

31 July 2026

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To: Free State Department of Education (Applicant)

To: Tshabalala M (Respondent)

Dear parties

RE: ARBITRATION AWARD

**CASE NAME: FREE STATE DEPARTMENT OF EDUCATION /
TSHABALALA M**

CASE NUMBER: ELRC1012-25/26FS

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

For any further queries related to this dispute/matter, please contact LebohangM@elrc.org.za

We thank you for your co-operation in this regard.

Kind Regards,



Dr N O Foca
General Secretary
Education Labour Relations Council

31/7/26



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SECRETARY**

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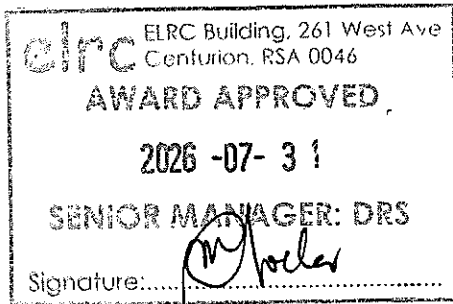
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**IN THE EDUCATION LABOUR RELATIONS COUNCIL
HELD AT BLOEMFONTEIN**



THE INQUIRY-BY-ARBITRATOR BETWEEN

THE HEAD OF DEPARTMENT:

FREE STATE DEPARTMENT OF EDUCATION

EMPLOYER

and

MR MTHANDEKI SAMSON TSHABALALA

EMPLOYEE

Case No: **ELRC1012-25/26FS**

Dates: **30 January, 06 & 18 March, 28 April and 13 July 2026**

Venue: **Provincial Office of the Department of Education, Bloemfontein**

AWARD

DETAILS OF HEARING AND REPRESENTATION

1. This is an arbitration award in the disciplinary matter (Inquiry-By-Arbitrator) between the Head of Department: Free State Department of Education (hereinafter 'the employer'), and Mr Mthandeki Samson Tshabalala, 'the employee'.
2. The Inquiry-By-Arbitrator (hereinafter 'the Inquiry') commenced on 30 January 2026, and resumed on 06 & 08 March, 28 April and 13 July 2026 at the Provincial Offices of the employer in Bloemfontein. The last sitting was held on a virtual platform (Teams). The employer was represented by Ms. Lindiwe Cweba, its Labour Relations Officer. Mr Aubrey Nappie, a Provincial Manager of the Public Servants Association of South Africa (PSA), represented the employee.
3. The proceedings were digitally recorded, and Ms Philane Nyezi was the Interpreter. Mrs ME Twala was the Intermediary.
4. The Inquiry was held under the auspices of the Education Labour Relations Council (hereinafter the Council), following section 188A of the Labour Relations Act¹ (the LRA), read together with Clause 32 of the Council's Dispute Resolution Procedure and the Council's Collective Agreement (Resolution 3 of 2018). The award is issued in accordance with Section 138(7) of the LRA.

ISSUE TO BE DECIDED

5. I am called upon to decide whether the employee misconducted himself, per the allegations levelled against him. If I find that he did commit the misconduct(s), I must decide on an appropriate sanction.

BACKGROUND TO THE DISPUTE

6. It is common cause that the employment relationship commenced in February 2011. The employee was employed as an Educator and specialised in the subjects of Life Sciences, Life Orientation and Sesotho. The employee was based at the employer's Nthabiseng Secondary School situated in Phuthadichaba, in the Free State Province.

¹ 66 of 1995 as amended

7. Following alleged acts of sexual assault and improper behaviour between October and November 2024, the employee was not suspended, and the disciplinary action against him was instituted in November 2025.
8. The allegations levelled against the employee are as follows:

Charge 1

You have contravened Section 17 (1) (b) of the Employment of Educators Act, No 76 of 1998, in that on or about October 2024 and November 2024, you committed an act of sexual assault on a grade 12 learner (the learner) when you put your hand in her school shirt and touched her breast. [sic]

Charge 2

You have contravened Section 18 (1) (q) of the Employment of Educators Act, No 76 of 1998, in that on or about October 2024 and November 2024, while on duty, you conducted yourself in an improper, disgraceful or unacceptable manner when you pulled down a towel which (the learner) wrapped around her waist in the Life Science Lab.

9. The employee (hereinafter the teacher) pleaded not guilty to the charges. He was adequately served with a notice to appear at the Inquiry and provided sufficient time to prepare for the case. His rights and obligations were also correctly explained to him at the commencement of the Inquiry.
10. For this award, the learners' names shall be kept confidential. The female learner against whom the alleged misconduct was committed was in Grade 12 at the time of the alleged incidents and was 18 years old. It is alleged that the incidents occurred in the teacher's Life Science Lab.
11. The teacher denied the allegations against him. It was common cause that the teacher and the learner knew each other and that the teacher was also a subject teacher of the learner.

SURVEY OF EVIDENCE AND ARGUMENT

12. This section summarises the parties' evidence and arguments. It is not intended to be exhaustive, but I have considered all submissions in reaching my conclusions.

