



IN THE LABOUR COURT OF SOUTH AFRICA, GQEBERHA

Not Reportable

CASE NO: 2026-018198

In the matter between:

MOTOR INDUSTRY STAFF ASSOCIATION

On behalf of 273 MEMBERS

Applicant

and

MOTUS GROUP LTD

Respondent

Heard: 3 February 2026

Delivered: This judgment was handed down electronically by circulation to the Applicant's and the Respondent's 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 6 February 2026.

JUDGMENT

LALLIE J

[1] In this urgent application the applicant trade union, Motor Industry Staff Association (MISA) seeks an order interdicting the respondent from consulting directly with its members during a retrenchment process. It further seeks an order interdicting the respondent from pursuing the consultation process

before issuing a fresh notice in terms of section 189(3) of the Labour Relations Act¹ (the LRA).

- [2] The facts that are relevant for the determination of this application are that the respondent who is the employer of the individual applicants issued a notice in terms of section 189(3) of the LRA in October 2025. In the notice it informed its employees including MISA that it contemplated embarking on a large scale retrenchment that is regulated by section 189A of the LRA. A consultation facilitated by a commissioner of the Commission for Conciliation, Mediation and Arbitration (the CCMA) was held. It was concluded in December 2025.
- [3] In December 2025 after the last facilitation meeting had been held the respondent made further proposals to MISA which included adjustments to the individual applicant's benefits and terms and conditions of employment. The proposals formed part of a draft agreement the respondent sought to reach with MISA to avoid the retrenchment. MISA rejected the proposals and refused to sign the draft agreement. In January 2026 the respondent made the proposal in the form of offers to MISA members directly. It is this conduct that the applicant seeks to interdict by bringing this application.
- [4] MISA seeks to assert its right in terms of section 189A(13) of the LRA to compel the employer to comply with a fair procedure by refraining from consulting with its member directly and by issuing a fresh section 189(3) notice. The applicant's argument that the respondent is obliged to consult with it and not directly with its members is based on section 189(1)(b)(ii) which requires an employer contemplating retrenching one or more employees to

¹ Act 66 of 1995, as amended.

consult with any registered trade union whose members are likely to be affected by the proposed dismissal. The applicant relied on *AMCU v Royal Bafokeng Platinum Ltd & Others*² where its right in terms of section 189(1)(b) is interpreted as follows:

- “(iv) The procedure for dismissals based on operational requirements is exhaustively set out in section 189 of the LRA.
- (v) Our jurisprudence since the introduction of the LRA has consistently interpreted section 189 to exclude any requirement of individual or parallel consultation in the retrenchment process outside the confines of the hierarchy section 189(1) itself creates.”

[5] It was argued on behalf of the respondent that the employer is not precluded from consulting with employees directly when the trade union intentionally obstructs the employer’s attempts to consult. In support of the argument the respondent relied on *Smith and Others v Courier Freight*³:

“[69] I am satisfied that the employer made genuine attempts to engage with the union on the retrenchment process. However, it could not allow the union to delay the process of restructuring indefinitely. The union overplayed its hand and must now accept the consequences of its ill-advised decision to unnecessarily delay the consultation process. In light of the aforesaid, I believe there was substantial compliance with the provision of Section 189 of the Act by the employer.”

[6] I accept the correctness of the *AMCU v Royal Bafokeng Platinum (supra)*. The respondent pointed out, correctly so, that it is the requirement of individual consultation that is excluded in that judgment. No party in this

² 2020 ILJ 555 CC at para [101].

³ (2008) 29 ILJ 420 (LC) at para 69.

matter submitted that the respondent is required to consult an individual employee. It is also not the respondent's case that it seeks to conduct parallel consultation. The respondent's case is that MISA refused to engage with it in respect of its revised offer. MISA did not deny the refusal.

- [7] It is common cause that respondent disclosed in the section 189(3) notice that should consensus not be reached during consultation on the withdrawal or implementation of adjustments to certain benefits and terms and conditions of employment, the affected employees may be included in the pool of employees contemplated for retrenchment. Those employees were in annexure B of the notice. The applicant submitted that the individual applicants fell in the category of annexure B employees. As the applicant took a decision to refuse to consult further it must accept the consequences of its decision. It may not reasonably claim to have been side-lined. The respondent's conduct of consulting with its members is a direct consequence of its refusal. Section 189(1) provides no alternative consulting party in circumstances where the trade union withdraws its participation. The refusal therefore requires a purposive interpretation of section 189(1) which should prevent a consulting party from unreasonably obstructing the consultation process. By consulting with MISA members directly, the respondent did not conduct a parallel consultation process because MISA's refusal to continue with the consultation brought the consultation to a halt. When the respondent consulted with MISA members directly, MISA, by its refusal, had left the consultation process. MISA therefore failed to prove, in the circumstances of this case that the respondent is precluded from consulting directly with its members. The Constitutional Court in *AMCU v Royal Bafokeng (supra)* did

not create a right for trade unions to unreasonably obstruct the consultation process.

