

Employment Law

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SOUTH AFRICA

Double jeopardy or double trouble?
Labour Appeal Court blocks “second”
dismissal, orders reinstatement



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EMPLOYMENT LAW
ALERT

Double jeopardy or double trouble? Labour Appeal Court blocks “second” dismissal, orders reinstatement

This analysis examines the contentious issue of double jeopardy in employment law, particularly when an employer seeks to impose further disciplinary action on the same set of facts.



Introduction

In the recent judgment of *SAMWU obo Malatsi v South African Local Government Bargaining Council and Others* (JA 64/23) [2025] ZALAC 40, the Labour Appeal Court (LAC) addressed the crisp question of whether the second dismissal of an employee, following an arbitration and reinstatement by the Commission for Conciliation, Mediation and Arbitration (CCMA) or a bargaining council, was substantively fair in light of the double jeopardy principle and the binding effect of an earlier arbitration award.



Facts

The employee was initially dismissed in 2013 for allegedly failing to conduct himself with honesty and integrity and in the alternative, fraud. He attempted to access the employer's bank account without authorisation. He successfully challenged his dismissal at the CCMA. The arbitrator found no evidence that the employee had committed the alleged misconduct, but did sanction him for password-related negligence by ordering reinstatement subject to a four-month period of unpaid suspension. The employer's subsequent review application was dismissed, and the employee was reinstated.

Shortly after reinstatement, the employer instituted fresh disciplinary proceedings based on the same underlying facts, charging the employee for gross dishonesty, in that the employee acted with the intention of deceiving the municipality by sharing his password with other employees and with failing to comply with the employer's IT procedures, by sharing his password with other employees. According to the employer, the employee's actions permitted the use of his computer for fraudulent activities. The employee was again dismissed, and a second arbitration upheld this dismissal.

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New charges

When considering the principle of double jeopardy, which generally protects an employee from being charged again for the same misconduct that they were previously acquitted or convicted of, the arbitrator held that the charges in the second disciplinary hearing were “*completely new charges which emanated from the same facts*”. Consequently, the arbitrator concluded that the basis of the first and second disciplinary hearings were distinct, and therefore, the principle of double jeopardy did not apply as the charges were deemed separate from those previously considered.

The employee sought a review of the second arbitration award, arguing that he had already been sanctioned for the relevant misconduct and that the second dismissal amounted to double jeopardy. The Labour Court dismissed the review, holding that the charges were sufficiently distinct and that fairness permitted a second disciplinary process.



Application of the law

The LAC reaffirmed that, in labour law, fairness is the ultimate yardstick in determining whether an employer may institute disciplinary action a second time for the same or related misconduct. While previous authorities have permitted second disciplinary enquiries in exceptional circumstances – such as the emergence of new information or where the initial process was ill-informed, incorrect or misconceived, the present case was distinguished by the existence of a final and binding arbitration award that already addressed and sanctioned the employee’s misconduct.

The LAC found that the employer’s second disciplinary action and the subsequent dismissal were based on the same misconduct for which the employee had already been sanctioned. By disregarding the binding effect of the first arbitration award, the arbitrator in the second arbitration committed a material irregularity.

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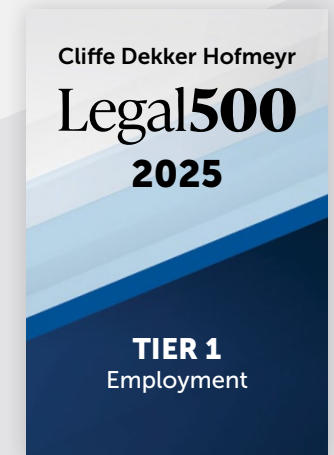
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Key takeaways

- Employers are precluded from imposing further disciplinary sanctions for misconduct that has already been addressed and sanctioned by a final and binding arbitration award.
- While fairness may permit a second disciplinary process in exceptional circumstances, it does not extend to situations where the same misconduct has already been arbitrated.

Anli Bezuidenhout, Sashin Naidoo and Lynsey Foot



OUR TEAM

For more information about our Employment Law practice and services in South Africa, Kenya and Namibia, please contact:

**Aadil Patel**

Practice Head & Director:
Employment Law
Sector Head:
Government & State-Owned Entities
T +27 (0)11 562 1107
E aadil.patel@cdhlegal.com

**Anli Bezuidenhout**

Director:
Employment Law
T +27 (0)21 481 6351
E anli.bezuidenhout@cdhlegal.com

**Frieda Kishi**

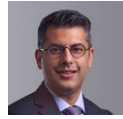
Director | Namibia
T +264 83 373 0100
E frieda.kishi@cdhlegal.com

**Fiona Leppan**

Director:
Employment Law
T +27 (0)11 562 1152
E fiona.leppan@cdhlegal.com

**Imraan Mahomed**

Director:
Employment Law
T +27 (0)11 562 1459
E imraan.mahomed@cdhlegal.com

**Nadeem Mahomed**

Director:
Employment Law
T +27 (0)11 562 1936
E nadeem.mahomed@cdhlegal.com

**Yvonne Mkefa**

Director:
Employment Law
T +27 (0)21 481 6315
E yvonne.mkefa@cdhlegal.com

**Phetheni Nkuna**

Director:
Employment Law
T +27 (0)11 562 1478
E phetheni.nkuna@cdhlegal.com

**Desmond Odhiambo**

Partner | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E desmond.odhiambo@cdhlegal.com