Documentary Evidence

13. The parties handed in the following evidence:

Employer: Charge Sheet

Teacher: Documents Bundle R

Employer's Case

14. The Learner testified as the first witness for the employer. She testified that during a school camp in October/November 2024, the Teacher commented on her legs and told her how attractive he found her legs. The Learner further stated that a few days later during the camp, she visited the Teacher's science laboratory, with a towel wrapped around her waist. She stated that the Teacher then asked her what she was wearing underneath the towel, to which she replied: 'a dress'. The Learner stated that the Teacher then wanted to make sure by trying to unwrap the towel, where she then clapped the Teacher's hand away.

15. The Learner testified that the following day, and as she usually does, she had her pens in her breast (bra), and that the Teacher attempted to take one of those pens and touched one of her breasts in the process. She stated that she reported the towel incident to another teacher and also complained to the Teacher about his behaviour.

16. In cross-examination, the Learner stated that she could not remember the exact dates on which the incidents happened. She stated that it was only the two of them when the incident of the towel happened, and that one Masenthe witnessed the incident of the breast touching.

17. Mr Leoatle Letlholoholo, a former Departmental Head for Languages at the school, testified as the Employer's second witness. He confirmed that the Learner did report the alleged incidents to him, and that he escalated it to the school's principal, who further escalated it to the Employer's circuit manager.

18. In cross-examination, Mr Letlholoholo stated that he did not witness any of the alleged incidents personally. He admitted that his statement to the police does not have any dates either.

19. Mr Tabatone Mahlako, a Senior Teacher, testified as the Employer's third witness. He stated that the Learner told him that the Teacher pulled down the towel from her body. Mr Mahlako also stated that the Learner informed him of the breast incident, and how the reporting of the incidents took place to

the superiors. He conceded in cross-examination that the evidence he gave is not contained in his sworn affidavit to the police.

20. Mrs Mantshabeng Mofokeng, the Learner's Mother, testified as the fourth witness of the Employer. She testified that the Learner left the camp earlier than expected, and that the Learner reported to her about the incidents. Mrs Mofokeng stated that the Learner told her about the towel incident (without providing details), as well as the ball point pen which the Teacher attempted to remove from the Learner's breasts. She then explained how she (Mrs Mofokeng) reported the matter to the principal and police.
21. In cross-examination, Mrs Mofokeng denied the contents of her sworn statement to the police and challenged the Teacher's union to call the police detective to testify in this Inquiry. She denied that the Learner told her that she (the Learner) clapped the Teacher's hand away before the Teacher could touch her breast and pen.

Employee's Case

22. Mr Mthandeki Samson Tshabalala, the Teacher, testified as the first witness in his case. He denied having committed the offences alleged in the charges and stated that he remembered how the Learner alleged that he was making advances on her. The Teacher stated that he immediately went to the principal at the time (Mr Chaba) and wanted the Learner to no longer receive a subject from him or that the Learner must no longer approach him alone. He stated that Mr Chaba and the School Governing Body's (SGB) chairperson at some point wanted him to meet the Learner's parents to discuss the allegations but was advised against it by the Employer's officials.
23. The Teacher testified that according to the police statements (Bundle R), the Learner stated that the breasts incident took place on 01 December 2024, whereas he (the Teacher) was not even in Phuthadichaba on that day, but in Bloemfontein. The Teacher then testified that the Learner's parents then wanted money from him in exchange for a withdrawal of the criminal case, and that he refused. He stated that the criminal case was subsequently closed by the police.
24. The Teacher stated that according to the police (who actually investigated the case and obtained statements), the Learner alleged that the towel incident took place on 28 November 2024, but that there were no learners on the school premises on that day. He produced his sworn statement to the police to prove his *alibi* for those two days.

25. In cross-examination, the Teacher stood by his testimony and stated that he does not have friends amongst his colleagues, and was very isolated, and believed that the Learner was negatively influenced against him.
26. Sergeant(f) SE Mokotedi, a Detective from Phuthadichaba SAPS, testified as the second witness of the Teacher. She testified that she was the criminal investigating officer, and that she took the witness statements except the Learner's statement. Sgt Mokotedi remembered how she took Mrs Mofokeng's statement and affirmed that the statement is accurate and correct.
27. Mr MB Chaba, the school's former principal and principal at the time of the alleged incidents, testified as the third witness in the Teacher's case. He confirmed that the alleged incidents were reported to him and other teachers, and that the Teacher wanted the Learner to be excluded from his class. Mr Chaba stated that the towel incident was not reported to him, and that he did not investigate the matter. He stated that these allegations were the first allegations against the Teacher since he started to know the Teacher.
28. Mr Pappie Mazibuko, the Teacher's Uncle, testified as the fourth witness in the Teacher's case. He confirmed the Teacher's *alibi* that the Teacher was attending a traditional ceremony at their homestead in Qwa Qwa on 28 November 2024.

