

The limits of leniency: Chairpersons, plea-deals and discipline in the workplace

By Andries Kruger, Bhekithemba Mbatha | 03 February 2026

The Labour Appeal Court (LAC) has handed down a compelling decision that tackles a question many employers and legal practitioners grapple with: *can a disciplinary chairperson reject a lenient sanction that emerges from a plea-bargaining process?* The response to this question was provided by the LAC in *South African Police Services v Mkonto and Others*.¹ We unpack this important case in detail below.

Mr Mkonto was a sergeant in the South African Police Service (SAPS). He was charged with serious misconduct for the unauthorised use and parking of a SAPS vehicle. During the disciplinary hearing, he pleaded not guilty. SAPS led evidence from its first witness before the matter was postponed due to the second witness being unavailable.

Mr Mkonto and SAPS entered into a plea-bargaining agreement where he would change his plea to guilty in exchange for a lenient sanction. The chairperson was informed of the agreement and accepted the revised plea. However, given the seriousness of the misconduct, the chairperson rejected the proposed lenient sanction and instead imposed a dismissal.

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Contact Details

Cape Town

15th Floor, Convention Tower
Heerengracht, Foreshore
Cape Town
8001

Tel: [+27 21 431 7000](tel:+27214317000)

Johannesburg

90 Rivonia Road,
Sandton
Johannesburg
2196

Tel: [+27 11 530 5000](tel:+27115305000)

Proceedings at the Bargaining Council



Aggrieved by his dismissal, Mr Mkonto referred the matter to the Safety and Security Sectoral Bargaining Council. The arbitrator found that the chairperson lacked authority to reject the plea-bargain agreement, rendering the dismissal procedurally and substantively unfair, and ordered his reinstatement with full back pay



Proceedings at the Labour Court



SAPS took the matter on review to the Labour Court (LC), but the court upheld the arbitration award as the chairperson was bound by the plea-bargain agreement. It held that if the chairperson rejected the plea-bargain agreement, he should have allowed Mr Mkonto to revert to his original not-guilty plea and then recused himself from the disciplinary hearing.



Proceedings at the Labour Appeal Court



SAPS appealed the LC's decision to the LAC. The central question became unavoidable: can a disciplinary chairperson reject a lenient sanction born from a plea-bargain, or must they simply accept what the parties have agreed?

The LAC first held that the plea-bargaining agreement was not binding on the disciplinary chairperson. This is because the SAPS Disciplinary Regulations require the chairperson to independently determine an appropriate sanction after considering all mitigating and aggravating factors.

The LAC then considered the procedure the chairperson should have followed. It warned that chairpersons cannot selectively accept only the parts of a plea-bargaining agreement that appeal to them. Instead, the court set out a clear four-pronged set of guidelines to be followed whenever such agreements are placed before a chairperson.

1

First, the chairperson must formally advise the parties that he or she is not inclined to endorse the proposed lenient sanction and must set out the reasons underpinning this position.

2

Second, the parties must be afforded an opportunity to reconsider their respective positions and evaluate their available options. These options may include:

- reopening the plea-bargaining discussions to address the chairperson's concerns and propose an alternative sanction; or
- terminating the plea-bargaining agreement altogether.

3

Third, if the parties agree to terminate the plea-bargaining agreement, the employee must be permitted to withdraw the plea of guilty.

4

Fourth, the disciplinary hearing must commence *de novo* before a different chairperson, unless the employee consents to the same chairperson continuing to preside over the proceedings

The court emphasised that these guidelines are not peremptory; their application will depend on the specific facts of each case.

Key takeaways from the judgment

Plea bargains in labour matters constitute a useful mechanism to resolve disciplinary issues in an expedient manner resulting in the charged employee, initiator and witness to focus on revenue generating activities rather than being involved in protracted disciplinary hearings. This is in accordance with item 2(2) of the Code of Good Practice: Dismissal.

Employers should ensure that their disciplinary policies include plea-bargain agreements, the principle that the chairperson is not bound by a plea-bargain agreement, and the process to be followed where the chairperson rejects the plea-bargain agreement in whole or in part. Employers should also include a full and final settlement clause in the plea-bargain agreement to avoid employees challenging the sanction imposed at a later stage.

1 - *South African Police Services v Mkonto and Others* 2026 ZALAC

Key Contacts



Andries Kruger

Partner



Bhekithemba Mbatha

Associate

Accolades



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