(1) Reportable: NO
(2) Of interest to other Judges: Yes

[redacted]
Signature

09 February 2026
Date

THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Case no: 2025-246180

In the matter between:

INDEPENDENT COMMERCIAL, HOSPITALITY AND ALLIED WORKERS UNION (ICHAWU)	**First Applicant**
EMPLOYEES LISTED IN ANNEXURE "A"	**Second and Further Applicants**

and

DISTRI GEORGE (PTY) LTD T/A DISTRILIQ GEORGE	**First Respondent**

Heard: **23 January 2026**

Delivered: **09 February 2026**

Summary: (s 189A(13) – return day – Facilitation process – union should deal with dislosure disputes timeously under the facilitator – Requests for significant disclosure at a late stage of the 60 day process, cannot justify prolonging the consultation – Company selecting employees on a basis not discussed in the consultation process,

procedurally unfair - limited extension of consultation process owing to rule *nisi* extension of employment without simultaneously requiring consultation.

JUDGMENT

LAGRANGE, J

<u>Introduction</u>

[1] On 23 December 2025, a *rule nisi* was issued on an urgent basis in the following terms:

> 'ORDER
>
> 1. Non-compliance with the forms and service and time periods provided for in the Rules of Court, is dispensed with, and the application is heard as an urgent application as contemplated in Rule 35 read with Rule 38 of the Rules of the Labour Court is condoned.
>
> 2. A rule nisi is issued calling upon the Respondent to show cause on 23 January 2026 at 10h00 why the following orders should not be made:
>
> > 2.1 Declaring that the Respondent has not complied with a fair procedure contemplated in section 189 of the Labour Relations Act 66 of 1995 ('the LRA').
> >
> > 2.2 Declaring that the facilitation process conducted under CCMA case number (WEGE 2762/25 was prematurely terminated and did not constitute meaningful consultation as required by sections 189 and 189A of the LRA.
> >
> > 2.3 Declaring that the Respondent failed to comply with s189(3) by failing to identify the affected employees by name until the date of the termination of their contracts of employment thereby denying meaningful consultation on the selection criteria and their application to specific individuals .

2.4 Interdicting and/or restraining the Respondent, in terms of section 189A(13)(b)of the LRA, from dismissing an employee prior to complying with a fair procedure; c) of the LRA that all 42 employees identified in Annexure “A” be reinstated in their employment with the Respondent on the same terms and conditions applicable immediately prior to the purported retrenchments, pending compliance with a fair procedure.

2.5 Directing the Respondent, in terms of section 16 read with 189(4)(a) and (b) read with section 189A(16) of the LRA to disclose to the Applicant’s auditors the following information within 14 (fourteen) days of the date of this order:

2.5.1 Complete bank statements for the 12-month period preceding the date of this order;

2.5.2 Cash flow forecasts and projections for the next 24 months;

2.5.3 Supplier schedules and ageing analysis;

2.5.4 Complete sales ledger and debtor ageing reports;

2.5.5 VAT, PAYE, and UIF returns for the past 24 months

2.5.6 Management and director headcount, remuneration, and any salary adjustments since January 2024 (information promised “asap” on 26 November 2025 but never provided);

2.5.7 Complete details of all payments to Silver Dawn Investments 200 CC and any other related parties, including the dates and timing of such payments;

2.5.8 Board and management meeting minutes relating to the decision to retrench;

2.5.9 Complete details of the labour broker (Workforce) arrangement, including monthly costs, worker numbers since January 2025, and the rate charged per category of worker (driver and assistants);

2.5.10 Any bonus, dividend, or other distributions to directors or shareholders in the past 24 months.

2.6 Directing the parties, in terms of section 189A(13) of the LRA, alternatively 189A(13)(b) or (c) to engage in meaningful consultation for a period of not less than 30 (thirty) days from the date of provision of the information set out in prayer 2.5 above, such consultation to take place under the auspices of the CCMA or as otherwise directed by this Court..

