



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

Signature 15/05/2026

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Reportable

Case no: JS 466/2023

In the matter between:

GERHARDUS STEFANUS GORDON BOTHMA

Plaintiff

and

PETRA DIAMONDS SOUTHERN AFRICA (PTY) LTD

Defendant

Heard: 20-24 October and 24 November 2025

Delivered: 15 May 2026

Automatically unfair dismissal and unfair discrimination - not established - race not shown to be the dominant cause of dismissal - lack of tertiary qualifications not an analogous ground on these facts - operational requirements dismissal - no genuine joint consensus-seeking process and unfair selection criteria - dismissal procedurally and substantively unfair.

JUDGMENT

HARVEY AJ

- [1] This case concerns claims of automatically unfair dismissal, unfair discrimination, and, in the alternative, unfair retrenchment, brought by an employee who, despite years of advancement and senior responsibility, was excluded from a restructured organisation because he lacked formal qualifications that had been newly introduced as a requirement.

Preliminary rulings

- [2] Two preliminary issues required determination at the outset. Both were dealt with *ex tempore* at the commencement of the hearing.

Jurisdiction

- [3] The Court's jurisdiction was challenged because the employee described the dispute as a dismissal motivated by discrimination, whereas, on the CCMA referral form, it was categorised as a '*dismissal dispute – operational requirements (single employee)*'. The employee testified clearly that the issue of discrimination was raised and discussed at the conciliation, that the conciliating commissioner recognised the matter as one involving potential automatic unfairness, and that a senior commissioner was called in to assist. The employer's version in oral evidence on this aspect was vague.
- [4] On that evidence, the Court was satisfied that the dispute conciliated by the CCMA was an operational-requirements dismissal alleged to have been discriminatory. A dismissal alleged to have been on a discriminatory ground, if proved, constitutes both an automatically unfair dismissal under section 187(1)(f) of the Labour Relations Act 66 of 1995 and unfair discrimination under section 6(1) of the Employment Equity Act 55 of 1998, thereby potentially giving rise to both causes of action. The referral, therefore, met the statutory preconditions of both Acts, and the Court found that it had jurisdiction to determine both claims.

Condonation

- [5] The employer raised another preliminary issue concerning compliance with the 90-day period prescribed for referral to this Court following the issue of the certificate of outcome. The statement of claim was emailed to the Labour Court within the 90-day period, but the hard copy was physically delivered only 7 days later. The employer contended that the referral was out of time and that the Court lacked jurisdiction, absent condonation. The employee's representative explained that the referral was made in good faith reliance on the Labour Court Directive of 2022 permitting electronic filing, and that the hard copy was delivered later only as a matter of administrative convenience. No prejudice to the employer was claimed. At the hearing, the employer indicated that it would not oppose condonation, and the Court, being of the view that the delay was short, the explanation satisfactory, and the prejudice minimal, granted condonation for the late filing of the statement of claim.

Background facts

- [6] The employee commenced employment with the employer in 2016 as a Group Procurement Practitioner. He was appointed on the strength of his many years of experience in procurement and supply chain management, despite having no formal tertiary qualifications. In December 2020, following a recruitment process, he was promoted to Group Supply Chain Manager, a more senior role with group-wide responsibilities.
- [7] Approximately four months later, the employee was informed by the employer's Chief Financial Officer that concerns had been raised regarding his appointment. These concerns included his lack of formal tertiary qualifications and that the position ought to be filled by a BEE candidate. The employee accepted placement in the lower position of Procurement Coordinator, a post created for him, and agreed to continue acting as Group Supply Chain Manager until a permanent BEE appointment to that position was made.
- [8] Ms Mahadew was appointed as Group Supply Chain Manager in December 2021. She became the employee's direct line manager, with responsibility to oversee the supply chain function.

