THE LABOUR COURT OF SOUTH AFRICA,
HELD AT JOHANNESBURG

Of interest to other Judges

Case no: J203/2020

In the matter between:

SOUTH AFRICAN COMMUNICATION UNION	**First Applicant**
COMMUNICATION WORKERS UNION	**Second Applicant**

and

TELKOM SA SOC LTD	**First Respondent**
ABDUL CARRIM OSMAN *N.O.*	**Second Respondent**
COMMISSION FOR CONCILIATION, MEDIATION & ARBITRATION	**Third Respondent**
NATIONAL UNION OF METALWORKERS OF SOUTH AFRICA	**Fourth Respondent**
SOLIDARITY	**Fifth Respondent**
INFORMATION COMMUNICATION TECHNOLOGY UNION	**Sixth Respondent**

Heard: 26 February 2020
Delivered: 5 March 2020

Summary: (S 189A(13) interdict – no material failure to comply with a fair procedure by the employer – impasse a result of unions' pre-conditions for consultation on VSPs – application dismissed)

JUDGMENT

LAGRANGE J

Background

[1] This is an application brought under section 189A [13]. The applicant unions, SACU and CWU [referred to jointly as 'the Alliance'], seek the following specific relief on an urgent basis:

Directing the first respondent ['Telkom'] to:

1. Withdraw the notice issued on 13 February 2020 in which it opened applications for voluntary severance packages and voluntary early retirement packages and to withdraw the letter sent to employees on or about the same date offering these packages to its employees;
2. Engage in further consultations with the Alliance and any minority union that may wish to so consult in respect of:
   2.1. the content of the proposed voluntary severance packages and voluntary early retirement packages;
   2.2. who shall qualify for the post voluntary severance packages and voluntary early retirement packages;
   2.3. When the proposed voluntary severance packages and voluntary early retirement packages shall be offered;
   2.4. what the retrenchment package would be should retrenchment be unavoidable;
3. Continue with such consultations until such time as the second respondent [the facilitator] claims that it is no longer possible to reach a possible consensus on these issues were until consensus is achieved, whether or not this requires further consultations than those required in the facilitation directive of the Commission for Conciliation Mediation and Arbitration;
4. refrain from consulting directly with members of the Alliance.
5. Further and/or alternative relief.

[2] Pending judgment being handed down on 4 March 2020, Telkom agreed that the period for applying for voluntary separation packages will be extended to the close of business on 6 March 2020. Owing to an oversight by the court as to the intended date of judgment the judgment was handed down on 5 March 2020.

Background

[3] CWU and SACU jointly represent the majority of Telkom's workforce. The fourth fifth and sixth respondent's, NUMSA, Solidarity and ICTU are minority unions.

[4] Telkom gave notice of possible retrenchments to the unions, excluding NUMSA, on 15 January 2020. It anticipated retrenchments taking place in two phases, Phase 1 relating to Openserve (including IT) and Consumer between January and April 2020 and Phase 2 relating to Telkom Corporate Centre from May to August 2020. The scale of the anticipated number of retrenchments is significant, amounting to 3,000 employees out of Telkom's workforce of approximately 9,500 employees. The cause of the planned downscaling is attributed to declining performance in the fixed voice market, fixed data and other operational inefficiencies. Under the heading of alternatives to retrenchment, Telkom mentioned steps it had taken in the past couple of years to improve its financial performance, including voluntary severance and early retirement options for employees as a means to reduce headcount and costs. In the notice letter, Telkom stated:

> "As part of the consultation process, Telkom is willing to once again consider voluntary severance and early retirement packages for employees affected by Phase 1. A formal proposal in this regard will be tabled first consultation meeting."

[5] The notice also stated that Telkom would consult with all unions jointly in a single consultation forum and proposed a first consultation meeting on 22 January 2020. It further confirmed that it had made a request to the CCMA to point a facilitator in terms of section 189A [3].

[6] The consultation meetings between the parties on 22 January and 5 February 2020 prior to the facilitation meeting of 12 February 2020 are not canvassed in much detail in the pleadings. From the little that can be gleaned, Telkom made a presentation on the rationale for the proposed retrenchments based on the notice at the first meeting on 22 January and provided the unions with a deck of documents, which it claims included a detailed proposal relating to voluntary separation packages, which include both voluntary severance packages (VSPs) and voluntary early retirement packages (VERPs). The Alliance disputes that any detailed VSP/VERP proposal was included in the documents, and notes that Telkom did not annex such to its answering affidavit.

