IN THE LABOUR COURT OF SOUTH AFRICA
HELD AT JOHANNESBURG

Case No.: J 197/03

In the matter between

1st Applicant **NATIONAL TERTIARY EDUCATION STAFF UNION**

2nd Applicant **MR PD SEKHUKHUNE**
3rd Applicant **DR T K RANKHODODO**

4th Applicant **MR M T CHAUKE**

5th Applicant **DR S J CHOKOE**

6th Applicant **DR N S MOGALE**

7th Applicant **MR L E MPASHA**
and

UNIVERSITY OF THE NORTH Respondent

JUDGMENT

KRUGER, AJ.:

1. INTRODUCTION

[1] This is an application brought in terms of section 189 of the Labour Relations Act 66 of 1995, concerning the alleged unfairness of the second to seventh applicants' dismissal by the respondent, their former employer, for reasons of operational requirements.

[2] Three cases have been consolidated. The first applicant is National Tertiary Education Staff Union ("NTESU") acting in its representative capacity of the second applicant, Mr P D Sekhukhune, senior lecturer in Northern Sotho; the third applicant, Dr T K Rankhododo, senior lecturer in Tsivenda; the fourth applicant Mr M T Chauke, lecturer in Xitsonga. The fifth applicant is Dr S J Chokoe, senior lecturer in Northern Sotho. The sixth applicant is Dr N S Mogale, senior lecturer in Northern Sotho and the seventh applicant is Mr L E Mphasha, lecturer in Northern Sotho. The second to seventh applicants are hereinafter referred to as "the applicants". The respondent is the University of the North.

[3] During 2001 the respondent decided to retain only a core academic staff in the disciplines in which the applicants worked. The applicants were dismissed because they were not part of the core academic staff component in the three affected disciplines, Northern Sotho, Tsivenda and Tsitsonga.

[4] The applicants allege that their dismissals were both procedurally and substantively unfair.

3. APPLICABLE LAW

[5] In view of the fact that section 189 consultations commenced early in 2002, before the new section 189 as substituted by section 44 of Act 12 of 2002 came into operation on 1 August 2002, section 189 in its unamended form applies.

[6] A dismissal is unfair if the employer fails to prove a fair reason based on operational requirements (s 188(1)); s 189(1)(a)(ii)). Operational requirements are based on economic,

technological, structural or similar needs of an employer (s 213).

3. WITNESSES

[7] Professor P Fitzgerald and Reverend L. W. Mbethe testified on behalf of the respondent, and Mr G. N. Tjia and Professor N. L. Nkatini on behalf of the applicant.

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3. FACTS

[8] Towards the end of 2000, because of a breakdown of governance and management at the University of the North (the respondent) Professor P Fitzgerald was appointed in terms of the Higher Education Act 101 of 1997 as Administrator to assume the roles and responsibilities of Council.

[9] He was empowered to and did appoint a management team which was called the IAG (Internal Advisory Group) . He also acted as chairman of Senate. He was further empowered to review the academic structure of the University in line with its vision and mission and if appropriate, adopt a new structure in consultation with the academic community.

[10] At a meeting of the Senate Executive Committee on 2 February 2001 it was noted that there were departments in various faculties which were either without students or having a trend of lower numbers of registered students. Courses which had too few students and would entail underutilization of university resources, were described as "sub-optimal", and a task team was appointed to draw the proposed general rule on such courses.

[11] Especially in language courses, a radical lowering of student numbers was experienced. According to Professor Fitzgerald, most universities in South Africa experienced this trend at the time. It was clear that the university had to be restructured. The direction and shape of the restructuring was in issue.

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[12] The situation relating to the disciplines in which the applicants were employed was the following in 2001/2002:

Lecturers: April 2002	Students

	2001				2002		
		Under-graduate	Post-graduate	Total	Under-graduate	Post-graduate	Total
Northern Sotho	10	17	6	23	8	28	36
Tshivenda	3	0	10	10	0	27	27
Xitsonga	5	5	9	14	1	21	22

It will be noted that during 2002, there was a considerable increase in post-graduate students. Professor Fitzgerald testified that this was due to the fact that post-graduate courses were at that stage offered at no fees or reduced fees.

