(1) Reportable Yes/No
(2) Of interest to other Judges: Yes/No
(3) Revised

______________ ________________
Signature Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case no: JS151/23

In the matter between:

SOLIDARITY obo LE ROUX, R **Applicant**

and

VANALLS PLANTHIRE (PTY) LTD **Respondent**

Heard: **14 May 2025**

Delivered: **20 April 2026**

(This judgment was handed down electronically by emailing a copy to the parties. The 20th April 2026 is deemed to be the date of delivery of this judgment).

Summary:

JUDGMENT

NHLAPO, AJ

Introduction

[1] The applicant is Mr Rian Le Roux (Le Roux), represented by Solidarity, who was employed as Chief Executive Officer (CEO) of Vanalls Plant

Hire (Pty) Ltd with effect from 1 February 2022 at a monthly remuneration of R110,000.

[2] The respondent is Vanalls Plant Hire (Pty) Ltd, a plant rental company operating two divisions: a short-term plant hire division and a fixed-term contract division.

[3] It is common cause that Le Roux was dismissed by way of retrenchment on 13 December 2022 and that this dismissal falls within the purview of section 189 of the Labour Relations Act[1] (LRA), which requires an employer to prove both a fair reason based on operational requirements and a fair procedure.

[4] The issue for determination is thus the substantive and procedural fairness of Le Roux's dismissal based on operational requirements.

[5] In the event that I find in favour of Le Roux, the remedy sought is financial compensation of twelve months.

Material facts

[6] From approximately the second half of 2022, the plant hire division experienced significant financial difficulties attributable to non-payment by clients, erratic cash flow, and high equipment maintenance costs. By the end of the third quarter, the directors were considering closure.

[7] On 6 December 2022, Le Roux was informed for the first time at an EXCO meeting that the directors had decided to close the plant hire division. On the same day, Le Roux sent the directors an email advising that the retrenchment process had to follow the legally prescribed timeline and that, given the desired deadline of end of January 2023, notices needed to be issued immediately.

[8] A follow-up EXCO meeting was held on 7 December 2022. The section 189(3) notice of contemplated retrenchment was issued on 7 December

[1] Act 66 of 1995, as amended.

2022 and the consultation meeting was scheduled for the very next day — 8 December 2022.

[9] The section 189(3) notice was addressed to employees, plant hire division. It contemplated the retrenchment of five employees in total and stated that the mechanical and management departments will be affected independently and that the financial and procurement management departments will not be affected.

[10] The notice did not identify Le Roux's position as CEO as being one of the positions under consideration for redundancy. The pre-trial minute at paragraph 3.9 recorded the agreed fact that only the plant hire division and its employees would be affected — Le Roux was CEO of the whole company, not an employee of the plant hire division.

[11] The group consultation meeting was held on 8 December 2022, chaired via Zoom by Mr Quintin Liebenberg ("Mr Liebenberg") of the Labour Law Association of South Africa. Le Roux attended in his capacity as CEO. At the commencement of the meeting, three individuals — Ms Jenny Van Zyl (procurement), Ms Sheila Du Toit (financial manager), and Ms Ester Muller (HR/payroll) — were identified as not being affected parties. Le Roux was not excluded.

[12] However, Le Roux testified that he understood his attendance to be in his capacity as CEO of the company and not as an employee affected by the retrenchment. He was never specifically told during that meeting that his position as CEO was redundant, that he was an affected party, or that the application of LIFO would make him the first to be retrenched within the management pool.

[13] The consultation meeting on 8 December was largely a reading of the notice by Mr Liebenberg, with limited elaboration from the directors. The only question raised was by Mr Raymond Welding regarding the severance package. Le Roux asked no questions and made no submissions — because, as he credibly testified, he did not know his position was at risk.

[14] On 9 December 2022, Le Roux submitted a detailed written letter to the shareholders in his capacity as CEO, setting out his views on the retrenchment process, proposals regarding the affected plant hire employees, and suggestions regarding alternatives such as transferring mechanics to Trans Alloys. This letter did not address his own position because he had no reason to believe it was under threat.

