



**GENERAL PUBLIC SERVICE  
SECTOR BARGAINING COUNCIL**



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**IN THE GENERAL PUBLIC SERVICE SECTORAL BARGAINING COUNCIL  
HELD AT  
Nr 473 STANZA BOPAPE STREET, ARCADIA, PRETORIA**

Commissioner : Adv. Itumeleng Kgatla  
Case No : GPBC1309/2022  
Date of Award : 16 January 2024

**PSA obo M.G LANGA**

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(Union/Applicant)

And

**DEPARTMENT OF INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE**

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(Respondent)

Applicant's representative : Mr. Archie Sigudla (PSA)  
Respondent's representative : Dr. David Ntimba (Labour Relations)

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## ARBITRATION AWARD

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### **PARTICULARS OF THE PROCEEDINGS AND REPRESENTATION:**

- [1] The above-mentioned matter was referred to **GPSSBC** for arbitration in terms of Section 191(1) [191(5) (a)] of the Labour Relations Act 66 of 1996 (LRA), as amended. The arbitration proceedings into the matter were held over several days at Nr 473 Stanza Bopape Street, Arcadia, Pretoria. The arbitration proceedings into the matter were concluded on the 15<sup>th</sup> of November 2023.
- [2] Closing arguments from both the Respondent and the Applicant were received by the Commissioner on the 29<sup>th</sup> of November 2023 and the 07<sup>th</sup> of December 2023 respectively.
- [3] The Applicant appeared and was represented by **Mr Archie Sigudla**, a union official from the Public Servants Association (**PSA**). The Respondent appeared and was represented by **Mr David Ntimba**, an employee of the Respondent attached to the Labour Relations Directorate.
- [4] The proceedings were conducted in English without the need of a language interpreter. Digital and manual recordings were made during the process. Both parties were afforded the opportunity to present *viva voce* evidence under oath, in chief and in re-examination and to cross examine opposing testimonies. Written closing arguments were presented and considered.
- [5] In terms of Section 138(7) of the LRA, the Commissioner is required to issue a signed arbitration award with brief reasons. It is for this reasons that only salient points will be referred to in this award even though all evidence and submissions were considered.

### **POINT IN LIMINE**

- [6] *None*

### **ISSUES TO BE DECIDED:**

- [7] I am firstly required to decide whether or not the Respondent's decision terminate its employment relationship with the Applicant following a disciplinary hearing is substantively and procedurally fair.
- [8] Should I find that the dismissal was unfair, I must determine an appropriate remedy in terms of Section 193 (1) of the LRA.

### **COMMON CAUSE ISSUES**

- [9] The Applicant was employed by the Respondent to the position of Deputy Director: Marketing and Communication since the 07<sup>th</sup> of March 2009. The Applicant was dismissed following the outcomes of a disciplinary hearing and an internal appeals process, which process outcomes, were communicated to the Applicant on the 22<sup>nd</sup> of August 2022.
- [10] The Applicant's disciplinary hearing was concluded on the 21<sup>st</sup> of September 2021 but the report was released on the 2<sup>nd</sup> of November 2021, after having been charged with the following:
- **Charge 1:**  
It is alleged that you are guilty of gross dishonesty in that on or about the 13<sup>th</sup> of December 2018, you forged and submitted fraudulent pamphleteering registers to Independent Police Investigative

Directorate and/or your supervisor, giving the impression that you conducted outreach activities at different areas with the members of the community as they appear on the said pamphleteering register, whereas you did not do so.

- **Charge 2:**

It is alleged that on or about 28 November, 05, 07, 10 and 12 December 2018 as it appears on your pamphleteering/outreach plan (annexure B), you absented yourself from work under the disguise that you were at outreach programs whereas you knew that you did not do so and you were unduly remunerated despite being absent from work without authority and or official leave.

- **Charge 3:**

It is alleged that you are guilty of gross negligence in that on or about the 28 November 2018,05,07,10 and 12 December 2018 as it appears on your pamphleteering registers, you distributed outdated pamphlets with the old departmental logo to the public while you ought to know it was wrong to do so.

### **ISSUES IN DISPUTE**

- [11] The Applicant contends that her dismissal was unfair both on substance and procedure. The Respondent contends however that the converse is true. The Applicant is alleging that the Respondent has failed to comply with clause(s) 7.3(o) and 8.8 of the PSCBC Resolution 1 of 2003 (Disciplinary Code and Procedure of the Public Service).
- [12] The Applicant further contends that there is no workplace rule that she has breached or contravened in as far as the charges are concerned.
- [13] The Applicant contends that the Chairperson's report with regard to the sanction was never communicated to him.
- [14] The Applicant contends that the Respondent has at some point used two different logos, but this point is vehemently disputed by the Respondent.
- [15] In terms of the relief sought, the Applicant is praying for retrospective reinstatement/reinstatement without loss of benefits. The Respondent has recorded its prayer that the Applicant's application be dismissed.

### **SUMMARY OF EVIDENCE AND ARGUMENT**

#### **RESPONDENT'S EVIDENCE**

- [16] **Mr Moses Zakhele Dlamini** was sworn in as the Respondent's first witness and his evidence can be summarized as follows:
- [17] He is a former employee of the Respondent to the position of Director: Communication and Marketing, and national spokesperson .He testified further that he held until June 2019, and then ventured into private practice from thereon.
- [18] He knows the Applicant as a former Deputy Director: Communications and Marketing as she was his subordinate and reported directly to him for more than ten (10) years. He testified further that the

Applicant's duties included drafting reports, budgeting and conducting community outreach programs, having a target of six (6) outreach programs per annum.