[13] On 11 May 2001 Senate took resolutions on the restructuring and accepted a model consisting of three faculties, comprised of "schools" withing each faculty. Senate also requested management to investigate, in consultation with stakeholders, early retirement, voluntary severance and redeployment options for
academic personnel, in Northern Sotho, Tsivenda and Xitsonga. Senate recognised that, due to the university's geographical and social positioning, it had a special responsibility in these three disciplines. Senate therefore recommended that, notwithstanding overstaffing implications, a core academic capacity be retained in these three disciplines.

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[14] Because there were no or very few first and second year students in these three disciplines, it was apparent that the pipeline was at the point of running dry. As Reverend Mbethe put it, the present indicated no future.

[15] Professor Fitzgerald testified that at university level management had to move with a large degree of consensus and support. A very effective debate on the issue of over-staffing followed in the departments. Voluntary severance packages were offered, and quite a number of people took those.

[16] The trend of lower numbers of students at undergraduate level continued. Post-graduate registrations were stimulated by offering reduced fees.

[17] At its meeting of 26 February 2002 the IAG suggested the academic criteria for core academic capacity and a maximum of three staff members per discipline. A committee under

Professor Mawasha was appointed to adjudicate the operation. The university contemplated retrenchment.

[18] In a letter dated 20 March 2002, Professor Mawasha listed his suggested criteria The criteria are discussed in more detail below.

[19] On 26 March 2002 the IAG approved the criteria as refined by Professor Mawasha.

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[20] Eleven section 189 meetings were held from 12 March 2002, up to 9 October 2002.

[21] The redeployment committee of the IAG in its meeting on 3 July 2002 recommended two staff members for the core component in Xitsonga and Northern Sotho. In its meeting of 3 September 2002 the IAG accepted these proposals and authorised the Human Resources Department to implement the decision. Reverend Mbethe testified that the third affected discipline, Tsivenda, was also discussed at the IAG redeployment committee on 3 July 2002, but in view of the fact that Dr Rankhododo's curriculum vitae was not available, the final recommendation on Tsivenda would be made at a later stage.

[22] The report of the IAG redeployment committee meeting of 3 July 2002 was referred to by Reverend Mbethe at the section 189 meeting on 31 July 2002.

[23] At the section 189 meeting of 31 July 2002 it came to light that two staff members in Tsivenda had received letters confirming their appointment as core staff. The third person in that discipline, Dr Rankhododo, had not received a letter

[24] At the meeting of 31 July 2002 Reverend Mbethe, who represented the respondent at the section 189 meetings, made it clear that his view was that there was no point in debating the choices of core staff members, as this was a management decision based on academic criteria.

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[25] In its meeting on 3 September 2002 the IAG resolved to implement the proposals as to who should be core academic staff. That was the date of the decision to retrench the applicants.

3. THE SELECTION CRITERIA

[26] The main thrust of the applicants' attack on the respondent's decision to retrench was

based on the criteria.

[27] The selection criteria used are critical to this case. The applicants dispute the fairness of the selection criteria on the basis that no proper assessment was made to determine whether the applicants qualify to be retained. They say that no objective method was used to select employees who were to be retained as part of core capacity.

[28] The applicants contend that it is probable that other individuals could have been chosen for retrenchments. The applicants further state that the retrenchments were procedurally unfair in that they did not comply with the provisions of section 189(2)(b), 189(3)(a), 189(4) and189(7) of the Labour Relations Act.

[29] The issue around the criteria has several aspects:

3. the content of the criteria,

(ii) the disclosure of the criteria,

(iii) the question whether the criteria which have been applied are fair

and objective (s 189(7)),

(iv) whether there has been proper consultation on the criteria as envisaged by section 189, in particular with reference to section 189(2)(b) the parties must attempt to reach consensus on the method for selecting the employees to be dismissed,

(v) the number of persons who would form the core, (vi) the debate on the criteria, in particular with reference to Tsivenda.

3. The content of the criteria

[30] At its meeting on 26 February 2002 (before the section 189 consultation meetings commenced on 12 March 2002) the IAG decided that the criteria for the retention of a core academic capacity in the affected disciplines would be as follows:

"3. research and publications
3. qualifications record
3. ability to supervise post-graduate students
3. number of students in a discipline
3. maximum of three staff members for each discipline."

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[31] In a letter dated 20 March 2002 Professor Mawasha suggested the following criteria:

"1. Qualifications
3. Articles published:
    3. Refereed articles (SAPSE)
    3. Non-refereed articles
    3. Newspaper articles
3. Newsletters
    3. Editorials
    3. Lay articles
3. Book publications, book reviews and chapters in books
3. Conference presentations at professional forums."

