

Can employers embark on redeployment before retrenchment processes commence?

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The recent case of *ArcelorMittal South Africa Limited v NUMSA*, unpacked what is meant by avoiding job losses indicating a possible change in section 189 requirements.



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Judge Van Niekerk held that s189 of the Labour Relations Act, “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 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.

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