

SOUTH AFRICA / JUDGMENT

Brandt v Quoin Rock Wines (C152/2021) [2022] ZALCCT 66; (2023) 44 ILJ 309 (LC) (27 October 2022) [2022] ZALCCT 66

COURT

Labour Court Cape Town

BEFORE

Rabkin-Naicker

CASE / FILE NUMBER

C152/2021

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REPUBLIC OF SOUTH AFRICA

IN THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

JUDGMENT

Not Reportable

C152/2021

In the matter between:

MELISSA BRANDT Applicant

and

QUOIN ROCK WINES Respondent

Date heard: 18 -20 July 2022;

Heads of Argument filed by 23 August 2022

Date delivered: Emailed in scanned document on the 27 October 2022.

RABKIN-NAICKER J

[1] In this referral, the applicant seeks compensation for an alleged automatically unfair dismissal relating to her pregnancy. In the alternative, if the Court finds that she was dismissed for the reason of operational requirements, that the dismissal was substantively and procedurally unfair.

Testimony at trial

Melissa Brandt

- [2] The applicant (Brandt) testified that she had been employed by the respondent since 1 July 2013, as its Financial Manager. Her duties included reporting submissions to SARS and Excise, budgeting and managing cash flow. She was earning a gross salary of R50,000 per month at the time of her dismissal on the

30 November 2020.

- [3] She testified that she had received IF treatment as a single person in January 2019 and in September of that year she became pregnant with a due date of 11 June 2020. She informed the CEO (Gaiduk) on the 3 January 2020, and told him that she would work until the 31 May 2020.
- Brandt testified that Gaiduk was well aware of her pregnancy and would come into the office and ask her how long she had left. He asked her if she was going to come back to work. She told him that she would be coming back from maternity leave and he said it was fortunate that it would be a quiet time of year. Brandt explained that June and July marked the end of the grape season.
- [4] Brandt stated that there were complications with the pregnancy and on the 12 May 2020 her blood pressure was too high, and there were problems with the condition of her unborn child. She was admitted to hospital to be monitored and on the 21 May 2020 the baby was born.
- [5] She had scheduled to do a handover of her work to her assistant Zandre Johnson (Johnson) on the 14 May 2020, but had been unable to do so. At that time the country was facing lockdown restrictions at level 5 and she was not allowed to have any visitors in the hospital in order to do a handover. She had taken her laptop into hospital with her as she did not want to just leave all her work with Johnson.
- [6] Brandt testified that from the 21 to the 28 May, her baby was in ICU and then remained in hospital until the 12 June 2020. This period was all during Covid and she was allowed to be with him in the ICU ward. She was still in contact with Johnson and Gaiduk and she still had her work laptop at the hospital. Johnson had told her not to worry. She was discharged on the 12 June 2020 with her baby and she had a first handover meeting with Johnson three days later.
- [7] Brandt referred the court to various emails and whats apps she had sent to Gaiduk prior to and after the birth of her baby. These were about payment of staff salaries and informing him that she had loaded wages and payments for approval. She testified that she sent these so that things could go as smoothly as possible. She was still the only person with a profile on FB to load salaries. She stated that there had been no formal discussions about her maternity leave with Gaiduk. On the 25 June 2020, she had informed him that she and the baby had to be admitted to hospital again for a few days. She wrote the following email to him on that day to which she did not receive a reply:

"Hi Denis

Following our discussion earlier this week, I have decided the following regarding my maternity leave:

I won't be part of the day to day operations for the period as it will put too much stress/strain on me when I want to focus on time with Roan and his health.

- I am still in contact with Zandre on an almost daily basis and I will continue to assist her as far as possible with queries should there be anything she is unsure of.
- I will still be submitting SARS assessments (PAYE, Excise) on a monthly basis.
- I am still doing some other work in my own time which I didn't get chance to finalise before being admitted to hospital. will keep track of these hours and we can discuss this once I return to the office.

My maternity leave will thus be from 1 June 2020 to 30 September 2020. I will however revise my situation at end of August and might consider to start working half day from September.

Please don't make any changes on the iKentoo with regards to SKU numbers and stock setup as this will mess up the mapping in NAV which I am still comparing.

Kind regards

Melissa Brandt | Financial Manager"

[8] Brandt testified that on the 2 July, Gaiduk had finally returned unanswered calls she had made to him. There was a twenty-seven minute conversation between them. Brandt said that he was screaming and yelling on the call. He said that he could not go on like this. He said he needs his financial manager and he said he did not understand why Brandt could not be available for work calls but could do two photoshoots with her baby. Brandt testified that Gaiduk also said that he was a parent too and it's not that bad, and that Brandt was not really a single parent as she had her parents to assist her. He told her that she had to have a full handover with Johnson. Brandt testified that she asked why this was necessary as Johnson was doing all she could. Gaiduk said he has a lot of issues and queries but did not specify these. He did mention that Johnson could not do tax directives on Sars and Brandt said these were not a daily occurrence.

