

# Employment Law

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### SOUTH AFRICA

The Labour Court does not have inherent jurisdiction over incomplete disciplinary proceedings



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**EMPLOYMENT LAW  
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## The Labour Court does not have inherent jurisdiction over incomplete disciplinary proceedings

The issue of the Labour Court's jurisdiction over incomplete disciplinary proceedings has now been authoritatively and definitively determined by the Labour Appeal Court (LAC).

In the recent judgment of *Chibane and Another v Premier of Province of KwaZulu-Natal* (DA15/2024) [2025] ZALAC 44, which was delivered on 15 July 2025, the court held that the Labour Court does not have inherent (general) jurisdiction to intervene and restrain any alleged illegalities, irregularities or unfairness in incomplete disciplinary proceedings. Its jurisdiction must be found in legislation, as it is, after all, a creature of statute.

This matter involved two senior provincial government employees who sought the intervention of the Labour Court to “quash” charges of misconduct and halt all disciplinary action brought against them, arguing that an unreasonable delay in the employer prosecuting the alleged waiver to discipline them had resulted in a ‘bar’ to the disciplinary proceedings.

The court dismissed the appeal, upheld continuation of the disciplinary proceedings, and provided important guidance on the jurisdiction of the Labour Court in the context of intervening in incomplete disciplinary hearings.



# The Labour Court does not have inherent jurisdiction over incomplete disciplinary proceedings

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## Factual background

The employees, senior managers in the KwaZulu-Natal Premier's office, were implicated in a forensic report in 2017 that recommended disciplinary action for alleged breaches of the Public Finance Management Act 1 of 1999 and supply chain policies.

Despite the recommendations, disciplinary proceedings only commenced in July 2020.

The employees objected on grounds of unreasonable delay and alleged that the employer had waived its right to discipline.

The disciplinary chairperson dismissed these objections, which resulted in an urgent application to the Labour Court where the employees sought the following as relief:

- A declaration that there had been an unreasonable delay in instituting disciplinary proceedings and that the employer had thus waived its right to discipline.
- Quashing of the charges and permanent termination of the proceedings.

- Reviewing and setting aside the disciplinary chairperson's ruling.

The Labour Court, in dismissing the application, held as follows:

- The delay, while protracted and inadequately explained, did not justify a permanent stay of proceedings given the seriousness of the charges and the public interest.
- The employees did not demonstrate prejudice.
- Public authorities cannot waive rights introduced in the public interest without proper grounds.

On appeal, the employees contended that the Labour Court misapplied the test for reasonableness of delay and incorrectly considered the nature of the charges in assessing the delay. The employees submitted that the Labour Court's finding in respect of a waiver *vis-à-vis* the right to discipline was incorrect.



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## Labour Appeal Court's findings

The LAC interrogated the jurisdiction of the Labour Court and held that:

- The Labour Court's jurisdiction is not inherent. It must be found in legislation, as it is a creature of statute.
- The employees did not identify any statutory basis for the declaratory relief sought regarding the delay or a waiver.
- The employees failed to rely on the relevant provisions of the Basic Conditions of Employment Act 75 of 1997, which confers jurisdiction over any disputes "concerning a contract of employment".
- The court clarified that the broad interpretation of the judgment in *Booyesen v Minister of Safety and Security and Others* [2011] 32 ILJ 112 (LAC), which has been misinterpreted to suggest that the Labour Court had inherent jurisdiction to intervene in incomplete disciplinary proceedings, was inconsistent with recent Constitutional Court authority that held that the Labour Court does not have jurisdiction to declare dismissals unlawful or invalid unless specifically provided for in the Labour Relations Act 66 of 1995 (LRA).
- Outside the scope of any statutory provision that specifically confers jurisdiction on the Labour Court, the Labour Court has no jurisdiction, in any general sense, to make any determination of the unlawfulness of employer conduct.
- The Labour Court does not have jurisdiction simply because the dispute arose from, or in the context of, an employment relationship (e.g. if an employee assaults a customer, the Labour Court does not have jurisdiction over criminal liability). Any dispute must be grounded in specific statutory provisions to clothe the Labour Court with the necessary jurisdiction to intervene in disciplinary proceedings.
- Thus, the expansive reading of *Booyesen* has been curtailed.



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## Key takeaways

- Outside the scope of any statutory provision that specifically confers jurisdiction on the Labour Court, it has no jurisdiction, in any general sense, to make any determination of the unlawfulness of employer conduct.
- Thus, the Labour Court does not have an inherent jurisdiction to intervene in incomplete disciplinary proceedings because its jurisdiction must be found in legislation.
- Claims of delay or waiver in disciplinary proceedings must be grounded in the facts and specifically the conduct (inaction) of the employer, and the parties must identify the statutory basis for jurisdiction.
- The public interest in the adjudication of serious misconduct by senior public officials weighs against the permanent stay of disciplinary proceedings, even where there has been significant delay.
- Even where statute finds jurisdiction for the Labour Court to intervene in incomplete disciplinary proceedings, it would only accede to such a request in exceptional circumstances, which conforms with the LRA's objective of expeditious resolution of disputes.

This judgment provides important guidance for employers and employees regarding the jurisdictional boundaries of the Labour Court to intervene in internal disciplinary proceedings.

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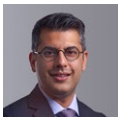
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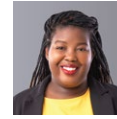
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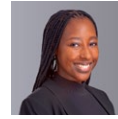
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