



GENERAL PUBLIC SERVICE
SECTOR BARGAINING COUNCIL



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IN THE GENERAL PUBLIC SERVICE SECTORAL BARGAINING COUNCIL

Held in _____butterworth/Mthatha_____

Panellist : JR Mopp

Case No.: GPBC 2017 -2014

Date of Award: 15 April 2026

In the Dispute between:

PSA obo NT Bobo

(Union/Applicant)

And

Department of Justice & Constitutional Development

(Respondent)

Applicant's representative: M Sidlodi

Respondent's representative: Adv. Nkululleko James



ARBITRATION AWARD

PARTICULARS OF PROCEEDINGS AND REPRESENTATION

- [1.] The aforementioned case was held at the Respondent's premises at the Magistrate's Court in Butterworth. Subsequently, the venue was changed to Mthatha for the convenience of both parties. The arbitration hearings commenced in June 2023 through to 2025, spanning several months, and experienced delays throughout.
- [2.] Some of the delays were due to parties being sick, and the Respondent's representatives were changed twice, another delay was the matter stood down as there were prospects of success and the commissioner reverted to conciliation and facilitated that process, the Respondent went seek a mandate then the deliberations broke down and the matter proceeded to back to arbitration The Applicant's representative retired, and the trade union needed to appoint someone new to this case. The Matter was held under the auspices of the General Public Service Sector Bargaining Council.
- [3.] The Applicant was represented by Mr Seakamela, He then retired, and Mr Sodlodi was appointed from the Trade Union PSA. Furthermore, the Department of Justice & Constitutional Development, which is the Respondent, appointed Mr Sithole. He left the Department, and Mr Mxalisa, who was the DD Employee Relations he subsequently appointed the State Attorney's office for their representation, who then appointed Adv N James.



THE ISSUE IN DISPUTE

[4.] I am tasked with determining whether the Respondent committed an Unfair Dismissal, as outlined in ***Section 191 of the Labour Relations Act 66 of 1995.***

BACKGROUND TO THE DISPUTE

[5.] The Applicant held the position of a Senior Admin Clerk and was appointed on 01 August 1990. She was initially dismissed from her position as a checking officer in the maintenance section of the Butterworths Magistrate's Court. She was accused of collaborating in the fraudulent theft of maintenance money. On the 11th April 2008, her salary at the time of dismissal was R 8088.24. Prior to her dismissal, she was put on precautionary suspension as from 01 April 2005 until the 11th April 2008

[6.] The PSA successfully argued at the GPSSBC that her dismissal was unfair. On 7 April 2016, the Arbitrator issued an award in her favour, finding the dismissal unfair and ordering her reinstatement.

[7.] The Labour Court Review (Case PR 88/17): ensued, and the Department of Justice took the award on review to the Labour Court in Gqeberha (Port Elizabeth). The case was plagued by protracted delays to the point that the Department had to apply for condonation.



[8.] The Final Outcome ***Minister of Justice and Constitutional Development v PSA obo Bobo and Others (PR 88/17) [2022] ZALCPE 30***. The Labour Court handed down at the time of 15.00hrs on the 31st October 2022, ultimately set aside the arbitration award. The judge found that the original arbitrator's decision was "unreasonable" given the nature of the allegations (theft of maintenance funds). The court ordered that the matter be remitted back to the Bargaining Council to be heard "***de novo***" (re-tried from the beginning) before a new arbitrator. Simply because there was no record available for the Courts to make a proper determination

PRELIMINARY ISSUE

[9.] There was a jurisdictional ***Point in Lamine*** raised by the Respondent in his opening statement. He submits that the dispute falls within the Prescription Act, Act 69 of 1999. They argue that this cannot depart from the ground on the basis that it is null and void

[10.] The Applicant argued that there is nothing that gives rise, or is owed or due, in terms of the definition of the word Debt, read together with the Act, and submitted a rebuttal to the arguments put forward by the Respondent. Everything was conducted ***vivoce***'and is on record

Ruling

[11.] An ***ex-tempore*** ruling was made, dismissing the arguments made by the Respondent for two simple reasons: this dispute is about unfair dismissal, and there is no debt nexus to this case; and secondly, the timeline is intact, and there is no break for any prescription to take effect as stipulated in the background of this case.



