THE LABOUR COURT OF SOUTH AFRICA,

HELD AT JOHANNESBURG

Reportable

Case No: 2025-173974

In the matter between:

NATIONAL UNION OF METALWORKERS OF SOUTH AFRICA (NUMSA) obo MEMBERS	**Applicant**
And	
ARCELORMITTAL SOUTH AFRICA LTD	**Respondent**

Date heard: 8 October 2025

Date of judgment: 30 October 2025

Summary: urgent application in terms of section 189A(13) of the LRA – employer directed to resume consultation and to reinstate affected employees pending compliance with a fair procedure

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JUDGMENT

HARVEY AJ

On 27 October 2025 the Court made the following Order, stating that its reasons would follow.

Order

[1] The application is heard as one of urgency.

[2] The preliminary point of non-joinder is dismissed.

[3] The respondent is directed to comply with a fair procedure by resuming consultations pursuant to the section 189(3) notice issued on 8 January 2025 (‘the Notice’).

[4] The respondent is interdicted and restrained from dismissing any employee at its operations in Newcastle and Vereeniging pursuant to the Notice, and is directed to reinstate all employees whose employment at its operations in Newcastle and Vereeniging was terminated pursuant to the Notice, pending its compliance with a fair procedure as contemplated in paragraph [3] of this Order.

[5] The parties are directed to resume the consultations contemplated in paragraph [3] of this Order within ten calendar days of the date of this Order.

[6] There is no order as to costs.

The reasons are as follows:

Introduction

[1] ArcelorMittal South Africa Ltd (AMSA) is the country’s primary steel producer and the core of what remains of our domestic steel industry. In January 2025 AMSA issued a notice under section 189(3) of the Labour Relations Act signalling its intention to wind down its Longs business at Newcastle and Vereeniging. The decision followed a year of engagement with government, industry associations, trade unions and other stakeholders about the declining viability of the Longs business and the broader economic and social impact of closure.

[2] Formal retrenchment consultations were facilitated by the CCMA, and the statutory process concluded on 14 March 2025. Two weeks later the company announced rescue measures to preserve the Longs operations, suspended the section 189A process, and deferred the wind-down for six months.

[3] NUMSA now applies urgently in terms of section 189A(13) on behalf of affected employees who have received termination notices. The issue is whether AMSA may simply resume the retrenchment process where it left off, or whether developments during the six-month deferral period were of a kind that gave rise to a duty of renewed consultation under section 189A.

[4] Before turning to that question, it is necessary to consider the preliminary issues of urgency and non-joinder raised by AMSA.

Urgency

[5] This matter was enrolled and heard as one of urgency in terms of section 189A(17) of the Labour Relations Act 66 of 1995. NUMSA launched the application within 30 days of AMSA issuing the first dismissal notices, as is required by that provision.

[6] AMSA argued that the application was not urgent, as, in its view, NUMSA ought to have brought any procedural fairness challenge when the facilitated consultation concluded on 14 March 2025. AMSA submitted that the union further delayed unreasonably in September 2025, once it learned of the intention to proceed with dismissals, such that by the time the application was launched, wind-down had already commenced.

[7] Section 189A(13) establishes a self-contained remedy for procedural unfairness in large-scale retrenchments. As the Constitutional Court explained in *Solidarity on behalf of Members v Barloworld Equipment Southern Africa & others*[1] it is the only mechanism through which employees may challenge failure to follow a fair procedure in such cases

[1] Solidarity on behalf of Members v Barloworld Equipment Southern Africa & others (2022) 43 ILJ 1757 (CC).

because the Labour Court 'is barred from determining the procedural fairness of a dismissal based on operational requirements when it is approached under s191(5)(b)(ii)'.[2] Once the opportunity to invoke section 189A(13) has passed, procedural fairness cannot be revisited in subsequent proceedings - only the substantive fairness of the dismissals may then be challenged. The section therefore creates a bespoke, time-sensitive remedy designed for judicial supervision before workers are dismissed, or within a very short timeframe after dismissal, so that procedural defects can be corrected while the employment relationship remains capable of restoration. As there is no alternative remedy, applications brought under this provision are inevitably determined as a matter of urgency.[3]

[8] I am not persuaded that NUMSA had any reason to challenge procedural fairness in March 2025. Its complaint that AMSA is not following a fair procedure is based on what it says are materially changed circumstances which arose in the six months after 31 March 2025, when AMSA suspended the section 189 process and deferred its decision to wind-down the Longs business.

