



- (1) Reportable: Yes
(2) Of interest to other Judges: Yes

Signature

19/01/2026

Date

THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Case no: C 317/2023

In the matter between:

OLUMIDE ADENIRAN

Plaintiff

and

**WEBHELP SA OUTSOURCING (PTY)
LTD**

Defendant

Heard: 17-18 March and 24 April 2025

Summary (Dismissal – Operational requirements – Employee cannot complain about selection decisions in respect of alternative employment they were not willing to accept even if they were selected - procedurally and substantively fair)

JUDGMENT

LAGRANGE, J

Introduction

- [1] The plaintiff, Mr O Adeniran ('Adeniran'), claims his dismissal for operational reasons by the defendant ('Webhelp') was substantively and procedurally unfair and seeks reinstatement in a finance or management position commensurate with his degree qualification, "*with excellent pay*". He also claimed restoration of all his benefits such as medical aid and funeral insurance cover.
- [2] Originally, Adeniran had also claimed that he suffered depression and trauma as a result of the retrenchment and delays in obtaining his UIF and tax certificates. Further, he claimed that he have been defamed when the company informed him that the tax number he had provided to it could not be validated. He also complained that perjury had been committed by the company because in an affidavit deposed to by a company representative it had been claimed that five individuals passed an English assessment, whereas in the course of consultations employees were advised that only one person had passed the assessment. Arising from these claims he believed he was entitled to compensation which he estimated amounted to R 10 million. However, none of these claims were reflected in the pre-trial minute.
- [3] At the beginning of the trial proceedings, the omission of all other claims from the pre-trial minute except the unfair retrenchment was clarified. Adeniran had accepted in earlier proceedings in this matter, that he would have to pursue any defamation claim in an ordinary civil court. Adeniran agreed that his claim was confined to the substantive and procedural fairness of his retrenchment.
- [4] By the time the matter was argued, Adeniran had further reduced the scope of his complaint relating to his retrenchment.

Brief summary of events and issues arising

- [5] Mr. Adeniran began working at Webhelp in May 2022 as a content moderator on the ByteDance campaign, focusing on Nigerian-language content. The company's principal business is providing customer support services for several international clients and 80% of its employees are engaged in providing these services on behalf of its clients.

- [6] As a content moderator, Adeniran's work was to monitor and moderate content with Nigerian language content loaded on TikTok, which ByteDance owned. The work did not involve dealing with the users of the platform. By contrast, customer service advisers dealt directly with a client's customers and verbal communication ability was required for the work.
- [7] In September 2022, ByteDance informed Webhelp that it would discontinue the Nigerian-language component of its campaign because of low content volumes and the company's inability to recruit the full team of 20 moderators, which ByteDance required. At that point, only nine moderators and one quality assurance employee were employed for the campaign. The service provided to ByteDance ended on 29 November 2022. With the termination of that contract, Webhelp no longer had a need for staff with Nigerian language skills in other roles in the company.
- [8] On 29 September 2022, Webhelp issued Section 189(3) notices to all affected employees, including Mr. Adeniran. These notices invited employees to consultations about possible retrenchment and alternatives. The initial letter contained clerical errors, such as references to "Deliveroo" and incorrect dates, which the company explained were template mistakes.
- [9] The first consultation meeting took place on 3 October 2022 at Webhelp's Claremont office. Management explained the situation and the consultation process. Employees were told that the ByteDance campaign had ended and that the company would look for alternative positions such as re-deployment in Webhelp's other campaigns.
- [10] During the second meeting on 5 October 2022, employees were asked to suggest alternatives. Webhelp introduced the first option: a position on a small General Electric ('GE') healthcare campaign, which required Nigerian language skills. Employees were invited to volunteer for this role. Three persons did, and Mr B Adeyoyenu ("Adeyoyenu") was chosen by the client. He testified for the company and explained that the job concerned planning the installation and servicing of MRI and CT scan equipment, which required him to deal with clients. He testified that all the affected employees had to complete an English assessment but agrees he did not see the results of that assessment either.

