

22 MAY 2017

EMPLOYMENT ALERT

Our programme on Conducting a Disciplinary Enquiry has been accredited by the Services SETA.

IN THIS ISSUE

POSSIBLE CHANGE IN SECTION 189 REQUIREMENTS: CAN EMPLOYERS EMBARK ON REDEPLOYMENT BEFORE RETRENCHMENT PROCESSES COMMENCE?

The recent case of *ArcelorMittal South Africa Limited v NUMSA* (case number: J 421/17) unpacked what is meant by avoiding job losses.

POSSIBLE CHANGE IN SECTION 189 REQUIREMENTS: CAN EMPLOYERS EMBARK ON REDEPLOYMENT BEFORE RETRENCHMENT PROCESSES COMMENCE?

The employer sought to restructure its operations in order to avoid retrenchments.

The Court held that an employer must embark on measures to avoid job losses even before a s189(3) notice is issued. Such measures include the redeployment of employees from one job to another.



The recent case of *ArcelorMittal South Africa Limited v NUMSA* (case number: J 421/17) unpacked what is meant by avoiding job losses.

Judge Van Niekerk held that s189 of the Labour Relations Act, No 66 of 1995 (LRA):

“specifically contemplates that prior to a formal invitation to consult being issued, measures to avoid job losses are to be considered and where necessary, implemented. Indeed, a failure to do so undermines the notion of retrenchment as a measure of last resort and amounts to breach of this section.”

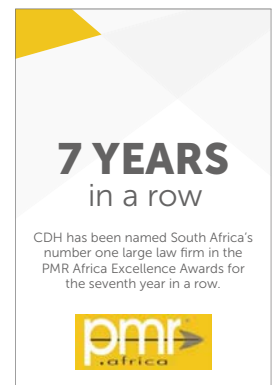
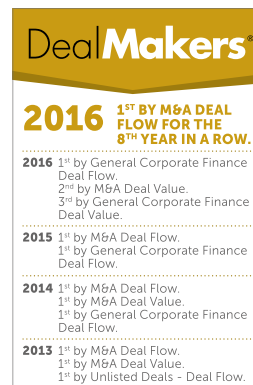
What does this mean for employers? The answer lies in the facts of this case.

The employer sought to restructure its operations in order to avoid retrenchments. It had not issued any s189(3) notices. The National Union of Metalworkers of South Africa sought to halt the redeployments to consult further with ArcelorMittal.

Their application was dismissed. The Court held that an employer must embark on measures to avoid job losses even before a s189(3) notice is issued. Such measures include the redeployment of employees from one job to another.

In light of this recent decision, could an employer offer voluntary severance packages to employees in order to avoid job losses prior to issuing s189(3) notices. Current case authority seems to suggest otherwise.

Samantha Bonato and Aadil Patel



Employment STRIKE GUIDELINE

Our Employment practice's new
EMPLOYMENT STRIKE GUIDELINE
answers our clients' FAQs.

Topics discussed include strikes, lock-outs and picketing.



[CLICK HERE TO FIND OUT MORE](#)

CHAMBERS GLOBAL 2014 - 2017 ranks our Employment practice in Band 2: Employment.

Aadil Patel ranked by CHAMBERS GLOBAL 2015 - 2017 in Band 2: Employment.

Hugo Pienaar ranked by CHAMBERS GLOBAL 2014 - 2017 in Band 2: Employment.

Fiona Leppan ranked by CHAMBERS GLOBAL 2017 in Band 3: Employment.

Gillian Lumb ranked by CHAMBERS GLOBAL 2017 in Band 4: Employment.



Michael Yeates named winner in the **2015** and **2016 ILO Client Choice International Awards** in the category 'Employment and Benefits, South Africa'.



OUR TEAM

For more information about our Employment practice and services, please contact:



Aadil Patel
National Practice Head
Director
T +27 (0)11 562 1107
E aadil.patel@cdhlegal.com



Gillian Lumb
Regional Practice Head
Director
T +27 (0)21 481 6315
E gillian.lumb@cdhlegal.com



Kirsten Caddy
Director
T +27 (0)11 562 1412
E kirsten.caddy@cdhlegal.com



Jose Jorge
Director
T +27 (0)21 481 6319
E jose.jorge@cdhlegal.com



Fiona Leppan
Director
T +27 (0)11 562 1152
E fiona.leppan@cdhlegal.com



Hugo Pienaar
Director
T +27 (0)11 562 1350
E hugo.pienaar@cdhlegal.com



Nicholas Preston
Director
T +27 (0)11 562 1788
E nicholas.preston@cdhlegal.com



Thabang Rapuleng
Director
T +27 (0)11 562 1759
E thabang.rapuleng@cdhlegal.com



Samiksha Singh
Director
T +27 (0)21 481 6314
E samiksha.singh@cdhlegal.com



Gavin Stansfield
Director
T +27 (0)21 481 6313
E gavin.stansfield@cdhlegal.com



Michael Yeates
Director
T +27 (0)11 562 1184
E michael.yeates@cdhlegal.com



Ndumiso Zwane
Director
T +27 (0)11 562 1231
E ndumiso.zwane@cdhlegal.com



Anli Bezuidenhout
Senior Associate
T +27 (0)21 481 6351
E anli.bezuidenhout@cdhlegal.com



Steven Adams
Associate
T +27 (0)21 481 6341
E steven.adams@cdhlegal.com



Samantha Bonato
Associate
T +27 (0)11 562 1134
E samantha.bonato@cdhlegal.com



Sean Jamieson
Associate
T +27 (0)11 562 1296
E sean.jamieson@cdhlegal.com



Zola Mcaciso
Associate
T +27 (0)21 481 6316
E zola.mcaciso@cdhlegal.com



Anelisa Mkeme
Associate
T +27 (0)11 562 1039
E anelisa.mkeme@cdhlegal.com



Prinoleen Naidoo
Associate
T +27 (0)11 562 1829
E prinoleen.naidoo@cdhlegal.com



Bheki Nhlapho
Associate
T +27 (0)11 562 1568
E bheki.nhlapho@cdhlegal.com

BBBEE STATUS: LEVEL THREE CONTRIBUTOR

Cliffe Dekker Hofmeyr is very pleased to have achieved a Level 3 BBBEE verification under the new BBBEE Codes of Good Practice. Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

This information is published for general information purposes and is not intended to constitute legal advice. Specialist legal advice should always be sought in relation to any particular situation. Cliffe Dekker Hofmeyr will accept no responsibility for any actions taken or not taken on the basis of this publication.

JOHANNESBURG

1 Protea Place, Sandton, Johannesburg, 2196. Private Bag X40, Benmore, 2010, South Africa. Dx 154 Randburg and Dx 42 Johannesburg.
T +27 (0)11 562 1000 F +27 (0)11 562 1111 E jhb@cdhlegal.com

CAPE TOWN

11 Buitengracht Street, Cape Town, 8001. PO Box 695, Cape Town, 8000, South Africa. Dx 5 Cape Town.
T +27 (0)21 481 6300 F +27 (0)21 481 6388 E ctn@cdhlegal.com

©2017 1647/MAY

