



ARBITRATION AWARD

Case Number: ECGQ665-25
Commissioner: Petrus Hendrik Jacobs
Date of Award: 21 October 2025

In the **ARBITRATION** between

PSA obo Dafel, WH

(Union/Applicant)

and

SAPS

(Respondent)

Details of hearing and representation

1. The arbitration hearing into an alleged unfair labour practice dispute, referred in terms of section 191(5)(a)(iv) of the Labour Relations Act 66 of 1995, as amended, (the LRA), was held at the offices of the CCMA, on 17 April, 03 September 2025 and 13 October 2025.
2. The applicant, Lieutenant Colonel W. H. Dafel (Lt Col), was represented by Ms N. Mabandla, an official from the Public Service Association (PSA). The respondent, the South African Police Service (SAPS), was represented by Warrant Officer R. R. Grootboom (WO).
3. The hearing was held in English and was digitally and manually recorded.
4. Parties submitted documents into record, they had an opportunity to peruse same whereafter the documents were accepted into record to the extent that they are what they purport to be.

Issue to be decided

- 5 I am required to decide whether the Respondent committed an unfair labour practice when they failed to pay the Applicant an Acting Allowance.

Background to the matter

7. The Applicant referred a dispute to the SSSBC initially as an interpretation and application of a collective agreement dispute, after clarification regarding PSA jurisdiction, the Applicant filed a dispute with the CCMA on 04 February 2025. The dispute was withdrawn, and the Applicant filed an alleged unfair labour practice dispute to the CCMA with an application for condonation, condonation was granted, and a certificate of non-resolution was issued.
8. The Applicant filed a request with the CCMA for the matter to be arbitrated.
9. The Applicant sought to be paid an acting allowance.
10. With regards to issues that were common cause, the Applicant fulfilled the duties of the higher post for a period longer than 6 weeks. The document issued by the district office was not dated. The amount payable to the Applicant regarding an alleged acting allowance would have been R65 355.15 and the salary for the Applicant in terms of his appointed position is R547 290.00 per annum.
11. With regards to issues in dispute, it is disputed that the position was vacant and funded, that the Applicant act in the post, when the acting appointment started and that the Applicant signed an acceptance document to act in the position.

Summary of submissions and argument

12. This is a summary and does not reflect all of the arguments heard and considered in reaching a decision.

Applicants evidence and argument

13. The Applicant testified that he is being employed as the Relief Commander at Bethelsdorp and has been employed by the Respondent for 39 years. During February 2023, he was asked to act in the position of General Francis, who filled the post of Visible Policing (VISPOL) Head at the time.
14. The post was vacant at the time, General Francis phones him while he was on leave, he had to cut his leave short to fill the post as VISPOL Commander from the end of January 2023. The Applicant further testified that there was nothing in writing at the time and he only received an acting letter on 01 May 2023 after General Francis went on retirement and his appointment letter was signed on 04 May 2023 by Colonel Scholtz.
15. Page 14 of the bundle of documents was prepared by the Human Resources Department and signed by Colonel Scholtz. The Applicant read the document into record which reads as follows:
"RECCOMENDATION FOR APPOINTMENT AS ACTING VISPOL COMMANDER AT VISPOL:
NO.0413632-2LT COL W.H. DAFEL: BETHALSDORP SAPS
1. Kindly be advised that you are hereby recommended to act in the capacity of the VISPOL COMMANDER, VISPOL, Bethalsdorp from 01 MAY 2023 until further notice, because of the following reason:
 - 1.1 Number 0173067-3 COL E.C. FRANCIS went on pension as from 2022-04-30.
 - 1.2 Lt Col W.H. DAFEL has 37 years of experience in the environment.
16. Page 16 is a certificate of recommended acting appointment by the office of the station commander and read as follows: "Kindly be informed that No.0413632-2 LT COL W.H.DAFEL is recommended to act as Vispol Commander, Vispol, Bethalsdorp from 01 May 2023 until further notice.
- The Appointment is subject to the following conditions:
- The acting incumbent shall not have or obtain any legitimate expectation as a result of his or her appointment in an acting capacity, or as a result of the period of his or her appointment, to obtain permanent in that position or any other benefit of favour in the appointment of a person in the said position.
17. The Applicant also testified that he signed the certificate of acceptance at the bottom of the page on 04 May 2023 and read into record page 1 and 2 of the bundle with the agreement on acting allowances which reads as follows:

