



ARBITRATION AWARD

Panellist: Andre Swart
Case No.: GPBC548/2019
Date of Award: 20 April 2021

In the ARBITRATION between:

PSA OBO SM MATIMBA
(Applicant)

and

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT
(Respondent)

Applicant's representative: Mr. Gilbert Seakamela
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Respondent's representative: Mr. Zola Mxalisa
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ARBITRATION AWARD

DETAILS OF HEARING AND REPRESENTATION

1. The matter was heard as an arbitration over various sittings commencing on 19 August 2020 and concluding on 1 March 2021, evidence was presented at the sittings of 19 August 2020, 25 November 2020 and 1 March 2021.
2. The Applicant in the matter is Mr. Sinawo Mxolisi Matimba, he was at all times represented by Mr. Gilbert Seakamela an official from PSA, the Respondent was represented by Mr. Zola Mxalisa from the Labour Relations Directorate of the Respondent.
3. The parties were to submit closing arguments by no later 10 March 2021, the Applicant did submit its closing arguments on 10 March 2021, the Respondent's submissions were received on 11 March 2021 together with proof that it had been dispatched on 10 March 2021 however the email address used was incorrect and they were therefore accepted, I thus regard the final date of the arbitration to be 10 March 2021.
4. The matter was heard in English and was digitally recorded.

ISSUE TO BE DECIDED

5. I am required to determine whether the dismissal of the Applicant was procedurally and substantively fair, if not, I must grant the appropriate relief in terms of Section 193 read with 194 of the Labour Relations Act 66 of 1995, as amended ("LRA").

BACKGROUND TO THE DISPUTE AND NARROWING OF ISSUES

6. The Applicant was employed as an Administrative Clerk at salary level 5, at the time of his dismissal the salary notch of the Applicant was R179000.00 per annum, the DPSA wage schedules give the figure of R178965.00.
7. He commenced employment with the Respondent on 1 January 2011 and was dismissed on 5 March 2019 following the unsuccessful appeal of the dismissal sanction dated 5 November 2018.
8. The Applicant was dismissed for three alleged acts of misconduct these being:

1. Allegation 1 had been amended from its original form and the amendment reads *“On or on the 19th May 2015 at or near Magistrate Office, Willowvale, while you were employed by the Department as an Administration Clerk, you received an amount of R3000.00 as a court fine paid by Nomveliso Sidlanya on behalf of Sameklo Masika. You indicated R300.00 in figures and R3000.00 in words on Z263. You failed to capture the money on JDAS and you also failed to account for it, by so doing you contradicted the Departmental Financial Policy and that led to the Department losing an amount of R3000.00 an act you knew or ought to have known its is wrongful to do so.”*
2. Allegation 2 *“On or about 25 May 2015 at or near Magistrate Office, Willowvale, while you were employed by the Department of Justice as an Administration Clerk, you received an amount of R800.00 (Eight Hundred Rant) cash receipt number 104724 and you receipted it on J399 but you captured it on the 27 May 2015 as EFT and you failed to account for that Money, by so doing you contradicted the Departmental Financial Policy and that led to the Department losing an amount of R800.00. An act you knew or ought to have known it is wrongful to do so.”*
3. Allegation 3 *“On or about the dates listed below at or near Magistrate Office, Willowvale, while employed by the Department of Justice as an Administration Clerk, you received the money from the members of the Public and you did not capture them immediately, you captured them on the later dates whereas JDAS was working by so doing you contravening Section 14.1.1.12(b) of Departmental Financial Instruction Policy and 3rd Party Funds paragraph 5.2. An act you knew or ought to have known it is wrongful to do”* a list of dates and transactions is attached to the charge this will not be repeated in the award and can be found in the charge sheet which is contained in Applicant Bundle B.

