GPSSBC
General Public Service Sectoral Bargaining Council

ARBITRATION AWARD

Panellist: LUNGISANI AMOS SITHOLE

Case No: GPBC 1976/2018

Date of the Award: 06 September 2020

In the **ARBITRATION** between:

PSA obo ER Mamabolo **Applicant**

And

National Prosecuting Authority **Respondent**

Applicant: PSA obo ER Mamabolo

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DETAILS OF HEARING AND REPRESENTATION

[1] The General Public Service Sectoral Bargaining Council (the Council) set down this matter for arbitration on 28 July 2020 at its offices situated at 260 Basden Avenue Centurion. The dispute is about alleged unfair labour practice relating to suspension - **section 186 (2) (b) of the Labour Relations Act 66 of 1995 (the LRA**).

[2] Mr Archie Sigudla, PSA's Labour relations officer, represented the Applicant and Ms M du Toit represented the Respondent. The arbitration proceeded and it was finalised. It was then agreed that the parties would submit their written closing arguments and indeed the parties did submit their respective submissions.

[3] The proceedings were digitally recorded.

BACKGROUND FACTS:

[4] The Applicant was employed by the Respondent as Senior State Advocate and was earning R104 669.78 per month. On 13 September 2017, the Respondent placed the Applicant on precautionary suspension and uplifted such suspension on 20 September 2018.

[5] On 17 September 2018, pursuant to the notice of suspension, the Applicant referred a dispute of unfair labour practice relating to suspension to the Council. At conciliation, held on 17 October 2018, the dispute remained unresolved and a Certificate of Non-Resolution was issued.

ISSUE TO BE DECIDED

[6] Whether or not the actions by the Respondent of suspending the Applicant constitute an unfair labour practice in terms of section 186 (2) (b) of the LRA.

SURVEY OF PARTIES'EVIDENCE AND ARGUMENTS

Applicant's case

[7] The Applicant testified under oath that on 02 November 2017 he received a notice of intention to suspend him and the said notice read as follows:

1) *This serves to inform you that the employer is intending to suspend you with the retention of emoluments applicable to your post and rank, until such time as the investigation of your alleged misconduct is finalised.*
2) *The reason for this intention to suspend is an allegation of gross misconduct that relates to a breach of the trust relationship.*
3) *You are requested to provide me with written reasons why you should not be suspended. Your written reasons should reach my office within two days of receipt of this letter.*

[8] On 06 November 2017, having received the Notice of Intention to suspend him, the Applicant addressed an internal memorandum to the Respondent asking it to provide him with further particulars of the allegations against him. The contents of the said memorandum read as follows:

1. *PURPOSE:*
   The purpose of this internal memorandum is to respond to Notice of Intention to Suspend, ADV. ER MAMABOLO by the EMPLOYER dated 02nd NOVEMBER 2017.

2. *This memorandum holds reference to your letter dated 02nd November 2017, served upon me by Messrs J.D Schmidt, who on my enquiry denied any knowledge of the nature and extend (sic) of allegations against me.*
3. *I have duly took (sic) cognizance of the contents thereof.*

4. *Your letter indicates an intention to suspend me on allegations of gross misconduct relating to a breach of trust (save to deny an allegation of misconduct which constitutes a breach of trust relationship the Employer is contemplating levelling against me).*

5. *I must unfortunately submit that the allegation is EXTREMELY vague and does not empower me with a fair opportunity to respond thereto in a sensible manner (in this regard I seek to draw your urgent attention to cardinal rule of practice and procedure governing Labour Practices prescribing to the Employer to furnish me with sufficient particularity of the allegations to which as an Employee I am called upon tom respond).*

6. *In the current circumstances, it is my request that you furnish me within two (2) days, full details of the intended investigation so that I can respond in a manner that will allow me to reasonably indicate the reasons why I should not be suspended as intended by the Employer.*

7. *I reserve my right to approach the Court of Law on URGENT application interdicting the Employer from suspending me until such time I have been provided with the particulars of the allegations against me.*

I trust you will find the above in order.