[9] As to events in September 2025, the evidence shows that the union was formally notified on 10 September 2025 of AMSA's intention to proceed with dismissals in reliance on the January section 189(3) notice. At a facilitation on 12 September 2025 concerning a related retrenchment, NUMSA advised AMSA that it could not lawfully proceed with these dismissals on the basis of the 8 January 2025 notice, and AMSA undertook to respond by 19 September 2025. NUMSA then learned that notices of termination dated 10 September 2025 had been issued to some of its members at Newcastle. In a letter dated 15 September 2025 NUMSA protested that these dismissals were contrary to the parties' understanding that dismissals would not proceed pending AMSA's response, and demanded that the notices be withdrawn by 17 September 2025, failing

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[2] Ibid at [71].

[3] See *National Union of Mineworkers v Anglo American Platinum Ltd & others* (2014) 35 ILJ 1024 (LC) (NUM) at [19].

which it would approach this Court on an urgent basis. AMSA declined to withdraw the notices in its written response of Friday 19 September 2025, and NUMSA filed this application the following Thursday, 25 September 2025.

[10] I am satisfied:

10.1 that applications in terms of section 189A(13) brought within 30 days of dismissal notices are by their nature urgent because there is no alternative remedy and the statute intends that they be determined on an urgent basis; and

10.2 that NUMSA acted with the necessary expedition.

[11] The application was accordingly treated as urgent.

<u>Non-joinder</u>

[12] The employer objected that the application was defective for failure to join Solidarity, non-unionised employees, and AMRAS employees affected by the retrenchment process.

[13] That objection cannot be upheld. Section 189A(13) confers standing on 'any consulting party' to bring an application to secure compliance with fair procedure, and the various forms of relief it contemplates do not finally determine or prejudice the substantive rights of other consulting parties.

[14] The preliminary point of non-joinder is dismissed.

<u>Facts</u>

Numsa's version

[15] NUMSA's case, as set out in the founding affidavit, is that AMSA issued a section 189A notice on 8 January 2025 signalling its intention to wind down its 'Longs' business at Newcastle and Vereeniging. The notice attributed contemplated retrenchments to a combination of factors including the slow economy and difficult trading conditions, national constraints including logistics and electricity challenges, the impact of steel

imports, and the scrap-pricing system. Approximately 2,200 employees were identified as potentially affected.

[16] Facilitated consultations were held in Newcastle under CCMA case H04-25 before three CCMA commissioners. Four meetings were held, and the commissioners were authorised to convene a fifth meeting on 14 March 2025. NUMSA's General Secretary says its principal focus in these consultations was to explore alternatives to dismissal. AMSA having declined to extend the 60-day consultation period, the formal facilitation terminated on 14 March, although AMSA stated that it remained willing to engage outside the process.

[17] On 31 March 2025 the company's Chief Executive Officer issued a communication to all employees headed 'Deferral of Long Steel Business Wind-Down'. It announced that the wind down had been deferred for 'an initial period of at least six months, until the end of August 2025' thanks to funding from the Industrial Development Corporation (IDC) and assistance from the Temporary Employee Relief Scheme (TERS). The letter recorded that, as a result, 'the previously announced consultation process will be suspended for the Longs business'.

[18] The letter proceeded to describe a series of new initiatives aimed at restoring the sustainability of the Longs business, including a 'fit-for-purpose flat product support structure', operational improvements, cost reductions, and collaboration with government to address structural challenges such as scrap-metal pricing and import protection.

[19] NUMSA contends that this communication created a legitimate expectation that dismissals would not proceed, noting that contractors who had issued parallel retrenchment notices to their staff also withdrew them in light of AMSA's announcement.