- [9] About six months later, in June 2022, Ms Mahadew presented a proposed new organisational structure within the supply chain department. The presentation described the employee's position, Procurement Coordinator, as '*obsolete role and over-complement – yet open to apply for all roles*'.
- [10] The employee was informed that positions on the new structure would be advertised and that he could apply for them. He applied for the position of Manager: Procurement, a position which he contended was substantially identical to the Procurement Coordinator role he occupied. Although he was short-listed and interviewed, he was not appointed. The appointee was Mr Pistorius, a white male who possessed the academic qualifications stipulated as one of the requirements for appointment to the position.
- [11] Shortly thereafter, in August 2022, the employee lodged a formal grievance concerning his treatment and the restructuring process. The grievance was investigated by an external party, and a report was produced. Certain recommendations were made, but these were not implemented. The employee did not pursue the grievance further.
- [12] In September 2022, the employee attended an interview for another position, that of Specialist: Project Procurement. Again, tertiary qualifications were stipulated as requirements for appointment to the position and, again, he was unsuccessful. The employee was thereafter encouraged to apply for the lower-level Buyer position, which he declined because it was an entry-level role.
- [13] During November 2022 and again in March 2023, the employer engaged the employee in discussions regarding a possible mutual separation agreement. The employee did not accept the employer's proposals in this regard.
- [14] On 24 March 2023, the employer issued a notice in terms of section 189(3) of the Labour Relations Act, identifying the employee as the only employee potentially affected by a contemplated retrenchment. No further formal consultation meetings took place thereafter.
- [15] The employee's employment was terminated with effect from 1 May 2023.
- [16] The employee led evidence concerning the financial and personal impact of his dismissal. Since his dismissal, he has worked as a consultant, earning a gross

monthly income of R70,000, substantially less than the R99,608.83 he earned whilst employed. Although he said that he had willingly stepped aside in favour of a BEE candidate in 2021 because he understood the employer's transformation imperatives, he later felt humiliated when his role was presented as obsolete, and he felt that he was stripped of authority in front of his colleagues. He regarded the subsequent suggestion that he apply for the Buyer role as an insult to his capabilities and a regression in his career path.

Claims

[17] The employee advances three claims arising from the termination of his employment, namely:

17.1 that his dismissal was automatically unfair in that it was for a discriminatory reason as contemplated in section 187(1)(f) of the Labour Relations Act;¹

17.2 that his dismissal for operational requirements was, in any event, and in the alternative, procedurally and substantively unfair; and

17.3 that the employer's conduct amounted to unfair discrimination in terms of section 6 of the Employment Equity Act.²

[18] The remedies sought are:

18.1 In respect of the automatically unfair dismissal, compensation in an amount of up to 24 months' remuneration;³

18.2 In respect of the alternative unfair dismissal claim, compensation in the amount of up to 12 months' remuneration;⁴ and

18.3 In respect of the unfair discrimination claim, a solatium, and/or patrimonial damages of R9,554,504.19.⁵

¹ Labour Relations Act 66 of 1995 (hereinafter 'LRA').

² Employment Equity Act 55 of 1998 (hereinafter 'EEA').

³ Section 194(3) of the LRA.

⁴ Section 194(1) of the LRA.

⁵ Section 50(2) of the EEA. The patrimonial damages were calculated as follows: the gross earnings shortfall of R29,608.83 per month (R99,608.83-R70,000) multiplied by the 193 months remaining until

Issues

[19] The employee's claims raise distinct legal enquiries, each with its own requirements and onus. It is necessary to consider them separately in order to avoid conflating the question of whether the dismissal was for a prohibited reason with the question of whether the employer has established the fairness of the operational requirements dismissal, and with the further question of whether the employee has established unfair discrimination under the EEA.

[20] I shall accordingly determine the issues in the following sequence:

20.1 First, whether the evidence establishes that the employee's dismissal was automatically unfair, in that the reason for the dismissal was his race or, alternatively, the alleged arbitrary ground of a lack of formal qualifications.

20.2 Second, if the dismissal was not for a prohibited reason, whether the employer has proved that the employee's dismissal for operational requirements was procedurally and substantively fair.

20.3 Third, whether the employer's conduct constituted unfair discrimination in terms of section 6 of the EEA on the grounds of race or the alleged arbitrary ground of a lack of qualifications.

20.4 Finally, in light of the findings, what relief, if any, is appropriate.

[21] Each of these issues is considered in turn. The evidence is addressed only to the extent necessary to determine the particular issue under consideration.

[22] But first, the law:

Law

Automatically unfair dismissal – s187(1)(f) of the LRA

[23] A dismissal is automatically unfair if the reason for the dismissal is that the employer discriminated against the employee on any arbitrary ground, including race.⁶

his retirement age (total R5,714,504.19) plus an annual bonus of R240,000 per annum for 16 years (R3,840,000).

⁶ Section 187(1)(f) of the LRA.