[9] Brandt testified that she had submitted PAYE and excise duty on the 7 July 2020. Brandt also asked Johnson if she would prefer her to continue to do Sars submissions and she had said yes because she was already overloaded. Brandt said she still had her lap top. On the 3rd August she tried to log in for Sars but could not. She contacted the IT department and Johnson took her laptop to IT for her to get the problem solved. After that she logged into the cloud to do the submissions and to access the system. She testified she had done her best to assist Johnson.

[10] Brandt referred the Court to a whats app message she had sent Gaiduk for the return of her laptop as she wanted to prepare for the audit after her October return to the office. There followed a string of messages between them which she read out follows: (Note those from Brandt are in italics)

"20 AUGUST 2020

Hi Denis, hope you are well.....Can I pick up my laptop tomorrow? I am coming round then to say hi to everyone...../ will bring my hard drive and copy my folder from the g-drive and then move it from there to One-drive folder one at a time as it takes so long to copy everything at once...just don't want to lose any of that data in my folder then you can shut down the server if want. Thanks

Hi. Unfortunately I am not in the office tomorrow. I am busy with sharepoint and with your laptop and already moved a lot of things

around but not finished yet. I saw and filtered a lot of stuff which personal and shouldn't be on G drive. You can leave hard drive with Zandre and I will copy it over the weekend. I restructured a lot of things but will explain after you maternity leave. A lot of things happened/happening and changed over this lockdown.

Ok, I cant recall that I had personal info on gdrive but will check tomorrow quickly if you leave my laptop in office. Wanted to chat to you as well but we can chat next week then. thanks

Let's chat next week. I left your laptop at home. There is nothing left at gdrive. I am in the process of moving data, Hope to finish soon. But there is complications.

28 AUGUST 2020

Hi Denis, QR audit starts second week in Oct and I wont have enough time to prep and have everything ready if I only start 1 Oct...wanted

to discuss that! will start working half day from 1 Sept 8am to 12 from home and come in one day a week to office if that's fine? Let me know what you think and we can meet on Tuesday at office for you to update me on all the changes etc and then also get my laptop. Thanks

31 AUGUST 2020

I'll call you later

Ok thanks

Still on meeting. Tomorrow will be difficult and I am not done with one drive yet. Last week was hectic with Alex birthday. Regarding audit - no stress as we haven't signed previous one yet. Let's try Wednesday, but will confirm tomorrow.

Ok maybe Wednesday then.I would rather start with it sooner than later as QR and KH will be back to back. just afraid that sign off might happen in this month and then they will stick to 12 Oct. please confirm tomorrow.

Thanks

I will. We can split Knorhoek and quoin rock

03 SEPTEMBER 2020

Morning. Sorry completely forgot to send you a message. Would like to have a meeting early next week. Probably Monday. Unfortunately there will not be time today. I took 2 days off the farm. I thought I will have time to be in the office this morning. But need to pack and leave early.

Hi Denis, we can meet on Monday then. Enjoy the long weekend.

06 SEPTEMBER 2020

Hi Denis, what time do you wanna meet tomorrow?

07 SEPTEMBER 2020

Hi. Will 15.00 work for you?

That's fine, see you then thanks

Hi again we might have corona case on the farm. Would like to postpone our meeting for a day. Sent guys for a check.

Ok you can confirm new time when you know thanks

Sure, If I have any info will let you know immediately

Hi can you remind me your laptop password

May 2017

(thumbs up emoji)

09 SEPTEMBER 2020

Hi. Seems like everyone is negative. We can meet tomorrow around 12ish or can do on Monday

Hi Denis, can we meet on Monday please...thanks

Sure

13 SEPTEMBER 2020

Hi Denis, I can be at the farm at 14:00 tomorrow. hope that is fine?

Hi

Can you come a bit earlier. I will check now if my next meeting is still there.

I have appointment at doctor earlier and wanted to come after that

Ok

No problem

Thanks see you then tomorrow

14 SEPTEMBER 2020

Hi lam almost at Knorhoek road turnoff..be there now

01 OCTOBER 2020

Morning Denis, will you please bring the laptop when you come down to office

Dear Melissa,

As we discussed I would like you to take 2 days off until our meeting on Monday 5th October.

Regards,

Denis Gaiduk"

- [11] Brandt referred the Court to the respondent's statement of response which reads, contrary to the evidence above, that: "On the 14 September 2020, the Applicant arrived at the Respondent's office unannounced. The Applicant had not been instructed to attend at the office. In fact her arrival at the office was contrary to Gaiduk's instruction to remain on maternity leave until 1 October 2020."
- [12] Brandt testified that her visit was not unannounced, as the whats app messages reflected, and she was never informed before that date that she must not come to the office until 1 October. She and Gaiduk had mutually arranged for the 14 September. On that day she went to the Boardroom and told Johnson shemwould see her later. Gaiduk did not look in a good mood. He said he had just had the worst 4 months of his life. He had two nervous breakdowns and he did not want to continue like this. He said that there were 5 reception ladies at the front desk with the restaurant closed, and the company was not doing well. He had decided to retrench the Financial Manager position. Brandt testified that she was very shocked and asked him who would do all her work. He told her that the accounts department would do fine without her and he would take over her duties and there was not work for her to do.
- [13] Brandt testified that she told Gaiduk that she did not agree because when hospitality reopened, the respondent would be able to cope financially. She told him that she could not believe he was doing this to her after all the work she had put into the company. She testified that Gaiduk said that she did not think of him when she dropped him and went on maternity leave. Brandt stated that she told him that it was a quiet time of year and if she had known this was his attitude she could have made a plan. In June, she told him, her baby's health was the most important thing for her.

