



Employment Law

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SOUTH AFRICA

- High Court confirms that employers are bound by final internal appeal outcomes in disciplinary proceedings



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High Court confirms that employers are bound by final internal appeal outcomes in disciplinary proceedings

In the recent decision of *Nkuna v Eskom Rotek Industries SOC Ltd* (2024-022546) [2026] ZAGPJHC 634 (3 June 2026), the High Court considered whether an employer may disregard the outcome of its own internal disciplinary appeal process and unilaterally uphold an employee's dismissal despite an appeal chairperson having set such dismissal aside. The court held that where the employment contract incorporates a disciplinary code that renders the appeal chairperson's decision "final", that outcome is binding on the employer. In those circumstances, the employer has no contractual entitlement to second-guess the appeal outcome or to resort to self-help by purporting to retain the dismissal.



The Facts

The applicant, Ms Nkuna, accepted an offer of employment from Eskom Rotek with effect from January 2023. Shortly after accepting the offer, Rotek attempted to withdraw it on the basis of concerns linked to her prior employment at Eskom, where she had allegedly been implicated in procurement irregularities and flagged for having resigned before a disciplinary process could be concluded. Following representations by Nkuna, Rotek appeared to retract the withdrawal and instructed her to report for duty. It nonetheless placed her on precautionary suspension days later.

A disciplinary hearing was convened and in October 2023 the chairperson found Nkuna guilty of misconduct and recommended her dismissal. Nkuna exercised her internal right of appeal under Rotek's Disciplinary Code and Procedure (the Code). On 8 January 2024, the appeal chairperson overturned both the finding of guilt and the recommendation of dismissal and directed that the effect of the appeal outcome was that Nkuna had never been dismissed.

Instead of implementing that outcome, Rotek advised Nkuna that it regarded the appeal decision as reviewable and unfair, and that it intended to "review or amend" the appeal outcome while retaining the sanction of summary dismissal. Although Nkuna disputed Rotek's power to do so, Rotek confirmed that it had elected to keep the dismissal in place. Nkuna approached the High Court by way of motion proceedings, relying on contract, and sought declaratory and consequential relief, including an order that her employment contract remained extant, payment of remuneration, and that she be permitted to resume her duties.





Legal question

The central issue before the court was whether Rotek was entitled to disregard the outcome of the internal disciplinary appeal process and maintain the dismissal notwithstanding the appeal chairperson's decision. This required the court to determine whether the internal appeal outcome was binding on the employer under the employment contract, and whether the employer's refusal to honour it constituted a breach of contract.

A further issue was whether the High Court had jurisdiction to entertain such a claim, given Rotek's contention that the matter was in substance an unfair dismissal dispute.



Applicable law

The court reaffirmed the now settled position that the contractual foundation of employment relationships has not been extinguished by labour legislation. Although the Labour Relations Act 66 of 1995, as amended (LRA) created a statutory regime for dismissal disputes and fair labour practices, it did not abolish common law claims arising from the employment contracts, nor did it strip the High Court of jurisdiction to adjudicate such claims. Jurisdiction is determined by the pleadings and the cause of action relied upon. Where an employee pleads a breach of contract and seeks contractual enforcement, the High Court remains competent to hear the matter.

On the merits, the crucial contractual question was the interpretation of Rotek's disciplinary code as incorporated in the employment contract. The Code provided that the decision of the appeal chairperson was "*final*". The court approached that wording textually, contextually and purposively. It held that "*final*" means the internal disciplinary process has come to an end and admits of no further internal recourse by the employer. In the absence of some other contractual term expressly conferring a right on the employer to revisit or overturn the appeal outcome, the employer is bound by it. If an employer wishes to challenge that outcome, its remedy lies, if at all, in review proceedings rather than unilateral self-help.



Application of law to the facts

Applying those principles, the court rejected Rotek's argument that the matter fell outside the High Court's jurisdiction. Nkuna's claim was not pleaded as an unfair dismissal dispute; rather, it was pleaded as a contractual claim founded on the proposition that the employment contract incorporated the Code, the Code made the appeal chairperson's decision final, and that Rotek breached her contract by refusing to honour the appeal outcome. On the pleadings, the issue was one of contractual interpretation and enforcement and therefore was properly before the High Court.

The court held further that there was no genuine dispute of fact that precluded final relief sought on motion proceedings. Nkuna's case did not depend on proving that she was innocent of the underlying allegations. Nor did it require the court to decide whether the original disciplinary chairperson had been correct on the merits. The central issue was whether Rotek was entitled to override the internal appeal outcome. That was a question of law arising from the terms of the employment contract.

On a proper interpretation of the Code, the court found that the appeal chairperson's decision was binding on both parties. The use of the word "*final*" meant that the appeal decision marked the end of the disciplinary process. Rotek's purported decision to "*review or amend*" that outcome and to retain the summary dismissal had no basis in contract. To the contrary, the court held that Rotek's conduct amounted to self-help and a breach of contract. Its refusal to allow Nkuna to return to work, its insistence that she remained dismissed, and its failure to pay her salary all flowed from that breach.

The court also dismissed Rotek's attempt to characterise its conduct as a lawful "*second dismissal*" that terminated the contract and thereby deprived Nkuna of a contractual claim. That argument failed because Rotek's conduct did not lawfully terminate the contract in terms of the contract's own framework. The purported "*second dismissal*" was itself inconsistent with, and in breach of, the contractual disciplinary regime. The case therefore did not have to be recast as a labour dispute merely because Rotek purported to persist with the dismissal.

On remedy, the court accepted that Nkuna had elected to enforce the contract and claim of specific performance. It observed that while specific performance in employment cases may in some instances be inappropriate, that depends on the circumstances and remains a matter of judicial discretion. Rotek had not placed sufficient evidence before the court to show why specific performance should be refused. In particular, it had not adduced evidence establishing that Nkuna occupied the kind of role or relationship where the employment trust relationship had broken down to such an extent that enforcement would be inequitable. By contrast, what weighed heavily in favour of the relief sought was Rotek's resort to self-help in attempting unilaterally to countermand the appeal chairperson's decision.

The court therefore declared the employment contract to remain extant, ordered payment of outstanding remuneration, directed Rotek to continue paying future remuneration while the employment relationship subsists, and ordered that Nkuna be permitted to resume her duties.

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Key takeaways

The judgment serves as a significant reminder that contractual rights remain an important and enforceable component of employment relationships notwithstanding the extensive statutory protections afforded by labour legislation.

Employers that incorporate disciplinary codes into employment contracts should be mindful that disciplinary outcomes may have binding contractual force. Where a disciplinary code and procedure provides that an appeal outcome is final, employers will generally not be entitled to disregard or overturn that outcome unilaterally simply because they disagree with it.

The decision further confirms that employees retain an election to pursue contractual remedies in the High Court, including specific performance, rather than relying exclusively on unfair dismissal remedies under the LRA.

From a practical perspective, employers should ensure that their disciplinary codes clearly state whether, and in what circumstances, internal outcomes may be revisited. If no such power exists, it cannot simply be assumed.



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