[12.] The Respondent's argument is weak, and it this unfair Dismissal dispute in this instance cannot be reconciled with a prescription argument, and a written Ruling was not appropriate in these circumstances.

SUMMARY OF EVIDENCE AND ARGUMENTS

The Respondent's case

[13.] The Respondent claims that the Applicant's refusal to follow mandatory financial reporting and verification protocols constitutes a serious breach of duty, as she possessed the clear authority and obligation to ensure every transaction was accurately certified and every shortage reported.

[14.] The conclusion is that the decision to investigate and charge the Applicant was objective, reasonable, and justified. They further contend that the combined evidence of the audit outcome, the suspicious after-hours behaviour, and the identifiable trend of losses during the Ms Bobo and Ms Apleni working together created a solid legal basis for the allegations of collusion and fraudulent activities between them.

[15.] The employer's position is that the Applicant was not a victim of old accounting errors, but an active participant in or facilitator of the misappropriation of state funds through a deliberate refusal to follow the very oversight procedures she was employed to enforce. The Applicant's dismissal was substantively and procedurally fair.



The Applicant's case.

[16.] The Applicant points out that the most serious charges conspiracy and fraud were never substantiated. There was no evidence led to show how or when she conspired with anyone. The charge sheet is described as inconsistent, providing a total amount of loss without a breakdown. The Applicant argues that since the employer admits shortages existed before the Applicant took the role, they had a duty to prove exactly what amount was lost specifically due to her actions, which they failed to do.

[17.] The Applicant argues that this is effectively countered by demonstrating that the evidence is based on hearsay from missing files, authored by a Court Manager (Mr. Ncoko) who was himself implicated by audit findings and had a vested interest in shifting blame. By exposing the witness's inability to authenticate the documents, together with the inconsistency in not charging the other two checking officers, and the existence of a Director-General's memorandum that reportedly exonerates the Applicant, she contends that the dismissal was a substantively unfair attempt to scapegoat her for systemic management failures and untraceable historical financial discrepancies.

[18.] On the issue of procedural fairness, a breach of the Collective Agreement, the Applicant highlighted that Resolution 1 of 2003 (the disciplinary code) is a binding collective agreement that the employer failed to follow, which mandates that disciplinary matters be handled within a reasonable time period. The Applicant argues that the employer's failure to do so caused significant prejudice by dragging her suspension for 3 years without any explanation or report produced on the outcome thereof.



Closing arguments

[19.] The written arguments were submitted within the stipulated time frame and received on time by both parties for my consideration.

ANALYSIS OF EVIDENCE AND ARGUMENTS

[20.] As the Commissioner in this Arbitration proceeding, I am mandated to provide concise reasons for the determination in compliance with **Section 138(7)(a) of the Labour Relations Act.66 of 1995**

[21.] In considering this case, several key factors must be taken into account when evaluating the evidence. First and foremost, I need to carefully consider the testimony provided by the witnesses involved in the case. Additionally, I must thoroughly examine the documentary evidence presented in the form of the bundles submitted by both parties.

[22.] The central question I am grappling with is whether the Respondent proved substantive fairness on a balance of probabilities contemplated in Section **192 of the Labour Relations Act**, when considering the burden of proof holistically together with the evidentiary weight. The Respondent's case relies almost entirely on circumstantial evidence and hearsay. While they established a "trend" and suspicious behaviours (after-hours safe access), they failed a critical procedural hurdle: authenticating their evidence, and I have to consider the probative value attached.