[14] Brandt stated that she proposed that she would work at a lesser salary and he said he said that did not think that would work and would inform her next week. He said that she was permitted to drop papers off with Johnson. She told Johnson that it looked like she is not coming back and Johnson asked her who is going to do the work'

[15] Brandt also referred to a call log in the documents before Court to indicate that she tried to call Dale Irvine (Dale) a director of the respondent on that day, the 14 September 2020. She then sent him the following what's app:

"Hi Dale, I had a meeting with Denis yesterday to be updated on the changes that happened at Quoin Rock and Knorhoek during my maternity leave in order for me to be up to date when I start again on 1 October. In the meeting I was however informed that my position as Financial Manager is being retrenched. The reason being to cut costs No further details (details, package, notice etc) was discussed as he said he still had to contact Johan de Kock, the HR consultant. I was obviously very shocked as I know the scope of work that the Finance Department has. I did ask him if he would consider keeping me at a salary cut and he said he is unsure and will think about it and inform me by the end of the week or next week."

[16] Brandt testified Dale had called her and she told him that she had been retrenched. She said that Dale had told her that the respondent could not just do that and that she should get legal advice and ensure the correct legal process was followed. She also informed Dale that Gaiduk had not yet met with the HR Manger, De Kock, regarding a package. Dale asked for his number so that he could speak to De Kock to ensure all processes took place.

[17] Brandt testified that she returned to the office on 1 October 2020. She found the vibe awkward in her office. She sent Gaiduk a message to ask for her laptop He arrived at 11 and asked her to come to the boardroom. He said he thought he could not afford her. He still had not talked to HR. He said he didn't want her at the office because she would confuse staff with her presence and there was no work for her. She testified that she asked him to tell her that in writing so that she was not absent without approval. A meeting was to be held with HR on Monday. The marketing manager Inger Rix asked her if they were going to see her again and she told her 'I don't know'

[18] She received a message on Sunday 4 October about a meeting the next day. Gaiduk and De Kock were there. De Kock said that a decision had to be made whether there should be a mutual separation agreement or a section 189 process. On that day, she received a Notice of Retrenchment. The letter included the following paragraphs:

"The company would like to invite you to engage in a meaning full joint consensus-seeking process to reach agreement on appropriate measure to prevent your redundancy, to determine the possible timing of possible retrenchment and to try to address the negative consequences to soften and alleviate the possible retrenchment.

Management wishes to disclose from the outset the following information that will be discussed at the proposed meeting:

- (a) The reason for the proposed restructuring, based primarily on the operational requirements of the company and the reduction of operating costs.
 - (b) Management has taken several alternative considerations in order to avoid the proposed retrenchment, but with the unfortunate effect of the Covid-19 pandemic on the company we believe that there are currently no acceptable alternatives. You will, however, be given the opportunity to come up with suggestions that can serve as an alternative to retrenchment.
 - (c) The number of employees likely to be retrenched are 1.
 - (d) The proposed method for selecting personnel to be retrenched does not apply to the current situation due to the fact that there are specific positions that no longer fall within the framework of the company due to the operating costs of the company...
- [19] She testified that in the meeting she said that the above letter is not a mutual separation agreement. The notice had also referred to the statutory minimum for retrenchment pay. She referred the Court to the minutes of the meetings that were held containing various proposals and counter-proposals that had been made. She did not dispute the content of the said minutes. The final offer from the company was that she take a job at a sister company for a salary of R29,000 a month with no severance package. This she did not accept. She testified that the financial department would have been effected by her retrenchment and the company would not consider her proposals of bouncing other members of it who had been employed after her.
- [20] Under cross-examination, Brandt agreed that Johnson had taken on additional functions when she was on maternity leave. She however stated that she was not sure whether Gaiduk had taken over her forecast functions. She did not know if Gaiduk dealt with insurance but she assumed that he took care of analyzing cashflow. She conceded that she could not dispute that he did do other of her functions. It was put to her that some of her functions went to Johnson and some to Gaiduk and so the need for a financial manager disappeared. Brandt stated that if Gaiduk did not see the need for a financial manager, LIFO should have applied.
- [21] Brandt disputed that the respondent was struggling. She stated that there had always been a deficit since 2013 and that sales had not dropped but increased during the 4 months she was off. She said she never received the financial statement she asked for doing the meetings with the respondent. It was put to her that the primary reason for her retrenchment was that the position had become redundant and not cost saving, but that her retrenchment came with a financial benefit. She agreed. However, she said that the Respondent did increase salaries in the financial department for dealing with her work. She accepted that other employees were paid more for overtime during the period she was away but said that they were performing her duties so does not agree that her position was redundant. Under cross-examination Brandt insisted that she was told that Gaiduk could not afford her and that he said the position was redundant.

