

Sneller Verbatim/ASS

CASE NO. J2907/98

IN THE LABOUR COURT OF SOUTH AFRICA

held at

BRAAMFONTEIN

2000-09-29

In the matter between:

Applicant

versus

(10)

Respondent

J U D G M E N T

LANDMAN J:

1.Mr John Majoro was employed by Blyvooruitzicht Gold Mining Company Limited from 9 September 1980 until the date of his dismissal on 24 February 1998. His services were terminated due to the operational requirements
(20)
of the mine. During the relevant period of his employment, Mr Majoro was a member of a trade union known as UASA. He was bound by the provisions of the retrenchment agreement which had been entered into between the mine and his union and various other unions.

2.As a result of his dismissal he launched proceedings in this court claiming that his dismissal was unfair. The parties held two pre-trial conferences. At the pre-trial conference of 16 August 2000 the parties

agreed that the termination of Mr Majoro's employment was for a fair reason and the only issue in dispute was the procedural fairness of the dismissal. It was agreed that the issues in dispute were that Mr Majoro alleges that the termination of his services were procedurally unfair because his representative was not consulted prior to the termination of his services.

3.The mine recorded its position. It complied with the retrenchment agreement and that it had consulted in accordance with the process established in terms of the agreement and reached consensus on the issue of Mr Majoro's dismissal before implementing the termination of his services.

4.The matter came to trial before me today. Evidence was led on behalf of the mine through the persons of Mr Boshoff, the human resource manager, and Mr Nelson, the chair of UASA at Blyvooruitzicht. Mr Majoro in turn gave evidence.

5.It is clear to me that the mine commenced negotiations at an early stage and that these negotiations and consultations were recorded. The consultations took place at what was termed a forum meeting which consisted of mine management and various other unions including NUM and UASA.

6.On 13 February at a meeting of the forum, management provided details of the divisions and jobs and numbers of persons which were to be retrenched. At this stage they did not inform the unions of the incumbents of these posts because it was agreed at this meeting that it would not be appropriate to do so. At that meeting it was agreed that

volunteers would be called for to take voluntary retrenchment. This would take place within a short period and thereafter discussions would be held between the various unions individually and the heads of departments where employees were to be retrenched.

7.Mr Nelson states that on 19 February he held a meeting together with five other members of his union with various heads of departments including the production manager who was in charge of the shaft clerk, Mr Majoro. The issue was discussed and he says that his notes reflect that some of the duties of Mr Majoro were to be transferred to a Mrs Bernard as Mr Majoro was only working for an hour or two hours per day and he was also working shifts. He says that at this meeting it was agreed that the retrenchment of Mr Majoro would take place. The procedure to be followed was that the mine would prepare letters of termination and they would be handed over to the employees concerned in the presence of a union representative. When the forum again met on 24 February someone, presumably a NUM member pointed out that Mr Majoro, who was the shaft clerk, had worked in the mornings since 1980 and was not informed of the situation and he requested a meeting with management. It was, however, said that NUM had approved the retrenchment, but this Mr Majoro was not a member of NUM, but of UASA. At this stage Mr Boshoff, who was chairing the forum meeting, ruled that the production manager and the representative of UASA should attend to the case with the employee present. The forum meeting concluded at 16:10. Thereafter Mr Nelson and Mr Lourens went to discuss the situation with Mr Majoro.

8.Mr Majoro is concerned, because there was no contact between him and his union. He was unhappy about the fact that he had been dismissed. However, he could throw no light on the question of whether or not proper consultation had taken place.

9.I find that the evidence of Mr Boshoff and Mr Nelson is entirely acceptable. This brings me to the conclusion that proper consultation took place with the union representing Mr Majoro; that consensus was

reached that Mr Majoro should be retrenched and that this accordingly was put into operation.

10.I accordingly find that in the circumstances the application should be dismissed.

11.Mr Pretorius, who appears on behalf of the mine, has requested costs. If I were to apply the law of costs strictly then the mine would be entitled to their costs. But if I take into account the fact that Mr Majoro was left somewhat in the dark about what happened, perhaps he only found out this morning, and that he is unemployed and has a difficult period ahead of him, I do not think in equity that I should award costs in this case.

12.In the premises, therefore, the application is dismissed, but there is no order as to costs.

AA LANDMAN

(20)

Judge of the Labour Court

APPEARANCES AS FOLLOWS:

FOR THE APPLICANT : MR Z MAHLAHLE

(30)