

Employment Law

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In this issue

SOUTH AFRICA

Understanding reinstatement in light of irreparable working relationships



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Understanding reinstatement in light of irreparable working relationships

In the recent decision of *Golden Arrow Bus Services (Pty) Ltd v Commission for Conciliation Mediation and Arbitration and Others* (CA10/2024) [2025] ZALAC 38 (19 June 2025), the Labour Appeal Court (LAC) confirmed that although reinstatement is the primary remedy in unfair dismissal disputes, reinstatement is not always appropriate, even where a dismissal is substantively unfair.



Facts

Jacobs was employed as a senior support services manager at Golden Arrow Bus Services (Pty) Ltd (GABS). He was responsible for rolling out a new smartcard ticketing system. Days before its scheduled launch, Jacobs went on pre-approved leave, assuring management that the system was ready to be rolled out. It was not.

On launch day, there was no sales system in place to sell the smartcards, there was a card shortage, and 18,000 smartcards were missing.

Upon his return from leave, Jacobs was called to a meeting to discuss the failed launch, including the missing smartcards. Instead of co-operating with the investigation, Jacobs expressed distrust in his direct line manager and GABS' legal counsel and shifted accountability to a junior employee. He later made unfounded accusations that senior management had destroyed evidence, were biased against him and had set him up to fail. Jacobs was charged with misconduct and subsequently dismissed following the conclusion of a disciplinary hearing.

Aggrieved by his dismissal, Jacobs referred a dispute to the Commission for Conciliation, Mediation and Arbitration. While the commissioner found his dismissal to be substantively unfair, Jacobs was awarded maximum compensation despite requesting reinstatement. The commissioner justified the relief on the basis that continued employment would be intolerable.

On review, the Labour Court set aside the award of maximum compensation and replaced it with an order of retrospective reinstatement. In arriving at this decision, the Labour Court found that the commissioner's conclusions were not supported by any objective evidence and were unreasonable. GABS appealed against this decision.



EMPLOYMENT LAW
ALERTUnderstanding
reinstatement in
light of irreparable
working relationships

CONTINUED

**The law**

Section 193(2) of the Labour Relations Act 66 of 1995 provides that reinstatement is the primary remedy where a dismissal is found to be unfair unless, among other things, *"the circumstances surrounding the dismissal are such that a continued employment relationship would be intolerable"*.

The courts have interpreted the 'intolerability' threshold as high. In this case, the LAC relied upon the interpretation of intolerability set out in *Booi v Amathole District Municipality* [2022] 43 ILJ 91 (CC) wherein it was held that intolerability requires **weighty reasons supported by tangible evidence**. A strained or unpleasant working relationship does not constitute an intolerable working relationship, more is required. An objective enquiry, based on tangible evidence, is needed.

The LAC further considered that unfounded and scandalous allegations made by an employee against management, even where there is ultimately no finding of misconduct, renders the continued working relationship intolerable.

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Application of the law to the facts

The LAC emphasised that the intolerability analysis must be objective and based on evidence.

In considering the totality of evidence before the commissioner, the LAC concluded that the objective facts before the commissioner met the high threshold of intolerability and demonstrated that reinstatement was not an appropriate remedy. This was in light of Jacobs's conduct after the smartcard debacle. The objective evidence before the commissioner included Jacobs's refusal to co-operate with the investigation, his failure to take responsibility for his actions, the serious and unsubstantiated accusations made by him against senior management and his lack of trust in them. These factors rendered the continued employment objectively intolerable and meant that reinstatement was an inappropriate remedy.

The LAC reiterated that a court reviewing an award to refuse reinstatement on the basis of intolerability does not itself conduct the intolerability enquiry anew. Rather, the review court assesses whether the analysis conducted by the commissioner in the exercise of their discretion in relation to remedy resulted in a decision which could not have been reached by a reasonable decision maker conducting that analysis.

The LAC found that the Labour Court erred in substituting the commissioner's award with its own view, especially as the commissioner had exercised her discretion judicially and reasonably.



Key takeaways

This case confirms that while reinstatement is the primary remedy, it is not an automatic right, even where dismissal is substantively unfair.

Pre-dismissal conduct, such as unfounded accusations against senior management or refusing to co-operate in an internal investigation, may make reinstatement inappropriate.

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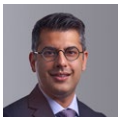
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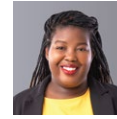
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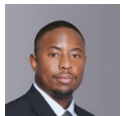
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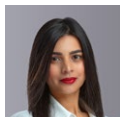
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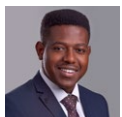
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