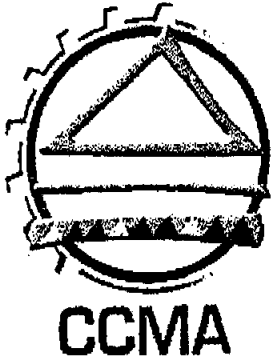


*Scuto AP*



# AWARD

Case Number: GAJB5215-14  
 Commissioner: NAMISILE KHESWA  
 Date of Award: 15 June 2015

In the **ARBITRATION** between

PSA obo Shezi L and 1 other  
 (Union/Applicant)

And

SASSA  
 (Respondent)

Union/Applicant's representative: Sam Mbathe  
 Union/Applicant's address: P.O. Box 30656  
Braamfontein  
2017

Telephone: 011 718 5413/ 082 340 6889  
 Telefax: 011 718 5400/ 011 718 5419  
 E-mail: Henry.hall@psa.co.za

Respondent's representative: S Rakgantshe  
 Respondent's address: Private Bag X 120  
Marshalltown  
2107

Telephone: 011 241 8300  
 Telefax: 011 241 8305/ 086 698 0614  
n/a

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

1. The arbitration hearing took place on 8 June 2015 at the CCMA in Johannesburg offices.
2. L Shezi and 1 other ( hereafter referred to as the applicants) was in attendance and represented by their Union official. SASSA (hereafter referred to as the respondent) ( hereafter referred to as the respondent) was represented by S Rakgantsha Labour Relations Manager.
3. The arbitration was held under the auspices of the CCMA in terms of section 191(1) (191) (5)(a) of the Labour Relations Act , 1995 as amended (LRA) and the award is issued in terms of section 138(7) of the LRA.
4. The proceedings were conducted in English and were digitally recorded. The applicant party submitted bundles of documents that purported to be a correct and the content was not placed in dispute by either party except for the material issues that the parties sought to be adjudicated.
5. The proceedings were conducted in English and digitally recorded. Thus what appears below is a summary of the evidence adduced; it is by no means minutes of what transpired in the course of the proceedings.

### **ISSUE TO BE DECIDED**

6. I am required to determine whether there was unfair labour practice in terms of section 186(2) (b) of the Labour Relations Act 66 of 1996 as amended

### **BACKGROUND TO THE DISPUTE**

7. The first applicant was employed by the respondent as grant administrator as from 1 November 2006 and was suspended on 02 October 2013. At the time of her suspension she was earning R11 000.00 per month.

8. The second applicant was employed by the respondent as grant administrator as from 1 July 2004, and was suspended on 25 September 2013. At the time of his suspension he was earning R11 000.00 per month.
9. The applicant stated that their suspension was unfair and they sought the suspension to be uplifted.

## SURVEY OF EVIDENCE AND ARGUMENT

### APPLICANT'S CASE

10. The applicants did not testify but relied on the submission made by their union official.
11. The applicants were suspended with full pay excluded the benefits. A resolution 1 of 2003 was concluded. The terms of the resolution 1 of 2003 reads as follows.....' *the following principles inform the Code and Procedure and must inform any decision to discipline and employee- discipline must be applied in a prompt, fair, consistent and progressive manner. ..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....the disciplinary hearing must be held within ten working days after the notice.*
12. It was further submitted that several communications have been forwarded to the respondent, demanding that he should adhere to the resolution 1 of 2003 terms and conditions. The respondent failed to respond nor to adhere to same.
13. The applicants were suspended in September 2013 but to date nothing has been done. The suspension has a negative impact in terms of their progression on yearly basis; stigma that is associated with it; and psychological effect.

### RESPONDENT'S CASE

14. **S Rakgantsha** submitted the following that the applicants are on precautionary suspension. The matter is investigated by risk and compliance. The first applicant's investigation has been finalized as such has been charged for a misconduct case. The second applicant's investigation is still pending.
  
15. **Majoro Jacob Pakkies** he is fraud manager and compliance in the Gauteng Office. After the employment of the new CEO, an investigation was done with regards to social grants, fraud perpetrated case and supply chain perpetrated cases. A meeting was conducted between Gauteng province, SASSA and SAPS 2012 which gave birth to "operational shanela". Operation shanela entails investigating the following offices: Thembisa, Voslorus, Johannesburg local office and Soweto Maponya Mall. In a nutshell the witness testified that the investigation is tedious, complex and lengthy in nature and that it does not only involve the two applicants. It is nationwide.
  