9. The Applicant denies having committed the acts of misconduct and further submitted in narrowing that he was not aware of the rules to which the Respondent was alluding to.
10. The Applicant thus submitted that his dismissal was substantively unfair, he also submitted that the Respondent had been inconsistent by no disciplining other employees who had committed the same misconduct.
11. The Applicant submitted that the dismissal was procedurally unfair as he was not afforded an opportunity to make submissions in respect of mitigation following the guilty finding in the disciplinary hearing.
12. The Applicant seeks reinstatement as remedy for his dismissal.

13. Both parties submitted bundles of documents at the initial sitting, the Applicant had two bundles marked A (6 pages) and B (15 pages), the Respondent had a main bundle of 92 pages together with 3 annexures these being Part 5 of the Departmental Financial Procedure Manual – Daily Transactions, Part 12 – Bail and Part 21 – Manual Transactions. From these bundles on page 1 of the Respondent main bundle was disputed.
14. Later in the proceedings a further 8 pages was entered into evidence by the Applicant the content of which not being disputed.

SURVEY OF EVIDENCE

15. I have considered all the relevant evidence placed before me regarding the issues that I am required to determine, but I shall only refer to that which I regard as necessary to substantiate my findings and the determination of the dispute, I will therefore not burden this award with evidence other than evidence which relates to the challenges brought by the Applicant.
16. It must be noted that the evidence as it appears below is not a verbatim record of the submissions but rather a summary of evidence presented by the witnesses.

Respondent's Case

17. **Mr. Chandler Shakumzi Silingela ("Silengela"), testified as a witness for the Respondent.**
18. He submitted that he is employed by the Respondent as a Financial Operations Manager at salary level 9.
19. He stated the various types of third-party funds which the courts deal with are bail, maintenance, court fines and admission of guilt fines.
20. He presented the process which is to be followed in the case of bail being paid, he stated that the court would make an order in respect of the bail which needed to be paid, this would together with the charge sheet be taken to the cash hall where the bail is paid, when payment is received the money is receipted in the J399 book (Bail Receipt Book) and also captured on the JDAS system, the J399 results in three copies of the receipt, one copy goes to the person paying, one is attached to the charge sheet and the third copy remains in the J399 book.

21. The daily audit trail that is generated by the system would reflect all the receipts captured on a specific day, should the JDAS system be unavailable due to technical problems a call needs to be logged with the help desk and an incident number is given, the transaction is manually recorded for the day and then on the follow day that transaction needs to be captured on the JDAS system.
22. He further submitted that person who are to handle funds are appointed by the head of the office and such appointment needs to be accepted by the appointee.
23. In cross-examination he was asked in any specific qualifications were needed to handle funds, he stated that it is an entry level position and that matric and on the job training is sufficient as the employees only receive monies.
24. **Mr. Mzwamadoda Sinyanya ("Sinyanya"), testified as a witness for the Respondent.**
25. He submitted that he is employed as the Court Manager for Willowvale and he had been the person who had appointed the Applicant to the cash office as is reflected on page 1 of the Respondent bundle.
26. He continued that he had reported to the regional office that R3000.00 which was receipted by the Applicant did not appear on the system when he had performed a check on 18 June 2015, the money according to him was therefore lost, he further stated that the daily audit report did not indicate that a R3000.00 payment had been made on the day.
27. He submitted that in respect of the manual receipt book used by the Applicant as found on page 8 of the Respondent bundle is used when the system is unavailable and the use is then authorised by the Court Manager, he submitted that the receipt on page 8 indicates a receipt of R3000.00 in words but R300.00 in figures, he also submitted that he had not granted the Applicant permission to use the manual receipt book.
28. He continued that if the money does not reflect on the system and it cannot be found in the safe it means that it is in the pocket of a person.
29. He stated that daily audit trail for 20 May 2015 shows two transactions of R3000.00 these being for a Chen and the State, there is no transaction for Sidlanya.
30. He further submitted that he was of the belief that the Applicant was deliberately not using the system to steal money.