[32] Professor Fitzgerald testified that these are the usual criteria, accepted internationally, which were to be used to determine core academic capacity. He said the decision needed to be taken on academic grounds.

[33] On 26 March 2002 the IAG resolved (i) that the maximum academic core capacity be two staff members and (ii) it adopted the criteria decided upon at its meeting of 26 February 2002 as refined by Professor Mawasha.

[34] Professor Fitzgerald testified that the major issue was resource constraints. Professor Fitzgerald testified that the criteria as finally agreed were academic, almost universally applied. Teaching did not come as high on the list as it would

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normally come, because there was not expected to be much teaching in the three disciplines. He said the criteria comprise the universal language of the academic.

[35] During June 2002 the criteria for redeployment were listed as "qualifications, skill, quality and relevance". The trade unions involved had no problem with these criteria to be used for redeployment.

[36] At a meeting on 3 July 2002 the IAG's redeployment committee made a recommendation

listing the persons who should be retained as core staff based on the preset criteria, namely:

"3. Academic Qualifications
3. Publications
3. Supervision of post-graduate students."

(ii) Disclosure of the criteria

[37] On the probabilities one has to accept that the criteria as set out in Professor Mawasha's letter dated 26 March 2002 were placed before the consultation meeting on 23 April 2002. It appears from the transcript of the meeting of 31 July 2002 that Reverend Mbete made reference thereto several times, and from the record of the proceedings it does not appear that anyone denied that the criteria were placed before the meeting.

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(iii) Are the criteria fair and objective?

[38] Professor Fitzgerald testified that the criteria used are accepted internationally when dealing with academics. This evidence was not disputed. The criteria are objective in nature. No alternative criteria were put forward by those who were affected.

(iv) Has there been proper consultation on the criteria?

[39] Consultation should commence "before a *final* decision to retrench (that is to terminate the contract of employment of the employees) has been made" (**Singh and Others v Mondi Paper [2000] 4 BLLR 446 (LC) par 29** and the authorities referred to there). Applicants must be given an opportunity to make representations on "low scores", **Singh par 75**.

[40] The purpose of consultation is to explore options identified by the employer, to solicit further options from the employees and their representatives, and to seriously consider them. See **FAWU and Another v National Sorghum Breweries [1997] 11 BLLR 1410 (LC) at 1423E-G.**

[41] The fact that management has a prerogative does not mean that it is not obliged to act in accordance with the requirements of consultation, disclosure of information and fair selection criteria **Department of Labour v Mushiana [1999] 6 BLLR 535 (LAC) par 15.**

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[42] Where there has been no consultation at all, the court may find that the dismissal was also substantively unfair as it did in **Wheeler v Pretoria Propshaft Centre [1997] 11 BLLR 1213 (LC) par 24.** Consultation does not mean that the parties have to agree, they should attempt to reach consensus - **Brassey**, **Commentary on the Labour Relations Act** with reference to Item 3 of the Code of Good Practice: Dismissals based on operational requirements and section 189(2) (introductory words).

[43] One is not here dealing with a situation where the criteria were listed *ex post facto*, as was done in **Keller v Transnet [1998] 1 BLLR 62 (LC) at 67B-E (per Revelas J).** I shall deal with the argument that it was decided beforehand by the respondent below.

(v) The number of persons comprising core academic capacity

[44] In the three disciplines relevant to this case (Northern Sotho, Xitsonga and Tsivenda) the decision was to retain core academic capacity in each, irrespective
of student numbers. This was done because of the geographical and social position of the university, which meant that it had a special responsibility towards scholarship in those disciplines.

[45] Senate in its meeting of 11 May 2001 decided to retain a core academic capacity in these three study areas. The executive committee of senate on 14 February

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2002 re-affirmed the retention of core capacity in these three disciplines.

[46] In its meeting of 26 February 2002 the IAG fixed the number for core capacity at 3 persons.

[47] On 20 March 2002 Professor Mawasha suggested his criteria, refining the initial draft of the IAG.

[48] On 26 March 2002 the IAG adopted these refined criteria adding the rider that the maximum core capacity would be two.

(vi) The debate on the criteria, in particular with reference to Tsivenda

[49] The decision that core capacity was two, not three, was not communicated to Reverend Mbethe who was negotiating on behalf of the respondent.

[50] In the section 189 meeting of 3 June 2002 the affected employees indicated that as Tsivenda had only three staff members, it would be removed from the section 189 consultations. The respondent agreed and Tsivenda was removed from the section 189 consultation process.