[20] On 1 April 2025 AMSA forwarded to NUMSA a Stock Exchange News Service (SENS) announcement confirming the deferral of the wind-down until at least 31 August 2025, enabled by IDC funding of R 1,683 billion and supported by a TERS grant. The SENS notice also stated that the section 189(3) consultation process 'will be suspended' while the company, government, and the IDC pursued structural and operational

interventions to place the Longs business on a sustainable footing. NUMSA relies on this as further confirmation that the section 189 process initiated on 8 January 2025 was not concluded but rather suspended pending the outcome of new measures aimed at restoring the business to viability.

[21] NUMSA points to external developments affecting the rationale for retrenchment which arose after 31 March 2025, including finalisation of the IDC due diligence review and media reports that talks were underway concerning the proposed acquisition of the Longs business for R8.5 billion, NERSA's approval of AMSA's application for a reduced electricity tariff at its Newcastle and Vanderbijlpark plants (an intervention the union says was likely motivated by the imperative to preserve jobs), and the impact of the efficiency initiatives announced by the employer when wind-down was deferred. It contends that these developments were material to the consultation process, as they raised possible viable alternatives to total closure and/or the potential for continued engagement to preserve jobs or change the timing or extent of dismissals.

[22] It is undisputed that no consultations have taken place between the consulting parties concerning the possible impact of these developments on the proposed retrenchments since the section 189(3) process was suspended at the end of March 2025.

[23] On 10 September 2025, AMSA wrote a letter with subject-line 'retrenchment rules' to NUMSA's Regional Secretary. The letter stated that the consultation process arising from the 8 January section 189(3) notice had been finalised on 14 March, but that retrenchments had been 'postponed' on 31 March 2025. As no alternatives to minimise or avoid retrenchments had been found, the company would 'commence termination of employees' employment in accordance with the principles set out below': severance pay would be calculated 'in accordance with the collective agreement' and would be staggered over several months, and employees might be transferred to other business units (coupled with a warning that those refusing reasonable offers of alternative employment would forfeit severance pay).

[24] NUMSA rejected the employer's position and pointed out that these were fundamentally new decisions taken in changed circumstances. At a 12 September 2025 facilitation tasked with a separate (Vanderbijlpark) section 189 consultation (CCMA case H086-25) the union urged AMSA to suspend dismissals at the Longs business and to consolidate all retrenchment consultations into a single process. AMSA undertook to respond by 19 September 2025, but in the interim issued termination letters to employees at Newcastle, in some instances giving notice of termination effective as early as 9 October 2025.

[25] NUMSA wrote on 15 September demanding written confirmation by 17 September that all dismissal notices had been withdrawn. AMSA rejected the demand on 19 September, citing the absence of further funding and asserting that NUMSA had taken no meaningful steps since early September. Unlike in its earlier notice, AMSA now proposed to close the Newcastle and Vereeniging operations entirely, including the coke-making facility at Newcastle, rather than placing them under care and maintenance.

[26] NUMSA launched the present application on 25 September 2025, within 30 days of the first batch of termination notices (as is required by section 189A(17) of the LRA). It asserts a clear right to proper consultation on all matters contemplated in section 189(2)-(4), including selection criteria, severance pay, alternatives to retrenchment, and transfers. It argues that AMSA's conduct deprived employees of a meaningful opportunity to engage on numerous issues arising after 14 March, including:

26.1 the decision to implement a complete shutdown (rather than putting Longs into care-and-maintenance);

26.2 the closure of the Newcastle coke plant;

26.3 the impact of the reduced electricity tariff now approved by NERSA;

26.4 the effect of operational improvements implemented under the March deferral plan;

26.5 the outcome of government's promised interventions on scrap pricing and imports;

26.6 the progress of AMSA's stated cost-reduction programme;

26.7 efforts to regain market share and restore key skills; and

26.8 the potential sale of the Longs business following the IDC's due-diligence exercise.

