



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

Signature

Date

26/3/26

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

CASE NO: JS62/2020

In the matter between:

NAKENE TLHAPA

Plaintiff

and

COCA COLA BEVERAGES SA

Defendant

Date: 2 - 4 February 2026

Delivery: Judgment handed down by emailing same to the parties, on 26 March 2026.

Summary: Alleged unfair retrenchment – evidence establishing that there was a valid and fair operational reason – evidence showing that there were no viable alternatives to retrenchment. Dismissal substantively fair.

JUDGMENT

DANIELS J

Introduction

- [1] In his amended statement of claim, the plaintiff alleged that his dismissal, by the defendant, was substantively unfair because the position in which he was employed was not redundant. The plaintiff alleged that he was no longer engaged in the affected department (i.e. the “vending department”) which the defendant closed. At trial, despite the absence of any allegation to this effect in his pleadings, the plaintiff alleged that the defendant refused to place him into an alternative position because of his ill health. Furthermore, despite the absence of any pleading to that effect, the plaintiff alleged that the retrenchment was procedurally unfair.

The Pleadings

- [2] It is trite that the parties are bound by the pleadings, the pre-trial agreement,¹ and the issues agreed to in the pre-trial minute.² The court cannot, and should not, go beyond the issues it is required to determine in the pleadings.
- [3] The purpose of the pre-trial minute is to narrow the issues in dispute, if possible. In this matter, the pre-trial minute limits the issues to be determined to: (a) whether the plaintiff at the time of the retrenchment was in the vending department, and (b) whether the defendant had “substantive reasons to terminate the plaintiff’s employment based on its operational requirements”. Accordingly, the plaintiff’s allegations that the defendant refused to place him into an alternative position because of his ill health is not an issue before the court and neither is the question of whether the retrenchment was procedurally

¹ *Chemical, Energy, Paper, Printing, Wood & Allied Workers Union and Others v CTP Ltd and another* [2013] 4 BLLR 378 (LC).

² *Professional Transport & Allied Workers Union on behalf of Khoza and Others v New Kleinfontein Gold Mine (Pty) Ltd* (2016) 37 ILJ 1728 (LC); *National Union of Metalworkers of SA and Others v Driveline Technologies (Pty) Ltd and another* (2000) 21 ILJ 142 (LAC).

fair. In any event, the evidence demonstrated that section 189A of the Labour Relations Act No. 66 of 1995 (the “LRA”) was applicable to the dispute and this court presently cannot adjudicate the procedural fairness of a large-scale retrenchment through trial proceedings. Such disputes must be determined by application in terms of section 189A(13) of the LRA.

Evidence presented

[4] The defendant called two witnesses, whose evidence is summarized below:

4.1 The first witness, Mr Justice Phetla (“Mr Phetla”) testified that he is employed by the defendant as its Group Head for Employee Relations. Mr Phetla testified that he drafted the section 189(3) notice and addressed it to the two affected unions, FAWU³ and the NUFBWSAW⁴ on behalf of their members. The notice⁵ set out the rationale⁶ for the proposed closure of the vending department in the East Rand. A consultation process, facilitated by the CCMA, was held, in terms of section 189A of the LRA. The plaintiff, as a shop steward of NUFBWSAW, attended the consultations. In the consultations, plaintiff never stated that he was not part of the vending department. The plaintiff was part of the vending department, as reflected by his payslip. Plaintiff, who was engaged as a driver in the vending department, had been dismissed for incapacity during 2017, and reinstated by the CCMA during 2018. The plaintiff was reinstated by the defendant but, because he could no longer perform his duties, he was temporarily assigned to the sales execution team, managed by Ms Ronelle Venter. There were no permanent filing positions, and there was no filing department either. At all material times, until his retrenchment, the plaintiff’s position was that of driver in the vending department. When the defendant

³ The Food and Allied Workers Union (FAWU)

⁴ The National Union of Food Beverage Wine Spirits and Allied Workers (NUFBWSAW)

⁵ The notice also stated that 13 employees could be affected, the defendant had 7865 employees, and it had retrenched 368 employees during the previous 12 months.

⁶ The rationale included declines in revenue, inefficiencies, poor productivity, and poor equipment.

transfers an employee to a new position, this is confirmed in writing. A transfer will impact on the employee's salary and terms of employment. The plaintiff was not suitable for the alternative positions he applied for, namely warehouse operator and production process controller. He could not perform the work of warehouse operator because of his ill health, which was confirmed by the report of the occupational health professional, Dr Nelda Van Zyl, in September 2019.⁷ The plaintiff did not have the qualifications (including knowledge of maths and science), skills or experience to perform the function of production process controller, and to train him to do the job could take more than six months. This was confirmed in the letter sent to the plaintiff.⁸ The plaintiff was not dismissed because of his ill health or disability.

- 4.2 Mr Kamlesh Lalla ("Mr Lalla") testified next. Mr Lalla is engaged as the defendant's manager in its sales and marketing department. Mr Lalla explained the commercial rationale for the retrenchment and explained the reasons why the vending department was no longer fit for purpose. This evidence was unchallenged by the plaintiff's representative during cross examination. Mr Lalla knows the plaintiff as a driver in the vending department. After the plaintiff was reinstated by the CCMA during 2018, the defendant reinstated the plaintiff but placed him elsewhere while it sought a permanent alternative position for him. Mr Lalla confirmed that the plaintiff's assignment to do filing was temporary, to accommodate his medical difficulties, and there was no permanent filing position available. His evidence corroborated that of Mr Phetla.