[9] On 09 November 2017, the Respondent responded as follows to the Applicant's correspondence referred to in paragraph [8] above and such response reads as follows:

Dear Adv. Mamabolo,

Your letter dated 06th November 2017 refers.

Kindly take note that PSCBC, Resolution 1 of 2003, permits a precautionary suspension in cases where the employee is alleged to have committed a serious offence; and the employer believes that the presence of an employer at the workplace might jeopardise the investigation.

The NPA will not furnish you with the facts surrounding the allegation as you will only be informed of the outcome of the investigation once it is finalised.

We take note of your threatened Court action however we do not wish to respond at this stage. We however reserve all our rights to respond at the appropriate time.

It is clear that you did not respond and give reasons as to why you should not be suspended therefore we still wait your response as to reasons why you should not be suspended by close of business on 9 November 2017, as it would be premature to go into the merits at this stage.

[10] On 10 November 2017, the Applicant responded as follows to the Respondent's notice of intention to suspend him:

Dear Mr Pather.

1. *PURPOSE*
   The purpose of this internal memorandum is to respond to Notice of Intention to Suspend, ADV. E.R. MAMABOLO by the EMPLOYER dated 06th November 2017.

2. *This memorandum holds reference to your letter dated 07th November 2017, served upon me Advocate Mosing and Mrs M Du Toit. Further, be advised that though the letter was dated on the 06th, I only received it yesterday on 09th November 2917 (sic).*

3. *I have duly took (sic) cognisance of the contents thereof.*

4. *I have noted with regret and disbelief that again you willfully refuse or fail to disclose the alleged serious misconduct I am alleged to have committed.*

5. *Regrettably, your failure to disclose the nature of serious misconduct you are accusing me of denies me the opportunity to make full representations why I should not be suspended.*

6. *In this regard I draw your attention to the judgment of the Labour Appeal Court, (MEC of Education, NWP vs Gradwell, (2012) 21 LAC 1.11.42. delivered by Acting Learned Judge Van Niekerk. In this case the Learned Judge ruled that the MEC denied the Appellant, Gradwell, the opportunity to make "full representations" before he was suspended. Like in the current matter, Gradwell was not sufficiently advised of the allegations levelled against him. The suspension was duly set aside by the Honourable Court.*

7. *It is my intention to make full representations why I should not be suspended, but you (sic) refusal or failure to disclose the nature of allegations against me has unfortunately denied or robbed me of opportunity to meaningfully do so.*

8. *Further, I do not think I should be suspended as I am in the dark as to the nature of allegations, neither do I know any potential witnesses and since this matter was brought to my attention on 02nd November 2017 (full eight days) I never questioned or inquired from any official as to what are the allegations.*

9. *Further, since I became aware on the 02nd November 2017 I have done nothing to impede, hinder or jeopardise your investigation. As a law abiding citizen I do not intend to interfere with your processes. I also have partly heard matter which needs my attention.*

I trust you will, find the above in order.

[11] On 13 November 2017, the Respondent placed the Applicant on precautionary suspension and the notice of such suspension read as follows:

Dear Adv. Mamabolo

1. *This serves to inform you that acts of misconduct allegedly committed by you have been brought to my attention.*

2. *The acts of misconduct allegedly committed by you relates to gross misconduct which affects the trust relationship.*

3. *After careful consideration of the facts at our disposal, the NPA has decided to suspend you as a precautionary measure.*

4. *Your suspension is with immediate effect on full remuneration pending the outcome the investigation.*

5. *To avoid possible interference with potential witnesses, you are not allowed to enter the premises of the NPA and to have contact with any staff of the NPA unless authorised to do so.*

6. *Further be advised that if you are in possession of an official cell phone, you are entitled to retain this during your period of suspension, however, all private calls will be for your own account.*

7. *All laptops and other equipment must be left at the workplace.*

8. *Please note that this suspension is a precautionary measure in terms of the Disciplinary Code and Procedure and does not constitute judgment against you.*

[12] The Applicant's further evidence was that as a result of his suspension, he suffered serious prejudice in that he was destroyed, belittled, treated with malice, treated as a criminal and portrayed as a person not to be trusted. He was saddened by the fact that the Respondent suspended him without giving him the courtesy of being told what were the charges against him.