[7] Nonetheless, in a letter dated 29 January 2020, which also included proposals on alternatives to retrenchment and requests for further information, SACU did respond forthrightly to whatever Telkom had tabled on voluntary severance packages:

> "Proposed Voluntary Severance Package
>
> Referencing the voluntary severance package in the slide presentation provided, we hereby place the following on record:
>
> - It is opportunistic of Telkom to have two separation packages. This serves as an alarming and stark indication company has no intention of respecting the process of *bona fide* engagement with organized labour-it serves as a pathogen that inhibits consultation in the true spirit of the LRA.
> - Our representation on the package remains and we await proper engagement thereon.
> - It is further our position that the voluntary separation packages can only be used as an alternative after the proposed structure have been fully populated with adequate ventilation."

(Emphasis added)

The reference to two packages appears to have been a reference to the proposed ordinary retrenchment package and the voluntary separation package.

[8] Telkom interpreted the letter as being the first sign that the Alliance intended delaying the consultation process because it requested further information despite what Telkom had provided to the unions prior to and at their first meeting. Telkom did not claim that the information was actually covered by presentation or not, so it is difficult to evaluate its contention that the request for further information was purely dilatory. The Alliance points out that it is entitled to relevant information and that the employer is obliged, if it rejects any written representations made the union to also state its reasons in writing.

[9] At the first facilitation meeting on 5 February 2020, the Alliance complained about the participation of the minority unions in the consultation process. It is not disputed that the whole day was consumed with this debate, though the Alliance claims it was a necessary debate. Eventually, Telkom agreed that consultation would be conducted separately but in parallel with the minority unions, despite its initial desire to conduct consultations jointly. This bifurcation of the consultation process predictably complicated matters later on.

[10] Consultation meetings were then scheduled with the minority unions and the Alliance on 11 and 12 February 2020, respectively.

[11] At the meeting with the minority unions the day before meeting with the Alliance, the minority unions indicated that they had no objection to Telkom allowing employees to apply for voluntary separation packages.

[12] When the meeting with the Alliance began on 12 February 2020, the facilitator clearly expected the meeting to start by addressing the unions' response to Telkom's rationale for the proposed retrenchments. However, CWU first raised a complaint about the fact that the minority unions had attended a facilitation meeting the day before and were already reporting back to employees about that meeting. The Alliance felt that this undermined their position as majority unions and insisted that in future consultations with the Alliance should proceed any consultation with the minority unions. The facilitator defended the process on the basis that it was inevitable that there would be separate timetables for facilitation now

that the consultation process had been divided, and that the issue of which parties should meet first had not been raised prior to this meeting.

[13] After the debate about this issue and communications to union members was discussed, the employer's representative asked if the meeting could proceed to deal with clarifying questions and also VSP/VERPs. He claimed that employees, including members of the Alliance unions, were pestering the company about "…where we are going with the VSP/VERPs." He then stated that it was Telkom's intention to table the issue that it was going to be "opening VSP/VERPs." He emphasized that it was important for the parties to make sure that people made an informed decision and further committed the company to make a presentation on the proposed structures even before a workshop scheduled for 19 February to deal with that issue.

[14] SACU's representative, while agreeing that the new structure was needed to be presented 'on the record' before they went to a workshop, expressed the unions' view that the company was attempting to circumvent the way in which the parties were obliged to engage with each other in terms of section 189. He contended that the issue of VSP's could not be raised at this juncture as the order of consultations is determined by section 189 [3], which states:

> "(3) The employer must issue a written notice inviting the other consulting party to consult with it and disclose in writing all relevant information, including, but not limited to-
>
> (a) the reasons for the proposed dismissals;
>
> (b) the alternatives that the employer considered before proposing the dismissals, and the reasons for rejecting each of those alternatives;
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> (c) the number of employees likely to be affected and the job categories in which they are employed;
>
> (d) the proposed method for selecting which employees to dismiss;

(e) the time when, or the period during which, the dismissals are likely to take effect;

(f) the severance pay proposed;

(g) any assistance that the employer proposes to offer to the employees likely to be dismissed;

(h) the possibility of the future re-employment of the employees who are dismissed;

(i) the number of employees employed by the employer; and

(j) the number of employees that the employer has dismissed for reasons based on its operation requirements in the preceding 12 months."

According to this interpretation the parties could not be discussing severance pay issues which fell under sub-paragraph (f) when they had not concluded discussions on the preceding items.

