

SACTWU obo Members v Fyvie G N.O and Others

(D258/2020) [2024] ZALCD 9
(5 March 2024)

BACKGROUND

The Respondents are Gary Fyvie, and Ian Fyvie (“**the Respondents**”), the owners of two farms, a vegetable farm and a macadamia nut farm. The Respondents employed all the employees at each of the two farms.

In 2019 due to an unsuccessful season at the vegetable farm, the Respondents stopped farming vegetables. The Respondents decided to continue operations at the macadamia nut farm, as it is more economically viable and has less vulnerability to environmental risks.

As a result, the Respondents retrenched 15 employees from the vegetable farm. The South African Clothing & Textile Workers Union on behalf of the retrenched employees (“**The Applicants**”), alleged that the dismissals were unfair because the Respondents failed to apply the last in first out (“**LIFO**”) principle, particularly the practice of “bumping”. The practice of bumping entails transferring employees with longer service to positions held by employees with shorter service in other divisions. Bumping can be horizontal or vertical. The Respondents argued that the Applicants, who were employed on a vegetable farm, did not have the skills required for the macadamia nut farm, and therefore bumping would not suit its operational requirements.

THE LABOUR COURT (“**the court**”)

The Court held that the decision of the Applicants to retrench only the vegetable farm workers was sound because only the vegetable farm workers were impacted by the closure of the vegetable farm. Generally, as the Respondents pointed out, they did not have the skill set to take over the positions of macadamia nut workers and that training the vegetable farm employees on the skill of growing macadamia nut trees would be unduly onerous on the Respondents. Therefore, bumping as proposed by the Applicants would be unreasonable and accordingly the application was dismissed.

By **Juliette Vermeulen** (Candidate Attorney),
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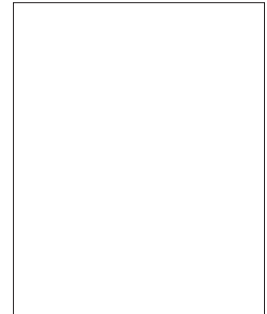
CONCLUSION

While bumping is a valid practice to reward long-standing employees it cannot be applied in circumstances where those employees do not have the skills of the other employees, which is needed to fill their roles, and where it would be unduly burdensome on the Respondent to train and upskill the employees.

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