[24] An 'arbitrary ground', for purposes of section 187(1)(f), must be shown to be based on attributes or characteristics that have the potential to impair a person's fundamental human dignity in a manner comparable to the listed grounds.⁷

[25] The employee must raise a '*credible possibility*' that the dismissal was for a prohibited or discriminatory reason.⁸ If that is established, the employer bears the onus to show that the dismissal was for a different or non-discriminatory reason, alternatively that it was based on an inherent requirement of the job.⁹ Where more than one factor may have played a role, the Court must determine the dominant or most likely cause of the dismissal.¹⁰

Unfair Dismissal for Operational Requirements

[26] The employer bears the onus of establishing that a dismissal for operational requirements was both procedurally and substantively fair.¹¹

[27] Procedural fairness requires the employer to engage in a meaningful joint consensus-seeking process with the affected employee as soon as a possible dismissal is contemplated. That consultation process must be genuine and directed at avoiding dismissal, minimising the number of dismissals, and mitigating the adverse consequences of any dismissal.

[28] Substantive fairness requires the employer to demonstrate a rational, fair, and objective operational rationale for the dismissal, and that its implementation was fair. This includes the obligation to apply fair and objective selection criteria and to consider alternatives to dismissal, including placing employees in suitable alternative positions where reasonably possible.

⁷ See *New Way Motor & Diesel Engineering (Pty) Ltd v Marsland* [2009] 12 BLLR 1181 (LAC) at 25 where the Court, referring to the test in *Harksen v Lane* NO 1997 (11) BCLR 1489, held that, in determining whether the reason for a dismissal was that the employer unfairly discriminated against the employee on an arbitrary ground, the question is '*did the conduct of the appellant objectively analysed on the ground of the characteristics of the respondent, in this case depression, have the potential to impair the fundamental human dignity of respondent?*'

⁸ *Kroukam v SA Airlink (Pty) Ltd* [2005] 12 BLLR 1172 (LAC) para 28.

⁹ Section 187(2)(a) of the LRA.

¹⁰ *Kroukam v SA Airlink* (note 8 above) para 29.

¹¹ Section 192(2) of the LRA.

Unfair discrimination (ss 6 and 10 of the EEA)

- [29] Section 6 of the EEA prohibits unfair discrimination on several listed grounds, including race, and on 'any other arbitrary ground'.
- [30] Where discrimination on a listed ground is alleged, the employer must prove that the discrimination did not occur, or that it was rational and not unfair, or that it is otherwise justifiable.¹²
- [31] Where unfair discrimination is alleged on an arbitrary ground, the employee must prove differentiation on the ground alleged, that the conduct complained of is not rational, that it amounts to discrimination, and that the discrimination is unfair.¹³ In order to qualify as an arbitrary ground, the court must be satisfied that the ground is analogous to a listed ground of discrimination, in the sense that it is based on attributes that are immutable or difficult to change, or that give rise to patterns of disadvantage that impair human dignity in a comparable manner to the listed grounds.¹⁴

Automatically unfair dismissal

- [32] The employee contends that his dismissal was automatically unfair because it was based on his race and/or on the arbitrary ground of his lack of formal qualifications.

Race

- [33] The employee relies principally on events preceding the 2022 restructuring, in particular, his removal in 2021 from the position of Group Supply Chain Manager after he was informed that there was unhappiness with his appointment because he was a white male without tertiary qualifications.
- [34] The employee testified that he agreed to the 2021 demotion to the Procurement Coordinator position because he understood the employer's BEE imperatives and that he accepted the lower appointment in good faith. His case, however,

¹² Section 11(1) of the EEA.

¹³ Section 11(2) of the EEA.

¹⁴ *Naidoo and Others v Parliament of the Republic of South Africa* (CA4/2019) [2020] ZALAC 38; (2020) 41 (ILJ) 1931 (LAC); [2020] 10 BLLR 1009 (LAC) (7 May 2020) at 20-27.

was that the race-based differentiation inherent in that earlier decision ultimately placed him in the position from which he was later retrenched. Put differently, had he not been moved into the Procurement Coordinator role in 2021, he would not have occupied the position later identified as 'obsolete and over-complement'. On that basis, he contended that the discriminatory demotion formed part of the causal chain of events leading to his dismissal.

[35] The employee accordingly contended that his race was causally connected to his eventual dismissal, notwithstanding the subsequent restructuring. The enquiry before the Court is whether the employee has established that race was the dominant or most likely reason for his dismissal in May 2023.

[36] In my view, he has not done so.

[37] Following the events of 2021, the employee remained employed in the Procurement Coordinator role for more than a year before the restructuring process commenced in June 2022. The restructuring involved introducing a new organisational structure and creating new positions for which affected employees were required to apply. The evidence does not establish that race played any role in that restructuring process or in the subsequent appointment decisions. The position of Manager: Procurement was ultimately filled by a white male candidate. The employee accepted in cross-examination that race did not influence the decision not to appoint him to positions in the new structure.

