Are you entitled to severance pay where you have been retrenched after your retirement age?

In the case of *PATRICK ALAIN HENRI BARRIER V PARAMOUNT ADVANCED TECHNOLOGIES (PTY)(LAC) (JA35/2020),* Paramount Advanced Technologies (the Respondent) employed Patrick Barrier (the Appellant) as an engineer with effect from 8 May 1985. In terms of a written contract of employment, the Appellant was to stop working at the end of the month when he reached the age of 65, unless the parties agreed otherwise in writing.

The Appellant reached the age of 65 on 13 June 2013 but continued to work for the Respondent, uninterruptedly, beyond this date until he was voluntarily retrenched by the Respondent with effect from 31 May 2017.

The Appellant accepted the severance package with a reservation that the severance pay was not correct. The Appellant appealed the fact that the severance pay was 32 weeks and not 4 weeks.

The appeal was upheld, as the Appellant never had any other employment. Hence section 84(1) and (2) respectively of the Basic Conditions of Employment Act 75 of 1997(BCEA) are not applicable. He was awarded the 32 weeks' severance pay for his full-service period.

Section 41(2) of the BCEA dictates that the employer must pay a severance for the employee who was dismissed because of operational requirements. The employer must pay a severance equal to at least one week's salary for every year the employee has worked.

Section 41(2) along with Section 84(1) states that a previous employment with the same employer must be considered if the break period was less than a year. Section 82(2) adds that the employees available leave and leave taken during the retrenchment process should be determined by the amount payable to the employee.

Thus, an employee is entitled to their full period of service severance pay even

after retirement age has passed. If however, they had previous employment, that fact must be considered when calculating their severance payment.

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