 6.2.5 wear trade union t-shirts, hats, caps, badges and other paraphernalia.
 - 6.2.6 approach and peacefully engage suppliers, clients, customers, employees (other than essential or minimum service employees) and replacement workers not to enter the premises and support the strike or oppose the lockout.

⁴ The Commissioner must determine the location of the pickets and the number of picketers in each designated location in accordance with section 69(5) and (6) of the LRA, clauses XX of the Code and any relevant court decision.

⁵ The Commissioner may amend this rule if the employer works night shift or the picket is rendered ineffective because the employer has arranged for its suppliers, customers and clients to enter the premises at night.

- 6.3 Any limitations on the activities listed in clause 6.2 in respect of specific locations are detailed in Annexure A.⁶
- 6.4 Picketers may not –
- 6.4.1 In performing the activities contemplated in clause 6.3 use hate or defamatory speech or incite violence;
 - 6.4.2 forcefully prevent or appear to prevent suppliers, clients and customers of the employer, members of the public, employees who are not on strike and replacement workers from entering or leaving the premises or any part of the premises of the employer;
 - 6.4.3 commit any unlawful action, such as intimidating, coercing, threatening or assaulting any person or causing or threatening to cause any damage to any property whether belonging to the employer or not;
 - 6.4.4 wear masks; or
 - 6.4.5 have any dangerous weapons or objects in their possession.
- 6.5 For the purposes of these Rules, dangerous objects or weapons includes any object that could be used to injure or threaten a person or damage property. In the context of a picket there is no other justifiable use for the possession or display of such an object, in particular any of the following objects:
- 6.5.1 Knives, spears, pangas, bush knives or any similar object;
 - 6.5.2 Sticks and knobkieries⁷ whether made of metal or wood;
 - 6.5.3 Whips and sjamboks;
 - 6.5.4 Bricks, stones or any similar object that can be thrown or propelled in a manner that can cause injury or damage to property;
 - 6.5.5 Any inflammable substance;
 - 6.5.6 Any liquid, foam or similar substance that can be sprayed or extruded to cause injury or damage to property.

7 CONTROL OF PICKETS (TO BE FINALISED AFTER SUBMISSIONS)

- 7.1 Union officials and managers are accountable and should be available to resolve problems may the need arise.
- 7.2 The name and contact details of the Commissioner responsible for the conciliation of the dispute giving rise to the strike or lockout and these Rules is set out in Annexure B.
- 7.3 The names and contact details of the trade union convenor/s of the picket and the employer representative/s are listed in Annexure B⁸.

⁶ The Commissioner may, for example, limit the activity of a picket in a shopping mall or business complex to carrying placards and handing out pamphlets.

⁷ To be discussed further.

⁸ The Commissioner must list the names and contact details of the convenor/s and employer representative/s in Annexure B.

- 7.4 The convenor/s of the picket is responsible for overseeing the picket and ensuring that the picket complies with the rules.
- 7.5 The trade union must appoint one marshal for every ten picketers to monitor and control the picket at each designated location. The full names and contact details of the marshals are listed in Annexure B.
- 7.6 The convenors, marshals and employer representatives must be present from the start to the end of the picket each day.
- 7.7 The convenor, the marshals and the employer representative must-
- 7.7.1 at all times during the picket have a copy of these Rules in their possession;
 - 7.7.2 wear the armbands or vests described in Annexure B to identify themselves as convenors or marshals⁹; and
 - 7.7.3 be present from the start to the end of each day of the picket.
- 7.8 The names and telephone numbers of the convenor and marshals must be set out in Annexure B.
- 7.9 Any change to a convenor, employer representative and marshal must be sent by a text message to the persons listed in Annexure B.
- 7.10 The trade union must ensure that its members and supporters who participate in a picket wear the identification described in Annexure B.¹⁰
- 7.11 The trade union must train its convenors and marshals on the Code and the Rules and their responsibilities to ensure a lawful and peaceful picket.

