

SOUTH AFRICA / JUDGMENT

Gwebu v Dimension Data (JS1399/01)

[2003] ZALC 169 (27 May 2003)

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COURT

Labour Court

BEFORE

A A Landman

CASE / FILE NUMBER

JS1399/01

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IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN CASE NO: JS1399/01

2003-

In the matter between

SIPHO GWEBU Applicant

and

DIMENSION DATA Respondent

J U D G M E N T

LANDMAN J: Mr Sipho Israel Gwebu was employed by Dimension Data on 1 October 1999 as an assistant technician. He worked in a division called the Advanced Infrastructure Division. This division was part of a larger unit known as the Collectivity Service.

Mr Gwebu was retrenched on 30 November 2001. He seeks an order reinstating him in his employment with effect from the date of his dismissal.

On 24 September 2001, Advanced Infrastructure, to which I shall refer as AI, informed its staff that it was contemplating retrenching its personnel.

Management convened a meeting with SAEWA(a union). The parties met on 8 October in order to discuss the proposed retrenchment.

On 12 October, Ms Tracy Arendse, the HR Manager, convened a meeting of AI's non-union staff. The purpose of this meeting was to inform them of the statutory information regarding the impending retrenchments.

She also conducted individual interviews and handed the letter regarding the proposed retrenchment to Mr Gwebu. Mr Gwebu is not a member of a union.

The letter handed to Mr Gwebu informs him about

1. the reasons for the restructuring and rationalisation of the business;
2. that his position might become redundant;
3. the alternatives that AI had considered to avoid retrenchment;
4. the areas in Dimension Data which could be affected by the restructuring;
5. the proposed selection criteria;
6. an invitation to make representations and to take part in the process of seeking consensus on statutory issues;
7. the proposed date of retrenchment; and
8. other matters.

The non-union staff elected Mr Gwebu to represent them during the consultations with the company. They also agreed that Mr Gwebu would attend the consultations which were held between the company and the union. This would be in lieu of separate consultations between the company and non-union members.

Mr Gwebu attended the management/union meetings on 15, 17, 23, 29 and 30 October. On 30 October consultations came to an end.

Mr Gwebu was given a letter dated 30 October informing him of his retrenchment. He received this letter on 31 October.

Mr Gwebu complains about his dismissal. He says that he has been unfairly dismissed and his specific complaints that appears from his statement of case, the pre-trial minute and his evidence, includes the following:

- (1) LIFO was not applied in a proper manner.
- (2) His position did not become redundant.
- (3) There was no need for Dimension Data to retrench its staff.
- (4) The selection criteria used by Dimension Data was unfair.

- (5) Someone else should have been selected in his place namely Samuel Ngumela and MornÃ© Marais.
- (6) The managing director said that there would be no retrenchments in the AI division.
- (7) Dimension Data discriminated on racial grounds in affecting the retrenchments.
- (8) He had skills, e.g. mine safety training, which would have distinguished his position.

I took turn to consider these aspects bearing in mind that the onus of proving that the dismissal was fair lies upon the employer, in this case Dimension Data.

- (a) It appears that Mr Gwebu was unaware that AI, in which he worked, fell under the larger unit, Collectivity Services. This mislead him into thinking that the AI division would not experience retrenchments. However, Ms Arendse personally informed him that he could be retrenched.
- (b) Mr Gwebu is of the opinion that his position was not made redundant. He points out that he did work on the mines for Dimension Data and that this work is still done from time to time. Mr Stenekamp, the director operations of Dimension Data, explained that AI's work was based on fixed long-term contracts, (SLA) and various ad hoc contracts. The retrenchment affected the ad hoc contracts as the long-term clients preferred stable teams to operate in their business. They preferred AI personnel with whom they were familiar. The work done on the mines was done in terms of various ad hoc contracts and the retrenchments were to be made from this group. Moreover, AI lost the contract which it had on the mines.
- (c) Mr Gwebu did not have other skills. He was an assistant technician. He assisted as a team leader but he had not been appointed as a team leader. His mine safety training was required for work on the mines. It was offered in the course of half a day.
- (d) Mr Gwebu had the advantage of sitting in on the consultations between management and the union. The selection criteria were not disputed, rather the application of the criteria was in issue. This was discussed on many occasions. No agreement was arrived at. The result was that Dimension Data was entitled to use a criteria which were fair and this would include LIFO with the retrenching of skills. This criteria is a long established criteria that is regarded as fair.
- (e) Samuel, who was held up as a worker with lesser service than Mr Gwebu, had other skills. Notably those in relation to casinos. Mr Gwebu did not have these skills. Marais had special skills. He was able to do electrical and Data cabling. Mr Gwebu's skills were restricted to Data cabling.
- (f) Mr Gwebu did not raise the issue of racial discrimination in his statement of case. Nevertheless there is no evidence that this was a consideration taking into account by Dimension Data in making its selection of retrenchees.

I have considered other aspects in addition to those mentioned above. For instance, I have given attention to the question whether the retrenchments could have been avoided by restricting bonuses which were payable to staff members in AI. But I am satisfied that the retrenchment of Mr Gwebu was fair in the sense contemplated by section 189 of the Labour Relations Act, Act 66 of 1995.

In reality, of course, retrenchments are not fair from the point of view from the employee. In this case, Mr Gwebu was a good worker. He was reliable. He was a person who was prepared to go the second mile. But retrenchment is not based on the personal attributes of employees, it is also not based on any fault.

In the result the application is dismissed.

Mr Ramsay, who appeared on behalf of Dimension Data, did not seek an order for costs.

SIGNED AND DATED AT BRAAMFONTEIN ON 27 MAY 2003

A A LANDMAN

JUDGE OF THE LABOUR COURT OF SOUTH AFRICA

FOR APPLICANT: MR S GWEBU

FOR RESPONDENT: MR RAMSAY

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