



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case No: JS218/21

In the matter between:

MUSA RYDER MAHLANGU

Applicant / Plaintiff

and

TRAVEL WITH FLAIR (PTY) LTD

Respondent / Defendant

Heard: 7 November 2024

Order delivered: 7 November 2024

Reasons: 29 January 2025 (This judgment was handed down electronically by circulation to the parties' legal representatives by email, publication on the Labour Court website and release to SAFLII. The date and time for handing-down is deemed to be 10h00 on 29 January 2025.)

REASONS FOR ORDER

PHEHANE, J

Introduction

[1] The plaintiff brings this referral to seek an order declaring his dismissal from the defendant for operational requirements as both substantively and procedurally unfair, and seeks retrospective reinstatement, alternatively, 12 months' compensation.

[2] The referral is opposed by the defendant on the basis that the plaintiff's dismissal was both procedurally and substantively fair.

[3] At the conclusion of the hearing on 7 November 2024, this Court issued an order dismissing the referral with no order as to costs.

[4] The reasons for the order appear below.

Background

[5] The following facts are common cause as recorded in the pre-trial minute concluded between the parties:

5.1 The plaintiff was employed by the respondent for a period of 14 years prior to his dismissal on 16 October 2020.

5.2 At the date of his dismissal, the plaintiff was employed in the position of Team Leader. The plaintiff was previously employed in the positions of Junior Creditor, Intermediate Creditor and Senior Creditor Clerk and he was appointed in the position of Team Leader: Creditors with effect from 1 August 2014.

5.3 On 18 June 2020, the defendant issued its employees, including the plaintiff with a notice in terms of section 189(3) of the Labour Relations Act¹ (LRA). Consultation meetings were scheduled for 25 June 2020, 17 and 23 September 2020, 8 and 15 October 2020. It is not disputed that the consultation meetings were held virtually due to the Covid-19 pandemic that was prevalent at the time.

¹ Act 66 of 1995, as amended.

5.4 During the consultation meeting on 25 June 2020, it was agreed that the selection criteria to select employees for retrenchment would be performance, skills, qualifications and LIFO. In addition, the defendant proposed that employees would have to apply for available vacancies.

5.5 Prior to the retrenchment process, the defendant had three positions of Team Leader: Creditors, which were occupied by the plaintiff and two other impacted employees, namely Mr. Pamuri and Ms. Mabhula. Consequent upon the defendant's operational requirements due to the impact of the Covid-19 pandemic, one of the Team Leader: Creditors positions became redundant. Therefore, only two Team Leader: Creditors roles were available. The plaintiff and the two aforesaid employees applied and competed for the two available vacancies of Team Leader: Creditors. The plaintiff was interviewed for the role on 28 August 2020 and was unsuccessful. Mr. Pamuri and Ms. Mabhula were successful in their interviews and were appointed to the two roles.

5.6 On 1 October 2020, while the retrenchment process was still ongoing, the plaintiff's manager, Ms. Du Plessis sent an email to a supplier of the defendant, in which she stated that the plaintiff had been dismissed from the employ of the defendant, his last day of service being 30 September 2020.

5.7 On 16 October 2020, the plaintiff received his letter of dismissal for operational requirements from the defendant.

[6] The plaintiff contended that his dismissal was unfair due to the defendant failing to fairly apply the agreed selection criteria. He contended that he was not selected for the available Team Leader positions he applied for despite possessing the requisite skills and experience and despite him being employed before Mr. Pamuri and Ms. Mabhula. He further contended that his dismissal is unfair as the defendant denied him the opportunity to make representations and dismissed him before the retrenchment process was finalized.

Issues that this Court is to determine

[7] This Court was called upon to determine whether the dismissal of the plaintiff was procedurally and substantively unfair.

The Evidence

[8] Ms. Mitchell gave evidence on behalf of the defendant. She was employed as the defendant's Head of Human Capital for 19 years. The plaintiff gave evidence on his own behalf. No other witnesses were called by either party.

Defendant's evidence

[9] Ms. Mitchell stated that the business of the defendant is corporate travel management, which entails flight and accommodation bookings and car hire for corporate clients. As a result of the Covid-19 pandemic, the travel industry was hard hit due to the ban on travel. The defendant accordingly had no choice but to retrench its employees. To avoid retrenchment, alternatives such as lay offs and reduced working hours were implemented. Further, the defendant applied for Temporary Employee- Employer Relief Scheme (TERS) payments from the Department of Employment and Labour.

[10] Ms. Mitchell explained that the plaintiff was employed in the role of Team Leader in the creditors department which dealt with accounts to be paid to suppliers such as hotels and shuttle companies. Junior and senior creditors clerks reported to the Team Leaders, who oversaw the administration function.

[11] Prior to the retrenchment process, the defendant had three Team Leader positions which were occupied by the plaintiff, Mr. Pamuri and Ms. Mabhula. Only two roles remained as a result of the operational requirements of the defendant.

[12] The selection criteria agreed upon during the first consultation meeting were performance, skills, qualifications, LIFO and applying for advertised positions.