- [22] Brandt was asked how she thought she could just decide on how to structure her maternity leave, referring to her letter of the 25 June
2019. She said that Gaiduk had given her an option and she was still prepared to assist with the Sars submissions. She had never got a response to her proposal made in the letter. Regarding the handover of her work, it was put to her that the CEO was concerned there had not been a proper handover. Brandt insisted that he had instructed her to do a handover but he had never requested a plan. It was put to her that it would be expected of her to do so as financial manager. She said he could have contacted her.
- [23] It was put to her that the reason Gaiduk was angry and upset on the call he made to her, was because of her failure to have a proper discussion regarding the way forward. She said her impression was that he was angry because she had decided to have maternity leave. It was put to her that it was the way in which she was going into maternity leave which was the problem. She stated that the way she was going into maternity leave was because of the problems with her baby. Brandt stated that in the conversation she had had with him on the 14th of September, Gaiduk had told her that she dropped him. She insisted she did the handover with Johnson between the 12 and 15 June. Her baby was born prematurely on the 21 May. She had told him about her pregnancy on the 1 January 2020 and he never asked her about a plan for the handover of her work.
- [24] Brandt conceded that her access to the system was not cut off in September. It was put to her that her statement of case was incorrect in alleging that the decision to dismiss her was already made on or about the 25 June 2020. Brandt said she felt this was the case. Colleagues at the company had had conversations with Mr Gaiduk, she stated, and on the 1 October they either knew she was not coming back or were not sure she was returning.
- [25] Brandt insisted that Gaiduk's attitude to her changed when she said she was taking maternity leave. She stated that if he had restructured the department in August, why had they not launched the consultation process sooner. It was put to her that Mr Gaiduk will say he was not expecting her on the 1 October. She answered that her maternity leave ended on September 30th. She was asked if she thought she was just going to work as normal. She said she had not heard anything to the contrary. She was asked when she thought the decision to dismiss her was taken and she answered she thought it was when she decided to take maternity leave and not to be in on a daily basis. She felt the decision was made and it was a foregone conclusion. Staff had already been informed and asked her whether they were going to see her again. She acknowledged she did not know what Gaiduk had told them.
- [26] Brandt refused to concede that no decision was made on her retrenchment before the 30 November 2020. She accepted there was a consultation process but not that any alternatives were listed for her or that any information on the respondent's financials had been provided as she had asked. It was put to her that she was the financial manager and should have that knowledge. She retorted that she had been away for 4 months. It was put to her that she was offered a position in a sister company. She stated that this was only at the end of October and

was not presented as an alternative position in the respondent. She conceded she was offered R28,000 for the position in the sister company on the 25 November 2020. She felt that bumping would have been the right way for her to stay in her position. Even though the respondent had still asked her for any alternatives in writing at the end of November, she persisted with her view that her dismissal was a foregone conclusion.

- [27] Under re-examination, Brandt stated that she took part in the consultation process because was advised to do so and because she was not prepared to sign a mutual separation agreement.

Evidence of Ms Zandra Johnson

- [28] Johnson testified that she worked as an accountant for the respondent responsible for the payroll and day to day operations and payments. She had been there for 9 years and her level of qualification was a N6 certificate. In April 2020 she was doing that job earning R28,000 monthly. She earned R7500 extra during the four months of Brandt's maternity leave. She confirmed Brandt's functions and said that during the time that Brandt was on leave, there were no audits to be done and Brandt had done the Sars functions from home. During Brandt's maternity leave, she was in touch with her and would ask her for assistance whenever she was available. She did have extra responsibilities when Brandt was on maternity leave but she did not mind as it was only for 4 months. She would work late if there were deadlines for salary payments and wages. She would work weekends on her own discretion and she would go into the office for a few hours every second Saturday because she had her own normal duties to perform too. Gaiduk also took on a few responsibilities when there were problems with Sars. Stacy, an assistant in the department also took on some of her normal duties.
- [29] Johnson was asked whether her duties had gone back to normal and she stated that they had not, and she was still doing extra work. They did have new systems so there was less of a manual and reconciliation workload. She was not able to remember the specific day she collected Brandt's laptop. She had given it to Gaiduk because he is her boss. Johnson referred the court to the numerous whatsapp message between herself and Brandt many of which dealt with work related issues which arose during Brandt's absence. She clarified she had said she was stressed in a message to Brandt because of all the work she had to do and she had also said she felt like resigning. Johnson confirmed that Brandt had told her on the 14th September that the respondent was thinking of making her position redundant. She had been expecting Brandt to return to work on the 2 or 3rd October.
- [30] Johnson was asked when Gaiduk had required a handover to take place. She said it was during Brandt's maternity leave during the first or second week in July. Gaiduk had taken over cashflow, budgets and authorization of payments from Brandt. She testified that a new system had been introduced in the department in September 2021. At present those working in the department were herself and two bookkeepers. A consultant was responsible for Sars submissions; and 'debtors' ladies' were doing the excise work. The consultant helped

monthly and did VAT as well.

