

**WHAT EMPLOYERS SHOULD BE AWARE OF  
WHEN DISMISSING EMPLOYEES BASED ON  
OPERATIONAL REQUIREMENTS**

**Newsletter**

When Employers are contemplating the dismissal of employees based on the operational requirements of a business it is important to follow a fair process as provided for in the Labour Relations Act (LRA). The issue that arises when dismissing an Employee based on operational requirements is that the Employer must consider the alternatives before proposing dismissal as provided for in section 189(3)(b).

The problem which Employers face concerns the alternatives which are a matter of mutual interest between the Employer and Employee. The alternatives considered must be legitimate and implemented to avoid the proposed dismissal of Employee. Should it be found that the alternative is not based on the operational requirements of the business or for a prohibited reason then such dismissal will be found to be automatically unfair in terms of section 187(1)(c) of the LRA which provides that if an Employee refuses to accept a demand of mutual interest between the Employer and Employee such dismissal will be automatically unfair.

The above matter was recently dealt with in the case of NUMSA v Aveng Trident Steel where Employees felt that their dismissals had been automatically unfair as they refused to sign new contracts which the Company had asked the Employees to consider which involved additional work concerning their positions in order to remove redundant positions in order to save costs and prevent retrenchments. The Employees however felt

that the Company had forced them to sign new contracts or else they would be dismissed.

Upon consideration of the facts the Company had followed the correct procedure in terms of section 189 of the LRA where consultations had been held with the representatives of the Employees concerned and discussed the reasons for the proposed dismissals based on the operational requirements of the business whereby new contracts were offered as an alternative to avoid dismissals.

The dismissals were held to be fair by the Labour Court as the reasons related to the operational requirements of the business and the survival of the Company. The dismissals effected were final as Employees were not offered re-employment had they decided to accept the new contracts after being dismissed, this would have resulted in the dismissals being automatically unfair.

Therefore Employers must ensure when dismissing Employees for the operational requirements of the business that it relates to the structural, technical or economical needs of the business whereby Employees are consulted throughout the whole process as provided for in terms of section 189 of the LRA in order to avoid such dismissals being automatically unfair.

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