- [19] The outreach programs were conducted wearing the Respondent's corporate material; included the filling in of attendance registers and taking of photographs as part of the evidence that the community outreach program was indeed conducted. The photos could be taken with the Respondent issued cameras or taken from personal phones of the relevant personnel.
- [20] The reports from the outreach programs were subjected to the quality assurance check to avoid queries with the Auditor General and ensure that it complies with the plan of the Respondent. The reports submitted would be scrutinized against the evidence submitted in support thereof.
- [21] The document on page 89-90 of the bundle (**R**) is an outreach report submitted by the Applicant for a program conducted at the Centurion train station.
- [22] The programs are generally conducted using the resources of the Respondent including the vehicle save for the SMS members. It is not possible that the required material can be carried without the use of a motor vehicle.
- [23] The document on page 92 of the bundle (**R**) is an attendance register and does not contain the contact numbers of the people who have signed it. He saw handwriting similarities on the attendance registers when he examined the same reports, and as a result, sanctioned for an investigation to be conducted against the Applicant.
- [24] The reports were submitted only in January 2019 for events which are alleged to have taken place in October 2018.
- [25] The Applicant never asked for the keys to access the campaign material in the form of branding, pamphlets and pull up gazebos needed for the community outreach from the store keeper.
- [26] As part of his investigations, he discovered that the Irene Market only operates on weekends, specifically the first and the last Saturdays of the month and the 28<sup>th</sup> of November 2018 was on a Wednesday, and the market was not operational on that date.
- [27] The Applicant has never claimed for the expenses incurred in terms of travelling and lunch for the outreach programs she has carried out and that made him suspect that same have never taken place.
- [28] It is highly unlikely and strange that a person would only interact with only ten (10)-fifteen (15) people for eight hours because that outreach program is like a full normal working day.
- [29] The Respondent went through a process to develop and new logo and all the material bearing the old logo were recalled, and same was also changed on the website of the Respondent, as the same was approved by the top management of the Respondent and was officially launched.
- [30] The Applicant then launched a campaign to reverse the implementation of the logo on the basis that the logo was never approved by the Minister, and this she did after the witness left the employ of the Respondent.

- [31] He became an employee of the Respondent on the 3<sup>rd</sup> of March 1997, and to the position of Deputy Director, Information Technology, and became a Director: Marketing and Communication in December 2005/6.
- [32] He became a supervisor to the Applicant on or about 2008/9 as Deputy Director: Marketing and Communication.
- [33] He has always had issues of performance with the Applicant few months into him becoming her supervisor, and that the same issues were raised by the Executive Director then, **Mr Beekman** and there were also complaints from provinces about her not representing the cases of the Respondent accurately.
- [34] She received support and coaching from him about her role as the Spokesperson but the situation did not improve and was asked by the Executive Director to take over the role and perform the duties of communicating on behalf of the Respondent.
- [35] He became the national spokesperson of the Respondent in 2012 when the position was made or elevated to the level of Director.
- [36] He is not aware of any complaint or grievance against him by the Applicant either to him directly, or to his superiors, and that his relationship with the Applicant was that of supervisor and supervisee. The email on page 150 dated the 13<sup>th</sup> of March 2019 of the bundle **(A)** is from the Applicant to the witness complaining about the treatment she is receiving from the witness as the supervisor.
- [37] The email is a counter to the investigation sanctioned by the witness on or about 17<sup>th</sup> January 2019.
- [38] He then requested for the Applicant to be transferred to another supervisor after receipt of the email from the Applicant, and she was indeed transferred to another supervisor.
- [39] He has never sat down with the Applicant alone since he came back from his nine (9) months suspension and everything is a fabrication and exists in the Applicant's head. She once lodged a grievance against him after he had asked for an investigation into the fabrication of reports about the outreach programs.
- [40] The outreach programs are preceded by an action plan which is subject to approval by the witness, and same was done in this case relating to then Applicant as per page 64 of the bundle (A). This is the second plan as the initial plan was never executed or implemented by the Applicant.
- [41] His understanding is that where there was no indication for the use of the state vehicle, the assumption was that she would use her private vehicle and claim for the mileage in line with the transport policy of the Respondent.
- [42] He received the reports and upon doubt, he reported the matter to the Integrity Unit for investigation and a handwriting expert was appointed and his suspicions were confirmed by the investigation team and or its outcomes.
- [43] The report(s) were recommended without comments by the witness on the 18<sup>th</sup> of December 2018. The report(s) were submitted in the last minute, and he only discovered later after recommending it that he was misled by the Applicant, and that the reports were fraudulent.

