



COMMISSION  
FOR  
CONCILIATION, MEDIATION AND  
**ARBITRATION**

Case Number: GATW5318-20

Commissioner: R de Wet

Date of Award: 18 June -2023

In the **ARBITRATION** between

**PSA OBO N MAKALENG**

(Union/Applicant)

And

**FINANCIAL SECTOR CONDUCT AUTHORITY (FSCA)**

(Respondent)

**AWARD**

## **DETAILS OF HEARING AND REPRESENTATION:**

- [1]. This is the arbitration award in the dispute referred to the CCMA in terms of section 191(5)(a) of the Labour Relations Act, 66 of 1995 (*hereinafter referred to as LRA*). The matter was scheduled for arbitration on 2 November 2022, 11 and 13 January 2023, 13 March 2023 and finalized on 29 May 2023. The arbitration was conducted at the offices of the CCMA in Pretorius Street, Pretoria, Gauteng. At the conclusion of the process, parties were granted the indulgence to submit written heads of argument on or before 5 June 2023. Both parties duly complied.
- [2]. Mr Makaleng, the Applicant, was present and was present by Mr Eager, Official from the PSA. The Respondent, Financial Sector Conduct Authority was present and represented by Mr Ka-Siboto, legal practitioner.
- [3]. At the commencement of the arbitration proceedings, two (2) bundles of documents were admitted into the record, and was marked as follows: Bundle "A" (Applicant's bundle) and Bundle "R" (Respondent's bundle). It was agreed that the documents contained in the respective bundles are what they purport to be.

## **ISSUE TO BE DECIDED:**

- [4]. Whether or not the dismissal of the Applicant was substantively and procedurally fair. In particular:
- [4.1]. Substantive fairness:
- [4.1.1]. Charge 1: Whether the sanction of dismissal was appropriate;
- [4.1.2]. Charge 2: Whether Mr Makaleng was in breach of the workplace rule;
- [4.1.3]. Charge 3: Whether a workplace rule existed that prohibits such conduct and whether the Applicant broke the rule as alleged?
- [4.2]. Procedural fairness:
- [4.2.1]. Whether the allegations preferred against the Applicant amounts to a splitting of the charges; and
- [4.2.2]. Whether progressive discipline should have been followed?
- [5]. In the event that a finding is made in the negative, to determine the appropriate remedy. The Applicant indicated his wish to be reinstated.

## **PRELIMINARY ISSUES:**

- [6]. During the course of the arbitration a preliminary and various interlocutory applications were made. For brevity, submissions, rulings made and the reasons thereof, will not be repeated in the award as same is on record. The application from the Respondent to supplement their bundle with pages 153 – 155, was however provisionally admitted and a ruling was reserved pending the evidence presented on the additional pages. The document in question to have been authored by one Ms Olivia Mashigo, Provincial Manager from PSA and is addressed to Dr. Sandile Buthelezi, the Director-General of the FSCA. The contents discussed therein refers to the possible misconduct of Ms Felicity Mabaso, a witness during the arbitration, and resolves around her testimony given during the arbitration proceedings. Having considered the document/s, I am not persuaded that the evidence is relevant, firstly because it does not assist in answering the issues placed in dispute to be determined, secondly as the dismissal predated the letter contained in this document and the letter appears to have been authored by the PSA and not Mr Makaleng.

## **BACKGROUND:**

- [7]. Mr Makaleng commenced his employment with the Respondent on 5 January 2009 until date of his dismissal, being 20 March 2020. At the time of dismissal, he was occupying the position of Administrative Assistant earning an annual remuneration package of R370 988.00. Mr Makaleng was also the Branch representative of the PSA whilst in the employ of the Respondent.
- [8]. The incident that gave rise to Mr Makaleng's dismissal, commenced with a meeting that Ms Sedibe had with her line manager whereas she was informed that she was identified to be a team leader in the Unclaimed Benefits Department.
- [9]. Pursuant to this meeting, Ms Sedibe was instructed to introduce herself to the team. She approached the team on or about 6 September 2019, and as she made the introduction to the team, Mr Makaleng interjected, stating that the team were not aware of this development.
- [10]. Ms Sedibe responded that she was under the impression that the team had been informed of the development during a meeting they would have had with their manager. Mr Makaleng replied in Sepedi with the following words, "*ba go fora*". Ms Sedibe understood the comment to mean that