[27] NUMSA contends that these were new and material developments requiring renewed consultation, and that by proceeding to dismiss its members without engaging on their potential effect AMSA acted in breach of its statutory obligations. The union maintains that its members face irreparable harm if deprived of that opportunity, as viable alternatives to closure may still exist. It points out in addition that, should (what looks like) an imminent IDC purchase bid succeed, dismissed NUMSA members' rights to transfer their employment to the new employer under s197 would be extinguished.

AMSA's version

[28] AMSA's position is that there was no procedural unfairness, because consultations on the retrenchment of employees in the Longs business were properly concluded under the facilitation process in March 2025, and that the circumstances since then have not materially changed.

[29] AMSA states that it was only able to defer the planned wind-down of the Longs business because of the funding provided by the IDC between 1 April and 31 August 2025. The deferral period was a temporary measure to facilitate due diligence and to explore alternative rescue plans. When no viable solution emerged, it had no choice but to proceed with the wind-down.

[30] AMSA stresses that no retrenchments have yet taken place in its flats or coke-battery operations at Vanderbijlpark or in the coke operations at Newcastle, where consultations are ongoing pursuant to the January 189A notice. This application, it says, concerns only NUMSA's members retrenched in the Longs business and corporate office.

[31] AMSA describes the background to the restructuring as long-running and industry-wide. The Longs business produces rebar, rods and other long-

steel products for the mining and construction sectors. The Flats Business, located mainly at Vanderbijlpark, produces hot-rolled coil and other flat products for the automotive market. AMSA explains that the global steel industry has for some time faced difficult trading conditions, compounded in South Africa by national constraints: excessive electricity tariffs, unreliable rail and port logistics, high transport costs, and unfair competition from imported steel and scrap-based producers benefiting from a preferential pricing system and export taxes.

[32] AMSA explains that these structural impediments have for some time rendered the Longs business unsustainable. From as early as November 2023 the company publicly contemplated closure, and through 2024 and early 2025 it engaged extensively with government, industry associations and organised labour to explore solutions. It says that, during the facilitated consultation process held between January and March 2025, the parties agreed that the only possible alternatives to closure were external interventions: TERS funding, IDC facilitation of a buyer, or direct government support. These were all canvassed in detail, and NUMSA itself made representations to the IDC and to government.

[33] AMSA refers the Court to the transcripts of the facilitated meetings which reflect these discussions. Those consultations encompassed the business rationale, alternatives to retrenchment, severance packages, transfers, and selection criteria. The employer refers to a proposed agreement tabled at the 5th facilitation meeting on 14 March 2025, which addressed transfers, vacancies, a moratorium on recruitment, relocation policy, voluntary severance, and related matters. It complains that NUMSA's contention that such matters were not consulted on is untrue, and that NUMSA agreed that such matters would be governed by the terms of the existing recognition agreement.

[34] The company emphasises that during facilitation the parties reached broad consensus on the commercial rationale for the shutdown, and that the terms 'shutdown' and 'care and maintenance' were used interchangeably in the discussions. NUMSA, it says, understood and accepted that the continuation of the Longs business was dependent on

third-party support, and that in the absence of such support the business would close.

[35] AMSA maintains that the section 189A consultation was fully and properly completed by mid-March 2025 and that the deferral period from April to September 2025 was a funding-supported holding operation during which the business case for retrenchment remained unchanged. It argues that the subsequent developments cited by NUMSA, including the IDC due diligence and bid, the preferential-tariff decision and efficiency initiatives, were all anticipated during consultations and did not alter the underlying rationale for retrenchment.

[36] Both parties accept that the Longs business faces serious and continuing financial strain and that its survival depends on external assistance. They differ only on whether the intervening events amounted to material changes requiring the consultation process to be reopened.

[37] The essential issue for determination is whether the circumstances arising after 14 March 2025 were materially different from those under which the earlier consultations occurred, to such an extent that AMSA was obliged to resume consultation before issuing dismissal notices. If they were, AMSA failed to comply with a fair procedure when issuing the dismissal letters that gave rise to this urgent application. I turn to consider the statutory framework governing that question, and the role of the Court under section 189A(13).