- [31] Under cross-examination, Johnson confirmed the handover took place in July. She testified that when Brandt was away things were not working smoothly. Johnson stated that eventually she did cope under the circumstances. She was helped with the backlog by one Michael from vision who also made the system more efficient. It was put to her that given the changes made there was no need for a financial manager. She stated no. Under re-examination she was asked When she started getting assistance from Navision. She stated this began in September 2021. She also clarified that she was unsure as to whether there was a need for a financial manager now given the role of consultant.

Evidence of Dale Irwin

- [32] Dale Irwin testified that he is a non-executive director of the respondent and mainly responsible for compliance issues. He had interfaced with Brandt regarding banking compliance issues. He confirmed that Brandt had called him on the 14 September and she informed him that it had been imparted to her that her position was redundant and she was being retrenched. He said he would have been consoling to her and when he said 'leave it to me', he wanted to assist in finding some middle ground, and find a home for Brandt inside the structure acceptable to both parties. He confirmed he asked for her CV and stated that he had had interfaces with her about her employment after discussions had taken place on retrenchment. He confirmed the consultant now assisting the company, one Irma, is an employee of a firm he had used. Johnson now also has two junior book keepers at her disposal who have been seconded from a company called Greenwood. He said the reason for using these consultants was that there was no time to catch up in a very fraught environment.
- [33] Under cross examination, he agreed that extra people were brought in who were not part of a permanent function. He thought they had possibly been brought in in November last year. Asked about the financial manager's function he said this involved forward costing, budgeting analysis and forecasting and management of a backward looking function. When Brandt went on maternity leave the forward looking functions were taken over by Gaiduk and the backward looking functions by Johnson. He said he became aware of restructuring on the 14th September 2020. Galiduk had spoken to him about restructuring because of Covid. He agreed that he was surprised about Brandt but did know about restructuring in general.

Evidence for the respondent - Denis Gaiduk

- [34] Gaiduk testified that the respondent is a wine farm and restaurant. He is the CEO and leader of a relatively small team. He had built a horizontal structure consisting of the farm manager, wine manger and financial manager and he ran the administrative side. The financial manager had to control the financial function both historic and forward looking. Brandt's role was to compile the budget for the whole company. He had been more in touch with other departments.
- [35] Gaiduk testified that Brandt had approached him in January 2020 to tell him she was pregnant. He said he was surprised because she didn't have a boyfriend and it was quite a decision. He said that Brandt told him that her parents would help financially. They did not discuss maternity leave in detail. Brandt was not sure how they were going to run the department. She did tell him when the baby was due.
- [36] In March 2020, all administration was being done from home because of Covid. After Brandt and the baby were hospitalized, he said he was quite surprised she had not done any training in the department. She took her laptop to the hospital surprisingly which he was thankful for because the operations of the respondent didn't stop. He testified that Brandt was the only person able to upload payments so urgent things could not be loaded. Daily work could only be done when they could reach her.
- [37] After the baby was born and they were out of hospital there was more communication but there were issues with time. He stated that there were obvious reasons for this but that they couldn't reach her from time to time. When a person is not in the office it is difficult to discuss planning he explained. He said that he was trying to discuss a food delivery function with the chefs but he did not have financial advice from Brandt.
- [38] Gaiduk acknowledged that he was stressed and upset when he spoke to Brandt. He had reached a point that he had to discuss maternity leave with Brandt and how to run the Department in her absence. It got to the point that it was necessary to have a meeting in the office with her. Emails were not the best way to communicate. In the conversation he had with Brandt on the 23 June, he told her that they could not work like this any further. He put timelines to her and said that they should try and sort things out by the end of the week. He told Brandt that he wanted a meeting on the way forward. He also told Brandt that if she wants to still be involved, clarity was needed on how to work If she was to be on maternity leave she could not be connected to the system.
- [39] Gaiduk testified that he was really upset about the email sent by Brandt on the 25 June 2020. There had been no discussion on how the department was going to move forward and yet she had sent him her decision. He wanted to discuss the email with her because he was really shocked. He thought about it and realized that this was her attitude and called her to tell her he could not work like this and he wanted her to take full maternity leave. Gaiduk testified that he couldn't work like this. He told her he wanted a full handover of all her responsibilities. He was asked whether he was emotional on the call and he said he was frustrated. He had mentioned the photoshoots because he was trying to reach her for two

days and she had time for a private life. You can't say you are working from home and then you do not have time.