[15] The respondent never responded to this letter in writing, as required by section 189(6)(b) of the LRA. Brian Marshall ("Brian") confirmed this in cross-examination: "*Not in writing.*"

[16] The respondent also never furnished Le Roux with the forward management structure he had specifically requested on 6 December 2022. Brian conceded*: "We never responded… we did not know what the structure was going to look like."*

[17] On 12 December 2022, the directors held individual meetings with all managers. On the evening of 12 December, Brian admitted: *"We made up our minds basically on the night of Monday the 12th of how we need to be going forward.*" The decision to retrench Le Roux was therefore made before any individual consultation specifically directed at him regarding his own potential retrenchment.

[18] On the morning of 13 December 2022, Le Roux had what he described as a general business meeting with the directors — covering the Trans Alloys situation, disciplinary matters, equipment, and the question of share acquisition. He was not told in this meeting that he would be retrenched.

[19] Later, on 13 December 2022, Le Roux was summoned to the boardroom, where he was presented with his retrenchment letter and told to vacate the premises immediately. He expressed shock. No meaningful discussion took place. John Marshall ("John") confirmed*: "Correct. As a person, as a position yes. [This was the first time we told him he was being retrenched]."*

[20] Le Roux referred the dispute to the Commission for Conciliation, Mediation and Arbitration on 13 January 2023, while still within his notice period, which ran to 31 January 2023. He remained unemployed for approximately one year before securing new employment.

Legal framework

[21] Section 188(1) of the LRA provides that a dismissal is unfair if the employer fails to prove that it was affected in accordance with a fair procedure and that the reason for the dismissal was a fair reason.

[22] Section 189(1) of the LRA imposes a duty on the employer contemplating dismissal for operational requirements to consult with the affected employees or their representatives.

[23] Section 189(2) requires that the consultation constitute a meaningful joint consensus-seeking process in which the parties attempt to reach agreement on measures to avoid dismissals, minimise their number, change their timing, mitigate their adverse effects, the method of selection, and severance pay.

[24] The purpose of consultation is to ensure that the ultimate decision on retrenchment is properly and genuinely justifiable by operational requirements or, put another way, by commercial or business rational.[2]

[25] In *SACCAWU and Others v Woolworths (Pty) Ltd*[3] the Constitutional Court had the following to say:

> "Section 189(2) of the LRA requires the employer and other consulting parties (the trade union and its members) to engage in a meaningful joint consensus seeking process and attempt to reach consensus on the topics specified in section 189(2)(a) to (c). These topics include appropriate measures to avoid dismissals, to change the timing of dismissals and to mitigate the adverse effects of the dismissals. The employer is also required to disclose relevant information and provide

---

[2] See: *SACTWU v Discreto (a division of Trump and Springbok Holdings)* [1998] 12 BLLR 228 (LAC) at para 8

[3] (2019) 40 ILJ 87 (CC) at para 39.

meaningful reasons for rejecting SACCAWU's representations or proposals."

[26] Section 189(5) requires the employer to allow the other consulting party an opportunity during consultation to make the representations about any matter on which they are consulting. Section 189(6) obliges the employer to consider and respond to the representations made by the other consulting party and, if the employer does not agree with them, the employer must state the reasons for disagreeing. Section 189(7) makes provision for what happens at the end of the process of consultation. Where attempts at finding measures that would avoid the dismissal of employees have failed, the end of the consultation process is the selection of the employees to be dismissed and then, finally, the dismissal.

[27] Further to the above, the issue of whether a dismissal for operational requirements is substantively fair is decided by way of answering what is called a general question and a specific question. This particular principle was articulated in *Chemical Workers Industrial Union and others v Latex Surgical Products*[4], where the Labour Appeal Court (LAC) held as follows in that regard:

> "[55] Whether or not there was a fair reason for the dismissal of the individual appellants relates to a general question and a specific question. The general question is whether or not there was a fair reason for the dismissal of any employees. The specific one is whether there was a fair reason for the dismissal of the specific employees who were dismissed, which in this case, happened to be the individual appellants. The question of a fair reason to dismiss the specific employees who were dismissed goes to the question of the basis upon which they were selected for dismissal whereas the other question related to whether or not there was a reason to dismiss any employees in the first place."

[4] (2006) 27 ILJ 292 (LAC) at para 55.