2.7 Interdicting and restraining the Respondent from proceeding with any retrenchments until such time as a fair procedure has been followed.

2.8 Directing the Respondent to pay the costs of this application on the scale as between attorney and client, alternatively on the party and party scale.

3. Pending the return date, the Respondent is interdicted from implementing the terminations of the employees listed in Annexure "A"; alternatively the employees listed in Annexure "A" are reinstated pending the return date and the Respondent is directed to permit the employees to continue working and to pay their remuneration pending the return date.

4. Respondent may anticipate the return date on 48 hours' notice.'

(*sic*)

[2] It should be noted that the relief sought and granted did not require any consultations or disclosure of information to occur during the currency of the interim order. Any order rebooting the consultation process that might take place would only take effect when the final order was made. Accordingly, the interim order did nothing to advance the consultation process but merely served to preserve the employment of the applicants pending the possible recommencement of the process.

[3] The hearing on the return day was conducted on MS Teams and judgment was reserved after hearing argument from both parties. Neither party filed any supplementary affidavits.

<u>Brief chronology</u>

[4] The second and further applicants ('the employees') are employed by the respondent ('Distri George' or 'the company') which conducts a beverage distribution business.

[5] In December 2024, the first applicant ('ICHAWU' or 'the union') settled a wage dispute which resulted in significant increases of approximately 68%, 62%, 25% and 54% being awarded to general workers, telesales staff and supervisors respectively. The settlement agreement was only concluded after the union's members had embarked on strike action. While the union alleges that the increases reflected the company 'catching up' on statutory obligations, it maintains that it had always been compliant and the increases were extraordinary.

[6] The company denied it only started raising the question of the unaffordability of the increase in May 2025 when it engaged an employers' organisation ('UEO') as advisers.

[7] In any event, on 18 Aug 2025, the company sent an email attaching an incomplete s 189(3) notice template requesting a meeting with the union. This was followed by a completed s 189(3) notice dated 27 Sep 2025 and sent by UEO on behalf of the company. Although the union initially claimed the notice was only receive on 2 October 2025 as an attachment to the company's CCMA Form 7.20 (a request for s 189A Facilitation), it subsequently agreed that it had been received on 27 September.

[8] Despite not having received a complete s 189(3) notice on 18 August 2025, on that date the union requested the company's Annual Financial Statements for 2023 to 2025, the number of employees affected, and various details about the UEO.

[9] Amongst other things, the s 189(3) notice of 27 September stated that the company could no longer sustain the salary bill on the current rates of pay which equated to R 3,28 million extra per year. It claimed not to have replaced staff who had left and had engaged suppliers in an effort to reduce costs, but

nevertheless proposed a 35% reduction in wages as an alternative to retrenchment. It estimated about 40 employees could be affected.

[10] Facilitation meetings under the auspices of the CCMA were held on 20 October and 14 and 20 November 2025.

Facilitation Meeting of 20 October 2025

[11] At the first facilitation meeting held on 20 October 2025, the Respondent explained its operational rationale for the proposed retrenchment process. It stated that the December 2024 wage settlement had significantly increased its payroll costs and had created financial strain which, in its view, necessitated consideration of retrenchments. The Respondent presented these concerns as genuine operational requirements and indicated that, although retrenchment was contemplated, it regarded salary reductions as the primary alternative. However, it argued that the reductions it sought would not amount to completely retracting the 2024 increases previously awarded as a result of the collective agreement. It claimed the proposed reductions would mean that employees would effectively still receive a 'reasonable increase'.

[12] The union disputed the legitimacy of the company's proposal, stating that the wage increases had been voluntarily agreed to by the employer and could not credibly serve as the basis for a sudden retrenchment exercise less than a year later. In the founding affidavit, the union also highlighted that a company representative apparently expressly disavowed the notion that the company was pleading poverty.

