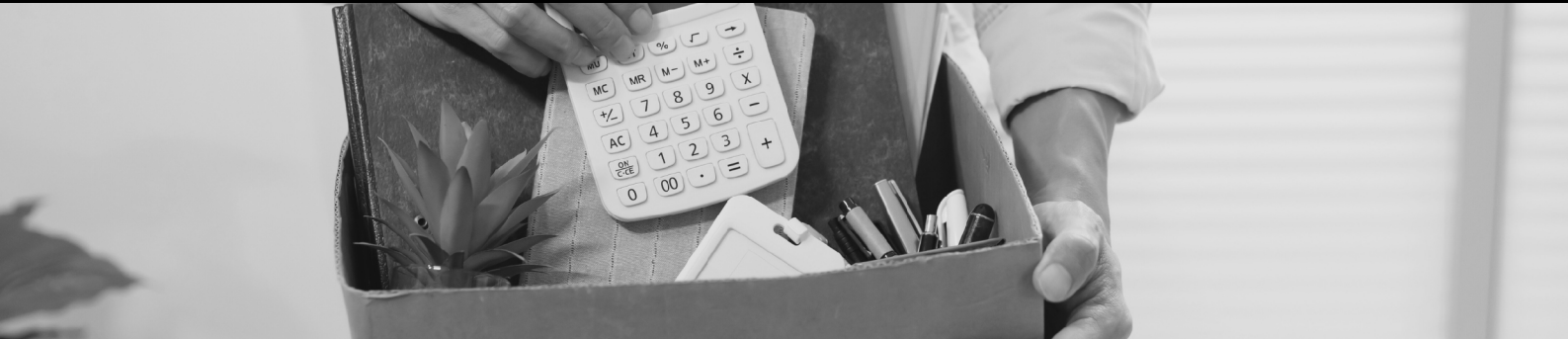




EMPLOYMENT

The Fired and the Furious — and Still Restrained

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The Labour Appeal Court's decision in *Backsports (Pty) Ltd v Motlhanke and another* is a useful reminder that dismissal does not mark the end of an employer's rights — particularly where a restraint of trade has been carefully agreed and plainly breached. For employers, the judgment reinforces several important lessons about enforcement, evidence, and the limits of sympathy-based reasoning.

At its core, the case deals with a familiar post-dismissal scenario: a senior employee leaves under a cloud, immediately approaches customers and colleagues, and then seeks to avoid restraint enforcement by invoking fairness, short service, or the fact of dismissal itself. The Labour Court accepted much of that reasoning. The Labour Appeal Court did not.

The first and perhaps most employer-friendly clarification is that dismissal, without more, does not disentitle an employer from enforcing a restraint of trade. The LAC reaffirmed long-standing authority that where a restraint is framed to apply once the employee "ceases to be employed", it remains enforceable regardless of the reason for termination — unless the dismissal itself was fraudulent or effected in bad faith for the purpose of triggering the restraint. In this case, there was no suggestion of bad faith. On the contrary, the employee had pleaded guilty to misconduct and abandoned his unfair dismissal claim. The dismissal was therefore legally irrelevant to the restraint enquiry.

That finding matters. Employers are often confronted with arguments that enforcing a restraint after dismissal is punitive or unfair. This judgment confirms that such arguments carry little weight unless the employer's conduct itself is tainted. Contractual consequences do not evaporate merely because the employment relationship ends badly.

Secondly, the judgment is instructive on what constitutes a protectable interest — and how little evidentiary gymnastics are required where the breach is obvious. The employer relied not on abstract claims of confidential information, but on concrete conduct: the former employee approached major clients, rendered services in direct competition, and solicited employees to join him. These were not speculative fears; they were observable facts. The Court had little difficulty finding that this conduct struck at the employer's goodwill and trade connections, which remain classic protectable interests.

Importantly, the LAC rejected the notion that a relatively short period of employment weakens restraint enforcement as a matter of principle. Duration may be relevant to reasonableness, but it is not decisive. What matters is not how long the employee stayed, but what they did once they left.

The judgment is also significant for its confirmation that the Labour Court has jurisdiction to grant ancillary relief flowing from restraint enforcement. The court a quo declined to interdict threats and harassment on the basis that there was no longer an employment relationship. The LAC firmly corrected this approach, holding that where the Labour Court has jurisdiction over the main restraint dispute, it is empowered — and indeed obliged — to deal with interlinked conduct, including threats to employees and sabotage of assets. Employers are not required to litigate piecemeal across multiple fora simply because the employment relationship has ended.

From a practical perspective, the case highlights the value of swift action and clear evidence. The employer acted urgently, identified specific customers and employees, and placed objective proof before the Court. The employee's response, by contrast, consisted largely of bare denials. That imbalance mattered.

Ultimately, the judgment reinforces a simple but often contested proposition: restraints of trade are not moral judgments, nor are they conditional on an employee's sense of fairness. They are contractual risk-management tools. Where an employer can show a legitimate interest and a clear breach, the Courts will enforce them — even where the employment relationship ended abruptly, unhappily, or by dismissal. For employers, the takeaway is reassuringly straightforward. Dismissal is not a waiver. Restraints still bite. And post-employment misconduct will not be excused by appeals to sympathy or indignation.



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