

NOT REPORTABLE

IN THE LABOUR COURT OF SOUTH AFRICA
HELD IN DURBAN

CASE NO **D208/99**

DATE 2000/08/01

In the matter between:

OTHER Applicants

and

Respondent

JUDGMENT DELIVERED BY THE HONOURABLE MR JUSTICE LANDMAN
ON 2 AUGUST 2000

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SNELLER RECORDINGS (PROPRIETARY) LTD - DURBAN

J U D G M E N TLANDMAN J

- 1] Mr Zuma and Mr Ndlovu were employed by Richardson Electrical CC until their retrenchment on 13 March 1998. They had been in the employ of the CC for a period of 20 and 18 years. Subsequently they launched an application in this court complaining that their dismissal on 13 March 1998 constituted an unfair dismissal.
- 2] The case for the CC, as it appears from the evidence which was led in this court, was that there was a decline in work. So much so that the employees were obliged to work short-time work on a rotation basis commencing in July of 1997. This continued intermittently. At a later stage the firm of accountants, who assisted the CC in drawing up its accounts, informed them that in view of the deteriorating financial situation they would face insolvency unless the business was turned around.
- 3] The principal member of the CC, Mr Bob Richardson, decided that there seemed to be little future in continuing with the business and he consulted the Electrical Contractors Association, in particular Mr Hall and Mr Greager, for advice on how to retrench his workforce.
- 4] Ms Cathy Fitzpatrick, Mr Richardson's daughter, was employed as a secretary/Girl Friday. She liaised with Mr Hall and obtained details as to how the retrenchment should be done. Some time prior to 23 February 1998 she faxed a letter to him which he corrected. She subsequently transcribed that letter on a letterhead addressed to the three employees who were involved. One of the employees was

boarded and therefore would not have received this letter.

5] The letter, dated 23 February 1998, was signed by Mr Richardson and, on the same day, after wages were paid out, he distributed these letters to the recipients, including Mr Zuma and Mr Ndlovu. He also explained the content of this letter to them in English and in the Zulu which he was able to speak. The letter informs the addressees that:

"As you are aware, there is a critical shortage of work at the moment and, as a result, you were placed on short time. As far as I can see there is no prospect of any major work either. As my business is now running at a financial loss even the short time is becoming a burden. As all employees will be retrenched there is no selection process necessary. I envisage your last working day to be 13 March 1998 (a two-week consultation period and one week's statutory notice). However, should you find alternative employment before that you will be free to leave immediately without the requirement of working the notice period. You will receive one week's pay for every year of completed service as severance pay. If in future I have sufficient work again you will be considered for re-employment. Your pension and UIF cards will be handed over to you on the last day of your work. Please be aware that your pension can only be claimed after one year should you no longer be employed in the electrical industry."

Ms Fitzpatrick was also present while the letters were distributed and the discussion took place.

6] None of the employees, including Mr Zuma and Mr Ndlovu, had anything to say when they were presented with these letters. They made no contribution as to what should be done about the business or what should be done about them or their

circumstances.

7] On 9 March 1998 a notice of termination of their services were given to the three employees, again including Mr Zuma and Mr Ndlovu. This letter informed them that their services would be terminated on 13 March 1998. On 13 March their services were terminated. They were paid their wage for the week. They were provided with severance pay. Severance pay was calculated at one week for every year of service even though the maximum required in terms of the Bargaining Council Agreement was fixed at nine years' service. The severance paid was deposited in their banking accounts to protect them from the burden of carrying money with them on that day. They were also provided with letters which constituted a notice of service. They were told that if there was an increase in work they would be re-employed and they were asked to keep in touch with Mr Richardson.

8] During April contact was made with Mr Zuma and he returned to work and was paid for 36 hours for work which he did, including work at the Meadows Dairy.

9] The applicants' case (and it is important to bear in mind that the applicants commenced leading evidence in this court) at the time their case was closed, was that they admitted that some short time had been worked. They said they were unaware whether or not the CC had work to do. They denied receiving the letter of 23 February 1998 which I have set out above. They denied that any meeting took place or that any explanation was given to them regarding their impending dismissal. They denied that there was any consultation and they denied receiving a letter of termination of their services, or notice to terminate their services, dated

9 March 1998.

10] Under examination-in-chief they were referred to pages 58 and 59 of the bundle.

Those pages refer to a letter dated 9 March 1998 which reads as follows:

"Final Notice of Retrenchment.