management was lying to her<sup>1</sup>, whilst Mr Makaleng explained that it means that whoever told her that was deceiving you, he further contended that he did mention that the deception originated from management. Due to the incident that transpired, Ms Sedibe left the meeting without conclusion of the introduction.

- [11]. Ms Sedibe subsequently reported the incident and an investigation into the incident was undertaken resulting in the disciplinary hearing.
- [12]. On or about 18 November 2019, Mr Makaleng was served with a notice to attend a disciplinary hearing. The notice alluded to three (3) allegations of misconduct, to wit.:

**‘GROSS DISCOURTESY:**

*It is alleged that on 06 September 2019, you interrupted Ms Mthembu (Khomotso Sedibe) while she was introducing herself as a new team leader, you also mentioned that you were not informed of the said development and further stated that “Ba go fora”, meaning in Sepedi language, they are lying to you. This retort was received and understood by Ms Mthembu to mean that her line manager was lying to her. Incidentally her line management are your line management as well.*

*Ms Mthembu then asked you whether she was not allowed to complete her introduction since you interjected whilst she was introducing herself, whereupon, you responded that “she must tell her manager to send an email informing you about her joining the team”. In terms of FSCA Code of Conduct and Ethics Chapter 2. The clause 2.6. states that the employees shall deal courteously, fairly and reasonably with others respecting the individual’s dignity, cultural sensitivity and rights as contained in the Bill of Rights set out in the Constitution of the Republic of South Africa.*

**UNPROFESSIONAL AND/OR UNETHICAL CONDUCT**

*By the use of the words “ba go fora” understood by Ms Mthembu in “Sepedi” to mean they are lying to you, you displayed unprofessional and unethical conduct, more so towards management, in that Ms Mthembu was conveying management’s instruction to you and the other colleagues present in the open plan. In so doing you displayed defiance towards management. Your behaviour indicates an intention to damage management’s reputation and show disrespect to management’s authority. Behaviour of this nature falls foul of the values and ethics of the FSCA as set forth in our policies and procedures generally.*

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<sup>1</sup> Loosely translated



*Your conduct in requesting Ms Mthembu to go back to management and to say to management that “they lie” is viewed as being clearly unsatisfactorily, and totally unacceptable at the FSCA. Employees and the employer are in a fiduciary relationship and owe a duty of trust to each other. In addition, respect must always be maintained between all employees, towards each other. Your conduct showed a completed lack of respect for management and Ms Mthembu.*

**USE OF AN UNOFFICIAL LANGUAGE TO REDICULE (sic) OR DISPLAY CONTEMPT FOR ANY PERSON**

*The FSCA embraces diversity and recognizes that South Africa has 11 official languages. However, the official language medium to be used in verbal and written communication for internal business purposes is English. This is well known to all employees and stated in the Code of Conduct and Ethics at the FSCA. The use of the words “ba go fora” in communicating to Ms Mthembu and management displays a failure and disregard by you, to comply with the above Code in that your communication was not entirely in the FSCA official medium and was interpreted by Ms Mthembu at (sic) ridiculing the management and her. In addition, your noncompliance with the Code is perceived as disrespectful and contempt towards management’s internal rules and authority.’*

[13]. The hearing was scheduled for 4 December 2019 and concluded on 13 February 2020. The outcome of the disciplinary hearing was handed down in a document dated 17 March 2020. Pursuant to the dismissal Mr Makaleng referred a dispute in terms of Section 186(1) of the LRA to the CCMA.

