

**8 August 2025**

**To: PSA obo Molemoeng Teise**

And

**To: Department of Education North West**

**Dear Sir / Madam,**

## Letter

**CASE NAME: PSA obo Molemoemg Teise and Department of Education North West**  
**Case No: ELRC1078-25/26NW**

I transmit herewith a copy of the Arbitration Award for the above-mentioned matter for your attention and information.

The matter will now be closed by the council.

We thank you for your co-operation in this regard.  
For any further queries related to this  
dispute/matter, please contact AbramP@elrc.org.za

Kind Regards

**GENERAL SECRETARY**  
**Education Labour Relations Council**



OFFICE OF THE GENERAL  
SECRETARY

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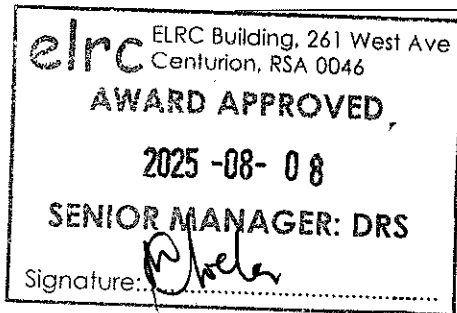
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## ARBITRATION AWARD



Arbitrator: Macjon Maarman

Case number: ELRC1078-24/25 NW

Date of Award: 04 August 2025

PSA on behalf of Agnes Molemoeng Teise

and

Department of Education, North West

Applicant

Respondent

### DETAILS OF HEARING AND REPRESENTATION

1. The arbitration hearing took place virtually and concluded on 25 July 2025. The applicant, Ms. Agnes Molemoeng Teise, was present and represented by Mr. Nceba Baartman, an official from the Public Servants Association (PSA). The respondent, Department of Education, North West was present and represented by Mr. David Seakgosing, its Labour Relations Practitioner. The proceedings were manually and digitally recorded. Parties submitted bundles of documents which were accepted for what it purported to be. Parties further submitted closing arguments on the agreed date.

### **ISSUE TO BE DECIDED**

2. I am required to determine whether the first respondent committed an unfair labour practice against the applicant by suspending her without pay for three months. The applicant seeks the repayment of her salary for three months (as per the sanction) as well as compensation.

### **BACKGROUND:**

3. The applicant who is employed earning a basic salary of R37 995, 25 per month, was charged and found guilty of "Corporal punishment - It is alleged that on or around 07 March 2023 while on duty at Dikakanyo [school] you allegedly administered corporal punishment on learners namely Mbhali Lecahaba, Mautlwa Otloteng and Matoane Omphemetse, thus misconduct in terms section 18 (1) (dd) of the Employment of Educators Act 76 of 1998 which reads "commits a common law or statutory offence", read with section 10 (1) of the South African Schools Act 84 of 1996 which reads that no person may administer corporal punishment at a school to a learner". The applicant was eventually found guilty after the conclusion of the disciplinary hearing and a sanction of three months' unpaid suspension was imposed. The applicant submitted an appeal of which the outcome was received on 22 October 2024 coupled with an unpaid suspension letter for the period of 1 November 2024 until 31 January 2025.
4. The applicant challenges both procedural and substantive fairness in this dispute and seeks that the sanction "be set aside" and for her to be compensated. The matter was referred in time to the ELRC, a dismissal ruling was issued and thereafter a rescission ruling whereafter the matter was again enrolled for arbitration eventually leading to its conclusion on 25 July 2025.

## **SURVEY OF EVIDENCE AND ARGUMENT**

5. This award does not contain everything that was said that the arbitration or in the closing arguments of the parties. It only records the evidence and arguments material to the subject matter and the finalization of the dispute. This is in line with section 18.6.1 of the ELRC constitution as well as section 138 (7) of the LRA.

### **The applicant's case**

6. Ms. Agnes Molemoeng Teise (herein after "the applicant") testified and set out that she started working for the respondent in January 1984 and she started working at Dikakanyo Primary School in 1998. She testified that on 2 February 2023 the principal was attending a "bosberaad" and asked her what time does her grade (class) knock off and the deputy principal came to her class. She testified that her first disciplinary hearing sat on 13 December 2023 which was 8 months after the alleged misconduct and it was postponed. She said that she had to get a protection order against Mr. Lechaba who is a parent of one of the learners whom she allegedly applied corporal punishment to.
7. The applicant continued to testify that on 07 March 2023 she was in her class teaching her learners as usual and that she knows nothing about assaulting any of the learners. She said that the principal soon thereafter came and told her that Mr. Lechaba says that she is administering corporal punishment on the learners but she does not know what he (Mr. Lechaba) was speaking about. She said that no parent has ever come to school to complain that she is assaulting them and that the first time she saw the alleged corporal punishment pictures was during the disciplinary hearing when the respondent shared their bundle.