[28] In essence the general question relates to whether there was any commercial or business rational for the retrenchments. In *SACTWU v Discreto (A division of Trump and Springbok Holdings)*[5] the LAC had the following to say regarding the general question:

> "[8] Every person has the constitutional right to fair labour practices (section 27(1) of the interim Constitution; section 23(1) of the final Constitution). As far as retrenchment is concerned, fairness to the employer is expressed by the recognition of the employer's ultimate competence to make a final decision on whether to retrench or not (cf the *Atlantis Diesel* case at 1252H (ILJ); 28I (SA)). For the employee fairness is found in the requirement of consultation prior to a final decision on retrenchment. This requirement is essentially a formal or procedural one, but, as is the case in most requirements of this nature, it has a substantive purpose. That purpose is to ensure that the ultimate decision on retrenchment is properly and genuinely justifiable by operational requirements or, put another way, by a commercial or business rationale. The function of a court in scrutinising the consultation process is not to second-guess the commercial or business efficacy of the employer's ultimate decision (an issue on which it is, generally, not qualified to pronounce upon), but to pass judgment on whether the ultimate decision arrived at was genuine and not merely a sham (the kind of issue which courts are called upon to do in different settings, every day). The manner in which the court adjudges the latter issue is to enquire whether the legal requirements for a proper consultation process has been followed and, if so, whether the ultimate decision arrived at by the employer is operationally and commercially justifiable on rational grounds, having regard to what emerged from the consultation process. It is important to note that when determining the rationality of the employer's ultimate decision on retrenchment, it is not the court's function to decide whether it was the best decision under the circumstances, but only whether it was a rational commercial or

---
[5] [1998] 12 BLLR 228 (LAC) at para 8.

> operational decision, properly taking into account what emerged during the consultation process.

[29] So the important question in the determination of the general question is whether there was a rational commercial or operational decision, properly taking into account what emerged during the consultation process.

Analysis

[30] This compressed timeline was incompatible with the requirement for a meaningful joint consensus-seeking process under section 189(2). Affected employees received the notice on 7 December 2022, attended the consultation on 8 December 2022, and were required to submit proposals by 17h00 on 9 December 2022 — a window of less than two full working days to consider their positions, seek advice, and prepare submissions. The 10th and 11th were weekend days. The retrenchment letters followed on 13 December 2022.

[31] A central procedural defect is the respondent's failure at any point prior to the delivery of the retrenchment letter to specifically inform Le Roux that his position as CEO was at risk. The section 189(3) notice was directed to "*employees, plant hire division*." Le Roux was not an employee of the plant hire division — he was the CEO of the whole company. The pre-trial minutes (paragraph 3.9) formally recorded the agreed fact that only the plant hire division / short term rental contract and its employees would be affected.

[32] The notice identified that the "*management and mechanical departments*" of plant hire were at risk. It did not identify the CEO position as redundant. Le Roux cannot reasonably be expected to have understood that the apex position of the entire company fell within the "management department" of a division two levels below him in the organisational structure.

[33] John confirmed under oath that on 8 December 2022, the company still did not know which positions would be affected or how many employees would be retrenched. He stated: *"We first had a meeting with all*

managers to see where we could move people across. And which departments we… only after that did we actually consider [retrenchments].”

[34] Critically, this means that at the time of the section 189 group consultation on 8 December, the respondent itself had not determined that the CEO position was redundant. It was procedurally unconscionable in these circumstances to have expected Le Roux to make representations about his own potential retrenchment at that meeting.

[35] The consultation on 8 December 2022 comprised largely a reading of the notice by Mr Liebenberg. While Mr Liebenberg explained each heading and invited the directors to elaborate, this process was not the meaningful engagement envisaged by section 189(2). No specific discussion of LIFO’s application to Le Roux’s position was had. No specific alternatives to his retrenchment were canvassed. The meeting lasted approximately one hour.

[36] The requirement for a meaningful joint consensus-seeking process is not fulfilled by the mechanical reading of a notice. The employer must approach the process with an open mind and must genuinely engage with representations made by affected employees. In this case, the employer had not even identified Le Roux as a target for retrenchment at the time of the group consultation — making meaningful engagement regarding his position structurally impossible.