[14]. Mr Makaleng indicated his wish to be reinstated in the event of a finding in his favour.

**SURVEY OF EVIDENCE AND ARGUMENT:**

[15]. *It is not my intention for purposes of this award, to record verbatim the evidence lead and or submissions made, as such will be evaluated hereinunder.*

**Respondent's Evidence:**

[16]. The Respondent presented the evidence of seven (7) witnesses, to wit. Ms Khomotso Audrey Sedibe (Senior Administrative Assistant and current team leader and also the complainant); Mr Sanele Magazi (Manager for the Unclaimed Benefits Department); Mr Soyaphi Lawrence Khoza (Head of Department Business Centre reporting to Ms Magazi); Ms Felicity Mabaso (Divisional Executive in the Unclaimed Benefits Department); Mr Kanyiso Manjezi (Employment Relations Specialist); Mr Dryl Giyose

(Previously Acting Manager and currently Head of Human Resources); and Ms Lerato Tleane (Manager within the Business Centre Department).

- [17]. The evidence from the Respondent was that Mr Makaleng's conduct amounted to gross discourtesy, unprofessional conduct and/or unethical conduct and the use of an unofficial language to ridicule or display contempt for another. Further that Mr Makaleng's dismissal was effected in a fair manner.

### **Applicant's Evidence:**

- [18]. The Applicant did not call any witnesses, but testified in her own defense. He testified in brief was that his dismissal was both substantively and procedurally unfair.

### **ANALYSIS OF EVIDENCE AND ARGUMENT:**

#### **Legal considerations:**

- [19]. In the matter before me, the existence of a dismissal was not in dispute, and therefore the onus of proof rests with the Respondent to prove, on a balance of probabilities, that the dismissal was both substantively and procedurally fair<sup>2</sup>.
- [20]. In analysing the evidence, cognisance was taken of the Code of Good Practice, Schedule 8 ("Schedule 8"), Item 7, *Guidelines in cases of dismissal for misconduct*, set out in Schedule 8 of the Labour Relations Act, and the *CCMA Guidelines on Misconduct Arbitration*. This award contains brief reasons<sup>3</sup> for the decision arrived at and although all the evidence and argument may not be specifically detailed in this award, consideration have been given to all that was presented during the arbitration in terms of relevance in reaching this decision.
- [21]. The dispute before me was largely a factual one. In order to resolve factual disputes findings must be made with reference to (a) the credibility of the various factual witnesses; (b) their reliability; and (c) the probabilities.<sup>4</sup> I will make these findings during the course of the award.

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<sup>2</sup> Section 192 of the Act

<sup>3</sup> Section 139(1)(a) of the Act

<sup>4</sup> ***Stellenbosch Farmers' Winery Group Ltd v Martell & Cie*** 2003 (1) SA 11 (SCA) at 14I par 5. The Court further remarked as follows: "As to (a), the court's finding on the credibility of a particular witness will depend on its impression about the veracity of the witness. That in turn will depend on a variety of subsidiary factors, not necessarily in order of importance, such as (i) the witness's candour and demeanour in the witness-box, (ii) his bias, latent and blatant, (iii) internal contradictions in his evidence, (iv) external contradictions with what was pleaded or put on his behalf, or with established fact or with his own extracurial statements or actions,

Substantive fairness of the dismissal:

*Allegation 1: Whether the sanction of dismissal was appropriate*

- [22]. Mr Makaleng did not deny the occurrence of the incident on 6 September 2019, nor that he was guilty of gross discourtesy. He disputed the meaning ascribed to the words uttered in Sepedi, further that Ms Sedibe was appointed as team leader and that the sanction of dismissal was appropriate.
- [23]. Ms Sedibe's version of events is echoed in allegation 1, and she testified that the conduct of Mr Makaleng caused her to feel embarrassed and belittled. She added that Mr Makaleng had no authority to interrupt her the way he had and thereby stopping her from speaking, and as a result she could not complete the introduction, but had to leave the meeting. Pursuant to the meeting, she requested to go home as the incident left her incapable of continuing with her work, and since then the working relationship between her and Mr Makaleng had broken down.
- [24]. Mr Makaleng's defense in this regard was that, although being informed that two (2) colleagues will be joining their team on a date to be confirmed, they were not informed in which capacity these colleagues would join them. When Ms Sedibe then introduced herself, it prompted him to ask, since when? The response from Ms Sedibe was not believable, hence he responded, whoever told her so, was misleading her, with reference to the capacity of team leader itself and not her relocation.
- [25]. Mr Makaleng did not impress me as a witness as his evidence changed during the course of the arbitration. To mention but a few instances, the first being, that he had a clean disciplinary record, however when confronted with previous disciplinary action taken against him, he conceded that he had been issued with verbal and written warnings in the past. The second is when Mr Makaleng disputed during the arbitration that "*ba go fora*" means they lied to you and his interpretation that the phrase means they *mised you*, however in the letter authored by Mr Makaleng<sup>5</sup>, he confirmed that the phrase means they lied to you.

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*(v) the probability or improbability of particular aspects of his version, (vi) the calibre and cogency of his performance compared to that of other witnesses testifying about the same incident or events. As to (b), a witness's reliability will depend, apart from the factors mentioned under (a)(ii), (iv) and (v) above, on (i) the opportunities he had to experience or observe the event in question and (ii) the quality, integrity and independence of his recall thereof. As to (c), this necessitates an analysis and evaluation of the probability or improbability of each party's version on each of the disputed issues. In the light of its assessment of (a), (b) and (c) the court will then, as a final step, determine whether the party burdened with the onus of proof has succeeded in discharging it.... But when all factors are equipoised probabilities prevail "* (at 141 - 15E par 5 per Nienaber JA)

<sup>5</sup> Bundle R page 105 paragraph 2.2.1



[26]. Ms Sedibe's testimony on the other hand was consistent and clear in all aspects. Her evidence was also corroborated by Ms Mabaso and Mr Khoza, albeit they were not present when the incident occurred, who confirmed that Mr Makaleng's conduct was unacceptable.

[27]. The conduct of Mr Makaleng seemed to have been sparked by the fact that he believed that he was the most suitable person to be leading the team. He denied this contention during cross-examination, however, he confirmed that due to his position as the Branch representative of the PSA, he should have been informed / consulted in relation to this decision. This contention is unpersuasive as the position of team leader was not made by appointment, and as a result it remains the prerogative of the Respondent to assign duties to employees.

[28]. Schedule 8, reads as follows:

*"Generally, it is not appropriate to dismiss an employee for a first offence, except if the misconduct is serious and of such gravity that it makes a continued employment relationship intolerable. Examples of serious misconduct, subject to the rule that each case should be judged on its merits, are gross dishonesty or willful damage to the property of the employer, willful endangering of the safety of others, physical assault on the employer, a fellow employee, client or customer and gross insubordination."*

[29]. According to the Respondent's Disciplinary Policy, gross discourtesy in the workplace is viewed in a serious light, warranting dismissal on first offence. From the objective facts, it is evident that the conduct of Mr Makaleng had a detrimental impact on Ms Sedibe, this much remained unchallenged. She further testified that the effect of Mr Makaleng's behaviour towards her was that the working relationship broke down and that they stopped talking thereafter. Although Mr Makaleng made an attempt to state that they continued to work together, the fact remained that they did not communicate anymore. The very principle of a working relationship between colleagues, especially if one of the colleagues is a team member, is communication. Without such, the relationship becomes intolerable and unmanageable. Had Mr Makaleng showed remorse for his actions, the probability of change in his behaviour could be envisaged, however he persisted in his innocence.

[30]. The Respondent is duty bound to create a safe working environment for its employees, hence the importance of the rule against discourteous behaviour. Allowing such behaviour to persist would seriously undermine this duty and the well-being of others in the workplace.