[15] The facilitator conveyed his understanding of the stage reached in the process namely that while Telkom was indicating that it wanted to advertise VSP's very soon it was willing to deal with the proposed structures with the Alliance the following day before addressing those with the minority unions. He then characterized the difference between the parties on the issue of VSP's being that the Alliance was of the view that it could only be dealt with after dealing with the rationale for retrenchments whereas Telkom believed discussions could take place in parallel. He acknowledged that the matter might end in a legal dispute but proposed that the parties should first discuss structures, which is what he understood Telkom wanted to do.

[16] SACU motivated its reason for opposing the opening of VSPs on the basis that before employees knew what the new structure was they had no idea whether or not they would be accommodated in it, which made it difficult to know whether to apply for a VSP or not. Further, it is representative made the point that Telkom had decided to raise VSP's as part of the issues under consultation instead of just advertising VSP applications before the consultation. Having chosen to include VSPs in the consultation process,

Telkom ought to accept the sequence of discussion on the basis of the order of topics in section 189 [3].

[17] After an adjournment to permit both sides in the consultation to consider the respective positions on the issue of communications to employees and VSP's, Telkom confirmed its view that after doing a presentation on structures, VSP applications could be opened and provided on the understanding that the application process would not be closed before the discussion on new structures had been conducted. It was not in favour of withdrawing the section 189 notice and advertising VSP's after which the 189 process would be restarted, which was one idea floated by the Alliance. The spokesperson emphasized that in Telkom's view the whole purpose of offering VSP's was to minimize or avoid retrenchment even before discussion took place on the items mentioned in S189(3) (a) to (j). He also emphasized that during the prior meeting with the minority unions, even though the issue of opening VSPs was raised, there was no discussion of dates and no discussion of structures was held because that had not yet been discussed with the Alliance.

[18] Following this response, the Alliance requested a further caucus. On returning, apart from reiterating concerns about communications with employees about the consultation process and the role of the minority unions in that regard, the CWU spokesperson explained their opposition to opening VSP applications at that point. The concern expressed was that if VSPs were opened for applications, it was possible that even a large number of persons who might not ultimately be affected by the restructuring would unwittingly apply for a VSP. He questioned how Telkom could be so sure that if the VSP process was not opened up it would not reduce the impact of retrenchments, when the parties had not even finished consulting on the rationale, which was what the Alliance understood was going to be the purpose of that meeting. Yet now the company was talking about VSP's already.

[19] Management responded that it agreed that questions of clarity what had been expected from the unions but none had been received and that management's understanding was that this was where the meeting or to

have begun in the morning and they could then have proceeded to discuss structures in the afternoon.

[20] The Commissioner noted that at the previous meeting when it adjourned there had been no agreement that questions of clarity would be provided by the union in advance of the meeting. He also confirmed that at the previous meeting when VSPs had been discussed the Alliance had indicated they did not want to pursue that issue until the structure had been dealt with. The same issue had arisen during the meeting with minority unions and after initially resisting the idea they indicated they would be prepared to have a discussion about VSP's on 13 February, following the consultation meeting with the Alliance on 12 February. As he understood it management was intent on discussing the structure because they did not want to open VSP's without doing so.

[21] The SACU representative expressed the view that it seemed as if Telkom was not meaningfully engaging with them with a view to reaching consensus but simply ticking consultation boxes. The unions wanted an opportunity to interrogate the rationale and to propose their own alternatives. For example, the unions had raised the issue of re-skilling as an alternative but Telkom had never responded to this. It was also impossible for the union to engage in a parallel process of dealing with the business rationale on the one hand and VSP's on the other. He asked whether management still intended to proceed with VSP's. The facilitator and the Telkom spokesperson confirmed that the discussion on the rationale for retrenchment was still on the table.

[22] Management made the point that it had raised the issue of VSP's at the meeting on 5 February and a SACU spokesperson confirmed this was correct but added that the unions had already responded at that stage saying that the whole process would be jeopardised if the issue of VSPs was opened up.

[23] As the meeting progressed the impasse between the parties crystallised more clearly into a dispute about whether management was going to accede to the unions' demand that Telkom would take discussion of VSPs off the table until the parties got to the stage of considering alternatives.