“AGREEMENT ON ACTING ALLOWANCES

NOTING THAT paragraph 5.1 of the PSCBC Resolution 9 of 2001 provides a framework for the compensation of an employee acting in a higher post

THEFEREFORE THE parties agree as follows:

- 1. An EMPLOYEE appointed in writing by any assistant commissioner at provincial or national level of higher rank or any area commissioner (here-after the “appointing authority”) shall be paid an acting allowance to act in a vacant posts provided that:*
 - 1.1 the post is a vacant and funded post, and*
 - 1.2 the acting period is longer than 6 weeks.*
- 2. The EMPLOYEE must accept the acting appointment in writing.*
- 3.1 An EMPLOYEE may only be appointed to act in a higher post that is one post level higher than her/his current position.*
- 3.2 The provisions of paragraph 3.1 above may be deviated from on good cause shown by the appointing authority.*
- 4. In instances where the acting period is uninterrupted for longer than 6 weeks the EMPLOYEE so acting will be compensated from the date of appointment.*
- 5. The acting allowance will be calculated on the basis of the difference between the current salary notch of the EMPLOYEE and the commencing notch of the higher post. An EMPLOYEE acting in a post in the Senior Management Services will receive the difference between her/his current salary notch and 60% of the commencing total cost to employer package applicable to the post level. The allowance is payable as a monthly non pensionable allowance.*
- 6. Subject to paragraph 7 infra, an EMPLOYEE appointed to act in a higher vacant post will occupy the post in an acting capacity until the post is filled, and may only be removed on ground of misconduct, incapacity or operational requirements.*
- 7. An EMPLOYEE may not act in a higher vacant post for an uninterrupted period exceeding 12 months.*
- 8. Appointing authorities must investigate the necessity to have acting appointees in vacant funded posts. If the need does exist EMPLOYEEES who commenced acting before the date of implementation of this agreement must be re-appointed in their respective acting posts. The twelve-month period referred in paragraph 7 above will run from the date of actual appointment.*
- 9. The effective date for purpose of calculation of the acting allowance is 01 March 2002.*
- 10. The fact that an employee has been appointed in an ating capacity does not create a right or legitimate expectation to be appointed in the vacant post.*

11. *The provisions of this agreement are applicable to all employees appointed in terms of the South African Police Act. 1995 and Public Service Act. 19194 but excluding employees appointed to be Senior Management Service.*

12. *Date of implementation: 01 March 2002."*

18. The Applicant testified that he was told he will receive an acting allowance when he acts in the post, all other officers who acted in different posts were paid an acting allowance. Page 17 of the bundle is a letter of recommendation for appointment as acting VISPOL Commander: NO.0413632-2Lt Col WH Dafel: Bethalsdorp SAPS which was signed by Brigadier M Jada, the Station Commander for Bethalsdorp SAPS on 2023-10-11, which reads as follows:

"1 The officer commence duties as Acting VISPOL Head. Bethalsdorp from 23 January 2023 to replace Col Francis who was appointed as Acting Station Commander.

2 On 1st May 2023 the post became vacant due to the retirement of Col Francis on 2023-04-30. The officer was officially appointed by Col Scholtz (Acting Station Commander) and District Commissioner. Up to date the officer has not received an acting allowance.

3 On 1st September 2023 Col Perels was appointed VISPOL Head Bethalsdorp SAPS, but the officer never reported for duty, due to cardiovascular operation.

4 Currently Lt Col Dafel is still Acting VISPOL Head, and his office have no date to when Col Pereis will take up his post.

5 This office would like to enquire if the officer will still be receiving acting allowance, if the post is not vacant any more."