16. Under cross-examination he testified as follows: he did not do the investigation in person, he has subordinates that dealt with the investigation and they report to him. He does not have direct evidence that is implicating the applicants, but has general information regarding the investigation. That the investigation was finalised in May 2015 and it is currently under review.
  
17. He further testified that the resolution 1 of 2003 had to be adhered by all the stakeholders involve. That is the employer, the employees and the recognised trade union. Further confirmed that the respondent did not adhere to the resolution 1 of 2003. That is due to the investigation that had its own ups and downs.
  
18. He further confirmed that the respondent did not advise the applicants of the challenges that they experienced during the investigation. His department strictly deals with investigation and they are not allowed to deal the suspects directly. Once the investigation is finalised, the matter gets referred to the Labour relations department.

19. He further confirmed that the first applicant's investigation has been finalised, they await the date of the hearing. He understands that the applicants may have been prejudice, in that, they have to physical be on duty in order to be assessed and there is high possibility that the colleagues are now earning more than the applicants. They cannot avoid the fact that any investigation comes with an uncomfortable experiences. However, the most important factor is that they are paid their salaries in full.

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


20. I must decide whether the applicant was unfairly suspended and if so whether it constitutes an Unfair Labour Practice ('ULP') in terms of the relevant law. The applicant bears an onus to prove that an ULP was committed.
21. It is common cause that the parties had an agreement on how to handle the matter regarding suspension which is referred to as Resolution 1 of 2003.
22. The resolution sets out what to do be done when dealing with suspension. The terms are as follows: *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....the disciplinary hearing must be held within ten working days after the notice.*
23. It is common cause that the respondent failed to adhere to the resolution and further no correspondences was forwarded to the applicants advising them of the delays in their matter.
24. I am mindful that the investigation is complex in nature, however it is my considered view that the parties in question concluded an agreement which stipulated clearly that the employer must hold a hearing within a month or six days. The time that has lapsed after 60 days is unreasonable long which is now approximately 20 months.

25. I acknowledge the fact that the first applicant has been charged and they are awaiting the date of the hearing. It is my considered view that this does not remedy the dispute in question as she does not know when the hearing would be held.
26. It is worth to be noted that the respondent failed to advise the applicants of the delays, despite the repeated requests from the union with regards to the delay. It is my opinion that the respondent had a reasonable duty to expressly inform the applicants of the delay seeing that the investigation was complex and they would have completed at the required time.
27. It is also worth to be noted that the respondent's lax attitude could be due to the fact that the applicants are paid in full. The respondent, however, failed to appreciate the stigma, psychological effect that comes with the suspension. Also, the respondent failed to appreciate that some benefits can only be acquired if the employees are physical present to do their duties.
28. *In POPCRU obo Masemola & others v Minister of Correctional Services (2010) 31 ILJ 412 (LC) as per Nyathela AJ at par 37...it was said that a suspension has a negative impact on a person's dignity and harms the employee's reputation, dignity, and integrity and job security....*
29. It therefore my considered view that the applicants have suffered irreparable harm and they continue to suffer irreparable harm if this suspensions is allowed to continue.
30. Having regards to the aforementioned it is therefore my considered view that the suspension is unfair. As it is crystal clear that the respondent failed to adhere to its own resolution. In **Minister of Labour v GPSSBC & others [2007] 5 BLLR 467 (LC)** a commissioner's decision that it was an unfair labour practice to suspend an employee pending a disciplinary enquiry if the enquiry is not held within the time stipulated in the applicable disciplinary code which formed part of a binding collective agreement, was upheld.
31. In the light of the above, I am satisfied that the applicant is entitled to the relief requested.

**AWARD**

- i. I find that the respondent's suspension of the applicant is unfair.
- ii. I order that the suspension to be uplifted and the applicant to return to work, on 15 July 2015.

Signed at Johannesburg on 15 June 2015.



CCMA Commissioner  
Namisile Kheswa

