IN THE LABOUR COURT OF SOUTH AFRICA

(HELD AT JOHANNESBURG) **CASE NO J2097/99**

In the matter between:

LONG, PKC Applicant

and

REUMECH GEAR RATIO (a division of
REUNERT MECHANICAL SYSTEMS LIMITED Respondent

JUDGMENT

JAMMY AJ

1. The Applicant, who had until then been employed by the Respondent as a Quality Control Inspector, was retrenched on 26 March 1999. The commercial necessity for the restructuring exercise embarked upon by the Respondent at that time and which constituted the underlying rationale for the retrenchment programme which it implemented, is not in dispute in this matter. The parties are in agreement that the only issues for determination by this court relate to the criteria identified by the Respondent as justifying specifically the retrenchment of the Applicant and the question whether

alternatives to that retrenchment, submitted by the Applicant to the Respondent were properly considered and, if so, why they were rejected.

2. The first witness called by the Respondent was Mr J P Steyn who, at the relevant time, was the Respondent's human resources manager. Three Trade Unions were recognised by the Respondent, of which one, NETU, was the Union of which the Applicant was a member. On 4 February 1999 the Respondent addressed a letter to NETU and the other Unions recording the reasons identified by it for the reduction of the number of employees in its service, and alternatives which had already been considered to avoid retrenchments. Of relevance in that letter was a paragraph headed "Selection Criteria for Retrenchment", reading as follows:

"Should it be necessary for additional employee reductions after the voluntary retrenchments have been finalised, we propose the LIFO selection criteria be considered, however, we would welcome your input and suggestions. LIFO (last-in, first-out) per job category with the retention of essential skills is especially important, regarding our drive to become more competitive and obtain alternative business in the commercial field".

Consultation meetings were proposed and input from employees, by way of a notice generally exhibited in the company, was invited.

3. Meetings were held separately with each Union and in the case of NETU, with its organiser Mr M Scholtz and its shop steward. Discussions ensued responsibly and each possible alternative as set out in the letter of 4 February 1999, was again reviewed. Selection criteria were examined

and the LIFO principle, subject to the retention of skills, was accepted.

4. The Union was provided with a list of names of employees in the affected area and the Applicant, although his length of service was greater than certain other employees whom the company, because of their specific skills, had elected to retain, was identified for retrenchment, the justification for that decision being accepted by the Union in the circumstances explained to it.

5. For that purpose, the company had carried out an evaluation of quality control personnel in terms of skills, recording the date of employment, experience and qualifications of each of them. A critical factor in the selection of the Applicant for retrenchment, ahead of other persons with shorter service in the company, was the assessment that he "is not capable of working independently". This rationalisation, Mr Steyn testified, was not questioned by the Union, by which the decision to retrench the Applicant was accepted without further query. It was a fact however that the general agreement arrived at with NETU in that and in every other context, was not however reduced to writing.

6. On 26 February 1999 therefore, the Respondent addressed a letter to the Applicant confirming the consultations which had been held and the fact that he was to be retrenched. His notice period would terminate on 26 March 1999 and retrenchment benefits, including a "service gratuity" equivalent to twenty weeks salary, would be paid to him.

7. Somewhat unusually however in the context of the situation then prevailing, a second and separate letter was addressed by the Respondent to the Applicant on the same day, 26 February 1999. That letter read as follows:

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You are probably aware of the fact that there has been a drastic decrease in the workload.

After considering various alternatives, the company is forced to continue with the planned restructuring.

We would like to offer you the opportunity to forward any proposals that may benefit either yourself or any of the other employees concerned.

Please provide us with the proposals, in writing, as soon as possible. All proposals will, most certainly, be considered".

That letter was signed by Mr Steyn and Mr J N Greeff, the manager: Quality Control.

8. The Applicant responded in writing to that invitation on 2 March 1999. He wished, he said, "to forward the following proposals on behalf of all employees and myself, who may be affected by the planned restructuring taking place". As alternatives to retrenchment and "as a job and cost saving initiative", he suggested the following:

Hold recruitment of all new employees.