[38] In those circumstances, while the earlier events formed part of the factual background to the employee's eventual dismissal, the later restructuring process constituted a materially independent operational process involving fresh decision-making unrelated to the employee's race.

[39] I accept that, but for the earlier demotion, the employee would not have occupied the position from which he was later retrenched. But that is insufficient to establish legal causation; the evidence does not establish that his race was the proximate, operative, or dominant cause of the dismissal itself.

[40] The employee has therefore not established that his dismissal was automatically unfair in that the reason for the dismissal was his race.

Lack of qualifications as an arbitrary ground

[41] It is common cause that the employee had no formal tertiary qualifications and that the positions created in the new structure stipulated such qualifications as a minimum requirement. The employee was shortlisted and interviewed for two of those positions, but was not appointed.

[42] The employee contends that his exclusion on the basis of his lack of qualifications constitutes discrimination on an arbitrary ground. For an unlisted ground to fall within the scope of section 187(1)(f), it must be shown to be analogous to the listed grounds, in that it is based on attributes or characteristics that are immutable, difficult to change, or that otherwise impair human dignity in a comparably serious manner.

[43] On the facts of this case, I am not satisfied that the employee's lack of tertiary qualifications meets that threshold. The employee testified that he did not pursue tertiary studies after school because of financial constraints. Despite this, he progressed over several years into increasingly senior and well-remunerated positions in supply chain management, including within the employer's organisation, despite his lack of formal qualifications. There was no evidence that he remained unable to obtain further qualifications during that period. This is also not a case in which the employee's lack of tertiary qualifications was shown to arise from systemic exclusion or disadvantage of the kind historically associated with apartheid-era racial discrimination.

[44] In these circumstances, I find that the employee's lack of tertiary qualifications did not, on the evidence before the Court, constitute an immutable attribute or characteristic analogous to the listed grounds in section 187(1)(f). It follows that reliance on this ground cannot sustain a claim of automatically unfair dismissal.

Conclusion

[45] The employee has not established that his dismissal was for a reason prohibited by section 187(1)(f) of the LRA. The dominant cause of dismissal was not his race, and to the extent that his non-appointment was due to his lack

of tertiary qualifications, this has not been shown to be an analogous ground. The claim of automatically unfair dismissal must accordingly fail.

Operational requirements dismissal

Procedural fairness

- [46] Procedural fairness in dismissals for operational requirements requires that the employer engage the employee in a meaningful joint consensus-seeking process, as soon as dismissal is contemplated. As the LAC held in *SACTWU v Discreto*,¹⁵ consultation is not a formality. It is aimed at influencing the outcome. To present an employee with a decision already made ‘fatally taints’ the process, rendering it procedurally unfair.
- [47] The employee’s case is that the outcome of the restructuring process was predetermined: his position had already been identified as obsolete long before any section 189 consultation commenced, and the employer’s subsequent steps did not amount to a genuine joint consensus-seeking process.
- [48] It will be recalled that the proposed new structure, reflecting the employee’s position as obsolete, was presented to employees on 23 June 2022. The s189(3) notice was given to the employee 9 months later, on 24 March 2023. In the intervening months, the employee had unsuccessfully applied for two positions, and the employer had twice engaged him regarding a proposed voluntary separation.
- [49] The employer’s principal witness on the restructuring and retrenchment process was Mr Oosthuizen, its Human Resources Manager. Mr Oosthuizen accepted that pursuing voluntary separation negotiations before commencing s189 consultations reversed the usual order of events in a retrenchment process. He also accepted that, apart from the June 2022 meeting, there were no further consultations regarding the restructuring, and that no consultation with the employee took place after he was issued with the section 189(3) notice.

¹⁵ *SA Clothing and Textile Workers Union v Discreto (A Division of Trump and Springbok Holdings)* (1998) 19 ILJ 1451 (LAC).

- [50] The employer contended that retrenchment was not yet contemplated during the earlier stages of the restructuring, when its aim was to avoid dismissal by accommodating the employee elsewhere. However, once the employee's position was identified as obsolete, in circumstances in which the employer knew the employee satisfied none of the qualification criteria stipulated for the roles at his level, dismissal was plainly a potential if not contemplated outcome and the obligation to consult accordingly arose at that point – and, in any event, certainly by the time the employer suggested he apply for the junior Buyer roles and then initiated discussions concerning voluntary or mutual separation.
- [51] I find that the section 189 process was not a genuine attempt to engage on alternatives to dismissal. The employee was the only person identified for retrenchment, and the formal consultation process commenced only after attempts to secure his departure by other means had failed.
- [52] The employer has failed to persuade the Court that it engaged in a meaningful joint consensus-seeking process, as required by section 189 of the LRA. The dismissal was accordingly procedurally unfair.

