



EMPLOYMENT

Reinstatement – not always fair

18 September 2025 3 min read

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South Africa's labour law often elevates reinstatement as the primary remedy for unfair dismissal, but reinstatement does not automatically serve justice. The Labour Appeal Court recently reminded us that reinstatement is not appropriate when an employee's misconduct destroys the foundation of trust that holds the employment relationship together. The CCI Call Centres v Pinn case illustrates this principle with striking clarity: an employee who defies direct instructions, undermines his manager's integrity, and threatens core business operations cannot expect to walk back into the workplace as though nothing happened.

The case began with Mr Pinn, a management accountant responsible for generating the payment codes that enabled thousands of call centre employees to receive their monthly salaries. Pinn grew angry when he did not receive a bonus and salary increase. He refused to create the codes, despite repeated and direct instructions from the Chief Financial Officer. He also accused the CFO of dishonesty. His defiance placed the company in a position where employees risked not being paid. The company charged him with gross insubordination, gross insolence, and inappropriate workplace conduct, and then dismissed him.

At arbitration, the commissioner found Pinn guilty of serious misconduct. However, the commissioner rejected dismissal as a sanction. Instead, the commissioner ordered one month's compensation. He explained that reinstatement would not work because Pinn's conduct had destroyed the working relationship with his superior.

Pinn challenged the award in the Labour Court. The Labour Court accepted that reinstatement stands as the default remedy under section 193 of the Labour Relations Act. It held that the commissioner should have reinstated Pinn and ordered retrospective reinstatement.

The employer appealed to the Labour Appeal Court. The LAC carefully reviewed the record and concluded that the Labour Court had applied the wrong test. The correct question remains whether the commissioner's decision fell within the range of decisions a reasonable decision-maker could reach. The commissioner had concluded that reinstatement would be intolerable because of the collapse of trust between Pinn and his superior. The LAC confirmed that conclusion.

The LAC emphasised that an employer must prove intolerability, not mere tension or conflict. Yet the facts here showed intolerability beyond question. Pinn had refused to perform the very function that enabled thousands of employees to be paid. He deliberately undermined the authority of the CFO. He accused a senior manager of dishonesty. He acted in a way that revealed a willingness to hold the employer hostage. No employer could reasonably restore an employment relationship after such conduct.

The LAC therefore reinstated the commissioner's award of one month's compensation. Reinstatement, the court ruled, would not serve fairness. The breakdown of trust meant that returning Pinn to the workplace would endanger operations and corrode workplace discipline.

The lesson from this case is both practical and principled. On the practical level, arbitrators and courts must weigh whether an employment relationship can survive the misconduct. If the relationship lies in ruins, reinstatement cannot deliver justice. On the principled level, reinstatement should never become an automatic remedy. The law requires reinstatement only when fairness demands it. Fairness considers both parties, not only the employee.

Employers should note that a well-documented breakdown of trust can justify resisting reinstatement even after a finding of substantive unfairness. Employees should note that serious insubordination or attacks on management integrity may close the door on reinstatement, even if a commissioner criticises the sanction of dismissal.

Reinstatement remains a central feature of our labour law, but it is not sacrosanct. The Pinn judgment affirms that trust forms the bedrock of every employment relationship. Once trust collapses, reinstatement collapses with it.



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