19. Page 18 of the documents is a recommendation for appointment as Acting VISPOL Commander Bethalsdorp: No.0413632-2 Lt Col WH Dafel: Bethalsdorp SAPS dated 2023-10-19 and signed by Brigadier M Jada, the Station Commander Bethalsdorp SAPS which reads as follows:

"1. My evenly numbered letter dated 2023-05-04 refers.

2. Lt Col Dafel was appointed by Brig Jada from 1st August 2023 for further acting duties.

3. The officer is still acting in the absence of the newly appointed VISPOL HEAD Col Perels, who is currently off sick due to cardiovascular operation.

4. A copy of his appointment signed by Col Scholtz from the 1st May 2023 and this letter serves as further appointment from 1st August 2023 till date.

5. Kindly confirm if your office received the first appointment letter of 1st May 2023, as the officer has not up to date received any acting allowance.

6. Attached appointment letter and enquiry letter dated 2023-10-11.

7. Your assistance will be highly appreciated."

20. Page 19 of the bundle is an enquiry for appointment as Acting VISPOL Commander Bethalsdorp SAPS: No.0413632-2 LT Col WH Dafel signed by M Jada, the Staion Commander Bethalsdorp SAPS dated 2024-02-05 which reads as follows:

- "1. This office would like to enquire regarding the appointment of Lt Col WH Dafel, as Acting Vispol Commander Bethelsdorp SAPS.*
- 2. Lt Col Dafel has been acting as Vispol Commander since 2023-05-01 until 2023-08-31.*
- 3. On 2023-09-01 Col Perils was appointed as the Vispol Commander Bethelsdorp SAPS. Due to medical reason the officer only reported for duty at Bethelsdorp SAPS on 2024-01-08.*
- 4. Attached copies of documentation forwarded to District office.*
- 5. Documents was giving to Brig Koll By Lt Col Dafel at the NMB District and Brig Koll said he will take it by hand to the Provincial Office.*
- 6. This office just want to enquire if Brig Koll did submit the appointment letter and extension letter to Provincial office.*
- 7. Your assistance in this regard will be highly appreciated."*

21. The Applicant testified that he lost money that he could have earned working in his appointed position. It was the Human Resources Department responsibility to ensure the correct documents were completed and submitted to the relevant persons.

22. Under cross-examination, the Applicant confirmed that he was called during December 2022 by Col Francis to act in his post, it is a culture to obey your seniors even though he could have refused to act in the post, but it is not in his nature.

23. The Applicant also confirmed that Mayor General Kunene did not sign his appointment to act, he is not responsible for the administrative part of the recommendation and appointment, that is the responsibility of the Human Resources Department, he signed all documents and all he had to was to wait for everything to be processed.

24. He was aware that the approval comes from the provincial Office, but he already accepted when he was appointed by Col Scholtz. Practically he was not supposed to act until approval was received from Provincial Office, in practice, it does not work that way, there is a Police Station that needs to be operational, one cannot just leave a post vacant, there are documents that needs to be signed and at the end, it would be the community that suffers.

25. He officially acted in the post from 01 May 2023 till January 2024 after Col Francis left, and he could not apply for any allowance if the post was not vacant.

Respondents evidence and argument

26. Lt Col Matiwane testified that she has been employed as Section Head Placement and Records at the Provincial Office, she is responsible for placement and records within the Eastern Cape Province.
27. The process that must be followed when someone is appointed in an acting post is that the need for acting is identified when a vacant post exists, a suitable person who is below the vacant post is recommended to act in the post after consultation, the Station Commander will sign and submit to the District Commander for signature, the Human Resources Department at the Station is responsible to submit the recommendation to the Provincial Office. At Provincial level, the recommendation is shared with the Organisational Development (OD) and the Human Resources (HR) Departments to confirm whether the post exists and vacant who will inform her in writing the outcome.
28. Once they received the outcome, they process the recommendation and issue an appointment letter signed by the Deputy Provincial Commissioner Support Services after the recommended person accepted the post.
29. In the Applicant's case, the recommendation was only received at Provincial Level on 08 April 2024 when the post was already filled, the Applicant's recommendation was never considered because of the late submission. It is not known why the application was submitted late, at the time the Applicant was recommended, the post was vacant and funded.
30. Page 16 is not a formal appointment letter and is not used by the Provincial Office, in the absence of an appointment letter, there will be no acting allowance.
31. Under cross-examination, Lt Col Matiwane confirmed that the Applicants recommendation on page 14 did meet the requirements of the two signatories, that he was not responsible to forward the recommendation to the Provincial Office, if it was forward in time, his application would have been considered, and he would have been received an acting allowance.