<u>The statutory framework and the role of the Court</u>

[38] Section 189 of the Labour Relations Act requires an employer contemplating dismissals for operational requirements to engage in a 'meaningful joint consensus-seeking process' with consulting parties. The purpose is to ensure that dismissals take place only after the affected employees and their representatives have had a fair opportunity to influence both the decision to retrench and the way retrenchments are implemented.

[39] Section 189A was enacted to strengthen this obligation in large-scale retrenchments by providing for facilitated consultation, coupled with limited urgent supervisory relief under sections 189A(13) and (17).

[40] Section 189A(13) of the LRA provides that:

'If an employer does not comply with a fair procedure, a consulting party may approach the Labour Court by way of an application for an order -

(a) compelling the employer to comply with a fair procedure;

(b) interdicting or restraining the employer from dismissing an employee prior to complying with a fair procedure;

(c) directing the employer to reinstate an employee until it has complied with a fair procedure;

(d) make an award of compensation, if an order in terms of paragraphs (a) to (c) is not appropriate.'

[41] Section 189A(17)(a) of the LRA provides that:

An application brought in terms of subsection (13) must be brought not later than 30 days after the employer has given notice to terminate the employee's services or, if notice is not given, the date on which the employees are dismissed.

[42] The Constitutional Court has in recent years provided detailed guidance on the nature and purpose of the Labour Court's powers under section 189A(13). In *Steenkamp & Others v Edcon Ltd* [4] the Court explained that the section mandates for urgent intervention by this Court to address procedural irregularities as and when they arise, to restore the integrity of the consultation process.[5] The Court's function is not to second-guess the commercial rationale for restructuring, but to ensure that the statutory procedure is honoured in substance, and not merely in form. In *Solidarity on behalf of Members v Barloworld Equipment Southern Africa & others*[6]

[4] *Steenkamp & Others v Edcon Ltd* 2019 (40 ILJ 1731 (CC).

[5] Ibid at [52] and [54].

[6] *Solidarity on behalf of Members v Barloworld Equipment Southern Africa & others* (2022) 43 ILJ 1757 (CC).

the Constitutional Court confirmed that notwithstanding that the purpose of section 189A(13) is to cure defects before jobs are lost, it also contemplates reinstating workers who have already been retrenched, provided the application is launched within the short 30-day timeframe stipulated in section 189A(17).[7]

[43] Against that background, it is necessary to recall the broader purpose of these provisions within the statutory scheme. The LRA regulates the structural conflict of interest between workers and employers that characterises our industrial relations system. The statutory framework entrenches dialogue and collective agency. Where an employer restructures to enhance profitability, the consequence is the loss of livelihoods for employees, with wider effects on local economies. The consultation requirement is not an act of benevolence towards workers, but a statutory mechanism to contain the effects of unilateral corporate power and to ensure that it is exercised within the bounds of fairness and accountability in a society committed to both enterprise and social justice. The wording of section 189(2) - describing consultation as ‘a meaningful joint consensus-seeking process’ - reflects a deliberate legislative choice to weave constitutional values of equality, dignity and fair labour practices into the procedure itself, so that consultation functions as genuine engagement rather than formality.

<u>Evaluation</u>

[44] The first question is whether there has been a procedural defect, because only then will the Court’s power to intervene under section 189A(13) be triggered.

[45] It is undisputed that the statutory 60-day facilitated consultation period ended on 14 March 2025. Between then and September, however, when dismissal notices were issued, the landscape changed: the completion of the IDC due-diligence process, credible reports of a proposed R8.5 billion IDC acquisition bid, the NERSA preferential-tariff decision, and AMSA’s

[7] Ibid at [71].

own operational-efficiency measures together create a new factual matrix bearing directly on the timing, scope, and necessity of retrenchments. When consultations were suspended in March, these developments had not yet occurred; by September they had become features of the operating environment.