[13] The union requested a list of names of employees who might be affected and company financial information in general terms, apart from specifically asking the company to provide audited financial statements. It also asked for the increases given to other categories of staff and the cost of staff provided by labour brokers. The company agreed to provide audited financial statements and the categories and number of affected employees.

[14] The main focus of the first meeting concerned the rationale for the proposed retrenchments and dealt with some aspects of disclosure of information. The

Union insisted on receiving the outstanding documents before further meaningful consultation could continue.

Provision of financial statements

[15] On 31 October 2025, the company's accountants forwarded what seem to have been the provisional financial statements of the company for the financial year ending 28 February 2025. On 4 November, after he had reviewed the financial statements, the union's auditor advised the union of extensive additional financial information that was needed to determine the real state of the company's finances. Despite receiving this detailed brief from the auditor, at that stage, the union did not request the company to provide any of the additional information he had identified.

Facilitation Meeting of 14 November 2025

[16] The second facilitation meeting took place on 14 November 2025. The union indicated to the employer that its auditor had raised certain 'red flags' after reviewing the financial statements and that further clarification and information was needed in order to consult meaningfully. The company acknowledged that the union raised several issues concerning the financial disclosures during the meeting, to which it responded it had already made the '*audited financials'* available. Both parties' accounts are vague about the specific financial issues raised. It appears the union reiterated its request for the identification of affected employees.

[17] It seems that once again the primary focus of the discussion between the parties concerned the rationale for the proposed retrenchments. The union makes much of the fact that the operations manager commented to the effect that it was not the aim of the company to retrench but to reach an agreement on a salary reduction. It also noted that the company mentioned the fact that employees provided by a labour broker were working at significantly lower rates and highlighted that management disclosed it had in fact replaced permanent workers who had left with staff provided by a labour broker.

[18] The Respondent continued to advance the salary-reduction proposal as the preferred alternative to retrenchment and urged employees to consider the significant wage cuts as the only viable means to avoid dismissals. The Union rejected this position, stating that the magnitude of the proposed salary reductions—ranging between 27% and 35%—was impossible to evaluate without a complete financial picture and that the proposal appeared aimed at undoing a collectively bargained agreement rather than addressing demonstrable operational hardship.

Facilitation Meeting of 20 November 2025

[19] The final facilitation meeting was convened on 20 November 2025. On the morning of this meeting, a few hours prior to the meeting, the Union delivered a detailed position paper containing eleven specific categories of information requests, formally setting out the documents required to complete the consultation process, namely:

19.1 bank statements for all operating and related party accounts for the preceding 6 to 12 months;

19.2 cash-flow forecasts for the next 12 to 18 months;

19.3 records of related-party transactions, including loan agreements, lease agreements, and proof of payments;

19.4 payroll journals, payslips, and EFT payment confirmations;

19.5 supplier payment run schedules and proofs of payments;

19.6 VAT, PAYE, and UIF returns with supporting proof of submissions and payments;

19.7 management salary and bonus information for the preceding 12 to 24 months;

19.8 debtor ageing schedules and sales ledgers;

19.9 documentation relating to cost-saving measures considered or implemented;

19.10 board or management minutes related to financial decisions, and

19.11 schedules explaining the timing of rent payments and intra-group financial flows.

[20] The union also made a 'without prejudice' proposal that it was willing to consider reasonable alternative cost saving measures to be applied fairly across the organisation including management, but excluding any reduction in members' remuneration or conditions which were less favourable. It is difficult to interpret the full import of this suggestion, but judging from other comments in the document, it seems to reflect that the higher earners and management accounted for a large proportion of the salary bill and savings could be made there.

[21] During the meeting, the Respondent declined to provide most of the documents listed in the eleven-point request, asserting that many of them were irrelevant to the consultation process or that the audited financial statements already disclosed constituted sufficient information. The Respondent stated that it would not "respond to each and everything" contained in the Union's position paper and expressly refused to disclose key items such as bank statements, supplier payment records, detailed payroll records, tax-compliance documentation, related-party agreements, cash-flow forecasts, and management remuneration data. Nevertheless, the company indicated that it would, in the "interest of meaningful consultation," attempt to provide aggregated information regarding management-level remuneration as soon as possible.