Management appealed to the unions that it was an issue it had put up for discussion as an alternative and wanted to discuss it and finalise it because if there was a good response it would reduce the number of potential retrenchments. The spokesperson was unable to finish what he was saying about the way forward on the issue because of interjections by union representatives who ignored the facilitators request to let him finish speaking. The facilitator summed up the situation as he saw it at that point:

> "So, the way I understand the way forward is at the end of the day there is no agreement reached here. Intention is try and reach an agreement and the agreement was from labour's perspective, employer, hold back the SPV's. And employer is saying, from their side they're saying to labour, engage us on this thing before we send it out. Engage us on the structure and engages on the type of package that has to go out. Now, that has been rejected. You're saying, we cannot engage you on that until you finish rationale. So, the way I understand the process straightforward and, really, if the way I understand that is that the parties need to now take their legal positions and go forward in that regard. Nothing really stops us from saying, okay, let's continue on the rationale issue. But there is no agreement in place as what is going to happen with the VSP. Now, the employer has indicated that going to go ahead with it. So, you know that. If your response is that, we could not convince you, but we intend to challenge that, then you must indicate that. But if your indication is, fine, do as you please. We will deal with that but in the meantime let us proceed with the rationale, then we can proceed with the rationale. That's my view. I'm not even saying. I am saying we should continue. But I heard the GS say earlier that if we can't reach agreement on this thing we can't proceed with the rationale. So, that's where I have a difference. I believe you can still proceed with the rationale, but understand that if this VSP package goes out tomorrow, it doesn't stop the process. The processes can still continue in terms of that way forward." (*sic*)

[24] The union spokespersons insisted that the issue of VSP's was something that should come at the end of the process and likened Telkom's approach to first skinning a goat and then slaughtering it rather than the other way around. At that point, the union confirmed that it was in a deadlock with the employer and it would refer the matter to court. The following day, Telkom opened up the process of accepting applications for voluntary packages to all affected employees within the open serve and consumer divisions, with the closing date for submitting applications being a week later on 21 February 2020.

[25] By the deadline 1585 employees had applied for voluntary packages and in the answering affidavit Telkom indicated that employees would be informed of the outcome of the applications by 25 February 2020. Of the applications received 57% in both divisions were from members of the Alliance unions and 73% of those who applied were applying for voluntary early retirement packages, which are available to employees above the age of 55. Telkom argued that it would be unfair to delay the processing of these applications pending the outcome of this application, but it had agreed to extend the closing date for applications to 28 February 2020.

Evaluation

[26] Although Telkom argues that the matter is not urgent, it is generally accepted that it is in the nature of applications section 189A [13] when they seek to try and rectify serious flaws in the consultation process while it is still underway that they are heard on an expedited basis.[1]

Legal principles

[27] The court is being asked to intervene under the provisions of s 189A(13)(a), which states

> "189(13) If an employer does not comply with a fair procedure, a consulting party may approach the Labour Court by way of an application for an order -

[1] See e.g *Banks v Coca-Cola SA* [2007] 10 BLLR 929 (LC) par 6

(a) compelling the employer to comply with a fair procedure;…"

[28] In *Edcon v Steenkamp* the Labour Appeal Court characterised the purpose of section 189A(13) thus:

> "[25] In summary, section 189A(13) is a procedure designed to enable the Labour Court to urgently intervene in a large-scale retrenchment to ensure that fair procedure is followed. It is not designed to offer a platform for *ex post de facto* adjudication of unfair procedure disputes. Although a failure to comply with the 30-day period can be condoned, the merits of any condonation application must be understood within the context of an urgent intervention, that being the critical functional characteristic of an application in terms of section 189A(13).
>
> [26] Moreover, the intervention contemplated, by its nature does not contemplate a trial at some future remote time. It exists not to facilitate a post mortem but, rather, to oversee the process of retrenchment while it is taking place or shortly thereafter where precipitate dismissals make intervention before actual dismissal impossible, and to reverse the dismissals."

(emphasis added)

[29] In *National Union of Metalworkers of South Africa (NUMSA) obo Members v Toyota South Africa Motors (Pty) Ltd*[2] Cele J held:

> "The section 189A (13) remedy was clearly designed to correct a derailment of consultations in a consensus seeking process prescribed by SectionSACU89 and 189A of the Act."[3]

[30] Lastly, in *RAWUSA v Schuurman Metal Pressing (Pty) Ltd*[4], Murphy AJ, as he then was, held:

> "[32]…(T)he aim of section 189A(13) (Act 66 of 1995) is to provide a remedy to employees to approach the Labour Court to set their employer on the right track where there is a genuine and clear cut

[2] (2017) 38 ILJ 1162 (LC)

[3] At par [25]

[4] [2005] 1 BLLR 78 (LC)

> procedural unfairness which goes to the core of the process. The section is aimed at securing the process in the interests of a fair outcome. It follows that not every minor transgression of a procedural nature will invite the benefit of the court's discretionary power to grant a remedy. To hold otherwise would be to open the door to excessive litigation, abuse and unnecessary delay in the process of consultation. Section 189A(13) is aimed at unjustifiable intransigence, it is not available as a tool to thwart a retrenchment process where the process, as in the present case, is otherwise capable of being rescued by genuine efforts to cure such flaws as may exist."

