



ARBITRATION AWARD

Commissioner: Winnie Everett
Case No.: WECT21420-24
Date of Award: 7 July 2025

In the ARBITRATION between:

Tshepiso Titipana
(Applicant)

and

IHC South Africa (Pty) Ltd
(Respondent)

APPROVED

DETAILS OF HEARING AND REPRESENTATION

1. This arbitration took place on 25 June 2025 at the CCMA's Cape Town offices. The applicant, Ms Tshepiso Titipana was present and represented by Mr Zola Mcaciso of MS Inc. The employer, IHC South Africa (Pty) Ltd, was represented by Mr R Naiker, commercial director.
2. The proceedings were digitally recorded.

THE ISSUE IN DISPUTE

3. I must decide whether the applicant's dismissal for operational requirements was fair. Both substantive and procedural fairness were in dispute.
4. The applicant claimed compensation.
5. I am satisfied that the CCMA has jurisdiction to arbitrate in terms of section 191(12)(b) of the Labour Relations Act 66 of 1995 (the LRA) as the applicant was the only employee dismissed on or around December 2024 following a consultation process regarding the employer's operational requirements.

BACKGROUND

6. The South African company and employer in this matter, IHC South Africa (Pty) Ltd, referred to as "IHC SA", has a "parent company" - Dutch company, Royal IHC. The applicant was recruited and appointed on a fixed-term contract for six months when one Wendy, based in the Netherlands and responsible for marketing and communications globally, went on maternity leave at the end of May 2023. Satisfied with Titipana's performance, the applicant was then appointed indefinitely by IHC SA although she continued to perform functions globally, for the group. In particular, her focus was on communications whereas Wendy focused on marketing. The applicant reported to Naiker in South Africa, and functionally to Wendy in the Netherlands.
7. At the time of her retrenchment, the applicant earned R39 000.00 per month.
8. The applicant was dismissed on 6 December 2025 and she referred a dispute to the CCMA on 9 December 2024. As conciliation did not take place, there was a brief attempt to resolve the dispute before proceeding with arbitration, but this was unsuccessful.
9. Both procedural and substantive fairness of the dismissal were in dispute.

SURVEY OF EVIDENCE AND ARGUMENT

10. Despite lengthy cross-examination, especially of Mr Naiker, the facts were not materially in dispute.
11. Naiker testified that IHC SA had essentially created a position for Titipana after Wendy's return from maternity leave, but Wendy was able to run with both marketing and communications globally. For a number of years, there had been constraints at the global level, and in the course of the year (2024) the

Durch company was downsizing, with marketing and communications in head office targeted for downsizing, with the aim of doing shared work with a smaller team.

12. At the end of July 2024, the company did planning and decided that further downsizing was needed. Given two resources for marketing and communications, IHC SA was required to reduce by one person. Since Titipana did communications only, whereas Wendy had experience with both communications and marketing, the applicant's position was identified for redundancy, and the section 189(3) notice was sent out on 1 August 2024.
13. Naiker admitted under cross-examination that the applicant's salary was paid for by the South African company, which was performing well, and that South Africa was essentially funding the global organisation by paying Titipana's salary. He also admitted that the decision to retrench Titipana was made at the level of the Dutch company, and IHC SA was required to implement it.
14. The applicant was notified that her position was redundant and the company requested consultation. The first meeting took place on 5 August 2024 and was facilitated by a consultant, Mr J van Wyk. The applicant requested a postponement which was denied, and she then attended on the basis that she would listen only; although she did ask a question or two, pertinently about legal representation, which Van Wyk said would be permitted. Despite this undertaking, the applicant demonstrated through emails that Van Wyk refused to engage the applicant's representative and communicated directly with her, without copying her representative.
15. Naiker's view was that between August and November 2024, there was very little opportunity to consult as the applicant was repeatedly booked off sick by a psychologist or psychiatrist, to the point that she was on unpaid leave in December 2024 when it was ultimately decided that the retrenchment should be effected. He believed that the process was frustrated by these delays.
16. Naiker conceded that there were three consultation meetings which took place on 5 August 2024, 16 August 2024 and then 6 September 2024, although the first meeting was to go through the proposed retrenchment, explain the notification and the potential following steps, as well as that she was welcome to have a representative in the following meetings.
17. The applicant contended that in the second meeting, the rationale was questioned, and an organogram and structure was requested with a view to understanding the greater dynamics at play and why only the applicant was identified for retrenchment. Naiker maintained that this information was sent. The import of the documentation was that management had decided that two resources were not justified, and the proposed retrenchment was part of cost reduction initiatives throughout the global organisation to meet the Royal IHC strategy. The applicant's version was that Titipana's retrenchment made no sense, since IHC SA was paying for her and the global organisation was benefitting from her services at no cost. In this regard, the applicant testified that she was not aware of a general downsizing or a single person being retrenched, and while she was being consulted regarding her retrenchment, a policy was circulated

providing and incentive for employees who assisted in recruitment of suitable staff. When the applicant's representative asked for proof of downsizing and lists of those retrenched, Naiker said IHC SA could not make the parent company provide this information. Naiker stated under cross-examination that the global organisation was worth approximately \$9 billion, and the applicant earned about half a million Rands per year.