[22] During the course of the meeting, the company did reveal that the costs of staff provided by labour brokers was significantly lower than the employment costs of permanent staff.

[23] The Union objected strenuously to the Respondent's refusal to disclose the requested information, stating that without these documents it could not

meaningfully evaluate whether the Respondent was in financial distress, nor could it assess the necessity of the salary-cut proposal or formulate alternatives aimed at preventing retrenchment. The Union further indicated that consultation had not been exhausted and that additional facilitation sessions were required.

[24] The company was unreceptive to the extension of the facilitation adopting the position that consultation had run its course and that no progress could be made. Despite the Union's objections, the facilitator recorded the facilitation process as concluded on 20 November 2025. He advised the union to approach the Labour Court if it wished to take matters further.

[25] Consequently, the facilitation process ended with the Union having outstanding information requests, a lack of consensus on the justification for retrenchments, and no consensus on the identification of affected employees or the application of selection criteria.

Post facilitation developments

[26] The company issued individual salary reduction letters to 42 employees on 21 November 2025, requiring them by 26 November to accept or decline the proposed salary reduction '*as a reasonable alternative to retrenchment*'. The salary reductions proposed varied between 27% and 35 %. During the course of consultations it had modified its proposal to reduce the remuneration of drivers, warehouse and general workers from 35 % to 27 %. This was the first time it revealed the employees it had identified for retrenchment.

[27] On 26 November the company did respond to the union's position paper, even though it had not been willing to extend the facilitation process beyond 20 November. It stated that it viewed the consultation process as having ended on the latter date. It responded only to information requests which directly impacted on the s 189A process.

[28] In the response, the company detailed a number of other cost saving measures it had implemented. It did undertake to provide the number of managerial posts and the aggregate cost of management remuneration for the seven month loss making period. It provided some information concerning related party outflows and payment timing and confirmed the payroll journals requested by the union

would not show any arrears in remuneration payments. It stated that supplier payments are a priority and not a factor the union could influence. It disputed the need for cash-flow forecasts because it had currently experienced a seven month loss of R 2.58 million and reliable forward looking forecasts were simply not possible given cost uncertainties and market underperformance. It was willing to provide its accountant's confirmation that it was tax compliant but not to provide the returns themselves. The company disputed the relevance of the sales ledger and debtor ageing to the question of finding alternatives. It refused to provide board meeting minutes, which it regarded as privileged and argued that the board's decisions were reflected in the audited statements and management accounts provided.

[29] On 27 November 2025, the company issued termination letters with the effective termination date set for 24 December 2025.

[30] The union made two requests on 27 and 28 December 2025 for an extension of the facilitation process by 60 days.

[31] On 3 Dec 2025, the facilitating commissioner advised the parties that the CCMA could not extend the consultation period without their agreement and advised the union that it could approach the Labour Court, which prompted this urgent application.

<u>Merits of s 189A(13) application</u>

[32] Section 189A(13) offers a way for employees to ensure that problems with the retrenchment consultations in large scale retrenchments can be rectified before the process runs its course. Rather than conducting a post mortem on defects in the consultation many months' hence in a trial, the consultation process can be set on the right track so proper consultation takes place at the

time it is supposed to[1]. For the sake of convenience, the full text of the provision and related ones are set out below:

'(13) 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.

(14) Subject to this section, the Labour Court may make any appropriate order referred to in section 158 (1) (a).

(15) An award of compensation made to an employee in terms of subsection (14) must comply with section 194.

(16) The Labour Court may not make an order in respect of any matter concerning the disclosure of information in terms of section 189 (4) that has been the subject of an arbitration award in terms of section 16.

(17) (a) An application 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.

(b) The Labour Court may, on good cause shown condone a failure to comply with the time limit mentioned in paragraph (a).