[31] Various *dicta* of the labour court have also elaborated on the extent and manner in which the court might intervene in procedurally unfair retrenchment processes. In *AMCU and others v Sibanye Gold Ltd t/a Sibanye Stillwater and others*[5] Van Niekerk J stated that there were limits on the extent to which the court should intervene under SACU89A(13):

> "[15] The preamble to section 189A(13) makes clear that the Court's intervention is limited to instances of a refusal or failure by the consulting employer to comply with a fair procedure. What the subsection seeks to accomplish, in the face of a prohibition on the right to strike over any dispute that concerns the procedural fairness of a retrenchment and the limitation on the right to refer a dispute of that nature to this Court for adjudication in terms of section 191, is to extend to this Court a real-time supervisory role over the consultation process, with powers to intervene if and when necessary, and to craft a remedy designed to address any procedural shortcoming that is found to exist. The section is not an invitation to consulting parties to use this Court to micro-manage a consultation process – intervention ought to be limited to a substantial failure or refusal to comply with the relevant statutory requirements."

(emphasis added)

[5] [2019] 8 BLLR 802 (LC)

[32] In *SASBO v Standard Bank of South Africa*[6] this court emphasised the importance of orders made under the section not being cast in wide terms:

> "[29] The introduction of the 189A procedure has a short-term preventative aim of pro-actively fostering proper consultation, as opposed to a long term remedial one of compensating employees, following a belated 'post-mortem' examination on what was wrong with the process, long after workers have been retrenched. For this reason, blanket orders which lack specificity about what the parties ought to do are of little value in my opinion and, as far as possible, orders made under section 189A(13) should be crafted to address the defects in the process."

Should the court intervene on this occasion?

[33] Bearing the above considerations in mind, the crisp question is: should the court intervene in the type of impasse reached between the parties in this process? Essentially, before the court can intervene it must be satisfied that the employer party has acted in such a way that it has fundamentally prevented or obstructed a fair consultation process in keeping with the intentions of section 189.

[34] The reason for the impasse is that the Alliance was not prepared to engage in discussions about the use and content of voluntary separation packages at such an early stage of the consultation process. In the unions' view, the provisions of section 189 [3] do not merely list items that the parties should consult on with a view to reaching consensus but also sets out the sequence in which such discussions should take place. Further, without having concluded discussions on the rationale for retrenching it would be premature to discuss alternatives. The logic of this argument is that if the rationale is found wanting then the need for retrenchment would not exist, and there would be no need to discuss alternatives to retrenchment. In addition, the unions argue that offering voluntary severance packages before employees know what the proposed structure is so they can take a view on whether they would probably be

[6] (2011) 32 ILJ 1236 (LC)

accommodated in it, means that any decision they make to apply for a voluntary severance package would only be a partially informed decision based solely on weighing up the benefit of a more generous voluntary severance package against the standard retrenchment package, without knowing the likelihood of whether or not they would be selected for forced retrenchment.

[35] Telkom for its part was prepared to continue to discuss the rationale for the retrenchment's and to explain the proposed new structure, which would then be populated by employees eligible for those positions and subject to other criteria. However, it also wanted to put VSP's on the table for consultation at the same time. In essence, Telkom contended that because of the significant impact that voluntary terminations could have on the ultimate need for any forced retrenchment's, it made good sense to deal with this at the start of the process to reduce the scale of the potential retrenchments. Although it was clearly anxious to initiate a voluntary severance process as soon as possible, it was willing to consult over it. What the 2 sides could not agree on was when consultation on VSP's should take place.

[36] As the facilitator observed at the conclusion of the meeting on 12 February, even though the Alliance was supposed to consulting on VSP's at that stage of the process, it did not mean that the consultation process had to come to a halt: discussions could still continue on the rationale and structure.