[31]. In reaching this conclusion, and in order to make a balanced and equitable assessment, consideration was given to the position and interests of both Mr Makaleng and the Respondent. In the circumstances, the Respondent succeeded in discharging the onus of proof in showing that the decision to dismiss was appropriate, regard had to the totality of the circumstances, which includes the importance of the rule that had been breached, the reasons given by the Respondent for imposing the sanction of dismissal, and other factors such as, the harm caused by Mr Makaleng's conduct. Any action short of dismissal would not have had the desired effect. Where there is a failure to show remorse, it would be extremely difficult to justify a progressive sanction<sup>6</sup>. Regard was also had to the impact of the dismissal on Mr Makaleng and his length of service<sup>7</sup>, however the gravity of the offence outweighs any mitigating factor raised by Mr Makaleng.

[32]. The courts have considered the absence of remorse from a dismissed employee, and held it is conceivable that an employer may find it difficult to re-employ an employee who has shown no remorse. Acknowledgement of wrong doing is the first step towards rehabilitation<sup>8</sup>. An employee who is guilty of misconduct and who does not admit that he has done wrong, cannot be trusted again<sup>9</sup>.

*Allegation 2: Whether Mr Makaleng is in breach of the workplace rule*

[33]. Ms Sedibe pointed out that Mr Makaleng went further to instruct her to inform management to send an email to confirm her capacity as team leader. In response she asked him whether she was not supposed to finish what she was saying, to which Mr Makaleng repeated the instruction.

[34]. With regards to the reference to management, Mr Makaleng stated that he did not mention any person by name nor position as he did not know who had informed Mr Sedibe to introduce herself as the team leader. He further denied preventing Ms Sedibe from continuing with her introduction. Instead, he stated that it was Ms Sedibe that elected out of her own free will to stop the meeting and to leave the office.

[35]. If Mr Makaleng indeed wanted clarification on Ms Sedibe's capacity then he could have sought such clarification either from Ms Sedibe or from management. Clearly the need for clarification did not inform his conduct on the day in question. Surely Mr Makaleng could have given Ms Sedibe the opportunity to explain, then he would have been given the clarification that he said he desired. However, the version

<sup>6</sup> *Timothy v Nampak Corrugated Containers (Pty) Ltd* (2010) 31 ILJ 1844 (LAC)

<sup>7</sup> *Sidumo v Rustenburg Platinum Mines Ltd* (2007) 28 ILJ 2405 (CC)

<sup>8</sup> *De Beers Consolidated Mines Ltd v CCMA & others* (2000) 21 ILJ 1051 (LAC)

<sup>9</sup> *Ibid*

of Ms Sedibe is accepted as the more credible version, when she testified that she understood the comments from management to mean that management lied to her as she received the instruction to introduce herself from management. Ms Sedibe's understanding is reinforced with the further comment made by Mr Makaleng, when he said to her that she must tell management to send an email explaining her role as team leader.

[36]. Of importance is that the conduct and words uttered to Ms Sedibe was in full view of other employees. In this regard his conduct is most definitely considered to be unprofessional and not what is expected of an employee, especially one that should lead by example.

[37]. In conclusion it is necessary to comment on the allegation itself. Although not the perfect example of perfection in relation to the phrasing thereof, it is accepted that the allegation may not have been drafted by a skilled Legal Practitioner<sup>10</sup>, and from the evidence presented, the version of the Respondent is preferred to that Mr Makaleng. His actions on the day in question should be frowned upon and can be seen as unprofessional and/or unethical. Having considered all of the above, there exists no hesitation in finding that the Respondent succeeded in proving the allegation against Mr Makaleng.

*Allegation 3: Whether a workplace rule existed that prohibits the use of an unofficial language to ridicule Or display contempt for another person and whether Mr Makaleng is in breach of such rule*

[38]. Mr Makaleng denied the existence of a rule relating to the use of unofficial languages in the workplace. He however failed to challenge the evidence of Mr Giyose with reference to the Disciplinary Procedure of the FSCA whereas he alluded to the fact that all employees, including Mr Makaleng, were issued with this procedure at their commencement of employment, and in addition that the procedure is displayed on the system.