[1] See *Regenesys Management (Pty) Ltd t/a Regenesys v ILunga and others* [2024] 8 BLLR 777 (CC) at paragraph 99. See also paragraph 78 of the judgment concerning when the various orders contemplated in s 189A(13)(a) to (d) are appropriate.

(18) The Labour Court may not adjudicate a dispute about the procedural fairness of a dismissal based on the employer's operational requirements in any dispute referred to it in terms of section 191 (5) (b) (ii)'

[33] The alleged defects in the consultation process identified by the union are the following:

33.1 The retrenchment process was a sham to compel employees to accept salary cuts.

33.2 The company had failed to provide information. More particularly, on 26 November it had refused nine of the eleven requests made by the union on 20 November, and it had not provided the management salary information, which it had agreed on 26 November to provide as soon as possible.

33.3 The facilitation was prematurely terminated on 20 November but on 26 November the company still responded to the union's requests, which it made on 20 November, demonstrating that the facilitation should have continued.

33.4 The company unreasonably refused to extend the facilitation process.

33.5 The five-day period provided for employees to accept the salary reduction the company had decided to implement as an alternative to retrenchment was unreasonably short.

33.6 The company had avoided consulting on severance pay in circumstances where the unreasonable refusal to accept the drastically reduced salaries did not amount to alternative employment within the meaning of s 41(4) of the Basic Conditions of Employment Act, 75 of 1997 (the BCEA'). Accordingly, it was obliged to consult over severance pay.

33.7 The company did not identify the employees likely to be affected by retrenchment in its s 189(3) notice.

[34] As will emerge from the discussion below, not all of these complaints point to a failure in the consultation process

The allegedly sham nature of the retrenchment process

[35] In essence, this contention appears to be related to the union's contention that the company embarked on the retrenchment exercise not because of serious financial difficulties it was facing, but because it wanted to claw back the salary increases it had agreed to in 2024. This allegation attacks the bona fide rationale of the employer for contemplating retrenchment and is really a claim that there is no genuine economic pressure the employer is facing. It is simply using a retrenchment exercise to circumvent the outcome of collective bargaining. As such, it goes to the heart of the question whether retrenchment is needed. Accordingly, it is an issue relating to the substantive justification for retrenchments and cannot be resolved by trying to get the consultation process back on track.

The failure to consult over severance pay

[36] Because of the manner in which the company proceeded it pre-empted consultation over severance pay, by simply proceeding with the retrenchments. This action gives rise to another dispute about whether it was unreasonable of employees to refuse to accept the large wage reductions proposed by the employer as an alternative to being retrenched under s 41(4) of the BCEA and must be resolved in terms of that Act. That said, it does not detract from the fact that the company and union did not engage in any consultations on severance pay by the time the company implemented the retrenchments, and aside from what it stated in it s 189(3) notice, in which it proposed the statutory payment of one week's pay for each completed year of service. Accordingly, this is a procedural defect in the consultations.

The early termination of the facilitation and consultation process

[37] At the time the process was concluded on 20 November, it is apparent that a number of issues had not been discussed. The parties do not appear to have got beyond arguing over the rationale for the retrenchment and whether there were other alternatives to avoid any retrenchment. The union believed that consultations could not proceed on either of these issues without further disclosure of information. It argues that the fact the employer only responded

on 26 November to its request for information made on 20 November demonstrates there were still matters they could have engaged with after the termination of the facilitation.

[38] It is noteworthy that the detailed set of information required by the union which it submitted on 20 November, was known to it since 4 November, and the sixty day period since the s 189(3) notice was served on it was due to expire in 7 days. In terms of s 189A(7) of the LRA, the expiry of the 60 day period gives the employer the right to issue notice of contracts to employees (s 189A(7)(a)), and the union or employees acquires the right to strike or refer a dispute over the substantive fairness of the dismissal the CCMA or relevant bargaining council (s 189A(7)(b)). In other words it did not articulate its demand for a significant amount of information until the sixty period was nearing expiration, despite being advised more than two weeks earlier to request this information.

