



EMPLOYMENT

Bad process doesn’t make a good dismissal bad: LAC draws a clear line between procedure and substance

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South African labour law has long recognised that a dismissal can fail for one of two reasons. The employer may not have had a fair reason to dismiss the employee, or it may have followed an unfair procedure. While both render a dismissal unfair, they are distinct enquiries with distinct remedies.

A recent Labour Appeal Court judgment in *Universal Product Network (Pty) Ltd v Commissioner Mbatsana NO and Others* provides an important reminder that those two concepts should never be conflated.

The dispute arose from a protected strike at Universal Product Network (UPN), Woolworths’ logistics arm, during 2015. Following widespread misconduct during the strike, approximately 256 employees faced disciplinary action for breaching picketing rules, violating a court interdict and obstructing access to the employer’s premises. After numerous disciplinary enquiries, almost all were dismissed.

The CCMA commissioner concluded that the dismissals were **substantively fair**. The employees had been properly identified, had breached the picketing rules and the employer had a valid reason for dismissal. However, the disciplinary process itself was procedurally flawed, resulting in an award of one month’s remuneration to each employee as compensation. That should, in many respects, have been the end of the matter. Instead, the Labour Court took a different approach. It reasoned that the procedural defects were so severe that they effectively tainted the outcome of the disciplinary proceedings, converting what had been a substantively fair dismissal into one that was substantively unfair. The court ordered reinstatement.

The Labour Appeal Court emphatically disagreed. Perhaps the most significant aspect of the judgment is not simply the outcome, but the principle it establishes. The LAC rejected the proposition that “gross procedural unfairness” can somehow mutate into substantive unfairness. The current Labour Relations Act deliberately separates these two enquiries. Section 188 requires employers to prove both a fair reason for dismissal and a fair procedure. Failing one requirement does not erase compliance with the other.

The court illustrated the point with a practical example. An employee dismissed for theft without being afforded a disciplinary hearing may have suffered a procedurally unfair dismissal. That does not mean the employer suddenly lacked a fair reason for dismissal. The misconduct remains the misconduct. The procedural defect does not rewrite the facts.

This may appear obvious, but it is an important clarification. Over the years, various judgments have referred to “gross procedural unfairness” in different contexts, particularly where arbitration proceedings themselves were fundamentally defective. The Labour Appeal Court drew an important distinction between procedural unfairness during an internal disciplinary process and a gross irregularity during arbitration that deprives parties of a fair hearing. The latter may justify setting aside an arbitration award. The former does not transform the underlying reason for dismissal into an unfair one.

Equally important was the court’s criticism of the Labour Court for deciding a case that had never been pleaded. The employees had challenged the substantive fairness of their dismissals on the basis that they were not guilty and that dismissal was an inappropriate sanction. They had **not** argued that procedural unfairness itself rendered the dismissals substantively unfair. A reviewing court cannot create an entirely new case for a litigant. Litigation remains governed by pleadings, and review proceedings remain confined to the grounds advanced by the parties.

For employers, the judgment should not be read as permission to relax procedural standards. Procedural fairness remains a statutory requirement, and employers who disregard it may still face compensation awards. A procedurally flawed dismissal is still unfair.

What the judgment does provide, however, is welcome certainty. Where an employer can establish a fair reason for dismissal, procedural defects—even serious ones—do not automatically erase the substantive justification for the decision. The appropriate remedy will generally be compensation for procedural unfairness rather than reinstatement.

The Labour Appeal Court has therefore reaffirmed a principle that lies at the heart of dismissal law: **substance and procedure travel together, but they remain separate journeys**. Employers ignore either at their peril, but neither should be mistaken for the other.



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