[39]. Item 38 of the Disciplinary Procedure reads as follows<sup>11</sup>:

*"Use of insulting or abusive language or use of any words expressing or showing hatred, ridicule or contempt for any persons or group of persons."*

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<sup>10</sup> *EOH Abantu (Pty) Ltd v CCMA and others* (JA 4/18) [2019] ZALAC 57; (2019) 40 ILJ 2477 (LAC)

<sup>11</sup> Bundle R page 125

[40]. Although the above does not specifically deal with the use of non-official languages, it prohibits in detail the use of “any words” that shows ridicule or contempt. It is therefore evident that a rule exists that prohibits any conduct that is viewed as an attempt to ridicule or disrespect another employee.

[41]. Considering whether the use of the phrase “ba go fora” constitutes ridicule or contempt/disrespect towards Ms Sedibe and/or management, regard was had to the circumstances in which the words were uttered, and as discussed elsewhere in this award, Mr Makaleng cannot escape the effect thereof.

*Appropriateness of the sanction:*

[42]. That brings me to the appropriateness of the sanction. From the objective facts before me, the only reasonable conclusion to be reached, as summarised above, is that Mr Makaleng is guilty of serious misconduct. In essence, he had conducted himself in a manner which had destroyed the employment relationship due to the profound impact on Ms Sedibe and the workplace in general. In the circumstances, the decision of the Respondent to dismiss, was appropriate, regard had to the totality of the circumstances, which includes the importance of the rule that had been breached, the reasons given by the Respondent for imposing the sanction of dismissal, and other factors such as, in particular, the impact on a safe working environment. I am not persuaded that any action short of dismissal, nor additional training and instruction, may result in this conduct never to be repeated. Where there is a denial of guilt, it would be extremely difficult to justify a progressive sanction<sup>12</sup>. Regard was also had to the impact of the dismissal on Mr Makaleng and his length of service<sup>13</sup>, however the gravity of the offence far outweighs any mitigating factor raised by Mr Makaleng.

[43]. The courts have considered the absence of remorse from a dismissed employee, and held it is conceivable that an employer may find it difficult to re-employ an employee who has shown no remorse. Acknowledgement of wrong doing is the first step towards rehabilitation<sup>14</sup>. An employee who is guilty of misconduct and who does not admit that he has done wrong, cannot be trusted again<sup>15</sup>.

[44]. Having considered all of the above, I have no hesitation in finding the dismissal substantively fair.

<sup>12</sup> *Timothy v Nampak Corrugated Containers (Pty) Ltd* (2010) 31 ILJ 1844 (LAC)

<sup>13</sup> *Sidumo v Rustenburg Platinum Mines Ltd* (2007) 28 ILJ 2405 (CC)

<sup>14</sup> *De Beers Consolidated Mines Ltd v CCMA & others* (2000) 21 ILJ 1051 (LAC)

### Procedural fairness:

- [45]. The challenge against procedural fairness is two-fold. Firstly, whether the allegations preferred against the Applicant amount to a splitting of the charges; and secondly, whether progressive discipline should have been followed.