8. The applicant further set out that she cannot identify any learner from the pictures and she does not know on what dates the pictures were taken. She said that she never agreed that she subjected the learners to corporal punishment and that it took the respondent six months to decide her appeal. She lodged the appeal on 01 May 2024 and only got the appeal outcome on 22 October 2024 and the suspension letter on 31 October 2024. She said that the suspension prejudiced her as she was devastated. When she was given the suspension letter Mr. Bahurutse said that she must read it quickly as he was going somewhere else. The letter said that the suspension was starting the next day.
9. The applicant said that she was still at school a few days after the "suspension" started and when the circuit manager came and queried her on that she said that the suspension letter was not meant for her as it said "Teiso" and not "Teise" and the persal number on the MEC's appeal outcome was also not hers. The circuit manager then wrote in the log book that she is suspended and said she must not come to school as she was suspended. She was threatened with the Police to which she responded that she was fine with that too.
10. The applicant said that she lost all her insurance policies that she had since 1984 due to the three months of no income and she survived because of God.
11. Under cross examination the applicant said that she is still at work and that in the internal disciplinary hearing she was represented by an attorney. She said that her learners do not knock off late but there are times where they go an extra five minutes. She said that she knows the learners but not all their parents and that Mr. Lechaba said that Ms. Matuoane must make sure to attend the disciplinary hearing so that their case can be strong. She said that she never saw the mitigating factors that her attorney submitted and that in the disciplinary hearing one of the children's parent could not answer why there was no police report or doctors report. She said that Mr. Bahurutse said that she cannot bring

witnesses to the disciplinary hearing and that the principal normally acts immediately [when there issues about learners and educators]. The applicant lastly said that she was not unreasonable by going to school when her suspension started.

12. Mr. Lentswe Thwane (herein after "Mr. Thwane") was the next witness for the applicant. He said that he is the former principal at the school where the applicant teaches and was principal at the time when the allegations of her doing corporal punishment surfaced. He said that he used to do random class visits, never picked up anything about corporal punishment being done by the applicant and the applicant was one of his best educators.

13. Mr. Thwane said that he does not know anything about the allegations of corporal punishment by the applicant to any learner. He said that Mr. Lechaba, a parent of a learner, told him that "abuse" of learners is happening at his school, that the school management is not doing anything about it and that they [him and other parents] are sending it to higher authorities. He said that he then queried why the issue was never reported to him as principal by Mr. Lechaba or any other parent and said that other parents in the community in fact want their children to be taught by the applicant.

14. Mr. Thwane further set out that he does not know Pinky Mpona who sent an e-mail on 08 August 2023 to the Department of Education, North West with pictures of abused children and which was signed by three parents at the end. He said that no incident of a child being beaten at his school whilst he was principal was ever reported to him and the first time he heard of such was when Mr. Lechaba approached him with the issue. He said that none of the parents who are mentioned in the e-mail ever reported alleged corporal punishment to him.

15. Mr. Thwane continued to testify and said that he suspects that Mr. Lechaba might have been annoyed at the fact that the applicant was still

busy teaching his child when he came to fetch the child but could not on a couple of occasions.

16. Under cross examination Mr. Thwane said that he viewed the applicant keeping some learners a little longer as she helping them and he is not sure to whom does the pictures belong to.

17. The trade union, in their closing arguments, said that "the employer introduced photographs of unidentified children with bruises and were not verified through expert or parental testimony. No witness testified as to when, where or by whom the photos were taken. No parent confirmed that their child appeared in the images. The employers case is built around hearsay evidence. There was no direct evidence from any who experienced or witnessed the alleged abuse".

#### **The employer's case**

18. Mr. Tumelo Bahurutse (herein after "Mr. Bahurutse") testified that he is employed by the respondent as an Assistant Director: Labour Relations. He said that the parents wrote various statements alleging abuse by the applicant where they complained about the mistreatment of the applicant towards their children. He said that Mr. Jabu Lechaba, Ms. A. Matoane and Ms. L. Mautlou complained about corporal punishment by the applicant on their children. He said that the applicant allegedly beat their children and kept them after school.

19. Mr. Bahurutse continued to testify and said that the principal was aware of the abuse allegations as he received the investigation reports. He said that during his investigation the applicant conceded that she is a "traditional teacher" [who believes in corporal punishment] however she said it off-record. He said that due process was followed where the applicant participated in the investigation, received the hearing notice, attended the hearing, was represented by an attorney, received the

finding, submitted mitigating factors, received the sanction and later submitted an appeal against the sanction.

20. Mr. Bahurutse said that the applicant was not happy with the finding and sanction and began to send him threatening voice messages. He said that the actions of the applicant was a criminal offence due for a dismissal but the applicant received a lenient sanction.

21. Under cross examination Mr. Bahurutse said that it was a typing error on the MEC's appeal outcome (wrong persal) and that the learners did testify in the disciplinary hearing.

22. Mr. Matome Machaka (herein after "Mr. Machaka") was the next witness for the respondent. He said that he is a Senior Education Specialist by the respondent and he was the chairperson of the disciplinary hearing of the applicant. Mr. Machaka said that the applicant was legally represented in the disciplinary hearing and that in the mitigating factors of the applicant she agreed that she should be punished but not dismissed and after considering all the factors he issued a sanction of three months' unpaid suspension which he thought was appropriate in the circumstances.