[37] The most decisive procedural failing is that the decision to retrench Le Roux was made on the night of 12 December 2022 — before any individual consultation specifically directed at Le Roux as an affected employee took place. Brian admitted this.

[38] Furthermore, the “consultation” on the morning of 13 December 2022 was a general business meeting, not a consultation on Le Roux’s retrenchment. John confirmed it was also only in the second meeting of 13 December 2022 — when the retrenchment letter was handed to Le Roux — that he was “*for the first time*” told he was being retrenched.

[39] It is further a fact that the CEO position was expanded to include Trans Alloys management because the minimum salary expectations of Le Roux could not justify a person only employed to grow the short term rental contracts division. Brian further admitted under cross-examination that when Le Roux was appointed, the respondent did not tell him [he was only] for plant hire and agreed he was appointed CEO "of both" divisions.

[40] It is noted that the pool of employees against whom LIFO was applied remains somewhat opaque. The notice referred to the "management departments" of plant hire. The Trans Alloys management (including the site manager and workshop manager of that division) was excluded from the pool, which is a matter that was not adequately disclosed or explained during the consultation process.

[41] The most significant substantive concern — beyond procedural form — is the failure to meaningfully explore alternatives to Le Roux's retrenchment. Brian Marshall conceded that salary reduction and reduced working hours were options that "*would have been fair to consider*" but were never in fact considered.

[42] Le Roux testified that had he known his position was at risk, he would have proposed a salary reduction as his primary alternative to retrenchment. This was never put to him. The failure to explore alternatives undermines the credibility of retrenchment as a last resort.

[43] I therefore find that there was a fair reason, generally, to retrench employees in the plant hire division. However, there was no fair reason to dismiss Le Roux who was the CEO of the entire company, and not just the plant division.

<u>Remedy</u>

[44] Le Roux has stated clearly that he does not seek reinstatement. He seeks financial compensation only. This brings the matter within section

193(2)(a) of the LRA, which provides that reinstatement need not be ordered where the employee does not wish to be reinstated. Compensation under section 193(1)(c) is therefore the appropriate remedy.

[45] Section 194 (1) provides that compensation must be just and equitable in all the circumstances and shall not exceed 12 months' remuneration at the rate applicable on the date of dismissal.

[46] In determining the just and equitable quantum, the following factors are relevant:

46.1 Severity and multiplicity of procedural defects: The procedural failures in this case were neither isolated nor technical. They were multiple, fundamental, and cumulative — encompassing failure to identify Le Roux as an affected party, failure to consult with an open mind, a *fait accompli* decision, failure to respond in writing to the submission, failure to furnish a management structure, and failure to explore alternatives.

46.2 Duration of unemployment: Le Roux was unemployed for approximately one year before securing new employment. This is a direct and substantial consequence of the retrenchment.

46.3 Career disruption: Le Roux left a permanent position at Stefanutti Stocks to join Vanalls. The retrenchment after less than 11 months caused significant career disruption and personal hardship.

46.4 Financial impact: The impact on Le Roux and his family was severe by his unchallenged evidence.

[47] Having regard to all these factors, a just and equitable award of compensation equivalent to eight (8) months' remuneration, being R880,000, is appropriate. This amount reflects the seriousness of the procedural defects — particularly the *fait accompli* finding and the failure

to identify Le Roux as an affected party — while accounting for the mitigating factors noted above.

Costs

[48] The respondent should pay the applicant's costs given the circumstances leading to the retrenchment of Le Roux. The important factor being that Le Roux was taken by surprise when he received the letter of retrenchment.

[49] Essentially, Le Roux did not receive the benefit of any of the rights envisaged in section 189 of the LRA.

[50] In the results the following order is made:

Order

1. The dismissal of the applicant was procedurally and substantively unfair.

2. The applicant is awarded compensation equivalent to eight (8) month's remuneration, which is R880 000, 00.

3. The respondent is ordered to pay the costs.

S. B. Nhlapo

Acting Judge of the Labour Court of South Africa

<u>Appearances:</u>

For the Applicant	:	Advocate N Wagemaker
Instructed by	:	Serfontein Viljoen & Swart Attorneys
For the Respondent	:	Advocate M Jacobs
Instructed by	:	Cilliers & Reynders Attorneys