31. In cross-examination it was put to the witness that the signature contained on the appointment letter was not that of the Applicant, the witness disputed this indicated that the Applicant had signed the document.
32. It was put to the witness that the Applicant had commenced duties at the Willowvale Court on 5 May 2014 this being later than the date on the appointment letter, he stated he was not sure of the commencement date.
33. He was asked if the Applicant had been trained to perform the duties of a Counter Clerk, he state that the Applicant was transferred to the position and that he (Sinyanya) requested Mr. Thobi to train the Applicant.
34. It was put to him that the training did not occur, he stated that he believed that training did occur as the Applicant had been performing the duties without complaints prior to the incidents indicating that training had occurred.
35. He was asked if after the Applicant had informed him that a mistake had been made when entering R300.00 in figures on the receipt if anything was done to verify the version of the Applicant, he stated that the money was only receipted there and that there was nothing to compare it to.
36. It was put to him that an amount of R5000.00 was paid in cash for an admission of guilty fine for Barker/Rhodes, this find was subsequently reduced to R2000.00, the Applicant then took R3000.00 which had been paid for a different fine and paid that toe Barker/Rhodes as a refund, he disputed this and indicated that the fine had been reduced to R2000.00 but that the Applicant had failed to record the payment of the fine by Sidlanya.
37. It was put to him that the use of the manual system was due to a network issue, he submitted that on the day in question the first transaction was recorded on the system at 09H00 and the last at 16H13 indicating to him that the system was operational.
38. He was asked if he had received the finding of the disciplinary hearing, he indicated that he did, he was thereafter asked if has provided such to the Applicant, he indicated that he would need to check his emails.
39. **Mr. Bennett N Thobi ("Thobi"), testified as a witness for the Respondent.**
40. He stated that he is the Supervisor in the Finance Section at Willowvale court.
41. He submitted that page 30 of the Respondent Bundle is the J339 manual receipt book, when a person is receives bail and pays for it then a receipt is issued to that person and page 29 of the Respondent Bundle reflects the capturing of the payment on the JDAS system.

42. He explained that the difference between a cash and EFT receipt is that the EFT already reflects in the account of the Respondent and that if an amount received in cash is recorded as a EFT there should be a surplus of cash on the day but there was no surplus reflected on the day the receipts were issued and there was no eft payment reflecting on the statement.
43. In cross-examination the witness was asked to identify the handwriting at the top of page 30 to which he responded that it was his, he was then asked why he had made the note regarding EFT, he stated that he had done to show the Applicant that it had been captured by the Applicant as an EFT on the system.
44. It was put to him that the R800.00 was not lost but that it was only a mistake in the entries, he submitted that he told the Applicant to correct the entry to cash as there was no money reflecting in the statement.
45. In a question posed by myself whether the money was at the court, the witness confirmed that indeed the money was at the court.
46. It was put to him that the Applicant could not correct the entry as he was arrested and placed on precautionary suspension from 3 July 2015, he responded that the note was made on 29 May 2015 the correction should therefore have happened in May or June 2015.
47. **Mrs. Ntombikayise Kasibe ("Kasibe"), testified as witness for the Respondent.**
48. She stated that she is employed as a Chief Administration Clerk in the finance section.
49. She indicated that a degree was not required to perform the duties of a finance clerk, she continued that there is no training only induction by other employees who work in the section, on occasion specialist training is conducted.
50. She submitted that the Respondent had sent herself and Applicant for training on Third Party Funds for 5 days in October 2014 and that although the Applicant signature is not reflecting, he was there.
51. Cross-examination did not challenge the submissions made.
52. **Ms. Lindelwa Sitsheke ("Sitsheke"), testified as a witness for the Respondent.**
53. She submitted that she is employed as a Financial Operations Manager and that she assists the finance sections in the Butterworth cluster which includes Willowvale.