Substantive fairness

- [53] The employer bears the onus of establishing that the dismissal was substantively fair, namely that it was based on a genuine operational requirement and that the employee was fairly selected for dismissal.
- [54] The employee's case was that the employer failed to establish a fair basis either to treat his position as redundant or to require him to compete for continued employment. He contended that the position of Manager: Procurement was materially similar to the Procurement Coordinator role he already held, and that the newly introduced tertiary qualifications were the deciding factor in excluding him from continued employment.
- [55] The evidence supports that contention. The employee testified, with reference to the respective job descriptions, that the Manager: Procurement role formally introduced only two additional functions, namely oversight of spend and cost-saving initiatives, which functions he was already effectively performing. The reporting structure also remained materially unchanged, with buyers continuing

to report to the role. Mr Oosthuizen accepted that he had not compared the job contents of the roles and was unable to identify any material difference between them. Ms Mahadew maintained that the positions differed but could offer no persuasive comparison of functions or responsibilities, nor was evidence led from the external consultant responsible for designing the structure and job profiles.

[56] The employer relied on a Paterson grading and organisational redesign process to justify introducing the tertiary qualification requirements. However, the evidence did not establish why such qualifications had become necessary for a role whose functions substantially overlapped with those the employee already performed. Furthermore, the employer shortlisted and interviewed the employee despite his acknowledged lack of qualifications, but then relied on that lack as the reason for not appointing him. That materially undermines the employer's contention that the qualifications constituted a genuine operational prerequisite for the role.

[57] Nor does *South African Breweries (Pty) Ltd v Louw*¹⁶ assist the employer. While a 'dislocated' employee may fairly be required to compete for positions within a new structure, no fair basis existed in the present matter for treating the employee as dislocated in the first place, or for excluding him from the Manager: Procurement role merely because other candidates performed better against revised criteria.

[58] The employer cited the employee's refusal to apply for the lower-level Buyer position as justification for his dismissal. The Court accepts the employee's explanation that the Buyer position entailed materially reduced status and remuneration and effectively required him to start again at the lowest level. In circumstances where the employer had not established a fair basis for excluding him from the Manager: Procurement role, his refusal to apply for the Buyer position does not render the dismissal substantively fair.

¹⁶ *South African Breweries (Pty) Ltd v Louw* (CA16/2016, C285/2014) [2017] ZALAC 63; [2018] 1 BLLR 26 (LAC); (2018) 39 ILJ 189 (LAC) (24 October 2017).

[59] In the circumstances, the employer did not establish that the employee's dismissal was for a fair reason connected to the restructuring process. The dismissal was substantively unfair.

Conclusion on operational requirements dismissal

[60] The employer has not discharged the onus of establishing that the employee's dismissal was procedurally or substantively fair. The dismissal was accordingly unfair.

Unfair discrimination (EEA)

[61] The employee further contends that the employer's conduct constituted unfair discrimination on the grounds of race and, alternatively, on the arbitrary ground of a lack of formal qualifications.

Race

[62] To establish unfair discrimination on the ground of race, the employee must show that he was subjected to differential treatment on that basis.

[63] The employee relied principally on the earlier decision to remove him from the position of Group Supply Chain Manager, together with the reference at that stage to him being a white male. However, the evidence does not establish that the subsequent restructuring, non-appointment, or retrenchment decisions were themselves driven by considerations of his race. In particular, the evidence does not establish that race played any role in the employee's exclusion from positions within the new structure or in the eventual termination of his employment. I am therefore not persuaded that the employee established ongoing differential treatment on the basis of race arising from, or continuing after, the earlier demotion.

[64] This is reinforced by the employee's own acceptance in cross-examination that race did not play a role in the decision not to appoint him to positions in the new structure. The position of Manager: Procurement was also ultimately filled by a candidate of the same race as the employee.

[65] In those circumstances, the employee has not established that he was subjected to differential treatment on the basis of race in contravention of section 6 of the EEA.

Lack of qualifications

[66] The employee also relies on his lack of formal qualifications as an arbitrary ground of discrimination.