Adeniran claimed there was no assessment required for this role. However, Adeniran testified he had no interest in the position so did not apply for it. Adeyoyenu said he and two others were interviewed for the GE role but only he was successful and he started working on the GE contract during that October.

- [11] Further consultations were held on 10 and 12 October 2022 to discuss other alternatives. Webhelp explained that moving into customer service roles would require passing English proficiency and technical assessments because these jobs were very different from content moderation. Webhelp claimed that two alternatives were offered to the affected employees: a Nigerian language advisor in one campaign (the GE contract) and ten positions for English customer advisors in two other campaigns. Both alternatives require a selection and qualifying process including written and oral language proficiency tests.
- [12] By mid-October, Mr. Adeniran and other affected employees, had completed the English proficiency test. Apart from Adeniran and another employee, the others also did SAGE specific assessments test. SAGE is a payroll system which was described as “quite technical” by the HR manager, Mr R Slamdien (‘Slamdien’). Adeniran later claimed that the English test results were never shared and that some colleagues were allowed to rewrite tests while he and another employee were not given that opportunity. The company denied this, saying results were communicated and only one round of tests was done.
- [13] Slamdien was not aware of a second English assessment round but testified that if Adeniran did not pass the English assessment, he would not have been asked to do any further assessment for a SAGE position. Earlier in his testimony he had explained that the reason most clients contracted with Webhelp to provide such customer services was that the South African accent was considered a relatively ‘neutral’ one. When the language used by the client was English, the company assisted the client in performing the assessment, but the client generally wanted to make its own audibility and oral capability assessments. In finding alternative positions for the employees facing

retrenchment, the company would try and slot them into available positions similar to the roles they occupied before. Apart from the GE position, the other positions available at the time were for customer service advisors, which had different language requirements from the content moderator role the employees on the ByteDance had fulfilled, which were less oral. As the affected employees had been recruited to fill the capacity of content moderation, it was explained to them that it was not possible simply to redeploy them directly in a different capacity and they would have to undergo English language assessments and meet any other specific skill requirements of the client.

[14] Adeniran was adamant they were not advised of the test results. Mr A Albert ('Albert'), another of the affected employees, testified for Adeniran. He agreed no test results for the English proficiency test were provided and confirmed that there was a further assessment for the SAGE campaign, to evaluate IT skills. He also testified that he was aware that certain people had redone assessments if they got a couple of points wrong. He was successful in being offered a placement with Sage. He complained that the salary was "way below", what they were earning before, and that he eventually left after filling the position for a short period only.

[15] On 12 October 2022, Webhelp confirmed the selection criteria it was adopting. The first stage was interviewing and assessing candidates for posts. Secondly, if more than one candidate qualified for appointment, LIFO would be applied. The affected employees did not dispute the use of these criteria. Adeniran accepted the fairness of the selection criteria, but claims they were not fairly implemented. Although he did not claim that someone else should have been selected in his place for retrenchment, he believed that other employees were treated more favourably in the process. He identified five such persons, but did not plead why they were treated more favourably. However, Slamdien's testimony was that, if they had been favoured they would not have been retrenched, and Adeniran did not allege any of them had obtained alternative appointments in the company.

[16] It appears that assessments and interviews for the alternative positions took place sometime around 17 October.