[23.] Why do I say that? Number 1. The witnesses (Ngewu and Nzonda) had no personal knowledge of the events and were repeatedly cautioned for being evasive. Furthermore, they only explained the processes and daily operations of what is required of a person in the Applicant's position. None of the Respondents' witnesses substantiated the how, where and when with granular detail of the allegations discharged with any evidence to the effect that the Applicant misappropriated funds that led to the dismissal.

[24.] number 2. The reconstructed documents lack signatures and clear origins. While the rules of evidence are less formal in arbitrations, the law of evidence still applies on a basic level, and the reliance on contested documents without calling their authors (like Mr. Ncoko or Ms. Tyusha) significantly weakens the employer's case, and so I can attach little weight to that evidence.

[25.] A major weakness in the Respondent's case is the role of Mr. Ncoko. The evidence suggests a tainted Investigation: Mr. Ncoko was the supervisor and one of three checking officers. If the audit (page 72) pointed to his failures, his role as the primary investigator is a gross conflict of interest.

[26.] The Respondent failed to show why, out of three officers responsible for checking, only the Applicant was charged. The **LRA Act 66 of 1995** requires that employers treat employees consistently and equally. Charging one person for a collective oversight, especially when the supervisor is also implicated, suggests unfair targeting. This is not in line with the **Code of Good Practice for dismissal schedule 8 item 7**, which states that in *determining whether a dismissal was fair should consider whether an employee contravened a rule or standard in the workplace, if the employee was aware of the rule or standard and most importantly for me in this instance is whether the rule or standard has been consistently applied.*



[27.] On the procedural aspects, the collective agreement **Resolution 1 of 2003** established that it was binding in nature and it states that upon a suspension, it must take a reasonable amount of time for the Respondent to do the investigation when the suspension is precautionary in nature; however, the Applicant was suspended from 01 April 2005 until 11 April 2008 for a full 3 years and took an unreasonable amount of time for her to be charged without any explanation is a gross contravention of this agreement and is unfair.

[28.] In **SAPS v SSSBC & Others (2010) 31 ILJ 2156 (LC)**, a police officer was dismissed for the alleged theft of a motor vehicle part. The state relied on circumstantial evidence. The Labour Court held that while the employer does not need to prove guilt "beyond a reasonable doubt" (the criminal standard), the circumstantial evidence must be strong enough that the inference of theft is the most probable one.

[29.] The function performed by an arbitrator was described by the Constitutional Court in **Rustenburg Platinum Mines Ltd v CCMA 2007 (1) SA 576 (SCA)** as follows: he or she has to determine whether or not misconduct was committed on which the employer's decision to dismiss was based. This involves an enquiry into whether there was a workplace rule in existence and whether the employee breached that rule."

[30.] In light of the evidence and arguments that were presented before me, I hereby make the following award in terms of **Section 193 (1)(a) of the Labour Relations Act 66 of 1995**. Reinstatement is the primary remedy where a dismissal is found to be substantively unfair. The Constitutional Court in **Equity Aviation Services (Pty) Ltd v CCMA [2008]** confirmed that the purpose of reinstatement is to place the employee in the position they would have occupied but for the unfair dismissal.

[31.] It is worth noting that awarding full back-pay for 17 years where no service was rendered would result in a disproportionate windfall for the Applicant and an unsustainable financial burden on the Department, and I am mindful of this quagmire



AWARD

[32.] The dismissal of the Applicant, Ms. Bobo NT, by the Respondent, Department of Justice and Constitutional Development, is found to be substantively and procedurally **unfair**.

[33.] The Respondent is ordered to reinstate the Applicant to the same or a similar position she held on **11 April 2008**, on terms and conditions no less favourable than those that governed her employment at the time of dismissal.

[34.] The Respondent is ordered to pay the Applicant back-pay in the amount of **R150 000 (one hundred and fifty thousand rands)**, which represents remuneration for the period of 17 years retrospectively paid on or before no later than the **31 July 2026**.

[35.] The Applicant is ordered to report for duty at the Respondent's offices in Butterworth on **15 May 2026 at 07:30 a.m**

JR. Mopp

GPSSBC Panellist : _____



Signature: _____