- [40] He was asked whether he said he was a father in the call. Gaiduk said what he meant was with the assistance of her parents she should have half an hour for conversation. He stated that he understands that every girl' wants a photoshoot. He did not recall how the conversation ended. He said he told her he didn't believe in part time maternity leave and she should take full maternity leave.
- [41] He was asked what he meant when he told Brandt that he had restructured things. He testified that previously they had a server on site with several data bases. In lockdown there had been issues with the financial programme on the server. He had decided to have upgrades done and move data bases to the cloud. This was a slow process done with the assistance of the IT guys.
- [42] Asked whether there were changes to functions, he testified that he took over more of compiling the budget, and strategy and Johnson did the accounting work. He later discovered that Brandt had not handed over the Sars work to Johnson and that is not what he wanted even if Johnson did. Gaiduk testified that he decided to call in one Michael to assist Johnson with the new system. Michael had known respondent's system for many years and as he was going abroad soon Gaiduk asked him to assist. Gaiduk stated that he had a conversation with Michael at the end of August and then he came in to assist Johnson to do things more efficiently on the system. Around October he fully checked the system.
- [43] Asked why he did not send back Brandt's laptop to her, he testified that he had discovered from the IT company that Brandt wanted to return to the server. He stated that the IT guys needed control with the move to the cloud. Gaiduk said that if he ordered full maternity leave there was no reason why she should have it. He had told her that there was no problem with the audit.
- [44] Gaiduk testified that he could remember his exact words at the 14 September meeting. He told Brandt he was planning to restructure the finance department and in that structure he did not see the need for a financial manager, but he needed to think about it more thoroughly. He told Brandt he would call her later but could not remember the date. Asked whether he was in a bad mood, he stated that he had said it had been the worst four months of his life and mentioned nervous breakdowns. He testified that he might have exaggerated, but the time had been very problematic with covid cases. He did not remember mentioning five ladies in reception. He confirmed he told Brandt that the Financial Manager position, given her half a million salary a year, would be a big saving.
- [45] Asked about the allegation that he told Brandt that she did not think of him when she dropped him and went on maternity leave, Gaiduk said he did not expect his financial manager to fail to do a proper handover. He wanted clarity regarding her maternity leave. He said that at the 14 September meeting he only recalled saying he was planning to restructure and it seemed her position is redundant. He did not recall that Brandt had

proposed a salary cut. When Brandt came back on the 1 October he realized he did not see the need for the position.

- [46] He was asked if he was expecting Brandt on the 1 October and he said he should have, but he lost track of time and then he realised that they needed to finalise. He said he had not yet had a chance to have a discussion with HR. He testified that he told Brandt that there was a decision that the position was redundant but that there was a need to speak to HR. He asked Brandt to stay at home because he didn't want other employees and management to communicate through her. Johnson was reporting directly to him and he did not want the old system back. Gaiduk confirmed that on the 5th of October at a meeting with HR, he told her there was a retrenchment process. He did not recall how notice was given to Brandt about this. He stated that a year earlier Brandt had wanted a raise from 38,000 to 50,000 and he had thought that

reasonable at that time.

- [47] He was asked about the financial position of the company and he said it was in a development state and because of lock down it was not in great shape. He did not have the exact figures but the reality they were facing was that the restaurant was the primary point of sales. As a new company sales had to double and triple each year. Gaiduk was asked whether he denied access to the system because he had already decided to retrench her. He said no, he saw she was upset and she could have wiped out the whole database.
- [48] Regarding proposals made by Brandt as reflected in the minutes of the meetings, he said he could not reduce salaries for everyone and it was not necessary. The position of financial manager was redundant and he saw this as cost cutting. He needed to cut overheads and increase sales. As to Brandt's suggestion that she remained as a staff member because the respondent's finances may improve, he said he did not need a finance manager and he didn't need her to stay on, to do what? On the suggestion of bumping her he said that was a more expensive option because Johnson's salary was R28,000 and he had paid her overtime until the end of September. In addition, he said that over the period they had built a system of communication and procedures which was slightly different and they had just started to stabilize and he did not want to restart the process again.
- [49] Gaiduk explained that Knordhoek is a related company on a neighbouring farm which had a joint administration department with the respondent. He had discussed the workload with Johnson around the 25 October, and he decided to build a separate team for Knordhoek which was a separate company. Brandt could have accepted an accountant post there. The proposal made by Brandt that she may consider the post at a R30,000 salary was not acceptable as the work load was twice less than at the respondent. He did not agree on a severance package as proposed by Brandt if she took the post, as it was a transfer not a retrenchment.