- [44] There is no policy position that all participants or group of people should individually sign the attendance register personally. The unit was assessed and found to have performed in terms of the expected mandate as per the KPA of the individual employees. He does not know if the Applicant received a performance bonus for the year in question or not as he left the employ of the Respondent before same could be concluded.
- [45] The plan on page 66 of the bundle **(A)** is not signed by him or anyone else, and he is not able to comment on it as a result. The plan on page 69 of the bundle **(A)** was approved by the witness.
- [46] He is not aware that the Applicant was acquitted on the charge relating to absenteeism, or absent without official leave.
- [47] The Respondent adopted a new logo and all employees were instructed by email in page 154 of the bundle **(A)**, and dated the 1<sup>st</sup> of March 2017 to make use of the new logo as the old one was recalled and distributing pamphlets with an old logo constituted gross negligence on the part of the Applicant as she ought to have known, though the email does not say anything about the pamphlets, but there are other emails, which can be produced should he be indulged.
- [48] All the material with an old logo was withdrawn but after he left the organization, the Applicant endeavored to nullify the new logo.
- [49] The Applicant was charged in January 2019 and then later started de-campaigning the new logo and its implementation thus pushing for its reversal. The use of the new logo was implemented with the support of the legal opinion that there is no legislative provision or law compelling the Respondent to utilize the cote of arm and not the new logo as registered with the Companies and Intellectual Property Commission (CIPC).
- [50] The letter on page 61 of the bundle **(A)** was a directive signed by the acting Executive Director, after he had left the organization that all Departments must use the coat of arms as a form of corporate identity, but there is no supporting evidence that the Government Communication and Information Systems (GCIS) has issued such a Directive.
- [51] He communicated an instruction by email to the provinces that the material bearing the old logo is being withdrawn and must not be used anymore, the provinces were invited to come and collect the new material at the Head Office, alternatively, that same would be couriered to the provinces.
- [52] The allegation that he made a threat to make the Applicant's life a living hell was proven to be untrue by an investigation report into the grievance lodged by the Applicant against the witness.
- [53] The Applicant became the acting Director: Marketing and Communication after the witness left the organization and that is when she started or got involved in the processes of reversing the implementation of the new logo.
- [54] The outreach plan in terms of page 70 of the bundle **(A)** can be amended by the Applicant in consultation with the witness.
- [55] The information which appears on the email on page 154 of the bundle **(A)** was informed by the discussion and/or was approved by the Executive Director.

- [56] The Directive on page 61 of the bundle was issued after he had left the Department and long after the Applicant was charged, and the charges were not drafted by the witness.
- [57] **Ms Lourika Buckley** was sworn and testified as the second witness in support of then Respondent's case and her evidence can be summarized as follows:
- [58] She is a forensic document and handwriting examiner and has been practicing as such since 2008, and is member of the American Handwriting Analysis Foundation, and a member of the South Africa Chapter of the Association of Certified Fraud Examiners.
- [59] She was appointed by the Respondent to compile a report on page 134 of the bundle (**R**) and to examine documents on pages 149-153. The instruction was to examine the sheets and establish if the signatures were made by one person or many people.
- [60] She placed the handwritings and signatures on the chart to illustrate the issues, and the findings were that there were handwritings of the two (2) people on the forms, and such contains fictitious scribbles/spurious production.
- [61] The signatures all have the same individual writing character flow from the two individuals.
- [62] The witness's qualification and membership of associations are summarized in page 154 of the bundle (**R**).
- [63] The certificate was acquired over a period of 2 and half years on a part-time basis.
- [64] She is alive to the fact that the handwriting of one person can differ depending on the mood and sitting or standing positions.
- [65] She does not know the names of the person who authored the documents but can confirm the signatures are for two (2) people as per page 149 of the bundle (**R**) but is not sure whether that constitutes fraud or not, named writer 1 and writer 2 for ease of reference.
- [66] **Ms Winfred Seefan** was sworn in as the third witness of the Respondent and her evidence can be summarized as follows:
- [67] She employed by the Respondent to the position of Deputy Director: Communication and stakeholder Manager with effect from the 1<sup>st</sup> of April 2016, but was initially responsible for compliance and is responsible for the following:
- Stakeholder engagement
  - Community outreach
  - Police station lectures
- [68] The community outreach entails gatherings wherein promotional materials such as gazebos, pamphlets and tables are used. The community outreach process is preceded by requisition of an official vehicle or approval for the use of a personal vehicle, for which one will later be reimbursed by the Respondent.
- [69] The materials are requested from the marketing department and are used for visibility purposes, especially the gazebo and table cloth, and the table is used for ease of operation, amongst others, the administration of the attendance register.

- [70] The process involves submission of a memorandum to the supervisor who will then motivate and submit same to the Chief Financial Officer (CFO) for recommendation and approval by the Executive Director.
- [71] She would normally involve the support team responsible for the taking of photos in big events like in the stadium or community hall, and management of the attendance register. She submitted further that the taking of photos is not necessary in minor events which are not held in community halls or stadiums.
- [72] She has never done an outreach program alone as it involves a lot of administration, sometime juxtaposing between presentation and management of the attendance register. She however submitted further that other people are able to do it alone without any assistance from the support team.
- [73] The details can be filled by her on the attendance register but the signature or cross in the case of a person who cannot read or write will be appended by the participant personally.
- [73] She is currently under the supervision of **Ms Shuping** who is the Director: Marketing and Communication, and was supervised by **Mr Dlamini** between the years 2017 and 2018 together with three (3) others.
- [74] She is expected to perform six (6) outreach programs annually and she would always request for the assistance of colleagues, which may sometime include investigators.
- [75] She knows the Applicant as a former colleague and once went out with her to community outreach programs together with other colleagues within the unit even though she does not recall the year but knows for a fact they went to the Mabopane Central city.
- [76] The report compiled after the outreach program is written jointly and all participant employees take ownership of the report. There is no standard operating procedure on the completion of attendance registers but it is stipulated that the register must be signed or else such a register will be queried by the superiors/people responsible for monitoring and evaluation, and that is from her own experience.
- [77] She is not aware of the interaction between the Respondent and the Government Communication and Information Systems in relation to the logos, and or in which year the eye logo was used. The people at marketing are responsible for the printing of the promotional material and the logos associated with that.
- [78] The instruction for employees to cease and desist from the use of the old logo was circulated by email to all the employees of the Respondent as per page 154 of the bundle **(A)** but does not remember the details in full.
- [79] She is not in a position to comment on the relationship between the Applicant and her previous supervisor **Mr Dlamini**. She would also not be in a position to know if certain people have been excluded from certain staff meetings or any other meeting.
- [80] She was not part of the team that was involved in the launching of the eye logo.