[51] On 3 July 2002 the IAG selection panel recommended two staff members each for the disciplines of Northern Sotho and Xitsonga. No recommendation was made on Tsivenda, as all the curriculum vitaes were not available.

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[52] At the section 189 meeting on 31 July 2002, the very next meeting after the one on 3 June 2002, Tsivenda was back on the table.

[53] According to the minute of the section 189 meeting of 31 July 2002 under the heading: "7.1 Report on the Core (Tsivenda, Xitsonga, Northern Sotho)" the respondent reported that "two staff members per each of the disciplines were selected as core academic capacity."

[54] The minutes refer to two names in Xitsonga and Northern Sotho each (as does the IAG selection committee report dated 3 July 2002).

[55] The affected employees wanted to understand how the decision to reduce the number of staff that would form core academic capacity was arrived at. According to the minutes the respondent stated that it had decided on three staff members, and that Tsivenda had three staff members at the time. The selection panel used two as the number, and thereby drew Tsivenda back into the selection process.

[56] The affected employees hereupon indicated that Tsivenda had been taken out of the section 189 consultations, but the two staff members in that discipline had received letters which confirmed their stay, whereas one had not received any letter.

[57] The affected employees said that the respondent was not consulting in good

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faith and took decisions on core capacity outside the forum.

[58] The respondent said that the decision to appoint only two persons per discipline was done by a proper exercise of management prerogative.

[59] The affected employees said that the report given on Tsivenda was incomplete and rescinded an agreement reached in the forum.

[60] The respondent said that the curriculum vitae of one the staff members was not available to the IAG selection committee, and that Tsivenda would be treated like the other disciplines.

[61] Dr Rankhododo of Tsivenda enquired whether he would be considered for the vacancy in marketing and communications, which had not been filled. The respondent responded that his curriculum vitae would be reviewed.

[62] The respondent indicated that there were fourteen staff members in discontinued disciplines, and where alternatives were not found, the respondent would consider dismissals for operational reasons.

[63] It thus appears that the issue of the number was only considered in regard to Tsivenda. The affected employees did not pertinently raise the change from three to two staff members as a concern in the other disciplines. They were not happy with the entire process, and the criteria.

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[64] After the section 189 meeting of 31 July 2002 Mr Tjia advised Dr Rankhododo to give his curriculum vitae to the respondent. It is common cause that he failed to present his curriculum vitae to the respondent.

[65] Despite Reverend Mbethe's evidence to the contrary, it was very clear, if not obvious, that after 3 July 2002 the respondent had decided to retain the two professors in Tsivenda, and not Dr Rankhododo. This decision was taken at a time where Dr Rankhododo had been brought under the impression that (not to say that there was an agreement reached in the meeting of 3 July 2002) he would be part of core capacity.

[66] It is not now for the respondent to say, as Mr Woudstra suggests, that it was open to Dr Rankhododo to present his curriculum vitae. The fact is that he had been told in a meeting there was no need to do so.

[67] There can be no doubt that Dr Rankhododo was treated procedurally unfairly.

3. THE REPRESENTATION OF DR MOGALE

[68] At the section 189 meeting of 23 April 2002 the issue of representation was discussed, in particular the representation of non-union members. It appears from the minutes of the 30 April 2002 meeting that the committee took a decision that non-union members would only be represented by members elected

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by themselves. Dr Mogale was present at the section 189 meeting on 30 April 2002, and also at other meetings. The minutes of the meeting of 28 August 2002 state:
"Dr N S Mogale recorded that he participate as an observer. Any aspect of the consultation that affects him, may be related to Mashego Attorneys".

[69] Reverend Mbethe testified that at the outset of the section 189 consultations, the consensus was that this was an internal matter, and would be run internally, and no external person could be allowed in. In cross-examination Reverend Mbethe stated that there was no consultation with Mashego attorneys by consent.

[70] With regard to section 189(1)(a)-(d), only one entity needs to be consulted, and it is the one that satisfies the condition highest on the list (**Brassey, *op cit* at A8.45**). Davis AJA said the following in **Baloyi v M&P Manufacturing [2001] 4 BLLR 389 (LAC) par 23**:

"In keeping with a premise of the Act, section 189(1) envisages that the collectivities of management and labour represented by trade unions should engage in an appropriate process of consultation, save where the affected employees are not so represented. To interpret the section so as to allow an employee represented by a union to engage in a parallel process of consultation would undermine the very purpose of the section".