[13] During December 2017 and January 2018 he was in Polokwane and he described the Respondent's suggestion that it could not get hold of him because his phone on voice mail as fake news. If his phone was off, he argued, the Respondent had an option of sending him an sms or a whatsapp message.

[14] The Respondent uplifted his suspension on 20 September 2018.

Respondent's case

[15] Mr L Makhale was the Respondent's first witness and he testified under oath. He is currently employed by the National Department of Transport as Deputy Director. He was employed by the Respondent as the Assistant Director when the process of suspending the Applicant took place.

[16] On 13 November 2017, the Respondent served Applicant with the notice of precautionary suspension. The Respondent appointed Advocate Holby to investigate the allegations of misconduct levelled against the Applicant. The Respondent further appointed Advocate Naidoo as the chairperson of the disciplinary hearing. The disciplinary hearing was scheduled for 10 January

2018 but it did not proceed after the Respondent had been unsuccessful to get hold of the Applicant.

[17] However, on 02 February 2018, Advocate Holby indicated that he had managed to get hold of the Applicant. The disciplinary hearing was then set down for 13 February 2018 and the Respondent had since appointed Advocate Nenghovela as the chairperson of the disciplinary hearing after Advocate Naidoo had indicated that he would not be available to chair the hearing on the above date due to other work commitments.

[18] On 13 February 2018 the disciplinary hearing proceeded and he (Mr Makhale) appeared on behalf of the Respondent. He was there for the purposes of submitting an application for the postponement of the hearing as the Respondent had not yet finalised its disciplinary investigation. The chairperson of the hearing was not impressed with the Respondent's application for postponement of the hearing but postponed the hearing *sine die.*

[19] He holds a view that was there was a fair reason to suspend the Applicant because of allegations that he had committed a serious misconduct and such suspension was procedurally fair.

[20] Mr H Netangaheni was the Respondent's second witness and he testified under oath. The essence of his testimony was that, whilst on duty, between 15 and 31 December 2017, the Respondent's messenger requested him to accompany him to the Applicant's residence to serve the Applicant with a notice to attend the disciplinary hearing. He and the Messenger proceeded to the Applicant's residence but they did not find any person at the Applicant's residence.

LEGAL CONSIDERATIONS

[21] **Section 23 of the Constitution of the Republic of South Africa, 1996** provides that everyone has the right to fair labour practices. **Section 185 (b)** of the LRA provides that every employee has the right not to be subjected to unfair labour practice. This implies that an employee has constitutional and statutory right to fair labour practice.

[22] **Section 186 (2) (b)** of the LRA defines an unfair labour practice as any unfair act or omission between an employer and employee involving unfair suspension of an *employee* or any other unfair disciplinary action short of dismissal in respect of an employee. The onus to show that there was an unfair labour practice for the purposes of section 186 (2) (b) of the LRA rests on the employee.

[23] **Clause 7(2)** of Resolution 1 of 2003 (the Resolution) regulates the suspension of the Respondent's employees who are not senior managers. Clause 7(2)(c) provides that if an employee is suspended or transferred as a precautionary measure, the employer must hold a disciplinary hearing within a month or 60 days, depending on the complexity of the matter and the length of the investigation. The chair of the hearing must then decide on any further postponement. On the other hand, the suspension of Public Service's senior managers is regulated by **SMS Handbook Chapter 7 Misconduct and Incapacity 1/12/2003** (the SMS Handbook). **Clause 2.7 (2) (c) of Chapter 7 of the SMS Handbook** contains equivalent provision to **clause 7.2 of t**he Resolution which provides as follows:

If a member is suspended or transferred as a precautionary measure, the employer must hold a disciplinary hearing within 60 days. The chair must then decide on any further postponement.