Analysis

32. Section 186(2)(a) of the LRA states that an unfair labour practice means any unfair act or omission that arises between an employer and employee involving unfair conduct by the employer relating to the promotion, demotion, probation or training of an employee or relating to the provisions of benefits to an employee.
33. It is trite that the list in terms of section 186(2) (a) of the LRA is a closed list, not all acts or omission committed by an employer fall within the ambit of an unfair labour practice as envisaged in section 186(2) of the LRA.
34. In ***Apollo Tyres South Africa (Pty) Ltd v CCMA and others*** (DA 1/11) [2013] ZALAC 3; [2013] 5 BLLR 434 (LAC); (2013) 34 ILJ 1120 (LAC) (handed down on 21 February 2013) an early retirement scheme was set up for Employees. Membership to the scheme was dependent on age and on management's discretion. The Employee, who fell within the age group and who had 24 years' service was refused entry, where after she claimed that she was subjected to an unfair labour practice relating to benefits.
35. The Court held the definition of benefit, as contemplated in section 186(2)(a) of the LRA was not confined to rights arising *ex contractu* or *ex lege*, but included rights judicially created as well as advantage or privileges Employees have been offered or granted in terms of a policy or practice subject to the Employer's discretion and that in this instance the early retirement scheme constituted a benefit.
36. What the Applicant is unhappy about is that the Respondent failed to pay him an acting allowance for the period he fulfilled the duties of the VISPOL Commander. It is trite that the payment of an acting allowance with the SAPS is regulated through a policy that sets out when one qualifies to be paid an acting allowance. The main requirements would be that there is a vacant and funded post that need to be filled, that the candidate recommended for acting is one level lower than that position and he or she qualifies and agrees to act in the post.
37. The recommendation must be signed by the Station Commander as well as the District Commander whereafter the recommendation must send to the Provincial Office by the Human Resources Department of the Station to confirm whether the post is vacant and funded whereafter the candidate will be appointed. Only upon receiving the appointment letter signed by the Provincial Commissioner, becomes a candidate eligible for an acting allowance.

38. It is common cause that the Applicant did not receive an appointment letter signed by the Provincial Commissioner. It must then follow that the Applicant would not be able to establish that he is entitled to the benefit *ex contractu* or *ex lege*.
39. In this instance, one will have to determine whether the Applicant was entitled to the acting allowance in terms of a policy which was subject to the employer's discretion. It is a fact that should a candidate receives an appointment letter to act in a certain position; the candidate will receive an acting allowance which constitutes a benefit.
40. In ***Aucamp v SARS (JS 884/2011) [2013] ZALCJHB 266; [2014] 2 BLLR 152 (LC); (2014) 35 ILJ 1217 (LC)*** (handed down on 17 October 2013) the Court held that remuneration as contemplated by law requires payment to the Employee to be a *quid pro quo* for the Employee actually working. Therefore, if the benefit is not a guaranteed contractual right *per se*, the Employee could still claim the same on the basis of an unfair labour practice if the Employee can show that the Employee was unfairly deprived of the same. An example would be where an Employer must exercise the discretion to decide if such benefit accrues to an Employee and exercises such discretion unfairly.
41. The facts in this case are very different than the norm and needs to be properly canvassed. The Applicant was asked to act in the position of VISPOL Commander, Bethelsdorp, which on principle was accepted and he fulfilled the duties of that position from 01 May 2023 to January 2024. It is not disputed that the Applicant fulfilled the duties of the post as VISPOL Head, Bethelsdorp.
42. The recommendation letter for the Applicant to act was signed by the Station Commander and the District Commander, although it is not clear when the District Commander signed as it was not dated. It was confirmed that the post was vacant and funded at the time of the recommendation. The recommendation was then never sent to Provincial Office to finalise the process and to formally appoint the Applicant to qualify for an acting allowance in terms of the policy.
43. The consequence of an attempt to follow the correct process in terms of the policy was that it automatically at the time the Applicant signed the acceptance of the recommendation create an expectation to be paid an acting allowance.
44. A further consequence is, if one has to accept and stand by the argument that the Applicant was never formally appointed to act and should not have assumed duties for the acting post, all decisions that was taken by the Applicant during his tenure as VISPOL Commander (Acting), including orders and signatures on documents during his period is a nullity.