[71] In this case Dr Mogale was represented by the union. He then apparently resigned his membership of the union. There is no evidence to suggest that his

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interests were so distinct from the other affected staff members that the issues raised and debated by the union were not equally in Dr Mogale's interest.

[72] In my view no irregularity was committed by not contacting Dr Mogale's attorneys. He

was also present in the meetings.

3. ARGUMENTS RAISED BY THE APPLICANTS

[73] Mr Moshoana, for the applicants, submitted that the three disciplines were not overstaffed. He referred to figures which indicated an increase in student numbers during 2002. That submission overlooks the evidence of Professor Fitzgerald that the problem lay with the undergraduate student number - the pipeline was running dry, as he put it. He also said that post-graduate numbers increased due to the incentives given by the respondent of no or lower registration fees. Further, Reverend Mbethe testified that there were instances of students who simply registered for courses, with no intention to follow or complete the course, simply to push up the numbers, on some occasions prompted to do so out of sympathy for the teaching staff who could lose their jobs. It is quite clear that student numbers in the three disciplines did in fact dwindle significantly, and that a reduction of staff was justified.

[74] Mr Moshoana further submitted that the respondent had failed to prove certain documents, for example the criteria in the letter from Professor Mawasha

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because Professor Mawasha had not been called to testify. The contents of that letter were the subject of evidence and cross-examination, and the authenticity of that letter was never placed in issue. Similarly, the report of the selection committee was never challenged on the basis of being an incorrect reflection of what happened at the meeting of the IAG redeployment committee on 3 July 2002.

[75] Mr Moshoana submitted that the criteria were not objective and fair, because the criteria contained "strong traces of capacity or incapacity". As Mr Woudstra pointed out, the criteria normally considered at retrenchment would be LIFO, or FIFO. Both those did not feature in this case at all. The evidence of Professor Fitzgerald was that the academic criteria used are universal and objective. There is a skills element, but that can be applied almost entirely objectively, and there is nothing unfair about it.

[76] Mr Moshoana submitted that there was no final decision of senate as to dismissals based on core capacity. But it was not up to senate to say how the university should be structured - that is for management to decide.

[77] Mr Moshoana submitted that there was incomplete compliance with s 189(3) in that all the

information listed thereon was not furnished, for example the number of employees affected (s 189(3)(c)). The question arises whether this rendered the process unfair. (**Johnson and Johnson (Pty) Ltd v Chemical Workers Union [1999] 20 ILJ 89 (LAC) par 27-29**).

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[78] The case of the employee parties is that they were constantly presented with decisions which had been taken elsewhere. Apart from the fact that that is not their pleaded case, such perception does not taint the proceedings. Mr Moshoana submitted that the respondent only commenced consultation after having decided on the number to form core academic capacity and the criteria to be used to apply the concept. With reference to **Atlantis Diesel** (**supra**) he said that consultation at that stage of implementation is too late.

[79] The need for input from the employees is less when the criteria are not based on merit (**Hendriks v South African Airways, case no. C 163/2000, (Unreported) 21 October 2002 par 33 (per Waglay J)**).

[80] In this case the final immutable decision to retrench was taken on 3 September 2002. This was the evidence of Professor Fitzgerald. It is borne out by the fact that the minutes of the IAG redeployment committee refer to a "recommendation" made on 3 July 2002, which recommendation was accepted in the IAG meeting of 3 September 2002, according to the minutes of the latter meeting. The fact that Reverend Mbethe in the meeting of 31 July 2002 refers to it as a "decision" does not alter the objective facts.

[81] The main thrust of Mr Moshoana's argument was that there was no consultation on the criteria, as the respondent (and in particular the IAG) had already decided before the first section 189 meeting, what the content of the criteria was, and how many persons would comprise core academic capacity. This argument

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overlooks the fact that the section 189 consultations do not deal only with the criteria. Several other topics are listed in section 189(2). Looking at the minutes, and reading the transcripts of meetings, it is clear that the parties negotiated about several other aspects, apart from the criteria for core capacity. Furthermore, in their nature the criteria are academic, and not suited for a general debate. As to the number, that is something which impacts directly on monetary constraints, and falls within management's prerogative.