54. She submitted that when doing a bail receipt a manual J399 is created and then it is also captured on the JDAS system and this process results in reference and receipt numbers which is how money is differentiated.
55. She continued that at the end of the day a cash hand over is done where the cashiers take the money they have collected to the main cashier and money is then balanced this done by using the system and manual receipts, this process results in three possible outcomes a till which balances or one which is either short or has a surplus.
56. Should a mistake or error be made the till will either be short or in surplus unless the system is being manipulated.
57. She explained how an EFT payment will reflect in the bank account but not in the till, with postal orders the order can either be receipted first and then the money collected, or the money is collected and then receipted, she also indicated that payment made by the cashiers need to be recorded on the system and if JDAS was not working a manual system needed to be used.
58. She submitted that it is financial mismanagement if you fail to account for money which you have received.
59. In cross-examination she was asked where shortages and surpluses are recorded, she indicated that it is logged on the system and that there is also a shortage book where it is recorded.
60. She was asked what would happen if a cash receipt were correctly recorded manually but incorrectly captured on the system as a EFT, she indicated that a error would occur and that if it is correctly captured there would be a cash surplus and the till would not balance however if the incorrect information is fed into the system the till could be made to balance.
61. She was asked how often this type or error occurs, she indicated that about 5% of the errors are related to this type of action and that it is rare as the system asks several question.
62. She was asked what the procedure is when power failures extend over several days, she indicated that irrespective if the system is of for 3, 5 or 6 days the information regarding transactions done manually during that time must be recorded on the system immediately when it becomes available, she stated that when this occurs the office needs to log a call as reference numbers also need to be recorded.
63. **Mr. Mcedisi Kobese ("Kobese"), testified as a witness for the Respondent.**
64. He submitted that he is employed as a Court Manager at the Butterworth Court.

65. He submitted that monies received should immediately be recorded on the system and that if that is not possible due to system problems it needs to be recorded immediately when the system becomes available, he said that period of two weeks should not elapse between recording of transactions.
66. He presented that the period which had elapsed in recording of transaction 104686 (3 weeks) and 104687 (3 weeks) was not allowed.
67. In cross-examination he was asked who is to be blamed for the late recording of a transaction on the system, he indicated that it was the person who received the monies.

Applicant's Case

68. **Ms. Tandiswa Matyolo ("Matyolo"), testified as the sole witness for the Respondent.**
69. She stated that she is employed as an Administration clerk.
70. She continued that she was not aware of any other person who had been charged allegation 1 at the Respondent.
71. She explained that when there is a shortage as happened with her when R800.00 was short when she was the main cashier, this was as a result of bail monies not being correctly recorded and it was not picked up by the checking officer, when the member of the public returned to collect his bail money the shortage was discovered and this was reported to the Court Manager who then had her and the checking officer each pay R400.00, neither of them had disciplinary charges brought against them.
72. In cross-examination she was asked if she was trained to handle the monies of third parties and if she had been trained on the JDAS system, she stated that she had not for both instances.
73. She was asked if it is correct that if the money was received it should have been in the vault, she indicated that it should be.
74. She confirmed that transactions need to be recorded immediately on JDAS and if that is not possible due to power failures it must be recorded the next day.
75. She was asked if the Applicant is the only employee which has been charged for financial misconduct, she stated that he is the only one she knew of.
76. **Ms Nelisa Silatshe ("Silatshe"), testified as a witness for the Applicant.**

77. She submitted that she is an Administrative Clerk at Maintenance and Estates.
78. She submitted the procedures on how bail and maintenance is receipted and indicated that manual receipts are issued and that it is then captured on JDAS.
79. She continued that when you are required to make a pay out but there are insufficient funds in the till, then money is obtained from the vault via the main cashier.
80. She confirmed in cross-examination that if the money you received does not tally with the money in your till then there would be a shortage and that if there was not a reasonable explanation it would constitute financial misconduct.
81. She was asked if money disappeared it was either as a result of negligence or theft, she agreed with the statement.
82. **Mr. Sinawo Matimba (“Applicant), testified as a witness for the Applicant.**
83. He stated that he was appointed as a Court Clerk in Zwelitsha on 1 January 2011 and that he started at Willowvale on 5 May 2014 in the domestic violence section in January 2015 he moved to the cash hall, he disputes signing page 1 of the Respondent bundle.
84. He continued that he did not receive training when he was moved to the cash hall and that he worked there until 3 July 2015 when he was arrested for allegedly stealing R3800.00, the criminal case against him was dropped in the basis that there was insufficient evidence.
85. He stated that he was charge with the allegations 19 months after the events, at the final stages of the disciplinary hearing the matter was postponed for closing arguments and he had asked for a transcribed record, in November 2018 he received a letter indicating that he was dismissed.
86. He submitted that in respect of allegation 1, he did indeed indicate a receipt of R3000.00 in words but that it was recorded as R300.00 in figures, he noticed the error before the Masika had left and informed his supervisor Mr. Ximbi about the error, he was told to call the Masika back and correct the error, this correction was done on the receipt of the Masika but could not be done on the departmental receipt as it was not possible to line up the carbon paper, Masika had testified in court that the receipt had been corrected and Sinyanya had a copy of that corrected receipt but at the commencement of these proceedings indicate that it had been lost.