### **APPLICANT 'S EVIDENCE**

- [81] **Ms Masediko Grace Langa** (the Applicant) was sworn in and testified as the first witness in support of her case and her evidence can be summarized as follows:



- [82] She was employed by the Respondent when it was still called the Independent Complaints Directorate to the position of Deputy Director: Marketing and Communications with effect from the 1<sup>st</sup> of August 2009, and was reporting directly to **Mr Moses Dlamini**, who was Director: Marketing and Communication, after having worked for the Department of Correctional Services.
- [83] She was responsible for the following duties: media relations, marketing, production and printing of publications, events management and Community outreach activities.
- [84] She had a good working relationship with **Mr Moses Dlamini** until things turned sour in the years 2016/17 after she had acted on his position while he was on suspension.
- [85] During the years 2014/15 when **Mr Robert MacBride** was the head of the Respondent and had a fallout with the Minister, **Mr Nathi Nhleko**, as he then was, and later had a fallout with the new Minister, **General Bheki Cele** and **Mr Robert MacBride** was suspended, and then, **Mr Israel Kgamanyane** was appointed as the acting Executive Director, when his substantive position at the time was that of the Provincial of the IPID in Free State.
- [86] The management of the Respondent and Directors had during the time of court cases stood against the Minister of police, while the staff of IPID was in support of him (Mr Robert MacBride) and attended his court(s) appearances, and that included the staff in the office of the Executive Director, and other directors but she did not attend same.
- [87] **Mr Israel Kgamanyane** made a lot of changes when he took over as head of the Respondent, he reshuffled and dismissed some of the people who were seen to be in support of **Mr Robert McBride**, and **Mr Moses Dlamini** was one of the people affected in that he was suspended, and she was appointed to act in his position.
- [88] At some point all the media inquiries relating to **Mr Robert MacBride** were referred to the ministerial spokesperson and she was given a mandate to update the media in relation to other employees including **Mr Moses Dlamini**.
- [89] **Mr Israel Kgamanyane** was transferred to the Police Civilian Secretariat on the day that the Court had announced that the suspension of **Mr Robert MacBride** was unlawful, and other colleagues resigned and left the employ of the Respondent.
- [90] **Mr Robert MacBride** issued a circular upon his return reinstating all the employees who were suspended or dismissed during the period of his suspension, and that included **Mr Moses Dlamini**, and he started sidelining her, as she was viewed as a person belonging to the **Kgamanyane** group, to an extent that he interacted directly with her direct sub-ordinates

- [91] She at some point she wrote an email to **Mr Moses Dlamini** complaining about his unfair treatment towards her as per page 150 of the bundle **(A)**,but there was no response from **Mr Moses Dlamini**, instead the email was forwarded to the Chief Director: Compliance, Monitoring and Stakeholder ,**Ms Molope**.
- [92] **Ms Molope** responded to **Mr Moses Dlamini** as per her email on page 152 of the bundle **(A)**, in which she was also copied, and she was then moved to start reporting to **Ms Geets**, on the condition that **Mr Moses Dlamini** must put it in writing that he cannot work with or sit with her in the same meeting, this was the arrangement until **Mr Moses Dlamini** resigned.
- [93] She lodged a grievance against **Mr Moses Dlamini** on the 25<sup>th</sup> of January 2019 in relation to the physical and the verbal assault committed against her while emphasizing that he will deal with her.
- [94] The outreach plan on page 64 of the bundle **(A)** was compiled by the witness requesting for permission from the Supervisor, to conduct outreach and get approval.
- [95] She would take brochures, a pen and attendance registers when she went out to conduct the outreach program, and would normally go alone without any support team. The nature of the material to be taken normal depends on the nature of the event.
- [96] Pamphleteering is not the same as a departmental outreach program, which would normally need branding such as banners, gazebos and tables and that would require the whole team to work.
- [97] She would go to places like church square and clinics to conduct the pamphleteering and acquire signatures of the participants or targeted group. Other places required her to have prior approval in the case where there would be the use or involvement of branding material.
- [98] The plan on page 64 of the bundle **(A)** speaks to Irene mall/market and the plan is subject to change subject the availability of people or vehicles. The plan would not include costs on the Respondent as she would not claim as the places would be closer to her place of residence and she would not be obliged to report to the office.
- [99] Collecting signatures from people is not an easy process hence it is possible to collect a maximum of 15 signatures in a space of eight (8) hours in a day, which includes lunch, going to the restroom and taking breaks, and generally people don't have time when they are in those kinds of places.
- [100] The feedback report from the outreach must be submitted before the end of the financial year, and depending on the quarter in which same was conducted. The reports were submitted timeously and were accepted by the Supervisor, **Mr Moses Dlamini**, as he then was.