- [5] Mr Nakene Tlhapa ("Mr Tlhapa") testified on his own behalf and called no further witnesses. Mr Tlhapa was employed by the defendant since 1997. From 2010, he was employed as a driver in the vending department. He was injured during 2013, and thereafter experienced back problems. He was placed on

⁷ Bundle C, p51

⁸ Bundle B, p32

temporary disability until he returned to work. During 2017, he was dismissed for incapacity. He challenged the fairness of his dismissal and was reinstated, by the CCMA, in 2018. After his return, the defendant attempted to place him in its special events department, but Mr Tlhapa rejected this. He was then instructed to report to Ms Venter to do filing for the sales execution team. The plaintiff believed Ms Venter intended to accommodate him on a permanent basis, but she required the cooperation of human resources. Ms Venter sent an email to human resources but received no response.⁹ Mr Tlhapa testified that he informed Mr Phetla, during the consultations, that he was not part of the vending department, but Mr Phetla insisted that he was. Mr Tlhapa testified that he was qualified for the position of production process controller because he was shortlisted, and he had done work in production when he was first engaged by the defendant about twenty-two years earlier. Mr Tlhapa testified that the defendant did not tell him that knowledge of science and mathematics was required for the position of production process controller. He was willing to take a salary cut, and the defendant should have searched harder for an alternative position. Under cross examination, after being confronted with various documents,¹⁰ Mr Tlhapa conceded that he was permanently employed in the vending department and had not been transferred. Mr Tlhapa testified that the defendant used the retrenchment process to get rid of employees with medical issues because it only found alternative employment for those employees had no medical issues. A further indication of this, says Mr Tlhapa, is the notice of termination of employment where the defendant stated that his ill health made it difficult to place him into another role.

⁹ Bundle B, p20. The email itself describes the work being performed by the plaintiff and states "...as discussed, later when filing and storage areas are up to date, I would like to start training Nakene on SAP how to capture DOC's and scanning of documentation." The email does not suggest that the filing work was of a permanent nature.

¹⁰ His payslips from April, May and June 2019 indicated that he was employed as a driver in the vending department. Mr Tlhapa signed a petition identifying himself as an employee in the vending department (Bundle C, p61). On 21 January 2019, Mr Tlhapa sent an email to human resources stating "*I'm currently being temporarily accommodated in filing at Bdf due to medical conditions*" (Bundle B, p25).

Assessment of the evidence

- [6] Recently, in *Workforce Staffing (Pty) Ltd v Mjoli and Another*¹¹ Van Niekerk JA repeated the principles to be applied when a court is faced with irreconcilable disputes of fact. The proper approach is to first consider whether the disputes can be resolved on the probabilities. If this fails to reveal where the truth lies, then recourse may be had to the credibility of the witnesses. It is important to remember that the estimate of the credibility of a witness is inextricably bound up with a consideration of the probabilities of the case.
- [7] In this matter, there are few material disputes of fact. The plaintiff did not challenge the rationale for the retrenchment, apart from alleging that the defendant targeted certain employees for retrenchment because of their ill health. However, plaintiff presented no cogent evidence of this alleged victimization. In any event, the allegation was not pleaded.
- [8] The main dispute related to whether the plaintiff was engaged in the vending department at the time of his retrenchment. However, ultimately, the plaintiff conceded that he was still engaged in the vending department. That concession was properly made. The probabilities overwhelmingly indicate that the plaintiff was engaged in the vending department at the time of his dismissal. On his own version, he was working in another department on a temporary basis, for medical reasons. Human resources never confirmed the transfer, and it never assigned new conditions of employment to him.
- [9] At trial, the plaintiff alleged that he was qualified for the position of production process controller. This too was not pleaded. In any event, the probabilities weighed strongly against the plaintiff's version. He could not explain what the position entailed, his previous experience, for several years, was that of driving.

¹¹ [2024] 7 BLLR 734 (LAC); (2024) 45 ILJ 1627 (LAC) at para [24]

He last worked in production more than two decades earlier and he had never held that position previously.

Legal principles and analysis

[10] In a retrenchment dispute, where substantive fairness is in issue, the court must consider whether the employer has proven that the retrenchment was based on some economic, technological, or similar need. While employers have the prerogative to restructure, the courts do not accept the proffered rationale at face value, nor do they defer to the employer. The court will consider whether the decision to retrench was fair to the employees and it fell within the range of reasonable options available in the circumstances. However, in this matter, the plaintiff did not challenge substantive fairness except in an extremely narrow manner. He alleged that he was not engaged in the affected department – an issue he conceded. The further allegations are dealt with in paras [7] and [9] and, in any event, were not properly pleaded. In the circumstances, the defendant discharged the onus.

[11] Neither party actively pursued costs. There is no reason to depart from the usual rule that costs do not follow the result.

Conclusion

[12] In the result, the plaintiff's case falls to be dismissed. There is no order as to costs.



RN Daniels

Judge of the Labour Court of South Africa

Appearances:

For the Plaintiff

Adv Morapedi

Instructed by Nkosi Tshabalala Inc

For the Defendant

Adv V Mndebele and J Mabuza

Moeletsi Attorneys