Referring to our letter dated 23 February 1998, as no major work has come in in the last two weeks, I hereby give you one week's notice. Your last day of work shall therefore be 13 March 1998.

Yours faithfully,

Bob Richardson."

11] These notices were not on letterheads, as may be expected of copies. Both applicants denied that they had received them. However, it later transpired that Mr Zuma and Mr Ndlovu were each in receipt of the final notice of retrenchment dated 9 March 1998. Now at pages 83 and 84 of the bundle these letters state:

"Final Notice of Retrenchment.

You are hereby given one week's final notice of retrenchment. Your final working day will, therefore, be 13 March 1998.

Thank you for your loyal service.

Yours faithfully,

Bob Richardson."

These letters are on a letterhead and they are on yellow paper. These letters were not in the bundle which had been prepared by Mr **Reheman** of the Help-In-Hand Trade Union, which represented the applicants. They were not put to Mr Zuma or to Mr Ndlovu while they were giving evidence-in-chief. The impression that this Court was left with when their case was closed, was that no documents of

any nature whatsoever had been given to them by the CC at the time of their retrenchment.

12] During cross-examination of Mr Richardson, Mr **Reheman** produced the documents, pages 83 and 84, the letters of the final notice of retrenchment on the letterheads, and this was put to Mr Richardson. It then became clear that notice was in fact given and that the evidence of Mr Zuma and Mr Ndlovu in-chief was incomplete. They were consequently recalled to the witness stand and admitted receiving these documents. They were also asked to explain why they had not said so earlier.

13] The result is that there was, in my opinion, an attempt to mislead the Court by withholding crucial evidence. This has a detrimental effect on the credibility of Mr Zuma and Mr Ndlovu. I do not accept their evidence save where it coincides with the evidence which was given by Mr Bob Richardson, Mrs Elizabeth Richardson and Miss Cathy Fitzpatrick, who I find to be credible witnesses.

14] I accept, in all the circumstances, therefore, that the dismissal of the applicants was occasioned by the decision of the principal member, Mr Richardson, to close the business because of the impending financial loss which was attributable to the lack of work. It is not a requirement of our law that an employer should continue with his business until he goes insolvent. An employer is entitled to make a decision at an earlier stage and that decision, if a *bona fide* one, is one which will be upheld by this Court.

15] In the circumstances, therefore, I am satisfied that there was a fair and substantial

reason for retrenching the two applicants.

16] I now turn to the question whether the dismissals were done in a fair manner and whether they complied with section 189 of the Labour Relations Act 66 of 1995. I have already referred to the fact that a letter dated 23 February was prepared which set out all the relevant information which should have been brought to the attention of the employees who were about to be retrenched. It is true that it is difficult to say whether any meaningful consultation took place. Certainly the employees were aware that they had been working short time. They were then informed that there was impending retrenchment, and what the reasons were. There was no reaction from their side. It is difficult to think that they could really have said anything which would have persuaded Mr Richardson from taking the decision to retrench, because there was no work to do and his CC was suffering financial loss. In consequence the decision was followed up by notice of retrenchment. That in turn was followed up by the actual dismissal of the employees, the provision of a notice of service and the payment of all benefits and severance pay, which was generous, and which reflected the good relationships which all parties say had existed between management and labour.

17] In the circumstances, therefore, I am satisfied that the dismissal of the employees was also procedurally fair. The result, therefore, is that the application should be dismissed.

18] In terms of the pre-trial minute the parties have agreed that if the Court finds the retrenchment is unfair, the Court should order the respondent to pay the costs of the application. The parties have also agreed that the costs of the pre-trial

proceedings be reserved. As no argument was addressed to me in this regard I think that the costs of the pre-trial proceedings should be costs in the cause.

19] These costs of course, because the parties are not represented by legal practitioners, are to be restricted to disbursements. In my opinion, taking into account the factors that I have set out, the conduct of this case by Mr **Reheman** and the Help-in-Hand Trade Union which, had it not been for the fortuitous production of documents 83 and 84 at a later stage while Mr Richardson was being cross-examined, would have left the Court with a total misapprehension of this matter, that is a matter which calls for censure. In the circumstances I order Mr Zuma, Mr Ndlovu, the Help-in-Hand Trade Union and Mr **Reheman** to pay the costs, being the disbursements of the respondent, jointly and severally, the one paying the other to be absolved.

LANDMAN J

ing: 1 & 2 August 2000

ment: 2 August 2000

cants: Mr Reheman of the Help-In-Hand Trade Union

For the respondent: Mr Greager