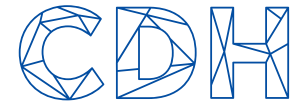


# Employment Law

ALERT | 17 June 2025



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Can an employee be retrenched if the job still exists in another form?



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## Can an employee be retrenched if the job still exists in another form?

When an employee is retrenched but their responsibilities are simply redistributed, can they argue that the position was not genuinely redundant? What if they believe that the employer failed to consider alternatives such as bumping or transferring them to another role? These questions were recently addressed by the Labour Court in *De Weijer v Babcock Africa Services (Pty) Ltd* (JS195/21) [2025] ZALCJHB 193 (19 May 2025).



### Facts

Michael De Weijer was employed in the Babcock Group for over a decade, initially serving as the COO of its flying academy. When the academy closed in 2013, he was transferred to Babcock Equipment and placed in a newly created role as a Property Manager: Projects. His responsibilities included lease management and oversight of certain infrastructure projects.

In July 2020, Babcock notified its employees of a proposed retrenchment process in terms of section 189 of the Labour Relations Act 66 of 1995 (LRA), citing the economic effects of the COVID-19 pandemic and the need to reposition its business. De Weijer's role was listed as among those potentially affected by the retrenchments. Following four consultation meetings between August and October 2020, De Weijer was retrenched and received his severance and notice pay. He challenged the fairness of his dismissal, arguing that:

- his position was not truly redundant;
- Babcock had failed to consider alternative roles or bumping; and
- the consultation process was predetermined.

De Weijer also alleged that he was underpaid his severance and notice pay.

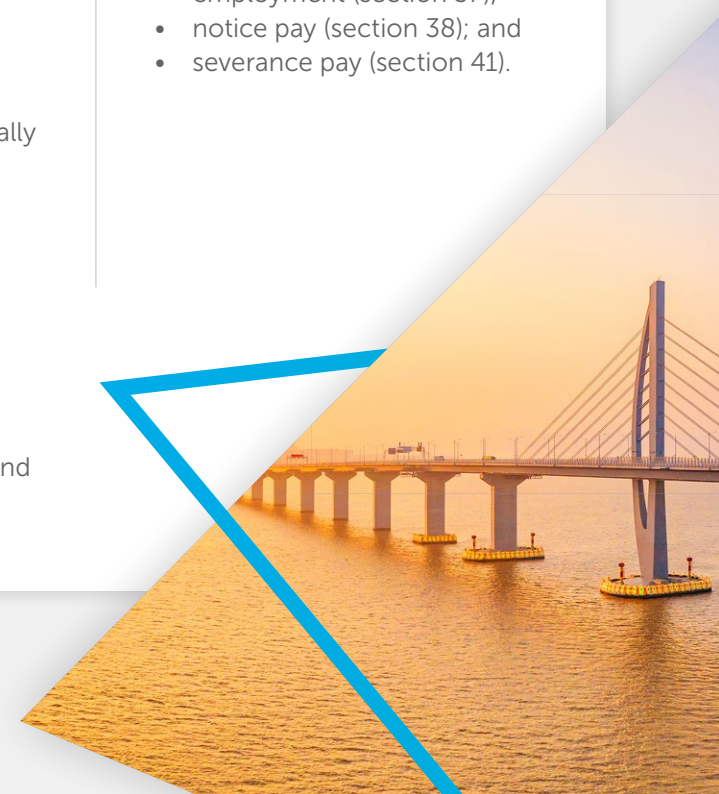


### Applicable law

Retrenchment processes are governed by section 189 of the LRA.

The Basic Conditions of Employment Act 75 of 1997 (BCEA) governs:

- notice of termination of employment (section 37);
- notice pay (section 38); and
- severance pay (section 41).



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## Application of the law to the facts

### Rationale

The court found that Babcock had a genuine operational rationale for the retrenchments. The COVID-19 pandemic caused a sharp downturn in its sales, with monthly equipment sales falling from 30 to 40 units per month to just one unit being sold in April 2020. At the time, Babcock's primary client base in the mining sector had come to a halt under the national lockdown. The court emphasised that operational requirements must be assessed with reference to the circumstances when the decision was made to retrench and not in hindsight based on later market recovery.

### Alternative positions and bumping

The court accepted that De Weijer's position had become redundant. It considered that while some of his functions, such as lease management, still existed in Babcock's business, the specific role performed by De Weijer was removed from its organogram and the duties associated with the position had been absorbed by other departments. The court reaffirmed that redundancy does not require a complete disappearance of work, but includes situations where reorganisation renders a role superfluous.

De Weijer's claim that Babcock failed to explore alternatives was rejected by the court. This is where the evidence showed that no suitable vacancies were available at the time. In relation to the issue of bumping, De Weijer had proposed that he should have been placed in the position of a Regional Export Manager. However, that role required specific experience in truck sales and operations across African markets, which De Weijer did not possess. Therefore, the court confirmed that bumping, which finds its roots in the "last-in, first-out" principle, is not automatic and applies only where an employee has the requisite skills and experience to take over another role.

### Consultations

The court found that the consultation process was genuine and that De Weijer's retrenchment was not a forgone conclusion. It considered that four consultation meetings were held over several months and that Babcock had engaged with De Weijer's proposals before dismissing them on legitimate grounds.



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**Application of the law to the facts...***continued***Financial information**

As to the disclosure of financial information, the court held that while Babcock did not provide the detailed financial statements that De Weijer requested, it did supply high-level data showing an operational downturn. In relation to this, the court held that section 189 of the LRA does not contemplate exhaustive financial disclosure – only the provision of relevant information sufficient to enable meaningful consultation is required. De Weijer's request for more detailed financial data was stated as being driven by his desire to conduct a strategic analysis, which was a purpose that went beyond what is contemplated by the LRA.

The retrenchment was found to be both procedurally and substantively fair.

**Severance and notice pay**

De Weijer, however, succeeded with his claim regarding the miscalculation of his severance pay. Babcock had based the calculation of De Weijer's severance on his basic salary and excluded allowances that formed part of his remuneration. Severance must be calculated on total remuneration, not only basic salary. Therefore, Babcock was ordered to pay De Weijer the shortfall in his severance pay.

Finally, the Labour Court held that where De Weijer had received payment through to the end of his notice period, and given that he had not proven any contractual breach or financial loss, there was no evidence to sustain his claim for additional notice pay. Accordingly, his claim for additional notice pay was also dismissed.



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### Key takeaways

- Employers are entitled to restructure their operations and eliminate roles even where certain duties continue to exist. This is provided that the redundant positions themselves become superfluous.
- Consultations during a section 189 process must also be genuine and an employer must meaningfully engage with employees' proposals, but this does not require agreement or the adoption of employees' suggestions.
- While employers must disclose sufficient information to enable meaningful engagement, they are not required to provide full internal financials unless necessary for consultation.
- It is also worth noting from the judgment that bumping is not an automatic right and must be feasible in both skill and operational terms. In other words, an employee is not entitled to displace another employee unless they are suitably qualified and capable of performing the other role.
- In relation to severance pay, it is important for employers to calculate amounts owing to employees on their total remuneration, including benefits and allowances, not only an employee's basic salary.

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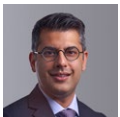
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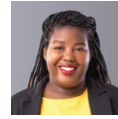
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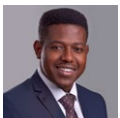
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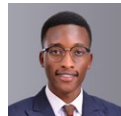
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Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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