[82] It should be noted that the affected employees tabled a document making suggestions as to core capacity. It is therefore clear that the issue was debated. The affected employees wanted a greater say than they got, but that does not mean that there were not proper consultations as contemplated under section 189. Consultation is a process of soliciting representations before a decision is made (**Brassey, Commentary on the Labour Relations Act A8. 44**). The ultimate decision to retrench is one which falls squarely within the competence and responsibility of management (**Atlantis Diesel Engines (Pty) Ltd v NUMSA [1994] 15 ILJ 1245 (A) at 252G-H**).

[83] The minutes of the section 189 meeting on 28 May 2002 state: "Labour appreciated management's move to avoid possible retrenchments and the passionate move of management to re-deploy skills".

[84] The implementation of the criteria is a management decision. The pleadings do

not raise the *fait accompli* point, it was only raised in argument at the end of the case by Mr Moshoana.

3. CONCLUSION

[85] Viewed on a "checklist" basis, the respondent did not comply with section 189(2). That is however not the question. One has to determine whether the respondent acted substantively fairly (**Johnson and Johnson supra at par 31**). One cannot say that the respondent did not attempt to find consensus. There were eleven section 189 meetings.

[86] The respondent had to restructure, and do so drastically. It was possible to accommodate above thirty of the affected staff members, either in other departments, or by means of voluntary severance packages.

[87] It is clear that during the section 189 negotiations the affected parties was aware that academic criteria would be applied by management in a business sense. The employee party wanted more input, but there was reluctance on the part of the respondent.

[88] It is clear that the criteria were not agreed upon. This aspect is open to some criticism but does not taint the process to such a degree so as to render it unfair. Many other issues, apart from the criteria, were discussed, and the fact that the respondent retained the right to determine

and apply the (academic) criteria

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which were not subjective must be seen favourably.

[89] As to substantive fairness, the respondent must show that dismissal was the only reasonable measure or a measure of last resort (**Manyaka v Van de Wetering Engineering (Pty) Ltd [1997] 11 BLLR 1458 (LC) at 1464F-G**). I am satisfied that was the case here - all other avenues had been exhausted.

[90] Save for the case of Dr Rankhododo, in respect whereof there was a procedural unfairness, the conduct of the respondent cannot be faulted.

3. RELIEF

[91**]** The right to compensation is a contingent right which rests on a finding pertaining to the substantive and procedural fairness of a dismissal. It is a discretionary remedy, although it is hedged by limitations on the quantum which may be awarded. Compensation which is just and equitable to both parties must be considered.

[92] In terms of section 194 the compensation awarded to an employee whose dismissal is found to be unfair because the employer failed to follow a fair procedure, may not be more than the equivalent of twelve months' remuneration calculated at the employee's rate of remuneration on the date of dismissal.

[93] The procedural unfairness in the case of Dr Rankhododo was not gross. Dr

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Rankhododo did not testify in court so as to explain his situation fully. He could also have provided his curriculum vitae to the respondent, and make a greater effort to remain employed.

[94] To award Dr Rankhododo compensation equal to twelve months' remuneration at the rate of his salary earned at the respondent, would be very punitive, given the aforesaid factors. I believe it would be fair if I awarded the third applicant compensation in the amount of R82 494-00, being equal to six months' remuneration.

10. Costs

[95] In terms of section 162 of the Labour Relations Act, this court has a discretion whether or not to order the payment of costs. Mr Woustra submitted that should I find that there was a procedural defect, but that there was a fair reason to dismiss, no order as to costs should be made.

[96] An alternative submission by him was that should I find that Dr Rankhododo was unfairly treated, but that the respondent was substantively successful in its defence, I should be inclined to grant an order for costs in the respondent's favour.

[97] Mr Moshoana said that the application should be granted with costs.

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[98] The applicants are by law entitled to challenge the fairness of their dismissal, and the respondent is entitled to defend the fairness of the dismissals. I have concluded that the dismissal of the applicants, save for Dr Rankhododo, was for a fair reason. As a matter of fairness to both parties, I intend making no order as to costs.

3. ORDER

[99] In the circumstances I make the following order:

3. The dismissal of the applicants, save for Dr Rankhododo, was both substantively and procedurally fair.
3. The respondent is to pay compensation to the third applicant (Dr Rankhododo) in the amount of R82 494-00.
3. There is no order as to costs.

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KRUGER, A. J.

For the applicant:	Adv H van R Woudstra SC Instructed by Hlatshwayo Du Plessis Van der Merwe Attorneys
For the respondent:	Mr G N Moshoana
Date of hearing:	19-28 April 2004
Date of judgment:	11 May 2004