



**IN THE LABOUR COURT OF SOUTH AFRICA
(HELD IN DURBAN)**

Case no: 2025-114171

Reportable/Not Reportable

In the matter between:

RAKESH GARACH

Applicant

and

AFRICAN BANK HOLDINGS LIMITED

Respondent

Heard: 24 July 2025

Judgment delivered: 4 August 2025

Summary: Contract – urgency - specific performance

JUDGMENT

WHITCHER J

[1] This matter came before me on the 24th of July 2025. After considering the pleadings and arguments presented by both parties, I made the following order:

- (i) The applicant's dismissal on 3 July 2025 is declared unlawful.
- (ii) The respondent is directed immediately to reinstate the applicant to the position of Head: Mergers and Acquisitions and Investment Banking: Business and Commercial Division retrospective to 3 July 2025.
- (iii) The respondent is directed to comply with clause 6, 7 and 10 of its Disciplinary Code in any further disciplinary process it brings against the applicant.
- (iv) Written reasons for this order will be provided at a later stage.

[2] This judgment constitutes the written reasons as contemplated by paragraph 1(iv) of my order, above.

A clear right

[3] The applicant's employment was governed by a written contract. Clause 7.2 of that contract, provides that the respondent's internal rules and regulations, including its Human Resources (HR) policies and procedures, are binding on the employee. The inverse necessarily follows. Just as the applicant is bound by these policies, so too is the respondent in matters where such policies apply.

[4] The respondent's Disciplinary Code is one such HR policy. It explicitly applies to "all managers and employees within the bank". The respondent's obligation to apply the Code arises from the reciprocal expectation (or concurrent condition) that employees comply with the "specific performance and behavioural standards" set out in the schedule of offences. The argument advanced by the respondent, that the Disciplinary Code (Code) forms no part of the applicant's contract, is unpersuasive. Equally unsustainable is the contention that the obligations in the Code rest solely with the employee.

[5] The central question is whether the applicant has a contractual right to a formal disciplinary hearing in which oral evidence is led and tested through cross-examination. The respondent maintains that the Code is merely a guideline, without binding procedural force. Several provisions are cited to support this contention.

[6] The respondent's reliance on the terms "guide" and "guidance" in paragraph 1 of the Code is misplaced. These terms afford discretion to the chairperson regarding sanction and refer to informal corrective action. They do not signal that the procedures for formal hearings are optional. It was concerning to the Court that this reading was advanced under oath.

[7] Other general references to "guidelines" in the Code do not displace clause 6.1(e), which states: "Where formal disciplinary action is taken, it must be done per the guidance in this code." The use of "must" underscores that when formal disciplinary action is pursued, the procedures prescribed are mandatory not discretionary.

[8] Clause 10(c) of the Code prescribes the contents of a notice convening a formal disciplinary hearing. It stipulates that an employee must be advised of, inter alia the time, date, and venue, the right to call witnesses, to lead evidence, to cross-examine the employer's witnesses; and to be represented by a fellow employee or Sasbo official.

[9] Taken together, these provisions impose an obligation on the respondent to hold a properly constituted hearing with the above procedural elements. The applicant is correct. A contextual reading of the Code does not permit the respondent to bypass a formal hearing in favour of a process devoid of oral evidence and cross-examination.

[10] It is well established, following *Avril Elizabeth Home for the Mentally Handicapped v CCMA and Others* (2006) 27 ILJ 1644 (LC), that the Labour Relations Act does not demand disciplinary hearings emulate court trials. Yet that case concerns fairness under labour law, not contractual compliance. Even within the equity jurisdiction, an employer that has adopted policies more generous than the minimum statutory standard may be held to them. That is precisely the position here.

[11] It is worth noting, although it may offer the respondent little solace, that the applicant's invocation of constitutional rights lacks foundation. The Court does not

lightly entertain arguments framed around broad constitutional principles when the dispute is properly resolved through contractual interpretation.

[12] In the result, the applicant has demonstrated a clear legal right, rooted in contract, to a properly convened disciplinary hearing.