[39] Had the union sent a written request to the company more promptly after receiving their auditor's opinion on what was required it could have asked for a response before the second facilitation meeting even took place on 14 November. Assuming the response would have been the same or similar to what the company provided on 26 November, the union could have declared a dispute over the failure to disclose information by the second facilitation meeting and asked the facilitator to direct the company to provide the relevant documents exercising his power under Regulation 5(1) of the Regulations for the Conduct of Facilitations in terms of Section 189A[2].

[40] In terms of Regulation 6(3) any meetings convened for the purposes of the facilitator arbitrating a dispute over the disclosure of information are not

[2] GN R1445, G. 25515 (dd10/10/ 2003). Regulation 5 reads:

'5. Power to order disclosure of information

(1) If there is a dispute about the disclosure of information the facilitator may, after hearing representations from the parties, make an order directing an employer to produce documents that are relevant to the facilitation.

(2) Sections 189(4)(b) and 16(5) and (10) to (14) of the Act, read with the changes required by the context, apply to any dispute concerning the disclosure of information in terms of subregulation (1).'

considered to be one of up to four facilitation meetings the facilitator is supposed to conduct under Regulation 6(1).

[41] I mention these Regulations, only because they demonstrate that a party that is unhappy about the disclosure of information by the other party, has available to it a dispute mechanism, which is built into the facilitation process and which obviates the need to refer a discreet dispute over non-disclosure under s 16 of the LRA. As the union only raised an extensive list of items it wanted disclosed at the eleventh hour, it only has itself to blame that its request overran the 60 day period. In my view, it is disingenuous of the union to raise a complaint that the company prematurely ended consultations, when the principal issue it argues should have been dealt with was its belated request for disclosure of a considerable range of information.

[42] It must be noted in this regard that the facilitator does not have the power to suspend the operation of the 60 day period, even though the CCMA director after consulting the facilitator, may increase the number of meetings the facilitator must conduct with the parties[3]. Any extension of the 60 day period requires the consent of both consulting parties.

The company's failure to agree to extend the consultation process

[43] This point is intrinsically linked to the issue above and is susceptible to the same criticism, namely that the ostensible need for an extended consultation process which is generated by a delayed engagement by the union is one that is self-generated. The responsibility for there being insufficient time is not attributable to the company in this instance, and for that reason cannot be employed as a justification for extending the consultation process.

[44] However, one consequence of the termination of consultations on 20 November was that the company never consulted over the selection criteria it actually applied and gave effect to *after* ending the consultation process. This is bound up with the period it gave to employees to consider whether to accept the salary reductions and the related issue of the selection method it ultimately adopted.

---

[3] Regulation 6(2).

Five day period for employees to consider whether to accept the salary reduction proposal as an alternative to retrenchment.

[45] In part this complaint echoes some of the union's argument about premature termination of consultation when disclosure of information was still outstanding. In the absence of such disclosure, the employees could not make an informed choice between accepting a wage cut or accepting retrenchment. In any event the union argued that the five day period was objectively too short for them to weigh up the long term consequences of accepting or rejecting the proposal.

[46] The company's argument was that the justification for the five day notice period, was linked to its substantive reason for embarking on the retrenchment when it did and accordingly the timing of the retrenchment was not a procedural question. This seems correct.

[47] Nonetheless, it does not detract from the fact that the company never revealed its actual method of selection before notifying the employees individually that they would be retrenched if they failed to agree to the proposed wage reduction.

The company's failure to name employees likely to be affected by retrenchment

[48] In its s 189(3) notice the company stated that about 40 employees may be affected, '*depending on the ability of the parties to reach consensus, which would drastically reduce the number'*. The company argues that s 189(3)(c) did not require it to do more than that. Insofar as the notice is concerned that is correct, but it also proposed that LIFO subject to the retention of key skilled people would be applied in selecting retrenchees. At no stage prior to issuing the letters to individual employees did it discuss the actual selection it arrived at and how it came to identify those employees.

