

You may retrench employees if they unreasonably refuse to accept changes to employment contracts

An extremely important Constitutional Court judgement was, yesterday, handed down in the *Aveng Trident Steel* case. Effectively, what this means is that employers can restructure not only by reducing staff numbers but also by changing terms of employment by offering alternatives to employees. This must be done in good faith.



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“For many years now,” says Jonathan Goldberg: joint-CEO of Global Business Solutions, “we were cautious to look at changing existing terms and conditions of employment. However, this Constitutional Court case illustrates that you can do this through a proper section 189 or 189(A) process. Furthermore, if the alternative being offered is reasonable then effectively employees can be retrenched - potentially without a severance package – if they refuse to accept these changes.”

Covid-19 has highlighted this. What was reasonable before Covid and what is reasonable afterwards has changed dramatically. We saw many executives accepting a 20% to 30% reduction in their salaries during Covid and some are even still enduring this reduction. Most of these changes were by agreement but some were in fact implemented unilaterally.

This is echoed by Mathopo AJ in the judgment to this case:

“ [99] In an ever-changing economic climate characterised by increasing global competition, operational reasons not only relate to the downsizing of the workforce, but also to restructuring the manner in which an existing workforce carries out its work. Restructuring entails a number of possibilities, including shift system duties; adjusted remuneration; and merging of jobs or duties. Generally, businesses that adapt quickly will survive and prosper. Those that do not will decline and fail. ”

This is a very positive case that may assist in stemming unemployment by re-aligning business costs as a result of changes to existing terms and conditions of employment.

What has happened in many industries is that - instead of being able to change existing terms and conditions of employment through a proper process - companies have rather just gone out of business and caused destruction to those industries and decimated jobs. "We are hoping," says Goldberg, "that this will encourage proper social dialogue around alternatives which would include primarily the retention of jobs on competitive packages."

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