[24] In **Minister of Labour v GPSSBC & Other**s (2006) 27 ILJ 2650 (LC) Francis J said the following about clause 27 (2) (c) —

It is clear from clause 2.7 (2 (c) of the resolution that after an employee has been suspended a disciplinary hearing must be held within a month or 60 days. If the matter is complex, the disciplinary hearing must be held within 60 days and the chairperson of the hearing must then decide on any further postponements. The suspension can therefore not exceed more than 60 days without a disciplinary hearing being held. Facts can be placed before the chairperson to grant a further postponement due to the complexities of the matter." (Own underlining)

[25] In **Jonker v Okhahlamba Municipality & Others** (2005) 2 BLLR 564 (LC) the Labour Court held as follows —

…the procedures and time limits are a commitment to deal with discipline expeditiously, and they serve as a guide to how this can be accomplished.

[26] The Labour Court in **Gosise Phuthabatho Gustuv Lekabe v The Minister of Justice and Constitutional Development**: Case No. J1092/08 outlined the purpose of clause *2.7 (2) (c)* as follows:

the purpose of clause 2.7 (2) (c), as I see it, is to address the problem of protracted suspensions which demoralizes and unfairly prejudice the suspended employee. It would appear that the mischief which the parties sought to address with the provisions of clause 2..7(2)(c), was to deal with what Andre Van Niekerk J in Mosweu Paul Magotlhe v The Member of the Executive Council for Agriculture Conservation and the Environmental and Another soon to be reported case number J2622/08, regarded as the tendency by certain employers to: "… regard suspicion as a legitimate measure of first resort to the most groundless suspicion of misconduct, or worst still, to view suspicion as a convenient mechanism to marginalise an employee who has fallen from the favour.

[27] The Labour Court in **Mosweu Paul Magotlhe v The Member of the Executive Council for Agriculture Conservation and the Environmental and Another case number J2622/08** quoted with approval what it had said in **SAPO Ltd v Jansen van Vuuren** [2008] 8 BLLR 798 (LC). The Court in that case was dealing with the abuse of power by the employers through the use of suspensions. As stated earlier the real intention of the parties in promulgating clause 2.7(2)(c) of the SMS Handbook was to address this abuse. The intention was to curb the power of employers in the public service from using protracted suspension as a means of marginalising those employees who may have fallen out of favour. The intention of the parties was also to minimise if not to do away with the resultant detrimental impact, the prejudice on the affected employees, reputation, advancement, job security and fulfilment that would arise from the prolonged suspension

[28] The Labour Court in **Gosise Phuthabatho Gustuv Lekabe v The Minister of Justice and Constitutional Development** at para 21 held that:

completed its investigations and therefore I do not see on what basis the suspension should be prolonged further. In the circumstances the Applicant's application stands to be dismissed in as far as interdicting the disciplinary hearing. The sixty days having expired and the employer having not taken any further steps in the initiation of the disciplinary hearing, I see no reason why the Respondent should not be ordered to uplift the suspension and allow the Applicant to resume his duties. The Respondent should by now have held the disciplinary hearing.

[29] It was held in **SAPO Ltd v Jansen Van Vuuren NO & Others** (2008) 8 BLLR 798 (LC) that a suspension, even whilst investigations are underway, amounts to an unfair labour practice, if the period of suspension exceeds the period stipulated in a disciplinary code, collective agreement, regulations, or contract of employment (See also **Minister of Labour** v **General Public Service Sectoral Bargaining Council and Others** (2007) 5 BLLR 461 (LC)).