Eliminate all over-time work completely.

3. Reduce working hours: i.e short time and/or short week on a trial basis of

up to six months, taking into consideration that saving jobs be more of a priority than retrenchment.

4. Bringing all nightshift employees on to dayshift, so as to save money on nightshift allowances.

5. Transferring of employees to other suitable jobs within establishment.

6. Offer senior employees early retirement if the pension and retrenchment package is viable for persons concerned.

7. That the LIFO system be adopted as it is an approved retrenchment procedure".

The letter continued:

"I sincerely hope that the above proposals will be taken into serious consideration, as retrenchments should be an absolutely last resort.

I would hereby also like to state that I personally feel that I have been unfairly earmarked for retrenchment. Considering my length of service and trade qualifications I will not hesitate to take my retrenchment to the CCMA for Arbitration. This is not a case of sour grapes, all I am trying to do is protect my job and that of my fellow employees as I have enjoyed working for Gear Ratio over the past ten years".

9. Pursuant to that letter said Mr Steyn, he met with the Applicant, the Union organiser and the shop steward. Further meetings were held during March and in a letter dated 12 March 1999, the Applicant was told that

management “has not made a final decision yet but will give you a final decision on Tuesday 16 March 1999”. In fact however, further meetings were held with the Applicant on 22 March and 29 March when, exhaustively, his proposals were reviewed and the reasons for their rejection conveyed to him.

10. In the result, the decision to retrench the Applicant as conveyed in the letter of 26 February 1999 remained unchanged and his services were terminated in accordance with that notice. As far as he was concerned, Mr Steyn concluded, the company had negotiated in good faith, had considered all possible alternatives and had generally complied in all respects with the requirements of Section 189 of the Labour Relations Act.

11. Cross-examined by counsel for the Applicant, Mr Steyn explained the second letter of 26 February as indicative of the company’s desire, “to go the extra mile” in a last ditch attempt to avoid the Applicant’s retrenchment. The consultation process had by then already been completed but the company was reluctant to “close the door” if any further possible alternatives could be realistically considered.

12. With regard to the proposals then submitted by Mr Long, all the alternatives suggested by him had already been canvassed in detail in the course of the consultations with his Union which had preceded the final notice to him. There was nothing new in his submissions and for practical reasons which had been fully explained, none of them could realistically be adopted. In the face of those explanations, the Union had unreservedly agreed that the retrenchment of the Applicant was justified. The notice of 26 February 1999 would not have been given to him had that not been the case. The Applicant himself had been fully apprised of the criteria for his selection.

13. Mr Steyn's testimony was corroborated in all its material respects by Mr Jan Greeff, the head of the Respondent's quality control division. It was he, he testified, who had identified the individuals to be affected, applying the criterion of last-in, first-out, with the retention of necessary skills. The company's main customer was the Defence Force, he said and it was essential that the most highly skilled persons be retained in its employment to ensure quality production where lives might depend on it.

14. The ability of quality control personnel to work independently of each other was an essential requirement, he testified. The Applicant did not possess that ability. It was he who had compiled a "skills evaluation" of all relevant personnel with a scoring grid which indicated, against different criteria there listed, the degree of compliance of each of the individuals concerned, ranging from "poor" through "acceptable", "average", "above average" and "good". The Applicant scored "average" in some instances but insofar as the critical requirements of the job were concerned, his evaluation was "poor:"

15. Mr Greeff was subjected to exhaustive cross-examination on the skills grid by the Applicant's counsel but remained steadfast in his explanation of the justifiability of his evaluation. The Applicant, he explained, had been evaluated only in the area where he was working, where the characteristics requiring control were limited. The whole quality department was being done away with in the restructuring exercise and "multi-tasking" on the part of retained employees was essential. There had been a clear indication to his immediate superiors that the Applicant was incapable of working independently on more complex tasks. He was, said Mr Greeff, sensitive to the consequences of retrenchment and its effect on the careers and families of persons affected and it was in that context that

he endeavoured as far as possible to carry out an objective evaluation.

