IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT DURBAN

Case Number: D258/97

In the matter between

W.D.Twine Applicant

and

Rubber Rollers (Pty) Ltd Respondent

JUDGMENT

LANDMAN J

[1] Bill Twine, a sales representative, was retrenched by his employer, Rubber Rollers (Pty) Ltd ("Rubber Rollers"), on 15 July 1997. Rubber Rollers had recently acquired Capital Rollers and found itself overstaffed in its sales division. Mr Twine knew this. He knew this at the latest in May 1997. On 3 June he was told to meet the managing director, Mr Chouler, the next day. He met with Mr Chouler on 4 June 1998. The meeting was soon over.

[2] What happened at the meeting? Mr Chouler says that Mr Twine had been prepared for the meeting by Mr Peltz, a shareholder and director and a friend of his, and told that he was the sales representative from Rubber Rollers who was to be retrenched. Thus, when

Mr Chouler broached this with him he was understanding. The meeting went off more quickly than expected. Mr Twine accepted the situation and the two men agreed on a retrenchment package.

[3] On the other hand, Mr Twine denies that he knew that he was going to be retrenched. Mr Peltz had not discussed this with him. He was surprised. He was shocked. He did not know how to respond. He asked for a letter to be given to him. This was done the following day.

[4] If Mr Twine's version is correct there has not been compliance with s 189 of the Labour Relations Act 66 of 1995 and the dismissal is procedurally unfair. It may even be substantively unfair for there might have been avenues of redeployment, mooted in evidence, which had not been explored.

[5] If Mr Chouler's version is correct then that is the end of the matter. It was resolved by agreement. Section 189 contemplates an attempt to reach an agreement and there is no reason why one should not be reached up front.

[6] It is the respondent's case that Mr Twine was primed for the meeting by Mr Peltz. In a letter dated 29 July 1997 it is said, on this issue, that:

Prior to this meeting Mr Konrad Peltz, a Director of Rubber Rollers, prior to the merger, also spoke to Bill and advised him that there was a strong possibility of him being retrenched after the merger between Rubber Rollers and Capital Rollers, him being the weakest in the group.

(See also paragraph 9 of the statement of response)

[7] It is common cause that Mr Peltz was available as witness. He was not called by either side. His evidence would have established for the respondent, assuming that it was satisfactory, that Mr Twine had been primed about the impending retrenchment and that he would not have been shocked and would have had time to consider its implications and have probably concluded the agreement mentioned by Mr Chouler.

[8] Rubber Rollers did not call Mr Peltz. Having regard to the onus on it of proving that the dismissal of Mr Twine was procedurally and substantively fair I would have expected it to have done so. I am mindful that Mr Twine and Mr Peltz are friends but this is not a sufficient consideration for the party bearing the onus not calling him. In my opinion, as there is no reason to chose between the credibility of Mr Twine or Mr Chouler, this case must be decided on the onus. Rubber Rollers has not acquitted the onus on a balance of probabilities. I find that Mr Twine did not know that he had been targeted for retrenchment, that he was ill-prepared and that he did not enter an agreement and accept his retrenchment.

[9] Rubber Rollers did not comply with the provisions of s 189 of the Labour Relations Act. The dismissal is procedurally unfair. Because it is procedurally unfair it may also be substantively unfair. It cannot be said that had there been consultation Mr Twine would still have been dismissed, especially as he was close to retirement and there were possibilities of a transfer to a factory or depot in East London or Cape Town.

[10] In the premises this is a case where the applicant should be reinstated, subject to the restoration of all monies that have been received. Rubber Rollers is however free to commence the retrenchment process afresh.

[11] It is ordered that:

1. The applicant be reinstated in his employment with the respondent with effect from 15 July 1997 on the terms and conditions which governed his employment on that date.

2. The applicant is to repay to the respondent all monies received by him by 2 December 1998.

3. The respondent is to pay the applicant's costs.

A A LANDMAN

Judge of the Labour Court

SIGNED AND DATED AT DURBAN THIS 6th DAY OF NOVEMBER 1998.

DATE OF HEARING: 5 November 1998

DATE OF JUDGMENT: August 14, 2007

For the Applicant: Mr. Maree of JJ Maree & Associates

For the Respondent: Mr. Denny of Deneys Reitz Attorneys