[30] In **Dladla v Council of Mbombela Local Municipality & Another** (2) (2008) 29 ILJ 1902 (LC)the court held that damage to the employee's image and reputation was not a ground for finding the suspension unlawful.

[31] In **IMATU obo Sankhanyane v Emfuleni Local Municipality** (2016) ZALCJHB 29 (29 July 2016) the court held that when the arbitrator finds that a suspension of an employee amounted to unfair labour practice, it was irregular to simply order his return to work without considering whether, based on the facts of the case, to consider awarding compensation as form of solatium.

[32] The Labour Court in **Special Investigating Unit v CCMA & Others** (JR 509/2014) (handed down on 21 April 2017) the Court with approval referred to Grogan, **Employment Rights** (**Juta & Co, Cape town, 2013)** held that central to a determination of disputes under the provisions of section 186 of the LRA, as amended, is whether the conduct of the employer was unfair and the facts of the case and the law determines an outcome, not the Commissioner's own sentiments.

[33] Recently, the Constitutional Court in a highly publicized case: **Long v SAB (Pty) Ltd and Others** (2019) 40 ILJ 965 (CC);2019 (5) BCLR 609 (CC); 2019 6 BLLR 515 (CC) (handed down on 19 February 2019) dealt with the employee who had been placed on a suspension pending a disciplinary hearing. The Constitutional Court held that the purpose of suspension of the Employee

is to ensure that the investigation is unhindered. The Constitutional Court further held that where the suspension is precautionary and not a disciplinary action, the requirements relating to fair disciplinary action under the LRA finds no application. Therefore, *there is no requirement to afford the Employee an opportunity to make representations before the precautionary suspension is affected.*

[34] The furnishing of reasons refers to the reasons an official or administrative body must provide whilst taking a decision, in order to justify such decision. Giving reasons is one of the fundamentals of good administration. It encourages rational and structured decision-making and minimises arbitrariness and bias. Firstly, a decision-maker who knows that she has to defend or justify his/her decision with reasons is less likely to act arbitrarily or mechanically. It compels him/her to properly consider the relevant statutory provisions, the grounds for taking the action, the purpose thereof, all relevant evidence and the specific circumstances of the matter at hand – **page 287 of Judicial Review of Administrative Action in South Africa, Revised First Edition by JR de Ville.**

[35] Secondly, it encourages open administration – **Section 1 (d) of the Constitution of the Republic of South Africa, 1996**. Such openness is conducive to public confidence in the administrative decision-making process. Thirdly, it satisfies the desire on the part of the individual to know why a decision was reached and contributes towards a sense of fairness – a person adversely affected by a decision knows that his/her case has at least been considered by the administration. Fourthly, if a person is furnished with reasons, it makes it easier for that person to appeal or to make an application for review as he/she knows what is the basis for the decision was. Lastly, the furnishing of reasons serves as educational purpose.

[36] Should an administrator fail to furnish adequate reasons in circumstances where a duty exits, a (factual) presumption will arise that the action was taken '*without good reason'*- **Page 295 of Judicial Review of Administrative Action in South Africa, Revised First Edition by JR de Ville.**

ANALYSIS OF PARTIES'EVIDENCE AND ARGUMENTS

Procedural fairness

[37] It is evident from the facts of this matter that the issue before me is the precautionary suspect ion and therefore, I must determine whether the precautionary suspension of the Applicant was procedurally amd substantively fair. It is trite that the onus of proof in alleged unfair labour practices rets on the employee. It appears to me the first issue in this matter turns mainly around the question of whether or not the Respondent gave the Applicant an opportunity to be heard *(audi rule)* before taking the decision to suspend him. In terms of the *audi rule*, an employee is before suspension entitled amongst others to a fair and reasonable opportunity to make representations as to why he or she should not be suspended.