[13] Ms. Mitchell referred this Court to page 158 of the combined trial bundle (marked "A"), and explained that this was the evaluation outcome of the interview for the two Team Leader : Creditors roles. Ms. Mabhula scored 5 points for the BEE category due to being an African and female candidate. The performance score was based on the average of the last three performance appraisals excluding the years

2019 and 2020, as no performance appraisals were conducted in these two years. The performance appraisals were historic information, as employees assessed themselves according to the defendant's performance appraisal process and the final score was provided by the employee's manager. As a team leader, the plaintiff was familiar with this process and he at no point challenged his past performance appraisals. Ms. Mabhula scored a total of 3.6 in the interview. Mr. Pamuri scored 3.38 and the plaintiff scored 3.33. The plaintiff's performance score was the second highest. However, he did not complete his tertiary qualification when compared to Ms. Mabhula and Mr. Pamuri. The management team evaluation is drawn up by the manager of the section, in this instance, Ms. Du Plessis, who assessed the candidates based on the interview questions and answers and aspects of the job – in this category, which weighed 35% of the criteria, the plaintiff scored the lowest at 3.74.

[14] Ms. Mitchell explained that in her email of 1 October 2020, which was not addressed to the Plaintiff, Ms. Du Plessis incorrectly informed a supplier that the plaintiff had been dismissed, when this was not the case. Ms. Mitchell denied the plaintiff's version that he was told by Human Resources that he had been dismissed. The plaintiff was on lay off during this time due to the Covid-19 pandemic. He was contacted and further consultations were held with him on 8 and 15 October 2020, when he was given feedback on the interview process, and was offered a reasonable alternative role of Senior Creditor, which role he refused to accept and was therefore, dismissed on 16 October 2020.

[15] Ms. Mitchell confirmed that the consultation process began in June 2020, extensive consultations were held virtually and the plaintiff did not attend all the consultations and none were cancelled. Further, the selection criteria were agreed upon and were applied fairly.

Plaintiff's evidence

[16] Mr. Mahlangu stated that he had been promoted thrice due to his performance. He confirmed that in June 2020, the defendant informed employees that it intended to restructure its operations. The employees were informed of the

selection criteria and that further consultations would take place at which employees could make suggestions.

[17] Mr. Mahlangu stated that LIFO was not applied, as Mr. Pamuri and Ms. Mabhula were employed after him, yet they were retained. He stated that the selection criteria were not applied fairly, as his performance could have improved in two years and his performance of the two years prior to his dismissal was not considered.

[18] Mr. Mahlangu's evidence was that following the email of Ms. Du Plessis of 1 October 2020 to a supplier stating that he was no longer employed by the defendant, he contacted Karien from Human Resources who confirmed that he had been dismissed and that further consultations would be held with him while he was at home. He conceded that he was offered the position of Senior Creditors Clerk, which he rejected, but he stated that he changed his mind later. He conceded that that he had changed his mind was not in writing, but was recorded in minutes that do not form part of the bundle before this Court.

Analysis

[19] When taking into account the pre-trial minute, the plaintiff admits that there was a general need to retrench.² He admits that the selection criteria were agreed upon and does not dispute that the selection criteria were unfair.³ The plaintiff does not deny that consultations took place.⁴

[20] The plaintiff contends that in failing to follow the agreed selection criteria of performance, skills, qualifications and LIFO, the defendant failed to comply with the provisions of section 189 of the LRA. He admits that he was interviewed for a Team Leader position but contends that the defendant used unfair and irrelevant factors and therefore, deviated from the agreed selection criteria which renders his dismissal as unfair.

² See: Pre-trial minute at para 25 on p 8.

³ See: Pre-trial minute at para 27, read with para 28 on p 9.

⁴ See: Pre-trial minute at para 32 on p 11.

[21] Together with the selection criteria of LIFO, skills and qualifications, the defendant used the last three performance appraisals of the plaintiff, Mr. Pamuri and Ms. Mabhula in recruiting for the two positions of Team Leader. It is not disputed that the plaintiff scored the second highest in the category of performance. His contention that his performance could have improved in two years is speculative, is not pleaded and is not supported by any evidence. The plaintiff did not dispute that the defendant utilized the available, historic information in the form of the last available last three performance appraisals in applying the selection criteria. He had at no stage, disputed his performance scores during the appraisals.

[22] In consideration of qualifications as a selection criterion, Mr. Pamuri and Ms. Mabhula possessed better qualifications than the plaintiff. Ms. Du Plessis considered their skills in the interview and scored each candidate following her evaluation and the plaintiff scored the lowest, at a score of 3.7. This management evaluation score accounted for 35 % weighting of the interview process following advertising of the Team Leader role.

[23] On the plaintiff's own admission, he did not attend all the consultation sessions and he cannot thus complain about the application of the selection criteria and scoring, when he made no counter-proposals during the consultation process. LIFO was not a standalone selection criteria – it was considered along with the other agreed selection criteria.

[24] It is improbable that the plaintiff was dismissed on 30 September 2020 premised on the email of Ms. Du Plessis of 1 October 2020. On his own version, the plaintiff was informed that further consultations would be held with him. He did not dispute being offered an alternative role which he rejected before he was served with his dismissal letter. The version of Ms. Mitchell that the plaintiff was offered a reasonable alternative role prior to his dismissal which he rejected, is more probable.

[25] In the circumstances, the defendant discharged its onus and proved that the dismissal of the plaintiff was both substantively and procedurally fair.

[26] In view of the afore-going, the above order was made.

M. T. M. Pehane
Judge of the Labour Court of South Africa

Appearances:

For the Applicant / Plaintiff: Mr. S. Khanya of Ismail & Dahya Attorneys

For the Defendant / Respondent: Mr. Q.F Horn of Horn Attorneys