- [101] She testified that there is no standard operating procedure on how to collect signatures or further prove that an outreach was conducted, one would have to use his or her own discretion.
- [102] There was never an instruction to discontinue the use of the material resembling the old logo which was already printed and in the storeroom save to say the use of the new logo had been approved by the Executive Director as per page 154 of the bundle **(A)**, and dated the 1<sup>st</sup> of March 2017.
- [103] She is the only person responsible for the printing and production branding material, and knows for a fact that it would have been fruitless expenditure to just discontinue the use of the old logo material. The material bearing the coat of arms was still in use even in 2022 at the Head Office.
- [104] She was given a task to interact with the Government Communication and Information Systems (GCIS) about the use of the new logo and was informed that it is not possible to have own logo but to use the coat of arms as the Respondent is a National Government Department on its own, and the message was relayed to the Executive Director through **Mr Moses Dlamini**.
- [105] A meeting was arranged between the GCIS and the Respondent which was attended by her and **Mr Moses Dlamini**, and that the logo can only be changed after the change of the new administration in terms of colours.
- [106] It was indicated that there is a pending legal dispute involving the Statics South Africa for having created its own logo while it is a National Government Department which is supposed to use the coat of arms.
- [107] She confronted or had an altercation with colleagues after having recorded them and heard what they were saying about her at a personal level. She was later charged and admitted to the altercation but refused the assault, and was placed on one month punitive suspension and the other colleagues were given written warnings.
- [108] She reported the assault incident by **Mr Moses Dlamini** to the Chief Director and she also lodged a grievance as per page 37 of the bundle **(A)**, and dated the 25<sup>th</sup> of January 2019. The grievance form is not signed but **Mr Moses Dlamini** confirmed on record during his evidence that there was a complaint against him by the witness.
- [109] An independent investigator was appointed by the Labour Relations Directorate to investigate the matter in relation to the assault incident involving **Mr Moses Dlamini**, and the outcome did not favour her, in that the allegation found to be unfounded, but she was interviewed by the investigator.
- [110] She reported the matter after **Mr Moses Dlamini** sanctioned an investigation against her mainly because the incidents were committed after the sanctioning of the investigation but does not remember the exact dates of the reporting and the commission of the offenses against her.

- [111] She testified that the word brochure and pamphlet can be used interchangeably to mean one and the same thing. She went to the Irene Market in Centurion on the 28<sup>th</sup> of November 2018, and the target audience was the people who pass-by the market but getting inside would have a required prior permission, though it is not clear on which area she operated.
- [112] The register on page 105 of the bundle **(R)** was signed by the people that she interacted with at the Irene market in Centurion, and it's possible that other people do sign for each other, and on this document, she is not sure whether people sign individually or for each other.
- [113] It has been an acceptable practice within the Respondent for people to sign registers for each other and it has been happening for long time, and she does not know the legal position with regard to people signing documents for each other.
- [114] She deemed it unnecessary to discontinue the use of the old logo, especially on the material that was already printed as that would have amounted to wasteful expenditure which the government is guarding against.
- [115] She remembers her evidence where testified that she is a law abiding citizen and that there is no way that she could have signed the document or attendance register on page 105 of the bundle **(R)**.
- [116] She was once charged for assault and altercation in 2017, she pleaded guilty and was sanctioned to a final written warning and one month punitive suspension and does not know the specific rule that she has contravened.
- [117] The plan which is normally approved by the Line Manager allows her to move from one place to another during outreach programs in the circumstances where the first point of contact does not have enough people, but does not remember the specific details since it happened a long time ago.
- [118] She can confirm that she would work for a full eight (8) hours when conducting the pamphleteering programs and the hours include having to be creative and access ablution facilities at certain establishments.
- [119] She conducts quality check and control on the outreach reports that she normally drafts to make sure that everything is in order but some of the report have errors. ,and the report was approved by the Line Manager but the Line Manager was never charged in relation to the same reports as approved by him.
- [120] She was performance appraised as a result of the same reports in the annual reports which were submitted to Parliament.
- [121] The proof of the outreach program having taken place can be in the form of photos, attendance register, trip sheets and or approval from the Manager of the facility that she is visiting.

- [122] She had a camera issued by the Respondent but did not take it along when she went out to the outreach program for security reasons, and it is not compulsory for the photo to be taken when alone in a pamphleteering.
- [123] She does not remember a specific attendance register which was signed by one person on behalf of other participants as the events unfolded a long time ago.
- [124] She would be busy giving out pamphlets while the others in the group are busy signing the attendance and some of them would sign for each other. She would approach various members of the public including the school children.
- [125] **Ms. Mpho Sindi Moeti** was sworn in and testified as the second witness in support of the Applicant's case and her evidence can be summarized as follows:
- [126] She was employed by the Respondent to the position of Secretary to the Communication Director, **Mr Moses Dlamini**, as he then was since the 15<sup>th</sup> of March 2015 and was responsible for the following:
- Arranging meetings for the Director
  - Clerical secretarial duties (typing, booking accommodation and travel)
  - Formed part of the outreaches for the component at the level of organizing
  - Procurement of the material for the communication (branding material)
- [127] She has not been working with **Mr Moses Dlamini** since his resignation in 2019. She testified further that she knows the Applicant as the former Deputy Director: Communication.
- [128] **Mr Moses Dlamini** once came to her office when she was just a month in employment and warned her to be careful of the Applicant. She realized as time went on that the relationship between the Applicant and **Mr Moses Dlamini** was not a good one and that he spoke bad about the Applicant alleging that she likes fighting with people and she does not like him because of the post he was occupying as the spokesperson.
- [129] She attended the *imbizo* in Cape Town and knows of the altercation that involved the Applicant, when she confronted her and other colleagues, after having heard them talking not aware that they were being recorded.
- [130] She was advised by **Mr Moses Dlamini** to go and open a case against the Applicant, including what she must say in the statement when opening the case. When they returned to the office, **Mr Moses Dlamini** was concerned with the status of the case and even called the police in Cape Town making follow up because according to him the Applicant ought to have been arrested.
- [131] The Applicant was subjected to a disciplinary hearing and was placed on one (1) month punitive suspension.

