

Vic & Dup/Pta/tm  
J3776/98 -JUDGMENT

**IN THE LABOUR COURT OF SOUTH AFRICA**

Held in Johannesburg

CASE NO: J3776/98

In the matter between:

**NATIONAL UNION OF METAL WORKERS**

Applicant

and

**NISSAN SOUTH AFRICA (PTY) LTD.**

Respondent

**J U D G M E N T**

ZONDO J.:

[1] This is a matter in which the applicant, namely the National Union of Metal Workers of South Africa, has brought an application which it asks this Court to deal with as a matter of urgency. It is asking for an order in terms of which in effect the respondent would be interdicted from proceeding with certain retrenchments until a dispute, which the applicant has referred to the CCMA, has been resolved.

[2] The applicant also seeks an order of costs. It is late in the day and I do not

intend going into the details of this matter. However, the gist of the application is that the respondent proposed a voluntary retrenchment and later on started to proceed with a compulsory retrenchment on the basis that it had too many workers than it needed to have. The respondent maintained that it needed to reduce its wage bill. The applicant asked the respondent to disclose certain information which it believed it needed for purposes of consultation. Initially the information that was asked for was furnished but later on the applicant sought further information which the respondent indicated it was not prepared to give, principally because, in the respondent's view, the information was irrelevant.

[3] Subsequently the applicant referred a dispute about the disclosure of that information to the CCMA and that dispute is still pending. The applicant asked the respondent not to proceed with the retrenchment pending the outcome of the dispute that it had referred to the CCMA about its entitlement, or otherwise to that information, but the respondent was not prepared to give any undertaking that it would not proceed with the retrenchment pending the outcome of such a dispute at the CCMA.

[4] After some time, the applicant brought this application before this Court for the order that I have referred to. The matter initially came before my Colleague REVELAS J. last week but it was postponed. The matter has now come before me. The respondent took the point that the applicant has failed to show that the matter was sufficiently urgent to warrant it being dealt with as a matter of urgency. It has also taken the point that there was no irreparable harm that the applicant had shown would occur if the application or the order that it

seeks was not granted. Counsel on both sides presented argument both in respect of these points as well as the merits.

[5] With regard to the issue of urgency, Mr Brassey who appeared for the respondent, emphasised that as at 5 November 1998 the applicant was informed in no unclear terms that it was not going to be given the information it was seeking, because such information was regarded by the respondent as irrelevant. He also indicated that the attitude by the respondent was made known in circumstances where it was clear what its attitude was in relation to the disclosure of the information whether it was in relation to voluntary retrenchment, and/or compulsory retrenchment and that no distinction as such was made in that regard. In those circumstances, continued counsel for the respondent, the applicant ought to have brought the application much earlier than it finally did.

(10)

(20)

(30)

[6] I am inclined to agree that the applicant has not shown any urgency. However, even if the matter were urgent, the right which the applicant fears will be infringed by the respondent if the latter proceeds with the retrenchment is what the applicant claims is its right to have the dispute which has been referred to the

CCMA resolved before the respondent can proceed with the retrenchment. Sec 189 of the Act confers on employees or their representatives the right to consultation when a dismissal for operational reasons is contemplated.

[7] That much I think is clear and probably is common course, but that does not show the right which the applicant says will be infringed in this case. The right which the applicant relies upon is the right which is provided for in the Act to refer a dispute such as a dispute about the disclosure of information to the CCMA. It is common course that the applicant has such a right, but what the court has got to be satisfied about is that there is a right that, pending the outcome of that dispute, the employer is obliged not to proceed with retrenchment.

[8] I am unable to find anything in the Labour Relations Act that provides for such a right to a party. Mr Bekker, who appeared for the applicant, has submitted that, if one has regard to the provisions of section 189, it must be inferred that there is such a right, because, if the employer is able to proceed with the retrenchment without such a dispute being resolved first, it would mean that employers would be able to simply proceed with a retrenchment without such a dispute being resolved.

[9] In my view the one provision of the Act which I am aware of as providing for the maintaining of the status quo pending the exhaustion of other procedures is sections 64. Sec 64(4) of the Act relates to situations where an employer seeks to unilaterally change terms and conditions of employment of employees and where a union refers a dispute to the CCMA. Those provisions say where the

union in such a case refers a dispute to the CCMA, it may in its referral of the dispute to the CCMA, require the employer to maintain the status quo. Those provisions go on and say once the employer has been so required by the union in such a case, then, within 48 hours thereof, the employer is obliged to maintain the status quo. There is no similar provision made or included in section 189 of the act, nor is there similar provision included in section 16, which deals with the disclosure of information.

[10] Mr Bekker relied in particular on Sec 16(6) as well as sec 16(10) of the Act. None of those subsections impose an obligation on the part of an employer not to proceed with retrenchment when a dispute on disclosure of information has been referred to the CCMA. In seeking the order that the applicant sought, Mr Bekker disavowed any intention of asking me to make any ruling on the relevance of the information the applicant says it is entitled to.

[11] While I agree that the commissioner is the person who has the right or power to deal with the relevance of that information, the difficulty that this raises is simply that, in that situation, the court will not be able to say whether there has been no compliance with the Act, because if that information is indeed irrelevant, then the employer would be entitled to refuse to give that information.

[12] In those circumstances the court would not be able then to say that the right to consultation under section 189 will have been infringed. If the court is unable to say that, the court would not therefore be able to come to the assistance of the applicant. In my view, in so far as the applicant seeks to argue the case that it has

a right to have the status quo maintained pending the outcome of the dispute that it has referred to the CCMA, and in this regard it's case becomes worse.

[13] In my view this application, falls to be dismissed. With regard to the issue of costs both parties sought costs. Mr Bekker submitted that there will be no justification for an order that the applicant pay costs, including the costs of two counsel.

[14] I am of the opinion that this is a matter where the respondent was entitled to brief counsel and in the circumstances the order I make is that the application is dismissed with costs. Such costs to include any costs that may have been reserved in regard to this matter, and such costs to include the cost of two counsel.

R. M. M. ZONDO

JUDGE IN THE LABOUR COURT OF SA.

DATE: 1998/11/30

**TRANSCRIBER'S CERTIFICATE**



I, the undersigned, hereby certify that the foregoing is a  
  
true and correct transcription of the proceedings recorded by  
  
means of a mechanical recorder in the matter of:

NUMSA V NISSAN SOUTH AFRICA (PTY) LTD.

CASE NO. J3776/98

TRANSCRIBER: MRS T MAREE

SIGNATURE: \_\_\_\_\_

VIC & DUP TRANSCRIPTION ENTERPRISES CK