

SUMMARY

The Applicant (the “**Employee**”) was employed as a Project Manager by the Second Respondent (the “**Employer**”). The Employee brought an application to the Labour Court on the basis of unfair retrenchment on both procedural and substantive grounds.

Within **6 (Six)** months of commencing employment, the Employer noticed that the Employee lacked a critical and fundamental skill to fulfil his duties in regard to the specific project (the “**Project**”) (which required extensive signalling experience). Resultantly, his employment within the Project was considered redundant and the Employee was accordingly informed of same.

In light of the above, the Employee was further informed that various consultations would be held to inform him of the following:

1. reasons for redundancy;
2. opportunity to state why his position would not be regarded as redundant; and
3. alternative suitable positions within the company which would be explored.

Pursuant to the above, the Employer made the determination that Employee was indeed redundant in his allocated position and accordingly, the Employer decided to assign the Employee to alternative suitable position within the company.

The Employee, being unsatisfied with the aforesaid determination, contended that the Employer failed certain guidelines contemplated in Section 189 of the Labour Relations Act (“LRA”) such as:

1. engage in meaningful consultation throughout the process;
2. took a close minded approach;
3. employer redundancy was based on a selection criterion; and
4. the opportunity of bumping up was not explored.

HELD

In light of the above, the court found that the Employee’s position was indeed redundant and there was no evidence to show the contrary nor were any submissions challenged during consultations between the Employer and Employee in this regard. In coming to this conclusion, the Court had to consider whether meaningful consultations were performed by the Employer when assigning the

Employee in the alternative suitable position.

The court found that that the consultation process utilised by the Employer was unduly shortened when allocating a new alternative suitable position in that the Employer employs over **11 000 (Eleven Thousand)** employees and accordingly, the Employee was not given sufficient opportunity to assess other vacant positions available, nor to comment on his new position allocated.

In light of the meaningful consultation process envisaged by the LRA, the Court found that the Employer failed to host the comprehensive facilitation process required throughout when embarking on retrenchment proceedings in terms of S189 of the LRA. However, the Court took into consideration the minor degree of neglect procedurally of the Employer and that the Employee was allocated an alternative position and, accordingly granted remuneration of only two months' compensation to the Employee.

VALUE

This judgment highlights the protections afforded to employees, as well as the numerous hurdles an employer has to overcome when contemplating retrenchment. It further emphasises that consultation and/or engagements should not be close minded nor have a predetermined outcome, without the meaningful engagement with employees throughout every step, even during allocation of alternative suitable positions. The judgment demonstrates the severity with which employers will be dealt with if they attempt to side step certain provisions contemplated in S189 of the LRA.

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