

# Employee confessions - are they valid? LAC ruling

 By [Chloë Loubser](#)

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In its first judgment of the year, in the matter of *Brauns and Others v Wilkes N.O and Others*, the Labour Appeal Court (LAC) dismissed an appeal by former employees of the South African Police Service (SAPS) who had challenged their dismissals for dishonesty relating to overtime claims.



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The first appellant, Quinton Brauns, was employed by the SAPS as a financial clerk. His duties involved, among other things, the management of work and remuneration for work done on public holidays and coordinating and controlling the budget and financial expenditure at the police station. It was alleged that he misrepresented that he and the two other appellants (being his wife and sister-in-law) were entitled to overtime payments, knowing that they were not entitled to such payments. In turn, the second and third appellants were alleged to have defrauded and prejudiced the State by not revealing or informing the SAPS that they had received the overtime amounts which were not due to them.

All three appellants were charged with fraud and with conspiring with each other to defraud the SAPS. They were dismissed by the SAPS and their unfair dismissal claim at the Safety and Security Sectoral Bargaining Council was dismissed, the arbitrator finding their dismissals to be both substantively and procedurally fair. Aggrieved, the appellants lodged a review application at the Labour Court. The Labour Court dismissed the review application and the appellants appealed to the LAC.

In evidence, it was common cause that the appellants received the unauthorised payments and that they did not work the overtime for which they were paid. The payments were made using other employees' access credentials to the SAPS payment system without these employees' knowledge. It was also common cause that Brauns made a confession about his fraudulent conduct before a magistrate.

This case is noteworthy for employers, as it provides a useful discussion of the law on employee confessions in the context of disciplinary matters. A summary of the applicable legal principles as articulated by the Court is set out below.

## **General requirements for a valid confession**

A confession is a statement in which a person acknowledges that they have committed one or more offences or crimes. In the context of labour disciplinary proceedings, a confession is an acknowledgement, on the part of an employee, of a fault, wrongdoing or breach of a rule.

In a disciplinary matter, an employer who relies on a confession, has the onus to prove that the confession was made, and that it is valid. A confession is valid only if the employer can show that it is:

- freely and voluntarily made without undue influence, coercion, or intimidation from the employer or any other person; and
- clear and unambiguous and that the employee understood the consequences of the confession.

Importantly, in labour matters, a confession does not amount to a plea of guilty on the part of the employee, and an employer cannot dismiss an employee based solely on a confession. Even where there is a valid confession, an employer is still required to follow a fair procedure and determine if there is a substantive reason to terminate the employment relationship.

### **Can a confession be invalid because it was made in fear of a criminal prosecution?**

The question of whether a confession may be rendered invalid based on fear of criminal prosecution depends on the circumstances of each case. A confession in these circumstances may be considered involuntary or influenced by a promise or threat and therefore, inadmissible, or unreliable. But this will not be the case where confession is made willingly and corroborated.

### **Is an employee entitled to information relating to the charges before confessing?**

One of the arguments made by the appellants was that Brauns' confession was rendered invalid because it was made before he had information relating to the disciplinary charges and had managed to consider the evidence. The LAC found this argument to have no merit.

The charges of misconduct against Brauns were based on the evidence gathered by the SAPS, including the confession. A confession generally forms part of the investigation into an employee's misconduct; it is not made by first finding out what information the employer has.

Further, while a confession can inform the charges proffered against an employee, it is not the only factor determining the outcome of disciplinary proceedings. An employee who has confessed to an offence could still challenge the confession itself, including its reliability, at the disciplinary hearing, or present evidence and argument to prove their innocence or to mitigate the severity of the sanction.

## Conclusion and key takeaways

While a valid confession by an employee to acts of misconduct can be considered by an employer, the confession cannot, on its own, justify an employee's dismissal. An employer is still required to follow a fair procedure and show that dismissal is an appropriate sanction in the circumstances of the case.

Considering the evidence, the Court in this case found Brauns' confession to be valid. It was made before a completely independent magistrate, who enquired into the voluntary nature of the statement and there was no indication that the statement was not voluntary or made under duress.

Further, the magistrate was called as a witness at the arbitration to confirm the contents of the documented statement. The confession was accordingly admissible as evidence.

Both the Labour Court and LAC were satisfied that the arbitrator had considered the evidence of the confession, as well as the other evidence presented by the SAPS, in reaching the decision that the misconduct had been committed, and that the dismissals were fair. The appeal was accordingly dismissed.

## ABOUT CHLOË LOUBSER

Chloë Loubser is a knowledge and learning lawyer in Bowmans' Cape Town office Employment and Benefits Practice. She specialises in the employment law aspects of commercial transactions, including mergers and acquisitions; drafts employment contracts, policies and procedures; and advises on dismissals and corporate retrenchments, agreements and restraints of trade.

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