- [17] From 19 October 2022 onwards, consultations shifted to severance terms as it became clear that redeployment options were limited. Employees asked for better severance, and the company agreed to pay two weeks' severance, even to those with less than a year's service.
- [18] Additional meetings were held in late October and throughout November to check for new opportunities. Webhelp offered a lower-paying customer service role (about R7,000 per month), which Mr. Adeniran declined because it was too far below his previous salary of R9,000.
- [19] On 22 November, in response to a request from Ms S Swartbooi ('Swartbooi'), a lead senior people advisor, who worked with the HR department, to respond to the proposed severance pay formula, Adeniran said he did not wish to respond to that but proposed that the company place him in a department in line with his B.Comm in Management Marketing qualification, preferably in a financial role. He also appealed to the company to continue paying his normal salary to mitigate the depression he said he was suffering on account of the retrenchment exercise. Swartbooi said Webhelp could not accede to the proposals because there were no available positions in the line of work he wanted, and there were no funds to continue paying him as the ByteDance contract was ending.
- [20] The final consultation took place on 29 November 2022. Webhelp confirmed that no further alternatives were available and issued termination notices to the remaining employees, including Adeniran.
- [21] His employment formally ended on 30 November 2022. He received notice pay and two weeks' severance, calculated according to the agreed formula.
- [22] In January 2023, Mr. Adeniran requested his exit documents (UI19 and IRP5 forms). The company delayed providing these, and the Labour Court later ordered Webhelp to issue the IRP5. According to Adeniran the delay in providing his IRP5 meant he was subjected to a tax penalty by SARS. He believed Webhelp's delay in resolving the matter was damaging to his reputation, and this formed part of his defamation claim, which he had erroneously referred to this court.

[23] In January and February 2023, the company gave Mr. Adeniran a chance to retake the English proficiency test, even though he was no longer employed. This did not lead to his re-employment.

Evaluation

[24] To some extent there is an overlap between the substantive and procedural fairness questions which relate principally to the selection process.

Substantive fairness

[25] Adeniran pleaded that his retrenchment was neither substantively nor procedurally fair. He did not accept there was a general need to retrench arising from the termination of the ByteDance contract. He asserted that the company still required Nigerian language skills, but did not identify where he believed those were utilised. He believes his own selection for retrenchment was a result of the consultation process being “rigged”. He did not say why the company had sought to rig the process against him. However, this appears to be something he inferred from the fact that he believes there were other alternatives he could have been offered, and that the company did not provide any evidence to substantiate the English language assessment results, coupled with his claim that other staff were given an opportunity to redo the test, but he and another staff member were not. The lack of transparency in this regard made the selection process opaque. He also suggested that the undue delay in furnishing him with his tax certificates, UIF form and salary schedule was another fundamental flaw in the retrenchment process.

[26] Webhelp argued that the termination of the ByteDance campaign eliminated the need for Nigerian language content moderation and rendered the staff such as Adeniran, who had been employed for that campaign, redundant. Procedurally, there was ample scope in the eight consultation meetings for Adeniran to engage with the process, during which he did not actively propose alternatives until right at the end of process, nor did he personally request further information such as the English language assessment results. Selection criteria

were accepted by the affected employees, including Adeniran. He declined to apply for the alternative GE Healthcare role and rejected the Sage positions due to the lower salary. The only proposal he put forward, very late in the consultation process, was that he should be placed in a management role. This was not feasible given his lack of managerial experience and absence of any vacancies of that kind.

[27] As far as the assessment processes are concerned, Webhelp disputed that there were any supplementary English language assessment conducted and denied favouritism played any role in the selection process. In relation to the Sage positions, a certain level of IT skills was required which he did not possess.

[28] While it does not dispute the delay in providing documentation after Adeniran's dismissal, it denies this has any bearing on the fairness of his dismissal.

The need for retrenchment

[29] Although Adeniran disputed the need for retrenchment, under cross-examination he did acknowledge that the termination of the ByteDance campaign meant there was no work for the Nigerian language moderators and that retrenchment had to be considered. However, he still believed that was not sufficient to justify his own retrenchment because an alternative could be found.

[30] The company had offered the GE campaign position and the SAGE customer service positions as alternatives, subject to meeting any specific skill requirements for the post. The GE position was the only one requiring Nigerian language skills. The SAGE positions required applicants to pass the English language assessment and certain IT skill requirements. Despite his complaint he was unfairly found to have failed the language assessment, he was not interested in a SAGE position in any event.

[31] What Adeniran had his eye on was a managerial position preferably in a financial capacity based on his business degree qualification. The evidence of Swartbooi was that no such position existed in the company at the time, and Adeniran was unable to dispute that evidence.