- [50] Under cross-examination, Gaiduk agreed that he took over some of Brandt's functions. He had looked at the logic of the old system and was contemplating an IT restructure during her absence. He acknowledged that Johnson was also feeling stress during Brandt's absence but he was not always aware of employees' stress. He agreed that the stress was caused by an increase in Johnson's work. He realised that he needed another person. He decided in mid-October to get an accountant in. He stated that while Brandt was on maternity leave it was too early to say if respondent needed another person. He was asking himself if he needed a financial manager. He stated that the stress that Johnson suffered was not necessarily about extra duties. Brandt had not trained other people how to do her job. His big surprise, he testified, was that Brandt had not done a handover well before. He ended up with a department not knowing what to do.
- [51] Gaiduk said he accepted that Brandt was entitled to maternity leave. He saw her as dictating the terms. Full maternity leave was fine but he needed to know how the department was going to operate. It was put to him that Brandt was willing to do certain of the work. He felt that Brandt was limiting him. He needed to find an efficient solution. Brandt had assisted in June but it was not an efficient situation. Gaiduk conceded that his statement of defence was incorrect in relation to the allegation that Brandt arrived unannounced on the 14 September. It was put to him that he did not expect her on October 1st because he had already retrenched her. He said that he did not instruct her to come in on that day. He was asked whether he recalled what happened on the 14 September. He disagreed that he told Brandt at the meeting of the 14 September about the retrenchment. He insisted the decision had not been made. He said he was going to restructure. When asked whether his memory was hazy, Gaiduk replied that he seriously doubts that he said that, but he could not be absolutely certain. Gaiduk stated that he contacted Mr de Kock and told him that he had made a decision to make the position redundant and that consultation was needed.
- [52] Under re-examination, Gaiduk was asked whether he had decided the form of the restructuring at the time of the 14 September meeting. He said he could not do that without time in the context, and there was no decision in regard to the outcome of the restructuring at that time.

Evaluation

- [53] | found Brandt and Johnson to be credible witnesses. Both made reasonable concessions when tested on their evidence. Johnson confirmed Brandt's evidence in material respects as the summary above reflects. She confirmed that Brandt had been told by Gaiduk on the 14th September that her position may be made redundant. In addition, Johnson's evidence that her workload had increased to the extent she was feeling like resigning when Brandt was booked off completely for 4 months, gave credence to Brandt's evidence that her role was not redundant. Brandt did not contest that she entered into a consultation process, but consistently emphasized that she regarded her retrenchment as a *fait accompli*, given her post was the only one to be affected and given the content of the section 183 Notice, compounded with the way in which Gaiduk dealt with her on a personal level after she was

out of hospital with her baby.

- [54] Gaiduk's credibility was somewhat damaged by the mistake made in the statement of defence in relation to being taken by surprise by the arrival of Brandt on the 14 September. He also was unable to clearly recall what he had said to Brandt when she did arrive on that day.
- [55] While he did downplay his anger on the long telephone call with Brandt, he largely confirmed the content of the call and tenor of his anger that Brandt had described. He mentioned his poor emotional state during the Covid period. His evidence was clear in explaining that he was angry that Brandt felt she could determine the scope of her Maternity Leave. He also felt aggrieved that Brandt did not properly organize and plan properly for her maternity leave. This in the context in which Brandt and the unborn child had been admitted into hospital a month before her due date and three days before she was to do a hand over to Johnson.
- [56] Gaiduk did acknowledge that he was thankful that Brandt had worked from the hospital while she was admitted. However, his testimony reflected his lack of grasp of the right to maternity leave enshrined in our law.[1] His anger at the fact that Brandt had not been at the end of the phone whenever needed after the discharge of her premature baby from hospital is a prime example.
- [57] Gaiduk's testimony on the issue of the retrenchment did not meaningfully assist the respondent's case. On his own evidence, he had made a decision that Brandt's position was redundant by the 1 October 2020. This was before he had had any discussions with his HR Manager and any consultations had taken place. On this basis Brandt's allegation that the retrenchment was a *fait accompli* is made more credible.
- [58] In relation to the pleadings in this case, the Court has to first consider Brandt's primary claim that the termination of her employment was for any reason related to her pregnancy.
- [59] Section 187 of the LA provides in material part that
- "(1) A dismissal is automatically unfair if the employer, in dismissing the employee, acts contrary to section 54 or, if the reason for the dismissal is-
- (a)
 - (b)
 - (c)
 - (d)
 - (e) the employee's pregnancy, intended pregnancy, or any reason related to her pregnancy.

[60] On Gaiduk's own evidence, the 25 June letter that Brandt wrote to him, setting out how she would like to take her maternity leave, made him angry and emotional. It was after this letter that he removed her access to her computer and the system; spoke to Michael, the IT person, about the system upgrade (in August), and decided to get an accountant in to assist in the department (in mid-October). He also made it clear to her that he did not want her to perform any function, however limited, in the running of the Department during her four months' maternity leave. No substantive evidence was produced by him to show that her retrenchment was necessary for operational requirements, save to say that minus her salary, a cost cutting would be achieved. No evidence was tendered as to how there would be a cost saving to the respondent once a consultant attended to functions formerly performed by Brandt, and two extra persons were seconded to do accounting administration.

[61] Although Gaiduk testified that he understood that Brandt was entitled to maternity leave, he had been upset and angry that she was not available at all times when she returned home from the hospital with her baby. As observed above, his reactions do not appear to be consistent with an understanding of the statutory obligations of employers in relation to maternity leave. In *De Beer V SA Export Connection CC t/a Global Paws*

[2] Francis J stated as follows:

"

[10] Section 187(1)(e) of the LA must be seen as part of social legislation passed for the specific protection of women and to put them on an equal footing with men. I have no doubt that it is often a considerable burden to an employer to have to make the necessary arrangements to keep a woman's job open for her while she is absent from work to have a baby, but this is a price that has to be paid as part of the social and legal recognition of the equal status of women in the workplace. If an employer dismisses a woman because she is pregnant and is not prepared to make the arrangements to cover her temporary absence from work the dismissal would be automatically unfair.