[49] Section 189 (7) of the LRA reads as follows:

> *'The employer must select the employees to be dismissed according to selection criteria -*
>
> *(a) That have been agreed to by the consulting parties;*
>
> *(b) If no criteria have been agreed, criteria that are fair and objective.'*

Section 189(2)(b) expressly provides that selection criteria is one of the items parties are supposed to consult on with a view to reaching consensus, for which there is no evidence this took place. However, whether the selection criteria actually applied by the company when it was issuing the letters to individuals even complied with the selection criteria it had proposed in the s 189(3) notice and whether the criteria it actually applied were objective and fair are matters pertaining to the substantive fairness of the retrenchments and do not fall to be considered here.

[50] No consensus was reached on the selection criteria, and that the company did not apply LIFO subject to skill retention, but rather a completely different method, namely whether the employee accepted the proposed wage reduction or not. There is no evidence this was the subject matter of consultation and would tend to support a finding that the failure to consult over selection criteria, particularly if the criteria implemented differed from those proposed, made the selection process procedurally unfair[4]. Although the union caste its complaint as a failure to identify those ultimately selected for retrenchment, it is obvious this presented an obstacle to consulting over the real criteria before they were adopted, and goes against the obligation to try and reach consensus on the issue. Thus, in this respect, the company acted procedurally unfairly.

[51] Had the parties consulted over the selection method the company actually adopted, it is not implausible to believe that they might have reached a compromise solution, but the curtailment of the consultations prevented this possibility being explored.

[52] In the result, I find that the company acted procedurally unfairly in failing to identify the employees it had selected for retrenchment and did not consult over the criteria it ultimately adopted or over severance pay. In respect of the union's concern about failing to provide sufficient information to permit consultation, the union should have raised its more detailed requests for information before 20 November 2025 and utilised the facilitation dispute

[4] See e.g., *Johnson & Johnson (Pty) Ltd v Chemical Workers Industrial Union* (1999) 20 ILJ 89 (LAC) at paragraph 48.

process for disclosure disputes, which the arbitrator could have dealt with. It cannot expect the court to come to its assistance on that matter in such circumstances.

Relief

[53] The applicants have not applied for compensation as an alternative remedy for extended consultation, so the only question is whether the consultation process should be extended to deal with the selection issue. I am mindful that the unusual nature of the order which simply extended the individual applicants' employment without requiring the parties to engage with each other during that period means that an opportunity for additional consultation might have been wasted.

[54] Given the time that elapsed before the return day, during which nothing happened except that the individual applicants' employment was extended, I am reluctant to require an extensive period for further consultation and believe that a period of two weeks should be more than enough to debate and try and reach consensus on retrenchment criteria, even if the parties are unable to agree on whether retrenchment is justified. Because of the interests informing that discussion do seem to relate to the principal reason the company wants to retrench, I believe it will give the parties and opportunity to resolve the underlying dispute and thereby avoid protracted litigation some time in the distant future over the substantive fairness of the retrenchments.

Order

1. The Respondent failure to properly consult over the selection criteria it imposed and to consult over severance pay was procedurally unfair.

2. The rule *nisi* handed down on 23 December 2025 is discharged.

3. The Respondent must continue to employ the employees appearing in Annexure "A" to the founding affidavit until 23 February 2025.

4. The Applicant and the Respondent must consult with each other with a view to reaching consensus on selection criteria and severance pay in the event retrenchment does occur between the date of this judgment and 23 February 2026, during which time they must meet to consult on at least two occasions.

5. No order is made as to costs.

[redacted]

R Lagrange

Judge of the Labour Court of South Africa

<u>Appearances:</u>

For the Applicant: --- C De Kock

Instructed by: --- Bagraims Attorneys

For the Respondent: --- N Wagemaker

Instructed by: --- LG Du Plooy and Associates