ANALYSIS OF EVIDENCE AND ARGUMENT

29. I shall now proceed to determine the charges levelled against the employee, in light of the evidence led at the Inquiry, and the onus which was on the employer to prove the allegations on a balance of probabilities:
30. It is trite to note that the Employer did not conduct its own investigation to gather all the relevant and necessary information and evidence against the Teacher. It is the Teacher and his union which took the initiative to investigate the allegations, and to request a copy of the statements taken by the police to verify the facts. I have decided to confine myself to the allegations in the charges for which the Teacher was formally charged. The rest of the other allegations are not contained in the charges, and they were in any event not proven by the Employer.

Charge 1

You have contravened Section 17 (1) (b) of the Employment of Educators Act, No 76 of 1998, in that on or about October 2024 and November 2024, you committed an act of sexual assault on a grade 12 learner (the learner) when you put your hand in her school shirt and touched her breast. [sic]

31. Both parties called four witnesses each during the Inquiry. The Employer's witnesses appeared more problematic than those of the Teacher, for the simple reason that the Employer's witnesses' versions lacked consistency. Although the Learner claims that the Teacher touched her breast in the process of taking out the ball point pen from her breasts, this is not the version which she conveyed to her mother.
32. According to the mother's sworn affidavit, the Learner clapped the Teacher's hand away before the Teacher's hand could reach her breasts. The mother then decided to deny this version during her testimony and accused the detective of not having taken her statement correctly. A statement which she has signed. Strangely so, Mr Letlholoholo's version of what the Learner told him corresponds with the sworn statement version of the mother, which in essence gives more credence to the sworn police statement than the testimony of the mother. This allegation of the mother about the incorrect statement was rebutted by the detective, Sgt Mokotedi, and the Employer could not disprove it.
33. It is on this basis that I find that the testimonies of the Learner and that of her mother lacked credibility and are unreliable. The details of the breast incident were not disclosed to Mr Matlhako by the Learner. Even though the Learner and her mother claim to have forgotten the dates of the alleged incidents, the sworn police statements proved that the dates were indeed mentioned, and that the alleged breast incident took place on 01 December 2024.
34. The Teacher denied this and stated that he was in Bloemfontein on that day on other matters. The Employer could not establish the presence of the Teacher on that day at the school, be it by means of an attendance register or any other form of evidence such as a video footage or a witness. As a result, I am not persuaded that the Employer has made out a *prima facie* case that the Teacher has indeed committed this alleged misconduct on 01 December 2024.
35. I accordingly find the Teacher not guilty on this charge.

Charge 2

You have contravened Section 18 (1) (q) of the Employment of Educators Act, No 76 of 1998, in that on or about October 2024 and November 2024, while on duty, you conducted yourself in an improper, disgraceful

or unacceptable manner when you pulled down a towel which (the learner) wrapped around her waist in the Life Science Lab.

36. It is the 18-year-old (at the time) Learner's testimony under this charge that the Teacher tried to unwrap the towel from her, whereafter she clapped the Teacher's hand away. Mr Matlhako and the charge talk of the towel having been pulled down by the Teacher. I am now uncertain as to whose allegation this really is: is it that of the Learner, or that of Mr Matlhako? It is clear that the charge is inconsistent with the version of the Learner. Though Mr Lethloloholo's version corresponds to that of the Learner, the version of Mr Matlhako does not match the Learner's version in the sense that he testified that the Learner told him that the Teacher physically pulled down the towel.
37. Other than the testimony of the Learner, which lacks credibility, it is important to note that none of the rest of the Employer's witnesses were eyewitnesses. The Teacher has confirmed and properly established his *alibi* for those two days (28 November and 01 December 2024); the police, who have properly investigated the alleged incident, have closed their case; contradictions between the Learner's testimony and that of the mother and other two teachers are clearly visible in this case.
38. The Employer has once again failed to prove on a balance of probabilities that the Teacher has indeed committed the offence alleged in this second charge. As a result, I find the Teacher's version that this case was fabricated against him probable, in the sense that the parents demanded money from him to withdraw the criminal case against him. This evidence was not contested by the Employer. No explanation was also given as to why this charge corresponds with Mr Matlhako's version and not that of the complainant, who happens to be the Learner.
39. I accordingly find the Teacher not guilty on this charge as well.

VERDICT

40. The Employer has failed to discharge its onus on both charges, and the Teacher is accordingly acquitted on these allegations.
41. In the premise, I make the following award:

AWARD

42. The Employer, Head of Department: Free State Department of Education, has failed to prove the allegations against the Teacher, Mr Mthandeki Samson Tshabalala.
43. The Teacher, Mr Mthandeki Samson Tshabalala, is found not guilty on both charges.

Thus, done and dated on 31 July 2026, at Kimberley.



David Pietersen

ELRC COMMISSIONER

Inquiry-By-Arbitrator

elrc	ELRC building, 261 West Ave Centurion, RSA 0046
AWARD APPROVED	
2026 -07- 31	
SENIOR MANAGER: DRS	
Signature:.....	