[11] A dismissal will not in my view escape being automatically unfair by the argument that the woman is being dismissed not because of her pregnancy, but because of her unavailability for work that results from her pregnancy. No more can the employer, argue that the reason is economic, citing the extra expenses that it must incur to provide temporary cover for an absent employee.'

[62] In *De Beer* the Court considered the phrase "any reason related to pregnancy" and stated that:

"[23] The phrase 'any reason related to her pregnancy' should in my view be carefully considered by the courts. No rigid rules can be given by this court and each matter should be considered on its own facts. Where an employee like the applicant in this present case is denied the right to go on maternity leave for four months, has a colicky child or a child with a condition that needs the nurturing of a mother and is dismissed, it will be impossible for the employer to argue that the

condition of the baby and in this case the colicky babies is not linked to the pregnancy. After all, the natural consequence of being pregnant is giving birth. An employee who has a miscarriage or bears a stillborn child is entitled to six weeks' maternity leave after the miscarriage or stillbirth. I fail to understand why it was contended that the fact that the applicant's babies were colicky and that she was unable to return to work as agreed upon, it is not a reason related to her pregnancy. The fact is that the applicant was entitled to four months' maternity leave. The BCEA allows her to structure how she intends taking the maternity leave. Whether she agreed to work a shorter period does not assist the respondent. The agreement was unlawful. The phrase 'any reason' is not only related to pregnancy related health problems but should also include babies who are ill and need nurturing from their mothers."

[63] In this case, Brandt had done her best in the most difficult of circumstances, while suffering from high blood pressure in hospital before the birth, and attending to her child who was in ICU after the birth in hospital, to perform the essential functions of her job. She had not had time to do a full handover of her functions because her pregnancy did not go to full term. The fact that she was not available during all working hours between 12 of June (when her baby was discharged from hospital) and the writing of her letter on the 25 June, when she set out how she would like to organise her maternity leave, was no basis in law for her employment to be under threat.

[64] The essential facts of this case, taking into account the witness testimony before me, lead to the inescapable conclusion that the termination of Brandt's employment was related to her pregnancy. In *Kroukam v SA Airlink (Pty) Ltd*[3] the LAC stated that:

"In my view, s 187 imposes an evidential burden upon the employee to produce evidence which is sufficient to raise a credible possibility that an automatically unfair dismissal has taken place. It then behoves the employer to prove to the contrary, that is to produce evidence to show that the reason for the dismissal did not fall within the circumstances envisaged in s 187 for constituting an automatically unfair dismissal.'

[65] Brandt has certainly met her evidential burden in this case. The respondent has not met the onus of showing that genuine operational requirements were the real reason for the termination of Brandt's employment. Gaiduk's own evidence threw light on the relation between the dismissal and Brandt's pregnancy. The fact that Brandt, on advice, participated in the consultations and tried to save her livelihood by so doing, is neither here nor there. This was a case of automatically unfair dismissal for reasons related to pregnancy.

[66] Brandt seeks compensation for her automatically unfair dismissal and I must decide what is fair and equitable in the circumstances of this case. Brandt testified that she was unemployed for a period of four months after her dismissal. I take into account in deciding on compensation in this matter, that Brandt was a senior employee and she did have a responsibility to the respondent to have duly interacted with Gaiduk as to how her maternity leave was to be handled between January and May of 2020. Be that as it may, in all the circumstances of this case, her rights under our employment laws should have been upheld

and protected by her employer and she is deserving of a meaningful solatium.

[67] As to the question of costs, I am of the view that in terms of the law and fairness these should follow the result in this particular case. Having upheld Brandt's claim that she was dismissed for reasons relating to her pregnancy, which constitutes an affront to the equality and dignity of women in employment, it is equitable that her employer should pay the costs. This order is in line with the principles set out by the Constitutional Court in *Zungu v Premier of the Province of KwaZulu-Natal & others*[4]I therefore make the following order:

Order

1. The dismissal of Melissa Brandt was automatically unfair.
2. The Respondent is to pay Melissa Brandt compensation in an amount equivalent to sixteen months of her salary at the time of her dismissal, being $16 \times R50,000.00 = R800,000.00$ (Eight hundred thousand Rand only).
3. The respondent is to pay the costs of this referral.

H. Rabkin-Naicker

Judge of the Labour Court of South Africa

Appearances

Applicant: Brendon

Braun instructed by Oosthuizen & G

Respondent: Craig Bosch instructed by Werksmal

[1] See section 25 of the BCEA more especially sub-section 3 which provides that "(3) No employee may work for six weeks after the birth of her child, unless a medical practitioner or midwife certifies that she is fit to do so.

[2]

(2008) 29 ILJ 347 (LC).

[3]

(2005) 26 ILJ 2153 (LAC).

[4]

(2018) 39 ILJ 523 (CC) at paragraph 24

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Prepared on 12 October 2026 · Esheria