8 EMPLOYER CONDUCT

- 8.1 The employer or any person in authority at the workplace or acting on the employer's behalf may not –
- 8.1.1 in any way hinder or obstruct the lawful and peaceful conduct of the picket;
 - 8.1.2 undermine any employee's right to lawfully and peacefully participate in the picket or discipline or threaten to discipline any employee for peacefully and lawfully doing so;
 - 8.1.3 engage in or permit conduct which is provocative or may incite conflict; or
 - 8.1.4 carry a dangerous weapon of any kind while in contact with the picketers.
 - 8.1.5 use hate or defamatory speech or incite violence
- 8.2 The employer must ensure that any private security company employed by the employer complies with the requirements relating to such companies under the Code of Good Practice on Collective Bargaining and Industrial Action.

⁹ The Commissioner to describe the armbands or vests identifying the members or officials as convenors and marshals.

¹⁰ The Commissioner to describe the Tshirts, hats, badges or other forms of identification of participants in the picket in Annexure B.

- 8.3 The employer must ensure reasonable access to toilet facilities and drinking water to persons participating in a picket

9 PICKETING ON EMPLOYER'S PREMISES OR IN OTHER DESIGNATED AREAS

- 9.1 If picketing is to take place on the employer's premises or other designated areas, the employer must, where applicable provide the trade union with written confirmation of the health and safety rules to be observed before, during and after the picket.
- 9.2 Participants in a picket on the employer's premises or in any other designated area must, in addition to the requirements set out in clauses 6 and 7 above –
- 9.2.1 remain within the designated picketing area(s);
 - 9.2.2 observe the health and safety rules and regulations applicable in the workplace;
 - 9.2.3 refrain from causing any damage to property or allowing any damage to be caused; and
 - 9.2.4 leave the premises and the facilities in the condition in which they found it.

10 FAILURE TO COMPLY WITH THESE RULES

- 10.1 Any person may refer a dispute concerning the interpretation or application of these Rules to the Commissioner responsible for the conciliation of the dispute giving rise to the strike or lockout and these Rules.
- 10.2 The Labour Court may suspend a picket at one or more designated locations if these Rules have not been complied with in terms of section 69(12) (c) of the Act.

11 DISPUTE RESOLUTION

- 11.1 Any dispute about the interpretation or application of these Rules or any alleged breach thereof shall be dealt with in accordance with section 69(8), (9), (10) and (11) of the Act or section 158(1)(g) of the Act. This does not affect any other right that any person may have in terms of the Act or any other law.
- 11.2 It is recorded that the employer, the union and persons taking part in the picket are subject to the protections and provisions set out in section 67 of the Act.

12 POLICE INVOLVEMENT

- 12.1 These Rules do not affect the right of any person to ask the South African Police Service or any security organisation responsible for maintaining safety and security at or near the workplace to investigate or deal with any unlawful conduct or alleged unlawful conduct.

12.2 If this happens, the employer and the union undertake to cooperate with the police or security organisation in the performance of their duties and the union undertakes to do everything possible to ensure that its members and supporters will do the same.

13 TERMINATION

These Rules will remain in effect until the settlement of the dispute, the termination of the strike, termination of the picket by the union or until it is terminated or reviewed by mutual agreement, whichever may come first.

These rules are subjected to the Disaster Management Act and should be in compliance with such.

Annexure 1- Description of place or places for the picket

Addresses and location/s of pickets and number of picketers

Address/es or location of the picket

- 1.
- 2.

Physical location of pickets at each address¹¹

.....	[number of pickets]	[limitation of activity]
.....	[number of pickets]	[limitation of activity]

Duration and times of pickets - Date/s and times that pickets may be held at each address and physical location

Address /physical location physical location)	times of pickets (hours during which pickets may be held at each address and physical location)
1.	
2.	

¹¹ The physical location may be described in words or drawn or both. So for example the location may be described as 5 metres from the entrance to the employers premises on XX road and extend no more than 2 metres onto the pavement – accompanied with a drawing to that effect.

Annexure 2 - Names and details of participants

Commissioner

1. [Name, email address and mobile telephone number]

Convenor

[Name, designation of status¹², email address and mobile telephone number]

Employer representative

[Name of person appointed in terms of clause 8.1, designation of status, email address and mobile telephone number]

Marshalls

[Name, work number and mobile telephone number]

¹² Whether a trade union official, shop steward or member. If a shop steward or member, then the employee's work number must be included]