- [132] The email on page 46 of the bundle (**R**) was sent by her to the Applicant on behalf of **Mr Moses Dlamini** to the effect that the Applicant must return the camera and accessories, but she does not understand what was meant by the accessories.
- [133] The Applicant was initially part of the discussion with the GCIS regarding the logo working together with **Mr Moses Dlamini** but was at a later stage excluded.
- [134] The movement from the code of arms to the eye logo and a memo was communicated to all the staff members as per the email on page 154 of the bundle (**R**) and the logo was launched at the Correctional Services but the Applicant was not part of the organizing committee.
- [135] There was an email to the effect that the material bearing the code of arms should continue to be used to avoid wasteful expenditure as the material was already printed and while still waiting for the new material to be printed. She does not know when the material with the code of arms was finished.
- [136] The Applicant was subjected to a disciplinary hearing and she testified in the same hearing in support of the Applicant's case as per page 163 paragraph 49 where she submitted that her view was that discarding the material bearing the eye logo continued to be used even after the Respondent had gone back to the code of arms from the eye logo.
- [137] The working relationship between her and the Applicant was never negatively affected even after she had opened a case against her and the beyond work relationship improved after the Applicant had apologized to her.
- [138] She heard when she was on maternity leave that the Applicant had a physical issue with **Mr Moses Dlamini**. She does not know what happened further as she was not around, and she heard this from **Mr Moses Dlamini** himself that the Applicant has lodged a grievance against him.
- [139] The Applicant was the acting spokesperson when **Mr Moses Dlamini** was transferred and **Mr Raburabu** was appointed within two (2) months on the same position.
- [140] Apart from warning her to be careful of the Applicant, **Mr Moses Dlamini** also spoke of the Applicant's personal life but she did not go into details of what that was.
- [141] She said the email regarding the usage of the material bearing the code of arms logo was from communications and the email was from **Mr Moses Dlamini** and she is sure about it.

#### **EVALUATION EVIDENCE, ARGUMENT AND FINDINGS**

- [142] The statutory and other framework for the determination of this dispute is provided by the provisions of Section 185 (a) of the LRA, which reads as follows:  
*"Every employee has the right not to be unfairly dismissed"*

- [143] The other framework is provided by the provisions of item 2 (1) of Schedule 8 of the Code of Good Practice of the LRA in relation to dismissal, which reads as follows:  
*“A dismissal is unfair if it is not effected for a fair reason and in accordance with a fair procedure”*
- [144] Briefly, I am required to determine whether or not decision of the Respondent to dismiss the Applicant was fair, both substantively and procedurally, taking into account all the relevant circumstances. This entails an inquiry into the reasons and the process leading to the dismissal of the Applicant, and the workplace rules which have been breached by the Applicant (if any).
- [145] It is correct that the community outreach programs reports are subjected to quality assurance to avoid or mitigate against queries by the Auditor General, which quality assurance includes scrutinizing the supporting evidence attached to the submitted report.
- [146] It is common cause that the Applicants' reports were submitted as part of the Respondent's performance review processes and employees including the Applicant's Line Manager received performance bonuses, and that the report was also submitted successfully to Parliament as part of the annual report(s).
- [147] The Respondent has argued that it was later discovered that the reports were fraudulent; the matter was then reported to the Integrity Unit at the request of the Applicant's Line Manager (**Mr Moses Dlamini**) after it had been realized by the Line Manager that the Applicant has misled him.
- [148] I find that the Applicant's Line Manager also failed in his role at the level of quality assurance and defeated the purpose of the entire process by approving a report without comments, and which report ought to have been rejected, if the Respondent's argument that the report had elements of fraud is something to go by.
- [149] It is correct that there is no evidence that consequences management actions were taken by the Respondent against the Applicant's Line Manager in the circumstances. This aspect alone may prove to be fatal to the Respondent's case as it fertilizes a ground for an argument that the Applicant was targeted and that the Respondent's disciplinary measures are invoked and implemented selectively.
- [150] The Respondent has submitted that programs are generally conducted using its resources including the vehicle save for the SMS members, and that, it is therefore not possible that the required material for the activity can be carried without the use of a motor vehicle.
- [151] The Applicant has submitted on the one hand that there is a difference between community engagement and outreach programs, and pamphleteering, with one requiring only pamphlets and an attendance register while the other requires major corporate branding of the employer.
- [152] I find that the distinction is self-explanatory and therefore making it possible to carry one of the two (pamphleteering) without the use of a vehicle. It is common cause that the Applicant was charged for fabrication of pamphleteering attendance registers.
- [153] It is common cause that the Respondent, through the Applicant's Line Manager, sanctioned an investigation following a suspicion that there were handwriting similarities on the attendance registers submitted by the Applicant as annexures attached to her report(s).