[37] What needs to be considered is whether the sequence of items for consultation set out in section 189 [3] also dictates that discussion of successive items in the list should not be embarked on until consensus or impasse is reached on the previous items, and that a failure to follow such a sequence renders the consultation process unfair. Having regard to subsectionSACU89 [3] [a]-[j], I am not persuaded that they prescribe a rigid sequence in which consultations can only proceed on a step-by-step basis. The first point to make is that the provisions of section 189 [3] cannot be read in isolation from section 189 [2], which sets out the primary obligations of both parties to the consultation process:

"189 (2) The employer and the other consulting parties must, in the consultation envisaged by subsections (1) and (3), engage in a meaningful joint consensus-seeking process and attempt to reach consensus on -

(a) appropriate measures-

(i) to avoid the dismissals;

(ii) to minimise the number of dismissals;

(iii) to change the timing of the dismissals; and

(iv) to mitigate the adverse effects of the dismissals;

(b) the method for selecting the employees to be dismissed; and

(c) the severance pay for dismissed employees."

[38] What is readily apparent from the section is the emphasis on the search for alternatives as an important objective for the parties to attempt to reach agreement on. Obviously, voluntary severance packages, however distasteful aspects of such schemes might be, are one of the ways of reducing the ultimate number of forced retrenchments which might eventuate. Even though there might be rational arguments for delaying the offer of voluntary severance packages that does not mean that a party should refuse to discuss them altogether unless its proposal on the timing of such offers is accepted. The timing of offering voluntary severance packages is something to be discussed together with the terms and conditions of such offers. It is not insignificant that, before the deadlock was declared by the Alliance, the unions did not propose that the parties should consult on voluntary severance packages as an alternative to retrenchment including the timing of such packages. Instead, they sought to embargo any discussion of VSP's until consultations on the rationale and structure had been concluded or exhausted.

[39] It is true that there is a logic to deliberating on the rationale for retrenchments first in order to understand what measures might be

adopted as partial or complete alternatives to attain the same operational objective. However, a failure to agree on that issue, does not mean the process must grind to a halt. It is noteworthy in this regard that section 189(2) does not impose an obligation on the parties to attempt to reach consensus on the reason or need for retrenchment. It is true that section 189 [5] requires an employer to allow its employee counterpart to make representations about "any matter dealt with in subsections [2], [3] and [4], as well as any other matter relating to the proposed dismissals" and an employer is required to respond to any representations on these issues, and if it does not accept them explain why it disagrees with the representation. However, that is as far as the obligation to debate the rationale for the retrenchment goes. Of course if the rationale is murky and the scope and scale of the proposed retrenchments cannot be easily explained by the reasons advanced for the retrenchment those might be factors bearing on the substantive fairness of the dismissal. Unions always have the option of challenging the substantive fairness of the retrenchment which lacks an operational rationale.

[40] By contrast, the obligation on the parties to consult over alternatives to retrenchment is unambiguous. Even if a party has reservations about whether there is a need for retrenchment, it must be prepared to engage in consultations on alternatives. Nothing prevents a party from engaging on a provisional basis, by making it clear upfront that its consent to the adoption of certain alternative measures is subject to it being persuaded that retrenchments would otherwise be required.

[41] I accept that Telkom was anxious to open the process of offering voluntary severance packages and that once the union made its intention clear that it was going to court about the issue, it decided to proceed in any event. Although the relief sought by the applicant unions seeks to reverse this process, it is important to emphasise that the Alliance declared a deadlock over the very timing of consultation on VSP's at a point when Telkom wanted to consult on that issue together with consultations on the rationale and proposed new business structure. Telkom only proceeded to open the voluntary severance process after the unions had rejected holding consultations on VSPs until other issues had been exhausted.

[42] In the light of the discussion above, I am not satisfied that it can be said that Telkom was the stumbling block to consultations proceeding. The stumbling block was erected by the Alliance when it set preconditions for consulting over VSP's. It is regrettable that this matter has come to court. With a bit of imagination and mutual commitment to engagement, despite their differences over VSPs, I believe the parties could have had a constructive engagement on the use, content and timing of VSP's, which might have resulted in a consensus on the issue. There is also nothing to prevent the parties still consulting on whether the period for applying for VSPs should be extended further.

Costs

[43] The parties are still in the process of consultation and I believe a cost award arising from this application might unnecessarily sour the already somewhat frayed relationship between them.

Order

[1] The application is dismissed.

[2] No order is made as to costs.

[3]

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R G Lagrange

Judge of the Labour Court of South Africa

APPEARANCES

For the Applicants:	M Lennox instructed by Boutoulas Krause & Da Silva Inc.
For the Respondent:	P Maserumule of Puke Maserumule Attorneys