[32] Considering the evidence on alternative positions, I am persuaded that Webhelp did attempt to offer alternatives subject to a candidate meeting the requirements of those placements, but Adeniran did not pursue either of the available options. In respect of the language assessment requirement for the Sage IT campaign, it is true he would not have qualified for that placement without it, but he made it clear in his evidence that the position did not interest him anyway because of the salary reduction it would entail. There was no evidentiary support for his contention that he could have been placed in a managerial position, because none were available. His own belief that such a position was available was nothing more than surmise on his part.

The selection process

[33] Adeniran has no complaint relating to the GE campaign position. He agreed under cross-examination that he did not “drop” his name for it, meaning he did not apply for it. Similarly, he said the company just gave everyone the Sage test even though nobody had “dropped” their name for it. He also testified that when he and others were told that the Sage salary was R 6,000 per month, he declined the offer, which was a third less than what he was earning before, even though strictly speaking he did not qualify to accept an offer for a placement on the Sage campaign because he did not satisfy the language requirement.

[34] A major emphasis of Adeniran’s case was that the selection process was opaque and that the company did not validate the outcome of the language assessment tests. The company had failed to disclose accent neutrality as a criterion that would be considered and the results of the language assessments were never disclosed. Further, Webhelp had shown favouritism in allowing two other employees who had failed the language test to redo it, namely Yakub Abdulaziz and Olayemi Olari. Slamdien testified he was unaware of any repeat language assessment being done and believed that, if those individuals had written a supplementary test for Sage, it would most likely have been for the technical requirements of the job, not the language assessment.

[35] In *Umicore Catalyst South Africa (Pty) Ltd v National Union of Metalworkers of South Africa and Others*¹ the Labour Appeal Court summarised the jurisprudence on the requirements of fair selection criteria:

[17] Absent agreement to the contrary, the selection criteria for operational requirements dismissals must be fair and objective. The intrinsic value of 'fair and objective' criteria has been explained as follows:

'The purpose of having, so far as possible, objective criteria, is to ensure that redundancy is not used as a pretext for getting rid of employees whom some managers wished to get rid of for other reasons. Excepting cases where the criteria can be applied automatically (eg last in, first out) in any selection for redundancy, elements of personal judgment are bound to be required, thereby involving the risk of judgment being clouded by personal animosity. Unless some objective criteria are included, it is extremely difficult to demonstrate that the choice was not determined by personal likes and dislikes alone.'

[18] Put differently, an employer who does not use agreed selection criteria to select the employees to be dismissed may not depart from 'fair and objective' selection criteria. To do so would render the dismissals substantively unfair.

[19] The onus is on the employer to prove that there was a fair reason to dismiss the selected employees. This raises the issue of the basis for selection. Selection criteria that are generally accepted to be fair include length of service, skills and qualifications. While the use of LIFO generally satisfies the test, there are instances where the LIFO principle, or other criteria, require adaptation. The Code makes mention of 'the retention of employees based on criteria mentioned above which are fundamental to the successful operation of the business' as an example, adding that such exceptions should be treated with caution."

(emphasis added)

¹ (2024) 45 ILJ 2545 (LAC)

- [36] In this instance, there was no disagreement on the way employees would be selected for retrenchment, namely candidates for available posts would be interviewed and if more than one was suitable for a post then LIFO would be applied. However, there was a dispute about whether the process was fairly implemented. In essence, Adeniran argues that Webhelp demonstrated partiality and did not demonstrate that the selection of candidates for available vacancies was objectively fair. Since the selection of candidates for appointment simultaneously entailed determining those who would be retrenched, he maintains it did not demonstrate that the employees who were not selected were, objectively speaking, not suitable for appointment in available vacancies and consequently failed to prove they were fairly selected for retrenchment. The issue of whether LIFO was applied properly as a tie-breaking mechanism did not arise.
- [37] Assuming in Adeniran's favour that the selection of successful candidates for the Sage positions was opaque and that the company failed to demonstrate that the selection of any successful candidate was objectively fair, does that mean his retrenchment was unfair? It is true that he was precluded from appointment in the Sage campaign because he was unsuccessful in the language assessment, but even if that assessment had been subjective and unfair, on his own evidence he still would not have accepted appointment in the campaign because the salary was unacceptably low. In other words, even if he had been successful in the language assessment it would not have resulted in him being employed in the Sage campaign, because he did not want such an appointment. Thus his complaint is not that he was unfairly denied employment in the Sage campaign because he was unfairly rated in the English assessment, but simply that the employer had not conducted the assessment fairly.
- [38] The fairness of Adeniran's selection for retrenchment is a substantive question. In order to show that his selection was unfair, it is necessary for Adeniran to show that his retrenchment was caused by the unfair application of the assessment process. However, even if he had passed the language assessment and any subsequent test for Sage he would not have accepted the appointment anyway. Accordingly, the way in which selection criteria were