- [154] It is correct that the expert evidence has undisputedly demonstrated that the handwriting styles are the same, and with the conclusion that two (2) to three(3) people might have completed the attendance register(s) of 30-60 signatories.
- [155] The Applicant has argued that in certain instances, members of the public sign the registers on behalf of each other as she does not monitor it on the basis that the attendance registers signing process takes place simultaneously with the process of her explaining certain aspects of the program to the public. It is further common cause that there is no policy position whether or not members of the public can sign such registers for each other, and if they do, what are the consequences to befall the responsible official.
- [156] I find that although there is no further evidence that this is a common practice within programs of the Respondent as the Applicant has argued, I take judicial notice to this possibility given the illiteracy state in South Africa, and therefore find that the Applicant's explanation is plausible, the evidence from the handwriting expert is also silent on whether or not one of the handwritings on the attendance registers is that of the Applicant or not, and therefore ,it cannot be said that the Applicant acted fraudulently, even though her negligent conduct in the circumstances cannot be simply ignored.
- [157] The Respondent has argued that some of the places that the Applicant is alleging to have conducted the outreach programs were not open on the dates that the Applicant is claiming to have visited.
- [158] The Applicant has in turn submitted that the program was not conducted inside the venue (Irene Market) but in the vicinity targeting the people who are passing by, thus not requiring for the place to be operating and or to acquire official permission.
- [159] Having drawn a distinction between community engagement and outreach program, and pamphleteering, I find that it was possible in the circumstances for the Applicant to conduct pamphleteering without the Irene Market operating but in the vicinity as her target would have been the people who were passing by.
- [160] The Respondent has argued that the Applicant has never claimed for traveling and lunch expenses, only interacted with 10 -15 people for a full working day, and that makes a strong case for one to believe that the outreach program has not have taken place.
- [161] The Applicant has submitted that the program/activity under review took place not far from her residence and she deemed it unnecessary to claim for the expenses as they were minimal as she was not obliged to first report to the office before undertaking the field work. The Applicant has on the aspect relating to the number of signatories indicated that people sign the register only after getting a proper explanation and some people are generally not interested.
- [162] The Respondent's argument is in actual fact seeking to encourage the Applicant to manufacture statistics in pursuit of quantity at the expense of quality, and on the aspect of expenses, it is my view that the Applicant should be commended to saving the tax payers money rather than be condemned for it and to be treated with suspicion, in fact, I find that the Respondent's argument is based on nothing but speculation.



- [163] It is common cause that the Respondent had at some point got an approval to launch and implement the use of a new logo (the eye) moving from the old logo (the coat of arm).The Respondent has argued that the Applicant continued, in defiance or by negligence, to distribute material bearing the old logo while there was a clear instruction for the use of the same to be halted and discontinued.
- [164] The Applicant has argued that discontinuing the distribution of the material bearing the old logo which was already printed would have amounted to wasteful expenditure.
- [165] I find that the Applicant's conduct and attitude on this matter and in the circumstances of the instruction from the superiors, *prima-facie* viewed, smacks of insubordination and insolence. It is however correct from evidence, and for the sake of completeness that, the email sent to staff in relation to approval and use of the new logo is silent on what must happen to the material already printed and bearing the old logo, an argument can therefore be advanced by both parties on the practical implications of having the new logo approved and implemented.
- [166] It is common cause that the logo was approved by the Executive Director of the Respondent who had the authority to do so as the Accounting Officer, and therefore the Applicant's argument that the logo was not properly approved as it was not approved by the Minister cannot be accepted.
- [167] It is the Applicant's argument and submission that she was targeted and or she is a victim of the factional battles within the Respondent which took place during the suspension of **Mr Robert MacBride** and during the acting tenure of **Mr Israel Kgamanyane**, which battles had divided the institution into two (2) factional groupings ,with others seen as pro-MacBride, and others seen as pro-Kgamanyane, and with her occupying the position of **Mr Moses Dlamini** on acting basis during his suspension, as he was seen to be more aligned to Mr MacBride and she was seen to be aligned to Mr Kgamanyane.
- [168] I find that this line of argument is not supported by any tangible evidence to establish a causal link between her charges during the disciplinary hearing and the alleged factional battles within the institution; the argument is wild and baseless.
- [169] It is common cause that the Applicant was at some point during the subsistence of her employment relationship with the Respondent subjected to a disciplinary process, wherein she pleaded guilty to the charges of misconduct in relation to an altercation involving colleagues and was sanctioned to one (1) month punitive suspension and a final written warning while her colleagues who were also involved in the altercation were sanctioned to written warnings.
- [170] It is not clear to me as to why such information is brought to the attention these proceedings, but for the purposes of completeness, I find that the Applicant would have had recourse through Unfair Labour Practice Dispute Resolution platforms had she felt aggrieved by the conduct of the Respondent in those circumstances, and of meting out different sanctions.