45. On the other hand, if the Respondent accepts the Applicant authority in the position as VISPOL Commander (Acting) from 01 May 2023 till January 2024, then they must also accept that he acted in the position and a decision not to pay the Applicant an acting allowance in accordance amounts to a decision that was irrational, capricious and arbitrary which constitutes an unfair labour practice in terms of Section 186(2) of the LRA.
46. One cannot adopt a blanket approach in terms of a policy when the recommendation of the Applicant to act was received after the fact, it was required from the Respondent to consider the circumstances surrounding the late submission, the circumstances regarding the acting such as was the candidate qualified to act, was he or she recommended, did he or she accept to act in the position and was the position vacant and funded. A decision to simply decline based on the fact that it was never submitted must be irrational.
47. It was argued that the Applicant should not have acted until formally appointed and that he should have familiarised himself with the policy regarding acting. That is most probably the correct option, but the Applicant testified that in practice, things work differently, specific in an institution such as SAPS.
48. In this instance the Station Commander was not proactive to make the recommendation, which is not at the blame of the Applicant. The position was vacant; a service must be delivered to the community through members of the SAPS that are well organised and coordinated. It is that mindset of service delivery as well as the Applicant nature and commitment that made him decide to resume the duties as he believed the acting allowance will be death with within time.
49. One cannot fault the Applicant in his thinking and his commitment, it must be accepted that the general culture within the SAPS is authoritarian by nature, and it should be. If one need to look at the purpose and duties of the SAPS to prevent, investigate and combat crime, a long autocratic process may hamper the effectiveness of SAPS, but even if one has to accept the process, then one must accept the Applicant's evidence that sometimes things takes long to process, but it always gets processed and one will get paid, albeit late.
50. In passing, no evidence was presented as to why the Human Resources Department never forward the recommendation in time, nor any consequence management that was implemented to prevent a similar incident to occur in future.

51. In light of the above, it must be concluded that the decision by the Respondent not to consider the Applicants recommendation after receiving the recommendation for the purposes of paying him an acting allowance for the period constitutes and unfair labour practice in terms of Section 186(2) of the LRA.
52. I will now turn to relief, the Applicant sought to be paid an acting allowance for the period in question. It was agreed as a matter of common cause that should the Applicant been appointed to act, he would have been paid R65 355.15.
53. In light of the above, I find it appropriate to make the following award.

Award

54. The applicant, W. H. Dafel, successfully establish that the respondent, South African Police Service, committed an alleged unfair labour practice as defined in Section 186(2) of the LRA when they failed to consider the Applicants recommendation for the purpose of processing an acting allowance for the period the Applicant act in the post of VISPOL Head, Bethelsdorp.
55. The Respondent is ordered to pay the Applicant in terms of an acting allowance for the period the Applicant acted in the post as VISPOL Head, Bethelsdorp in the sum of R65 355.15 (sixty five thousand rand three hundred and fifty-five rand and fifteen cent) by no later than 25 November 2025, failing which the sum shall bear interest from the date of this award to date of payment at the rate of interest applicable from time to time to judgement debts.

APPROVED



Signature: _____

Commissioner: **Petrus Hendrik Jacobs**