[46] These changes are material and require further consultation. The most significant change is the potential acquisition of the Longs business. In that regard, NUMSA contends that the October 2025 dismissals extinguishes workers' rights to transfer under section 197 to an acquiring employer. Renewed consultation could enable the parties to explore measures to preserve, as far as possible, continuity of employment should such an acquisition occur (such as an agreement that AMSA make it a condition of sale that retrenched workers be re-employed on existing terms). Such engagement falls squarely within the scope of section 189(3), which obliges parties to consult on ways of avoiding or minimising retrenchments and mitigating their effects.

[47] Numsa relied on *National Union of Metalworkers of SA on behalf of Members v General Motors of SA (Pty) Ltd* [8] to argue that, given the material changes, AMSA must issue a new section 189A notice and commence the consultation process afresh. That decision is distinguishable. In *General Motors*, Van Niekerk J (as he then was) held, on the facts, that the dismissals the employer sought to effect seven months after issuing a section 189(3) notice were not the same dismissals originally contemplated by that notice, and that a new consultation process was therefore required.

[48] In this case, the dismissals now contemplated by AMSA are the same as those foreshadowed in the January 2025 notice. Nevertheless, before giving notice of dismissal in September 2025, AMSA was obliged to resume consultations to assess the implications of the new developments, because renewed engagement could reasonably have produced different outcomes concerning the timing of the wind-down, the number of

[8] *National Union of Metalworkers of SA on behalf of Members v General Motors of SA (Pty) Ltd* (2009) 30 ILJ 1861 (LC) (*General Motors*)

employees affected, and the measures available to mitigate their impact. The procedural defect lies in the employer's failure to do so. By relying on a process that had been suspended and overtaken by material change, AMSA implemented dismissals on an outdated and incomplete procedural foundation. By treating the January consultations as concluded and the deferral period as irrelevant, the employer deprived the union of an opportunity to engage on matters that the LRA identifies as central to meaningful joint consensus-seeking. AMSA must therefore be ordered to comply with a fair procedure by reinstating any workers already dismissed and resuming consultations, as contemplated in section 189A(13)(c).

[49] The Court's supervisory role under section 189A(13) must be exercised in a manner that is both practical and purposive. As this Court held in *General Motors*, the requirements of sections 189 and 189A are not mechanical, nor are they intended to be mechanically applied.[9] Renewed consultation is not ordered for its own sake, nor to compel the employer to revisit its business rationale, but to restore the opportunity for engagement on developments that have become materially relevant since the section 189 process was paused. The remedy is restorative rather than punitive: it protects the integrity of consultation, ensuring that fairness is not compromised for the sake of expedience, and returns the process to the point where its statutory purpose can still be fulfilled.

[50] This accords with the broader purpose of consultation, which is to temper the effects of unilateral corporate power through structured dialogue. Such dialogue ensures that decisions with serious social and economic consequences are taken only after a fair process of collective reasoning, rather than being implemented unilaterally on an outdated factual premise.

<u>Remedy and costs</u>

[51] The Court is mindful that resuming consultations will impose cost and disruption on the employer. However, once a procedural defect is established, section 189A(13) obliges the Court to intervene to restore

[9] *General Motors* at [37].

procedural fairness. The appropriate remedy is to order the employer to comply with a fair procedure by resuming consultations to address the material developments that arose after 14 March 2025 and by reinstating the affected employees until that process has been completed. This remedy preserves the employment relationship to enable consultation to occur meaningfully and in good faith. Renewed consultations must commence within a short period to minimise operational prejudice while ensuring compliance with the Act.

[52] Both parties acted in good faith in seeking to protect legitimate interests in a matter of national economic and social significance. The dispute raised novel questions about the scope of an employer's duties following the suspension of a retrenchment consultation, and the parties have an ongoing relationship. In these circumstances, the interests of law and fairness are best served by making no order as to costs.

<u>Conclusion</u>

[53] For these reasons, and applying the principles set out above, the Order set out at the beginning of this judgment was handed down on 27 October 2025.

Harvey AJ

Acting Judge of the Labour Court of South Africa

<u>Appearances</u>:

On behalf of the applicant:	Minnaar Niehaus of Minnaar Niehaus Attorneys
On behalf of the respondent:	F Boda SC with I de Vos instructed by Cliffe Dekker Hofmeyer Inc