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EMPLOYMENT

Employer may fairly dismiss employees for refusing to accept operational changes in the context of restructuring

24 March 2022 *2 min read*

Refusing to accept operational changes in the context of restructuring

Explanatory Note

Generally, the dismissal of employees to coerce them into accepting a particular employment outcome amounts to an automatically unfair dismissal within the meaning of Section 187 of LRA.

The Constitutional Court, in the matter of NUMSA and Others v Aveng Trident Steel and Another, introduced a new dimension to the dismissal of employees for refusing to accept an employer's proposed operational changes in the context of restructuring. The Court's central focus, in this case, was to determine the true reason for dismissal. However, this explanatory note does not deal with this aspect.

Aveng was in financial distress, and it took a decision to implement an organizational plan (which involved the restructuring of its operations), in an attempt to save its business. The restructuring entailed, amongst others, the redesigning of job descriptions. As a result, the employees were going to earn less. The arrangement was initially interim and agreed to by NUMSA. Surprisingly, when the employer sought to implement the restructured job descriptions NUMSA refused. Consequently, the employees were dismissed.

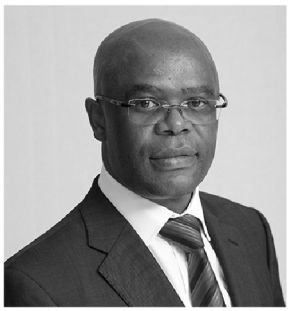
The Court, having considered that Aveng *"faced harsh economic conditions and needed to restructure in order to survive and avoid the wholesale loss of jobs of its entire workforce"*, determined that Aveng was justified in dismissing the employees for operational reasons. In other words, the employees were dismissed for refusing to accept the operational changes proposed by the employer (or alternatives to dismissal), and their dismissal was declared by the Court to be fair.

The Court in arriving at the decision has reminded us not to lose sight of one of the primary purposes of the LRA – to advance economic development.

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