[67] Section 11 of the EEA requires an employee alleging unfair discrimination on an arbitrary ground to prove that the conduct complained of is not rational, that it amounts to discrimination, and that the discrimination is unfair. The employee has established the first of these requirements. The employer's decision to exclude him from a role whose functions substantially overlapped with those he was already performing was irrational and, as I have found, lacked a fair operational basis.

[68] On the broad approach to 'arbitrary grounds' initially formulated in *Kadiaka*,¹⁷ that might have been sufficient, because unfair discrimination on an arbitrary ground was there understood to proscribe employer conduct that was capricious, unreasonable, or lacking an objective commercial rationale. However, our Courts have since adopted a narrower interpretation of 'arbitrary grounds': only discrimination on grounds analogous to the listed grounds – by reference to their immutability and impact on human dignity – is prohibited.¹⁸ Irrational differentiation alone is insufficient.

[69] The employee testified that financial constraints prevented him from pursuing tertiary education after school, but he later attained sustained seniority and substantial remuneration within the employer's organisation, notwithstanding his lack of formal qualifications. There was no evidence that he remained unable thereafter to obtain such qualifications, or that his lack of tertiary qualifications arose from the kinds of systemic exclusion and entrenched disadvantage produced by apartheid and other discriminatory laws and

¹⁷ *Kadiaka v Amalgamated Beverage Industries* (1999) 20 ILJ 373 (LC).

¹⁸ See the LAC's decision in *Naidoo and Others v Parliament of the Republic of South Africa* (note 14 above).

practices, and the resulting disparities which the Employment Equity Act seeks to eliminate in order to promote equality and eradicate unfair discrimination.¹⁹

[70] I am accordingly not persuaded, on the facts of this case, that the employee's lack of formal qualifications constituted an immutable characteristic, or one that impaired his dignity in a comparably serious manner to the listed grounds. I therefore find that, in these particular circumstances, the employee's lack of formal qualifications did not constitute an arbitrary ground analogous to the listed grounds in section 6 of the EEA. No unfair discrimination has been established on this ground.

Conclusion

[71] The employee has not established that the employer's conduct constituted unfair discrimination on either of the grounds relied upon. The discrimination claim must accordingly fail.

Relief

[72] The employee has not established that his dismissal was automatically unfair, nor that the employer's conduct constituted unfair discrimination. The employee has, however, established that his dismissal for operational requirements was procedurally and substantively unfair.

[73] The primary remedy in the case of an unfair dismissal is reinstatement, unless one or more of the recognised exceptions apply. In this matter, the employee did not pursue a claim for reinstatement but instead sought compensation.

[74] The Court must determine an amount of compensation that is just and equitable in all the circumstances, subject to the statutory limit.

[75] The employer's failures went to the core of both procedural and substantive fairness. The evidence establishes that the employee's position was identified as redundant before any meaningful consultation took place, that the statutory process was invoked only at a late stage, and that recruitment criteria were applied inconsistently. The employee was required to compete for a position

¹⁹ See the preamble to the EEA.

that, on the evidence, was substantially similar to the one he had previously held, in circumstances where his lack of formal qualifications, despite his proven ability to perform the work, was treated inconsistently and without justification. Taken together, these features reflect a serious failure to comply with the obligations governing dismissals for operational requirements.

[76] The employee had served the employer for several years and had progressed to a senior position within its supply chain function. That weighs in favour of a substantial award. Having regard to the seriousness of the unfairness established, the Court is satisfied that an award of compensation at the statutory maximum, being an amount equivalent to 12 months' remuneration, is just and equitable.

Costs

[77] Both parties sought costs. In terms of section 162 of the LRA, the Court may make an order for costs having regard to the requirements of law and fairness.

[78] The employee achieved substantial success in relation to the unfair dismissal claim, but not in relation to the discrimination claims. In the absence of conduct warranting an adverse costs order, the requirements of law and fairness are best served by making no order as to costs.

[79] In the result, the following order is made:

Order

[1] The employee's dismissal was procedurally and substantively unfair.

[2] The employer is ordered to pay the employee compensation in the amount of R1,195,305.96²⁰ within ten days of the date of this Order.

[3] The employee's claims of automatically unfair dismissal and unfair discrimination are dismissed.

[4] There is no order as to costs.

²⁰ 12 x R99,608.83.

SJ Harvey

Judge of the Labour Court of South Africa

Appearances:

For the Employee: Mr R Fourie, instructed by McCarthy Incorporated

For the Employer: Mr G Allsop of Pinsent Masons South African Inc