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## Armed picket during protected strike does not automatically justify dismissal

### *Sanction review – strike misconduct – armed picketing – peaceful strike*

The Labour Appeal Court, in *Mondi South Africa v CEPPWAWU* (DA25/24) [2026] ZALAC 20 (6 May 2026), upheld the reinstatement of employees dismissed for carrying weapons during a protected strike, finding that the arbitrator's decision to impose a sanction less than dismissal fell within the range of reasonable decisions under the circumstances.

The employees participated in a protected strike called by the union. Although the strike was peaceful and no violence or intimidation occurred, the employees were dismissed after being found guilty of carrying weapons (including tree branches) in breach of the agreed picketing rules, which expressly prohibited weapons.

The union and employees challenged the dismissals at the CCMA. The arbitrator found the employees guilty of misconduct but held that dismissal was not an appropriate sanction. In a detailed award, the arbitrator considered multiple mitigating factors, including:

- The employees' clean disciplinary records and long service;
- Their compliance when instructed to put away the weapons;
- The absence of any actual violence, intimidation, or damage to property;
- Genuine remorse shown during the arbitration; and
- That some employees only participated for one day and valued their jobs.

The arbitrator ordered reinstatement without backpay, effectively imposing a 12-month salary penalty – being the period from the date of dismissal until the date of the arbitration award. The company, however, took the award on review, arguing that the arbitrator failed to follow the Labour Appeal Court's decisions in *Pailprint (Pty) Ltd v Lyster N.O* (2019) 40 ILJ 2047 (LAC) and *Pailpac (Pty) Ltd v De Beer N.O* (2021) 42 ILJ 1038 (LAC). In both decisions, the LAC regarded the carrying of weapons at a strike as serious misconduct which, in those cases, justified dismissal. The Labour Court, however, dismissed the review application. The company accordingly appealed to the LAC.

In a judgment delivered on 6 May 2026, the LAC (per Nkutha-Nkontwana JA, with Tokota et Collis AJJA concurring) dismissed the company's appeal. The LAC held that, while armed picketing constitutes serious misconduct, *Pailprint* and *Pailpac* do not establish an inflexible rule that dismissal is the only appropriate sanction in every case and necessarily follows, regardless of the specific circumstances of the case.

The LAC held that the arbitrator properly appreciated the seriousness of the offence but reasonably concluded, on the totality of the evidence, that exceptional circumstances justified progressive discipline, rather than dismissal. Important factors included the peaceful nature of the strike, the lack of any evidence of actual intimidation or violence, and the presence of other strong mitigating factors. That the employees were denied 12 months' back pay was regarded as a sufficient punitive

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measure. *Pailprint* and *Pailpac* were also distinguished on the basis that, in the present matter, the arbitrator did not trivialise the misconduct and properly weighed all relevant circumstances.

The LAC emphasised that sanction reviews, including in strike-related misconduct cases, must always be sensitive to the context.

This judgment confirms that, while carrying weapons during picketing is a serious offence that can warrant dismissal, it does not necessarily warrant dismissal. Arbitrators retain discretion to impose progressive discipline where mitigating factors pertain and exercise a value judgment in deciding on the fairness of sanction. The decision to dismiss must always be based on a careful, evidence-based assessment.

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