applied made no difference to whether he was retrenched or not. He would have been retrenched in any event because he was unwilling to take up such an appointment. The application of the criteria was not the factor which prevented his employment in the Sage campaign. His complaint of being unfairly retrenched on account of the unfair application of selection criteria, would only carry weight if he had been willing to take up the appointment, but was prevented from doing so because of his poor language assessment rating. He cannot establish a claim of substantively unfair retrenchment on the hypothetical premise that *if* he had wanted the job he would have been unfairly excluded because of the unobjective language assessment. The allegedly unfair assessment process must have been the cause of his selection for retrenchment. Had Adeniran contended he should have been appointed on the campaign and disputed the company's failure to offer him a position on account of its flawed assessment, that would be a different matter.

- [39] In light of the above, I am satisfied that even if the employer has failed to establish that the language assessment test was fairly and objectively applied, any prejudicial consequence which might have flowed from that does not require consideration because of his own decision not to make himself available for the position. He removed himself from contention for any of the available positions and in the absence of any other alternative post he could have been placed in, whether managerial or otherwise, his retrenchment was not unfair.

Procedural Fairness

- [40] As mentioned there is a considerable degree of overlap between issues of procedural and substantive fairness, particularly in relation to the selection process. Adeniran had raised the following procedural issues.

- 40.1 Webhelp failed to disclose selection criteria;
- 40.2 assessment results, results were not provided preventing an opportunity to meaningfully challenge the outcomes;
- 40.3 Webhelp did not follow its own two stage selection method, and
- 40.4 document errors indicated a lack of procedural integrity.

[41] Adeniran's complaint about selection criteria relates not to the broad criteria, over which there was no dispute, but to the selection criteria applied by Sage in particular. He claims that it was not disclosed that Sage was looking for proficiency in English and oral communication and technical skills. Management agreed that this was not spelled out in a written document, but was mentioned during the consultations.

[42] In relation to the absence of assessment results, this has already been discussed above. To the extent that it impacts on requirements of procedural fairness, there was no evidence that Adeniran had raised this himself as an issue during the consultations. Moreover, given that he had no intention of applying for a Sage position because of the salary, the absence of disclosing assessment outcomes held no adverse consequences for him. The situation might have been otherwise if he had a serious interest in wanting one of the Sage positions. The same consideration applies to his complaint that certain employees were given another opportunity to redo the language assessment.

Adeniran's argument that the company had not proved it had followed the two stage selection process because it had not provided the assessment results and therefore it could not demonstrate the selection was properly done. Again this is of little relevance to him, as it concerned alternative positions he was not interested in.

[43] Adeniran made much of the fact that the original notice inviting affected employees did not refer to the ByteDance contract but to a Deliveroo contract. Samdien explained this was a typographical error referring to a previous retrenchment exercise involving another client. It was clear from the contract and the consultations that it was the Bytedance contract termination which triggered the retrenchment process, and the error caused Adeniran no material prejudice.

Conclusion

[44] In light of the discussion above, I am satisfied that Adeniran's retrenchment was both substantively and procedurally fair. This is not the type of matter in which a cost award needs to be considered.

Order

1. The Plaintiff's retrenchment by the Defendant was substantively and procedurally fair and the referral is dismissed.
2. No order is made as to costs.



R Lagrange, J

Judge of the Labour Court of South Africa

Appearances:

For the Applicant: --- In Person

For the Respondent: --- B Braun

Instructed by: --- Knowles Husain Lindsay Inc.