



## THE LABOUR COURT SLAMS EMPLOYER FOR RETRENCHMENT MISSTEPS

In *Duverge v Spanish Farm Guest Lodge CC t/a Sky Villa Boutique Hotel*, the Labour Court delivered a significant judgment on 11 April 2025 reminding employers of the importance of meaningful consultation in retrenchment processes. The case revolved around the dismissal of Mr Paul Duverge ("Paul") who held the position of Group General Manager within the Wiehahn Group's ("the Group") hospitality division, amid a purported restructuring exercise.

### MEANINGFUL CONSULTATION

Central to the Court's finding was the employer's failure to conduct a procedurally fair retrenchment process, particularly regarding its obligation under section 189 of the Labour Relations Act to engage in a "meaningful joint consensus-seeking process." Although the employer convened several consultation meetings, the Court found that these were largely perfunctory and hostile. The employer dismissed the employee's proposals without proper consideration, including cost-saving alternatives and possible reassignment and at times responded with open aggression.

During the consultation meetings, the employer's representatives can be quoted saying – "Paul, you are talking crap, you are wasting my time." "I do not have time for your bullshit man, you know you are talking crap." The Court concluded that the employer had approached the consultations with a closed mind, rendering the process devoid of the genuine engagement required by law.

## BUMPING AND SELECTION CRITERIA

The judgment also addressed the principle of "bumping" within the context of fair selection criteria. Although Paul proposed that he could displace another General Manager with less tenure in line with the "last in, first out" ("LIFO") principle, the employer rejected this without proper justification. The Court emphasized that bumping (both horizontal and vertical) is an essential consideration in retrenchment exercises. It held that the employer's rigid stance failed to recognize the nuanced and employee-protective nature of the LIFO principle. The Court found that had bumping been fairly applied, Paul could have remained employed, and the employer's refusal to explore this option rendered the dismissal substantively unfair.

## WITHHOLDING STATUTORY PAY

A further contentious issue was the employer's refusal to pay Paul's statutory entitlements such as severance and leave pay, on the grounds of an alleged "off-the-books" loan made to Paul by a separate entity within the Group. The Court noted that Paul's employment contract only permitted deductions for loans from his actual employer, not other companies in the Group. In the circumstances, there could be no set off because it is not mandated by the employment contract. The Court ordered the outstanding statutory payment of R249,083.65 to be paid to Paul in full. In addition, the Court awarded Paul eight months' compensation totalling R642,000 for procedural and substantive unfairness. The Court noted that the employer's aggressive conduct during the consultation and refusal to offer reasonable alternatives weighed in favour of the compensation awarded.

## TAKE HOME

This case serves as a caution to employers that dismissals for operational requirements are "no-fault dismissals." That is, the employee has committed no misconduct and bears no personal culpability for the termination. As such, the employer bears a heightened duty to ensure the process is both procedurally and substantively fair and that an attitude of empathy and sensitivity is displayed in the process.

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