

DISMISSALS: OPERATIONAL REQUIREMENTS: BUMPING

By now most employers are aware of the requirements of section 189 of the Labour Relations Act, when implementing retrenchments, the pitfalls and problems associated with retrenchments.

The purpose of s189 of the Labour Relations Act is to investigate through the process of consultation the need to retrench, and other means to save jobs.

What is not that widely known is the concept of “bumping”. This only adds to the quagmire, for if not done correctly, the dismissal could be ruled unfair.

In **PORTER MOTOR GROUP v KARHCHI**¹ the Labour Appeal Court dealt extensively with “bumping” in dismissals for operational requirements.

The facts appertaining to the case

The company entered into a restructuring programme, with the resulting retrenchments. “Bumping” was agreed with the trade union. The employee was offered a lower position with a reduction in earnings of R800.00 per month. The employee rejected this, on the grounds that on a horizontal line there was an employee with shorter service, whom she could replace, with a reduction in earnings of R200.00. The employer rejected this and the employee was retrenched. The employee challenged her dismissal, and the Labour Court found that her dismissal was unfair.

The employer appealed against the Labour courts ruling. The Labour Appeal Court found that the ruling of the Labour Court was correct and dismissed the appeal.

What is “bumping?”

“Bumping” is the replacement of a shorter serving employee by a longer serving employee.

What are the principles involved

The Court laid down the following principles where “bumping” is to take place:

- (a) that an employer is required to consult over the possibility of “bumping”;
- (b) that the practice uses as its point of departure the LIFO principle;

¹ [2002] 4 BLLR 357 (LAC)

- (c) that “horizontal” bumping should take place before “vertical bumping” is resorted to;
- (d) that “bumping” should be implemented in a way that creates the minimum possible disruption for the employer;
- (e) that geographical limits may be placed on the unit within which “bumping” is effected;
- (f) that the size of the unit will depend on the mobility and career paths of the employees concerned;
- (g) “bumping” must be effected with due regard for the retention of necessary skills;
- (h) downward “bumping” should take place where the employee is prepared to accept downgrading in work and status.