[38] The general principle that the *audi rule* was part of our law and should be applied was articulated by Zondo AJP, as he then was in **Modise v Steve's Spar Blackheath** 20 ILLR 337, when he said at para [15]:

"The audi rule is part of the rules of natural justice which are deeply entrenched in our law. In essence the audi rule calls for the hearing of the other party's side of the story before a decision can be taken which may prejudicially affect such party's rights or interests or property."

Substantive fairness

[39] In **Popcru obo Masemola &Others v Minister of Correctional Services** (2010) 31 ILJ 412 (LC) the Labour Court held, relying on **Mogothle v Premier of the North West Province & Another** (2009) ILJ 605 (LC) that –

Fairness requires the following before suspending an employee pending an investigation or disciplinary action: First that the employer has a justifiable reason to believe, prima facie at least, that the employee has engaged in serious misconduct.

[40] Furthermore, the Labour Court in **Popcru obo Masemola &Others v Minister of Correctional Services** (2010) 31 ILJ 412 (LC) the Labour Court held, relying on **Mogothle v Premier of the North West Province & Another** (2009) ILJ 605 (LC) that –

Fairness requires the following before suspending an employee pending an investigation or disciplinary action:

(a) First that the employer has a justifiable reason to believe, prima facie at least, that the employee has engaged in serious misconduct;

(b) Secondly, that there is some objectively justifiable reason to deny the employee access to the workplace based on the integrity of pending investigation into the alleged misconduct or some other relevant factor that would place the investigation or the interests of the affected parties in jeopardy.

[41] The question as to whether or not failure to comply with the *audi rule* renders the suspension unlawful was answered by the Labour Court in the positive in the case of **SA Post Office Ltd v Jansen van Vuuren NO and others** (2008) 29 ILJ 2974 (LC). In that case the Court said the following:

"*There is, however, a need to send a message to employers that they should refrain from hastily resorting to suspending employees when there are no valid reasons to do so. It is therefore necessary that suspensions are based on substantive reasons and fair procedures are followed prior to suspending an employee. In other words, unless circumstances dictate otherwise, the employer should offer an employee an opportunity to be heard before placing him on suspension.*"

[42] The valid and or substantive reasons for suspending an employee means that there must be cogent and recognizable reasons for the suspension. The requirement for valid reasons goes further than the employer simply listing a catalogue of what appears to be serious misconduct without any details of when and where such misconduct occurred.

[43] In discussing the principles that informs the *audi rule* the learned author, **Baxter: Administrative Law, at page 546 547 Juta 1984**, says the following:

"*In order to enjoy a proper opportunity to be heard, an individual must be properly appraised of the information and reasons which underlies the impending decision to take action against him... the administrative authority should not 'keep anything up its sleeve.*". (Own underlining

[44] Turning to the facts of the present case, it cannot be said that the Applicant was afforded a proper opportunity to make representations about the pending decision to suspend her. In my view, the Respondent being aware of the need for a hearing before suspending the Applicant, but lacking the basis to do so, used the process as a mere formality.

[45] The allegations made against the Applicant were very wide, vague and fails to state the specific nature of such allegation, when and where such allegation took place. The other important aspect, which the Respondent ignored relates to the request for clarity by the Applicant. In paragraph 5 of its letter dated 09 November 2017, the Respondent in its own words unequivocally told the Applicant that "*the NPA will not furnish you with the facts surrounding the allegations as you will be informed of the outcome of the investigation once it is finalised*." What is surprising is that the Respondent still expected the Applicant to submit his reasons or representations to show cause why he had not to be suspended by the Respondent.

[46] It is beyond imagination as to how did the Respondent expect the Applicant to show cause why it had not to suspend him when the latter did not even know the nature of the alleged misconduct against him, did not know when and where such alleged misconduct had taken place. In the light of this and as a general principle the Applicant was entitled as of right to be given information which should have indicated the basis of his suspension.