23. Under cross examination Mr. Machaka said that the applicant pleaded not guilty at the start of the disciplinary hearing and parties had to mitigate on a lesser or harsher sanction. He lastly said that schools are inundated with corporal punishment matters but the applicant did have a long service with the respondent.

24. The respondent, in their closing arguments, said that the applicant was never denied her rights, hence no objections were raised during the entire proceedings; she had a chance to comply with the submission of her mitigating factors following [receipt] of the findings. They said that the respondent has never received any discontent submission from the applicant between 01 November 2023 and 31 January 2024. They said



that the respondent has proven that the alleged misconduct is of a very serious nature with high public interest but the respondent after careful consideration of the applicant's mitigating factors decided on a lighter and progressive sanction.

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

25. Section 186 (2) (b) of the LRA states that "Unfair Labour Practice means any unfair act or omission that arises between an employer and employee involving the unfair suspension of an employee or any other unfair disciplinary action short of dismissal in respect of an employee".

26.

##### **Procedural fairness**

27. The testimony of the applicant as well as the closing arguments of the applicant were vague as to her exact issues with procedural fairness. In the closing arguments of the trade union it was eventually said that that it circled around the applicant's Persal number and surname being incorrect, her calls to the respondent being ignored and her not having a "legal document to give to her insurers and financial service providers". They said that the aforementioned resulted in the process being procedurally unfair and prejudicial to the applicant.

28. It is crucial to note that the applicant received the disciplinary hearing notice, was present and participated in the disciplinary hearing, was represented by an attorney and received a chance to give her version to the witnesses of the respondent and give her own testimony.

29. The applicant furthermore received the finding and through her attorney mitigating factors were submitted. After she received the sanction, she was granted the opportunity to submit an appeal which unfortunately was not in her favor.

30. The fact that the applicant's personal number and surname was spelled wrong did not result in procedural unfairness by the respondent towards the applicant. She knew that she was the subject of the documents.

### **Substantive fairness**

31. There are numerous legal authorities which confirm that arbitration proceedings are *de novo* hearings. In Unfair Labour Practice cases the applicant bears the onus to prove that the respondent committed an Unfair Labour Practice against them. In this case there was a flat out denial by the applicant that she has ever committed corporal punishment against any learner let alone those belonging to the parents who penned the complaining e-mail to the respondent.

32. Naturally the respondent must not "sit still" in the arbitration. They must proceed to show that indeed the applicant is guilty of the alleged actions (misconduct) that gave rise to the sanction and ultimate disciplinary action.

33. The aforementioned may be done through oral testimony of relevant and credible witnesses.

34. The respondent did not bring any learner or parent of an "affected learner" to these proceedings to testify. The two witnesses that they did bring testified in essence about procedural fairness, i.e. the lead up to the disciplinary hearing and what occurred in the disciplinary hearing.

35. It was for the respondent, at the start of the arbitration, to make an application for the admission of hearsay evidence. They did not do that. The testimony of their witnesses was not relevant to the aspect of substantive fairness. In the absence of any contradicting testimony to that of the applicant and her witness I find that the respondent failed to present evidence that would show on a balance of probabilities that the

applicant committed the misconduct of administering corporal punishment which she was found guilty of. . .

36. I thus find that the respondent committed an Unfair Labour Practice relating to disciplinary action against the applicant.

37. In *SAPO v Jansen Van Vuuren NO and others* (2008) 29 ILJ 2793 (LC) the Labour Court stated that Commissioners may set aside suspensions imposed as a disciplinary penalty if they find, on merits, that the employee was not guilty of the conduct which he or she was suspended for.

38. In this case I have found that the respondent committed an unfair labour practice relating to disciplinary action against the applicant. The applicant sought the repayment of her salary for the period of unpaid suspension (three months), as well as compensation.

39. In this case I have found that the respondent followed a fair procedure to the lead up of the sanction. . The applicant suffered financial and reputational damage due to the actions of the respondent. I thus deem 5 months' remuneration as compensation as an appropriate remedy in this case, that amount being the applicant's monthly salary of R37 995, 25 x 5 = R189 976, 25. This amount is inclusive of the three months' remuneration that the respondent deducted as a result of the initial sanction of unpaid suspension. The aforementioned amount is not to punish the respondent nor to reward the applicant but to remedy the substantive defect in the issuing of the sanction against the applicant.

#### **AWARD**

40. The respondent, Department of Education, North West, committed an unfair labour practice related to unfair suspension and disciplinary action short of dismissal, against the applicant, Ms. Agnes Molemoeng Teise.

41. The respondent, Department of Education, North West, must pay the applicant, Ms. Agnes Molemoeng Teise, R189 976, 25 (One hundred and eighty-nine thousand nine hundred seventy-six rands and twenty five cents) by no later than 01 September 2025.



Panelist: **Macjon Maarman**  
**ELRC1078-24/ 25 NW**