- [8] The applicant's contention that it is entitled to a fresh section 189(3) notice for the consultation process to continue after the facilitated consultation has been completed is based, *inter alia*, in *NUMSA v General Motors South Africa (Pty) Ltd*⁴ where the following view was expressed:

"[45] Taking all of these facts into account, on balance, it is my view that the retrenchments contemplated by GM in February 2009 were not anticipated by the invitation to consult issued on 1 July 2008, and that the consultation process initiated by that invitation came to an end in 2008. It was reasonable for the consulting parties to assume, as NUMSA did, at least by 3 September 2008, that no compulsory retrenchments were contemplated by GM consequent on that invitation. It follows that if GM contemplated further dismissals, as it did in February 2009, it was obliged to issue a fresh notice in terms of s189(3). It follows too that GM's failure to do so has the result that the dismissal of those employees who left GM's employ in April 2009 was procedurally unfair."

- [9] Based on the above judgment the applicant submitted that the Labour Court has consistently found that when the consultation process comes to an end and the employer therefore contemplates retrenchment, it must start again with the retrenchment proceed. The respondent disagreed and relied on *National Union of Metalworkers of South Africa (NUMSA) obo Members v Arcelormittal South Africa Ltd*⁵ where it was held that where there is a material change to the landscape between the conclusion of the CCMA facilitated consultation sessions and the issuing of the dismissal notices which may

⁴ (2009) 30 ILJ 1861 (LC) at para 45.

⁵ (2025/173974) [2025] ZALCJHB 510 (30 October 2025).

affect the business rational for the retrenchment, the employer is not necessarily required to issue a new section 193(3) for the further consultation.

- [10] Section 189(3) of the LRA makes no provision for the issuing of further notices after the first has been issued. The respondent pointed out that the authorities the applicant relied on are based on facts that are distinguishable from those of the matter before me. In *NUMSA & Others v Precious Metal Chains (Pty) Ltd*⁶ the reasons for the decision that the employer should issue a fresh section 189(3) are expressed as follows:

“From the evidence of Mr Durr, it is patently clear that the respondent did not comply with the provisions of s189. The consultations which were held in June 1996 and which resulted in the retrenchments then, cannot be relied upon to justify the retrenchments in January 1997. For a period of about seven months, the individual applicants and the other staff, as well as the union, had no reason to believe that retrenchments were imminent. When the respondent realized that the working of short-time was not meeting its requirements, it should have invited the union for consultations before making a final decision in this regard. The contemplation to dismiss the individual applicants was in January 1997 and that it when consultations should have commenced”.

- [11] In the authorities the applicant relied on the time that had lapsed between the retrenchment and the initiation of the consultation process and the change in the employer's circumstances led employees to believe that retrenchment was not imminent. That created the need for a fresh section 189(3) notice. It is therefore not the end of the facilitated consultation that triggers the need for a fresh section 189(3) notice. More needs to happen. There must be a material

⁶ 1997 ILJ 1346 (LC) at 1350 H-1351A.

change in the employer's ability to retain the employees it anticipated retrenching as retrenchments must be anticipated in the section 189(3) notice. The applicant did not succeed in establishing facts which justified the issuing of a fresh section 189(3) notice.

[12] The applicant sought an interdict. It therefore had to prove a right, reasonable apprehension of harm and the absence of an alternative relief. The applicant did not prove the right which needs to be protected by the interdict and absent that right the interdict may to be granted.

[13] The parties have a continuing relationship and granting a costs order will not be appropriate.

[14] In the premises, the following order is made:

1. The forms provided and the time periods stipulated in the Rules regulating the conduct of the proceedings of the Labour Court are dispensed with and this matter is heard as one of urgency in accordance with the provisions of Rule 38.
2. The application is dismissed.
3. There is no order as to costs.

NZM Lallie

Judge of the Labour Court of South Africa

Appearances

For the Applicant: Dr G. Ebersohn of Ebersohns Inc

For the Respondent: Advocate A. Redding SC with Advocate R. Itzkin

Instructed by Thomson Wilks Attorneys

LABOUR COURT