[47] It is that information, properly presented to the Applicant that would have assisted him in formulating and making a meaningful representation in response to those allegations. Without being placed in possession of the details of the alleged misconduct or irregularities the Applicant was denied the right to be heard before her suspension. It stands to reason that an employee cannot make representations regarding impending suspension if he or she does not know the reasons for the suspension.

[48] The Constitutional Court in **Long v SAB (Pty) Ltd and Others** held that the fairness of the precautionary suspension is determined by first assessing whether *there is a fair reason for suspension* and secondly, *whether it prejudices the employee*.), I fully subscribe to the views of

the Constitutional Court. Having considered the evidence before me as well as authorities or case law referred to above, I find that, there was no fair reason to suspend the Applicant. I should point out that the decision of the Constitutional Court in Long v SAB (Pty) Ltd in as far the hearing of the Applicant before the Respondent suspended him has no bearing in this matter because the Applicant was suspended in 2017 and the decision of the Constitutional Court was only issued in 2019.

Did the Respondent hold the Applicant's disciplinary hearing within sixty (60) days?

[49] It is common cause that the Respondent suspended the Applicant on 13 November 2017 and that, it only held the disciplinary hearing against the Applicant on 13 February 2018. It follows that the Respondent failed to hold the disciplinary hearing within 60 (sixty) days as envisaged by clause 7 (2)(c) of the LRA. It is evident from the case law referred to above that if the employer does not hold the disciplinary hearing within 60 (sixty) days of a suspended employee, the suspension becomes unlawful or unfair. In this regard, I further find that, the Applicant's suspension was unfair.

Prejudice

[50] The suspension with pay also has substantial prejudicial consequences relating to both social and personal standing of the suspended employee. Any suspension with or without pay has to bring into question the *integrity* and *dignity* of the suspended person. Thus, the standing of the person before his or her colleagues and the community is bound to be negatively affected.

[51] The Applicant's evidence that he suffered prejudice (see paragraph [12] above) was not disputed by the Respondent. On this basis, I have no reason not to accept this evidence and therefore, I find that, the Applicant was severely prejudiced by his suspension.

Compensation

[52] The remedies available to an employee who has suffered an unfair labour practice are provided for in s193(4) read with 194(4) of the LRA. Section 193(4) confers an arbitrator with the power to determine any unfair labour practice dispute referred to him or her on terms which the arbitrator deems reasonable, which may include ordering reinstatement, re-employment or compensation.

Section 194(4) in turn provides that the compensation awarded to an employee in respect of an unfair labour practice dispute must be just and equitable in all the circumstances, but not more than the equivalent of 12 month's remuneration.

[53] Having had regard to the facts that the Applicant's suspension is both substantively and procedurally unfair, the prejudice suffered by the Applicant, that he was suspended for nine (9) months, that the Respondent unequivocally refused to provide the Applicant with information relating to the alleged misconduct against him and that to date the Applicant still does not know the allegations which culminated to his suspension on 17 November 2017, I find that a compensation of eight (8) months is fair and equitable in this matter. The compensation is calculated as follows: R104 669.78 x 8 = R837 358.24.

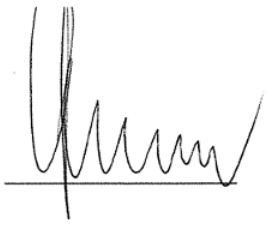
AWARD

[54] The suspension of the Applicant, ER Mamabolo, on 17 November 2017, by the Respondent, the National Prosecuting Authority constitutes an unfair labour practice in terms of section 186 (2) (b) of the Labour Relations Act 66 of 1996.

[55] The Respondent is ordered to pay the Applicant a compensation of eight (8) month's salary being R837 358.24.

[56] The Respondent must pay the amount of compensation mentioned in paragraph [55] on or before 30 September 2020.

SIGNED and **DATED** at PRETORIA on 07 September 2020



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LA SITHOLE