**Jean Ewang**

Counsel:
Employment Law
T +27 (0)11 562 1499
E jean.ewang@cdhlegal.com

**Thabang Rapuleng**

Counsel:
Employment Law
T +27 (0)11 562 1759
E thabang.rapuleng@cdhlegal.com

**JJ van der Walt**

Counsel:
Employment Law
T +27 (0)11 562 1289
E jj.vanderwalt@cdhlegal.com

**Ebrahim Patelia**

Legal Consultant:
Employment Law
T +27 (0)11 562 1000
E ebrahim.patel@cdhlegal.com

OUR TEAM

For more information about our Employment Law practice and services in South Africa, Kenya and Namibia, please contact:

**Daniel Kiragu**

Senior Associate | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E daniel.kiragu@cdhlegal.com

**Malesela Letwaba**

Senior Associate:
Employment Law
T +27 (0)11 562 1710
E malesela.letwaba@cdhlegal.com

**Lee Masuku**

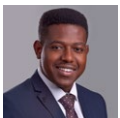
Senior Associate:
Employment Law
T +27 (0)11 562 1213
E lee.masuku@cdhlegal.com

**Leila Moosa**

Senior Associate:
Employment Law
T +27 (0)21 481 6318
E leila.moosa@cdhlegal.com

**Christine Mugenyu**

Senior Associate | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E christine.mugenyu@cdhlegal.com

**Kgodisho Phashe**

Senior Associate:
Employment Law
T +27 (0)11 562 1086
E kgodisho.phashe@cdhlegal.com

**Taryn York**

Senior Associate:
Employment Law
T +27 (0)11 562 1732
E taryn.york@cdhlegal.com

**Chantell De Gouveia**

Associate:
Employment Law
T +27 (0)11 562 1343
E chantell.degouveia@cdhlegal.com

**Ayesha Karjieker**

Associate:
Employment Law
T +27 (0)11 562 1568
E ayesha.karjieker@cdhlegal.com

**Biron Madisa**

Associate:
Employment Law
T +27 (0)11 562 1031
E biron.madisa@cdhlegal.com

**Lynsey Foot**

Associate:
Employment Law
T +27 (0)11 562 1429
E lynsey.foot@cdhlegal.com

**Shemonné Isaacs**

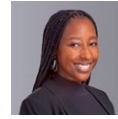
Associate:
Employment Law
T +27 (0)11 562 1831
E shemonne.isaacs@cdhlegal.com

**Thobeka Kalipa**

Associate:
Employment Law
T +27 (0)11 562 1238
E thobeka.kalipa@cdhlegal.com

**Kevin Kipchirchir**

Associate | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E kevin.kipchirchir@cdhlegal.com

**Thato Makoaba**

Associate:
Employment Law
T +27 (0)11 562 1659
E thato.makoaba@cdhlegal.com

**Thato Maruapula**

Associate:
Employment Law
T +27 (0)11 562 1774
E thato.maruapula@cdhlegal.com

**Sheilla Mokaya**

Associate | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E sheilla.mokaya@cdhlegal.com

**Sashin Naidoo**

Associate:
Employment Law
T +27 (0)11 562 1482
E sashin.aidoo@cdhlegal.com

**Billy Oloo**

Associate | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E billy.oloo@cdhlegal.com

**Melisa Wekesa**

Associate | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E melisa.wekesa@cdhlegal.com

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JOHANNESBURG

1 Protea Place, Sandton, Johannesburg, 2196. Private Bag X40, Benmore, 2010, South Africa.
Dx 154 Randburg and Dx 42 Johannesburg.
T +27 (0)11 562 1000 F +27 (0)11 562 1111 E jhb@cdhlegal.com

CAPE TOWN

11 Buitengracht Street, Cape Town, 8001. PO Box 695, Cape Town, 8000, South Africa. Dx 5 Cape Town.
T +27 (0)21 481 6300 F +27 (0)21 481 6388 E ctn@cdhlegal.com

NAIROBI

Merchant Square, 3rd floor, Block D, Riverside Drive, Nairobi, Kenya. P.O. Box 22602-00505, Nairobi, Kenya.
T +254 731 086 649 | +254 204 409 918 | +254 710 560 114
E cdhkenya@cdhlegal.com

ONGWEDIVA

Shop No A7, Oshana Regional Mall, Ongwediva, Namibia.
T +264 (0) 81 129 1868 E cdhnamibia@cdhlegal.com

STELLENBOSCH

14 Louw Street, Stellenbosch Central, Stellenbosch, 7600.
T +27 (0)21 481 6400 E cdh Stellenbosch@cdhlegal.com

WINDHOEK

1st Floor Maerua Office Tower, Cnr Robert Mugabe Avenue and Jan Jonker Street, Windhoek 10005, Namibia.
PO Box 97115, Maerua Mall, Windhoek, Namibia, 10020
T +264 833 730 100 E cdhnamibia@cdhlegal.com

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