18. Naiker tried to explore alternatives to retrenchment and he created a position for Titipana as office co-ordinator. The job proposal was sent on 27 September 2024, but the applicant rejected the offer on 2 October 2024. Naiker stated that it took a lot to create the position and it could have saved her job and been a stepping stone. At that point, Van Wyk informed the applicant that since she had rejected the position, IHC SA had decided to retrench her and she was invited to input on the timing of the dismissal and severance pay. The applicant's version was that there ought to have been more consultation on the alternative position in the hope of increasing the salary and reaching agreement.
19. Naiker's version was that the employer tried to meet for more consultation meetings but due to the applicant's sick leave, there was no opportunity to do so. The company had to move ahead with the retrenchment. There was frustration on the part of the employer that consultation process thwarted, and this eventually resulted in the employer having to inform the applicant in December 2024 that it was unable to continue consultation, hence the applicant was notified of her retrenchment and the termination letter was issued. She was not required to work her notice, which was paid out along with her severance pay of one week. The employer questioned the genuineness of the applicant's sick leave.

Argument

20. The employer argued that its intentions were to retrench the applicant in the correct way and this was made very difficult. The employer was acting on a directive from head office and there was nothing personal, as the applicant had good relationships and there was no reason to target one person.
21. Naiker put a viable option on the table, and she could have been earning and could have recovered an income all these months, which should be considered if compensation were ordered.
22. The applicant argued that the Labour Relations Act requires meaningful consultation and information to show the rationale for retrenchment, and these requirements were not met. There was a disconnect between the rationale given – to cut costs globally – when the global organisation was getting her services free, paid for by IHC SA. The whole process was a sham and the “facilitator” was in fact the employer's representative, assisting the employer to get rid of the employee. She was retrenched while on sick leave when there was no prejudice to the employer as, at the time, her sick leave was unpaid.
23. The whole process was a sham and the offer of an alternative position at half the salary was unreasonable.
24. The applicant did not wish to be reinstated and seven months' compensation was appropriate.

ANALYSIS OF EVIDENCE AND ARGUMENT

25. Dismissal for operational requirements is fair if the reason for dismissal is based on the employer's economic, technological, structural, or similar needs. The employer's explanation of the economic rationale was that there was downsizing at the global level, and that communications and marketing was targeted, and Wendy as a single resource could perform the functions of both marketing and communications, meaning that the applicant's position was redundant. This explanation does not pass muster and the flaws in the employer's business case are manifest. Firstly, IHC SA was not experiencing financial difficulties and it was paying for the global resource and essentially providing a free resource to the Royal IHC. There was therefore no need to reduce the number of positions. Further, no information was provided on how cutting the applicant's position would result in savings for the Dutch company; nor could there be since South Africa was paying Titipana's salary. There was no consultation on the rationale, the selection criteria or alternatives *before* the decision to retrench Titipana was taken. This is a clear case of a decision being made at global level, with SA instructed to carry it out. As a result, there was no genuine consultation on whether the position was indeed redundant; nor alternatives to retrenchment; nor the selection criteria. At this point it should be noted that international companies doing business in South Africa must follow South African law, and that includes the obligation to consult before deciding to dismiss for operational requirements. In this case much of the consultation process was a sham because the decision to dismiss Titipana had already been taken.
26. To make matters worse, SA appointed a consultant to facilitate the retrenchments, but he was clearly representing and acting for the employer. He was not neutral and worse, he was insensitive and disparaging of the applicant's mental ill health caused by her having to go through the retrenchment process. After assuring her of the right to be represented, he repeatedly refused to communicate with the applicant's legal representative and did not even keep him in copy, choosing to communicate with the applicant directly when she was booked off. He also communicated the decision to dismiss her before the consultation process had concluded.
27. The timing of the dismissal was also appalling – just before Christmas and while the applicant was on unpaid sick leave. The employer had nothing to lose by waiting for her to recover. Naiker admitted that the issue here was explaining to the Dutch company why the headcount reduction had not been finalised.
28. Despite the multiple ways in which the employer's conduct was unfair, I cannot say the same for Naiker personally. He genuinely tried to find an alternative to retrenchment and created a position for Titipana, albeit at a much lower salary. She and Naiker had a good relationship and had she accepted the position, it could have developed into a more meaningful role on a bigger salary. While I accept that it is difficult to accept an almost 50% reduction in salary, it is still better than unemployment, even if she had merely used

the time to look for another position. I have taken this into account in deciding on an appropriate remedy, which I find to be four months' compensation.

29. In summary, the economic rational was flimsy at best and there was no information to support it. I accept the applicant's claim that she was singled out for retrenchment, and there was no proof of other retrenchments globally.
30. There was no genuine consensus seeking process as required by section 189 of the LRA. The employer attempted to follow a fair procedure but the decision to retrench her was in fact a fait accompli and there was no genuine opportunity for the applicant to input on or question the need for retrenchment, the timing of the dismissal, her selection for dismissal and alternatives to dismissal.
31. For the above reasons I find the applicant's dismissal substantively and procedurally unfair.
32. The applicant did not wish to be reinstated and the appropriate remedy is to order the employer to compensate her from the date of dismissal for four months.

AWARD

33. The applicant's dismissal for operational requirements was substantively and procedurally unfair.
34. The employer, IHC South Africa (Pty) Ltd, must pay the applicant, Ms Tshepiso Titipana, four months' compensation for unfair dismissal, calculated as follows: $R39,000.00 \times 4 = R156,000.00$, less applicable taxation.
35. Taking into account the applicant's retrenchment and period of unemployment, the employer must obtain a tax directive from the South African Receiver of Revenue to determine the amount of tax to be deducted. The amount payable as directed must be paid on or before 15 August 2025.



APPROVED

WINNIE EVERETT
SENIOR COMMISSIONER