### *Splitting of charges:*

- [46]. Before consideration will be given to the facts, it is important to set out the legal requirements for procedural fairness in a dismissal. In ***Avril Elizabeth Home for the Mentally Handicapped v CCMA and others*** (JR 782/05) [2006] ZALC 44; (2006) 27 ILJ 1644 (LC); [2006] 9 BLLR 833 (LC) it was held that the employer was merely required to conduct an investigation, give the employee or her representative an opportunity to respond to allegations after a reasonable period was granted to prepare a response, thereafter to take a decision and give the employee notice thereof. This principle was confirmed by the Labour Court in ***PRASA v Moreki and others*** (J 190/15, JR 2361/16) [2017] ZALCJHB 114, where the Court, whilst referring to Schedule 8 noted that Item 4 makes room for a less formal process to be followed (as opposed to a formal oral disciplinary enquiry), it ought to be open to the Employer to follow any one of such processes as long as such process complies with the minimum standard set-in item 4(1)". Procedural fairness is thus determined on a case-by-case basis and a disciplinary enquiry need not always be "formalistic".
- [47]. Splitting or duplication of charges refers to the instance where the same factual basis is used to prove a variety of charges in order to achieve a more serious sanction such as dismissal, as the different charges, cumulatively bolster the case against the employee<sup>15</sup>.
- [48]. Although the factual basis for the three charges is linked, it is not evident that the intention from the Respondent was to bolster the case against Mr Makaleng. Mr Makaleng made himself guilty of serious misconduct and each allegation on its own have the capability of attracting a sanction of dismissal.
- [49]. It is accepted that the allegations against Mr Makaleng were not elegantly drawn. However, the intention of the LRA and Schedule 8 by extension, was never to be over formalistic. Allegations preferred against an employee need not be a model of criminal charges, as a disciplinary tribunal is

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<sup>15</sup> *Ibid*

<sup>16</sup> ***Steelcor (Pty) Ltd v Mokwena NO and others*** (JR812/2012) [2014] ZALCJHB 1



not a Court of Law, neither are there stringent rules to the crafting of allegations<sup>17</sup>. The question for consideration in an enquiry as the current one, is on fairness. Fairness is determined *inter alia* whether Mr Makaleng had a fair opportunity to respond to the allegations, and regard had to the facts, it cannot be said that Mr Makaleng suffered any prejudice in the manner in which the allegations were preferred against him.

*Whether progressive discipline should have been applied*

- [50]. Whilst it is correct that discipline should be corrective in nature and therefore a system of progressive discipline should be applied by an employer, Schedule 8 provides for exceptions to the general rule. The exceptions include when the misconduct is serious in nature and of such gravity that it makes a continued employment relationship intolerable.
- [51]. The effect of Mr Makaleng's behaviour was serious in nature as discussed elsewhere in this award. Although the categorization of the allegations, to wit, gross discourtesy, unprofessional conduct and use of a non-official language, does not appear to be serious in nature at first glance, the facts surrounding the misconduct, clearly shows the gravity of the offence/s. The effect of Mr Makaleng's conduct on Ms Sedibe and the workplace was far reaching. It left Ms Sedibe feeling embarrassed, belittled and destroyed any communication between Ms Sedibe and Mr Makaleng. In addition, it shows a total lack of respect to management's authority. In the circumstances, it cannot be said that progressive discipline should have been applied.
- [52]. If follows that the evidence of Ms Sedibe, Mr Giyose and Ms Mabaso, to the effect that the trust relationship has broken down, is accepted. The evidence of the three witness finds credence in the fact that it had a detrimental effect on the communication in the unit and the disrespect shown towards management in full view of other employees. The manner in which Mr Makaleng conducted himself is completely destructive of the prospects of continued employment. The concern stone of an employment relationship is trust and respect and it is inconceivable to fathom how progressive discipline would have been effective under the circumstances.
- [53]. In the circumstances the dismissal of Mr Makaleng is held to have been procedurally fair.

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<sup>17</sup> *Cape Gate (Pty) Ltd v Mokgara and others* (JA11/21) [2022] ZALAC 92; (2022) 43 ILJ 1277 (LAC)  
Only signed awards that contain the CCMA approved watermark are authorised.

**AWARD:**

[54]. In the light of the above, I find that the dismissal of the Applicant, **Mr Makaleng** was substantively and procedurally fair.

[55]. The Respondent, **Financial Sector Conduct Authority** is not ordered to reinstate Mr Makaleng.



Commissioner :

R de Wet

Date :

18 June 2023

**APPROVED**