Alternative Remedy and Substantial Redress

[13] The respondent contends that the applicant could have pursued an internal appeal in terms of clause 13 of the Code. However, the evidence does not support the existence of this option in the circumstances. The findings of the chairperson and the applicant's termination letter make no reference to a right of appeal. Instead, the dismissal is expressly stated to be summary, with the applicant directed to refer the matter to the CCMA. This suggests that the internal process was considered concluded by the respondent.

[14] Nor is a referral to the CCMA a viable alternative remedy in this instance. The applicant seeks enforcement of his contract and the convening of a proper disciplinary hearing, not reinstatement or compensation. The CCMA's jurisdiction under unfair dismissal law cannot afford such relief. At best, it allows for a finding of procedural unfairness with a compensatory award, an outcome mismatched to the remedy the applicant seeks.

[15] The respondent's suggestion that reinstatement at the CCMA offers a viable route is also misdirected. This would require the applicant to plead an entirely different cause of action, namely, one of substantive fairness under the Labour Relations Act, not the essentially procedural complaint of contractual breach.

Irreparable Harm

[16] The prospect of irreparable harm must be assessed in light of the applicant's contractual right. To realise that right, reinstatement is necessary so that a procedurally proper hearing may be held. Without this, the right is extinguished.

[17] The applicant claims that, due to the seniority of his post, the respondent is likely to replace him if the matter is not dealt with urgently. In doing so, they would frustrate any practical reinstatement. The respondent's denial of this possibility is evasive and devoid of meaningful detail. They retort that the applicant is merely speculating. The Court is satisfied that there is a well-grounded apprehension that the harm of the impracticability of reinstatement will materialise if relief is not granted.

Urgency

[18] The urgency of this matter is intertwined with the issue of irreparable harm. The likelihood that the applicant's post will be filled imminently justifies an urgent application.

[19] The applicant also cannot be faulted for not approaching the court earlier. Had he come to court shortly after 13 May 2025, on being advised of the employer's approach to making written representations, the applicant would almost certainly have been faced with the argument that his application was not yet ripe. This on the basis that the appointed chairperson could be approached to rule – or had not yet ruled - on any procedural challenge to the nature of proceedings. That ruling/decision was only served on 3 July 2025, and the applicant thereafter acted promptly and diligently. The application which required legal consultations and careful drafting by counsel was launched on the 15th of July 2025

Specific performance

[20] I am mindful that the effect of this order is to compel specific performance. It is trite that the remedy is not granted mechanically, as of right. A court must exercise its discretion judiciously, taking into account factors such as whether damages would constitute adequate redress, whether the obligation entails the rendering of personal services, or whether enforcement would result in undue hardship or difficulties in supervision.

[21] In this case, damages are not a viable alternative. The procedural right the applicant seeks to vindicate, namely, the right to a properly convened disciplinary hearing as provided for in the Disciplinary Code, is not readily reducible to quantifiable monetary compensation. Should the applicant ultimately still face dismissal following a lawful hearing, any damages for the earlier breach would be modest. Conversely, if he is retained, the calculation of loss would involve actuarial projections of future salary, rendering the calculation uncertain.

[22] Although the matter arises in an employment context, the relief granted does not compel the applicant to perform any personal service nor impose upon him any duties. Rather, it requires the employer to convene a discrete event, a disciplinary hearing in accordance with its own disciplinary code, and nothing more.

[23] Compliance with this order is not, in the Court's view, difficult to supervise. Whether or not the hearing is convened within the meaning of the Disciplinary Code is a readily ascertainable factual question. In the unlikely event of non-compliance, the applicant retains recourse to contempt proceedings. That said, the Court does not anticipate that a reputable entity such as the respondent would defy an order of this nature.

Conclusion

[24] On a proper reading of the disciplinary code, and on the basis of the surrounding contractual relationship, the applicant made out a case for relief sought.

Benita Whitcher

Judge of the Labour Court of South Africa

APPEARANCES:

For the Applicant: W N Shapiro SC, with N Seiti, instructed by Futchter and Poppesqou

For the Respondent: M Moolla, instructed by Cliffe Dekker Hofmeyer Inc