- [171] It is common cause that the Applicant lodged a grievance against her former Line Manager, **Mr Moses Dlamini** as he then was into allegations of assault, the matter was investigated and the grievance outcomes were not in favour of the Applicant.
- [172] It is also worth noting that such a grievance was lodged by the Applicant against **Mr Moses Dlamini** after he had sanctioned an investigation against her in relation to the forgery and or falsification of the outreach/pamphleteering attendance registers. This fertilizes a ground for one to draw an inference that the Applicant's grievance against her then Line Manager was an afterthought and a counter strategy to enhance her bargaining ground.
- [173] It is common cause that the proof of the outreach program having taken place can be in the form of photos, attendance register, trip sheets and or approval from the Manager of the facility that the official is visiting. The Applicant in this case only relied on the attendance registers as she had left behind the camera which she could have used to take photos as issued by the Respondent for security reasons.
- [174] I however find that there is no evidence that the Respondent's issued camera was ever stolen during field work or had one of the employees endangered as a result of him or her being in possession of the same.
- [175] I find therefore that the Applicant's reasons for leaving behind the camera are lousy and stand to be rejected. It is also not in dispute that the taking of photos as proof of the activity having taken place is not made a compulsory requirement by any rule of the Respondent.
- [176] When deciding whether or not to impose the penalty of dismissal, the employer should in addition to the gravity of the misconduct consider factors such as the employee's circumstances (including length of service, previous disciplinary record and personal circumstances), the nature of the job and the circumstances of the infringement itself.<sup>1</sup>
- [177] In the case of ***Shoprite Checkers (Pty) Ltd v CCMA & Others (JA46/05) [2007] ZALAC 24***, the LAC held that, theft must be treated like all other forms of misconduct and that mitigating factors must be taken into account. The employee was caught on camera on three occasions taking and eating food belonging to the employer. The employee had worked for the employer for a period of 30 years and had a clean disciplinary record, the value of the item stolen was not high although the exact amount could not be determined. The Court found that the dismissal was substantively unfair, the Applicant was reinstated with a severe written warning but the reinstatement was not with full retrospective effect.
- [178] It is clear from the case law referred to above that, a misconduct involving dishonesty does not automatically warrant a sanction of dismissal without taking into account certain factors, including the circumstances of the offence, the length of service and the disciplinary record of the employee

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<sup>1</sup> Item 3(5) Schedule 8 of the Code of Good Practice: Dismissal

[179] The Applicant has been in the employment of the public service since the 7<sup>th</sup> of March 2000 and was dismissed on the 18<sup>th</sup> of August 2022, in total, the Applicant has served the public service and in the employ of the Respondent for approximately 22 years, and during these period, the Applicant was at some point found guilty and sanctioned to one months punitive suspension and a final written warning.

**See also: *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others (CCT85/06 [2007] ZACC 22;[2007] 12 BLLR1097 (CC) 2008 (2) SA 24 (CC);2007 28 ILJ2405 (CC);2008 (2) BCLR 158 (CC)*<sup>2</sup>**

[180] The Applicant has argued that the chairperson of the disciplinary enquiry was biased towards her as he had deliberately ignored some crucial evidence in relation to the fact that pamphlets that had the national coat of arm were still distributed and displayed at the entrance of some of the Respondent premises.

[181] This argument cannot be accepted as is, on the basis that, when such evidence was led, it was led in relation to other aspects and the conduct of the Chairperson was not dealt with for procedural aspects in those circumstances. This argument is therefore ambushful and stands to be rejected.

[182] The Applicant has argued that the Chairperson's report on findings was not communicated timeously as required by the clause 7.3(O) of the code and she is therefore of the view that the Chairperson had submitted the report elsewhere for approval, thus compromising his independence. This argument is not supported by evidence, thus wild, speculative and farfetched.

[183] In the circumstances, I find that the Applicant's dismissal was procedurally fair but substantively unfair.

#### **REMEDY**

[184] In the case of *ARB Electrical Wholesalers (Pty) Ltd v Hibbert (DA3/13) [2015] ZALAC 34*, the LAC's Wagly JP with Ndlovu JA and Coppin JA concurring, opined that, in terms of Section 193(1) of the LRA, the remedy that an employee whose dismissal is found to be unfair may be entitled to is reinstatement or re-employment or to be paid compensation. Section 193(2) then goes on to provide that the Labour Court or an arbitrator "must" order the employer to re-instate or re-employ an employee whose dismissal was found to be unfair unless certain exceptions set out in that sub-section apply or the reason for the unfair dismissal was only a failure by the employer to follow a fair procedure.

[185] I am alive to the fact that the Applicant is praying for reinstatement without loss of benefits, it is now trite in law that such a remedy is not available merely for taking. The Applicant's prayer in the circumstances is without proper basis and can therefore not be granted as desired.

[186] In light of the circumstances of this case, the status of the disciplinary record of the Applicant, the gravity and circumstances under which the offence was committed, the conduct of the Respondent in

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<sup>2</sup> The listed factors which the Commissioner had to consider when determining the fairness of a dismissal: (a)the totality of the circumstances (b)the importance of the rule that had been breached (c)The reason for imposing the sanction (d)the basis upon which the employee challenges the dismissal (e)the harm caused by the employee's conduct (f)whether additional training and instruction may result in the employee not repeating the misconduct (g)the effect of the dismissal on the employee (h)Long service record.

meting out the sanction of dismissal and the Applicant's prayer. I find that reinstatement without retrospective effect, coupled with a written warning is the most appropriate remedy.

[187] In the circumstances, I come to the following conclusion:

**AWARD**

[188] The Respondent is therefore ordered to reinstate the Applicant without retrospective effect.

[189] The order in paragraph 188 above must be implemented by the Respondent within Seven (7) days from the date of receipt of this award.

[190] The Applicant's dismissal is substituted with a written warning.

[191] I make no order as to costs.

Signature:

A handwritten signature in black ink, appearing to be 'J. A. R.', written over a horizontal line.