16. Questioned further and in detail regarding comparative aspects of the individual evaluations produced by him, Mr Greeff, in my view, explained them rationally. I do not consider it necessary to traverse that testimony in detail. In the final result, whilst possessing certain characteristics on a par with others retained by the company, the Applicant lacked independence, a knowledge of programming and computer skills, all of which would have been essential to his ongoing employment. It was totally untrue that he had dispensed with the Applicant's services because he "liked him least".

17. The Applicant was the only witness in his own cause. When he received the notice of his retrenchment on 26 February, he said, he was not happy at being retrenched. He conveyed his concerns to the Respondent two or three days later and it was correct that he had had a number of discussions with them following that letter, when a serious attempt had been made to find a basis for his retention in his employment. His impression however was that the company was "going through the motions" and that its mind had already been made up. No specific reasons were furnished to him for his own selection.

18. With regard to the evaluation carried out by Mr Greeff and the comparative analysis of the qualifications and ability of the various persons mentioned, these were basically correct. As far as he was concerned he had the basic ability to work independently as a quality control inspector but if there was a major component problem, he would call in a Metallurgical Review Board official for final approval.

19. His shop steward, he confirmed, had been present at the various meetings with the company officials and, if there had in fact been some agreement

with his Union, it would not have represented him at the subsequent dispute hearings.

20. The termination of employment for reasons not associated with the conduct or ability, broadly assessed, of any employee, but for commercial operational reasons beyond his or her control, is inevitably a traumatic experience with far-reaching ramifications. As the law stands however, it is an established commercial phenomenon. The Labour Relations Act 1995 in its present form, recognising the need to limit its implementation where possible and to ensure that the exercise is exhaustively and responsibly carried out, prescribes the essential requirements for a fair procedure in that context. Where those requirements are met by an employer acting in good faith, retrenchment as a last resort in the context of the maintained viability of the enterprise concerned, will be unassailable.

21. I have considered in depth the evidence adduced by the Respondent's two witnesses and by the Applicant in this trial as well as the documentation tabled in the course of the hearing and whilst the Applicant's perceptions of unfairness in relation to the basis and manner of his dismissal, after ten years of what he justifiably considers to be dedicated service to the Respondent, is entirely understandable, there is nothing, in my view, in the substance of the case presented on behalf of the Respondent, to support it. I am left in no doubt that the consultation process was responsibly followed by the Respondent's management, that the evaluation of the individual skills of the various persons potentially affected by the exercise was properly and responsibly carried out, whether or not the Applicant accepted it, and that in all material aspects of its implementation of the restructuring which led to his retrenchment, the company's good faith was apparent. There is nothing in the Applicant's own testimony which

impugns it and indeed, the ongoing efforts to seek viable alternatives to the termination of his employment, even after formal notice of his retrenchment was received by him, is acknowledged and confirmed by him.

22. Finally, and as a relevant aspect of this matter, the Applicant was at all material times represented in the consultation process by an organiser of his Union and by his shop steward. The company's evidence that an agreement was arrived at with the Union in that context, which in accordance with all existing tenets of industrial relations practice, would bind the Applicant, is not controverted save for the Applicant's inference that he has no knowledge of it. Any challenge to that submission by the Respondent would of necessity have to have been mounted by the Applicant, presumably by way of the evidence of either the Union organiser or the shop steward, neither of whom however was called to testify. The Respondent's evidence in that regard, accordingly stands uncontested.

23. For all of these reasons I have concluded that the allegations of unfairness in the procedural aspects of the Applicant's retrenchment cannot be sustained and that his claims must fail. The order that I make is therefore the following:

The application is dismissed with costs.

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B M JAMMY
Acting Judge of the Labour Court

13 March 2002
Representation:

e Applicant:

J Nel, instructed by Snyman Van der Heever Heyns

e Respondent:

Hutchinson, instructed by Fluxman Rabinowitz – Raphaely Weiner