87. He continued that a postal order had arrived at court for Rhodes and that it had no control document, he then went to collect the money from the post office on 11 May 2015 which was R5000.00, when he returned to the court, he gave the R5000.00 to Sinyanya and was told to record it in the remittance register and give it to Ximbi he did so, Ximbi said that the money was going to be banked as Thobi knew something about it money, he was told on 19 May 2015 to put it under unclassified payments he did so.
88. The control document arrived at and it indicated that the admission of guilt fine for Rhodes had been reduced from R5000.00 to R2000.00, he was then told to issue a receipt to Rhodes and Thobi would allocate it.
89. Rhodes came to collect his refund and Ximbi was informed, Ximbi stated that there was insufficient money in the safe, the Applicant stated that he had received R3000.00 from Masika, Ximbi told him to give that money to Rhodes which he did.
90. On 24 May 2015, Thobi returned to the office and was told that the books are not balancing and asked what the problem was, Thobi was informed that R5000.00 had come for Rhodes and as there was no control document it was recorded as unclassified, when the control document came on 19 May 2015 the court fine had been reduced to R2000, Thobi was told that Ximbi had said he must take the R3000.00 paid by Masika and give it to Rhodes, Thobi stated that he would allocated the money so that he could balance.
91. Thobi gave him R1200.00 and this was combined with R800.00 which he had in his till to make up R2000.00, the R3000.00 was then to be allocated to Masika, before this could be done, he was arrested.
92. He submitted that in respect of the R800.00 EFT issue, this had occurred because of a system error and that is why he had not picked it up, the issue was picked up by the supervisor when he was no longer at the office, the error could still be fixed as the money was still at the Department.
93. In cross-examination he was asked if he had proof of the corrected Masika receipt, he stated that it was not provided to him by the Respondent.
94. It was put to him that he had a habit of feeding incorrect information into the system, he disputed this stating he was following instructions from his supervisor.
95. He was asked if Masika's money was captured on JDAS, he stated that it was in unclassified.
96. He was asked why it would be in unclassified if the money was for a court fine, he stated that his manager had told him to take the money and give it to Rhodes.

97. He was asked if he had paid Rhodes in cash as Rhodes stated in his affidavit that he had received the money in his bank account, he state that he did not know that version Rhodes.
98. He was asked who had submitted the Rhodes affidavit to the arbitration, he stated that he had.
99. He was asked if there is any evidence that Rhodes was paid in cash, he stated that there was none as he acted on instruction from his supervisor.
100. He was asked where the R2000.00 was captured, he stated that it was under an admission of guilt for Rhodes.
101. It was put to him that the R2000.00 was captured as an admission of guilt for Barker/n S, he stated that it happened in 2015 and that he recalls Rhodes.

ANALYSIS OF EVIDENCE AND ARGUMENT

102. Section 192 (1) of the Labour Relations Act 66 of 1995, as amended ("the Act"), requires that an employee must establish the existence of a dismissal. Section 192 (1) then places the onus on the employer to show that the dismissal was fair.
103. Section 188 (1) of the Act provides that a dismissal is unfair if the employer fails to prove that the reason for the dismissal was a fair reason (substantive fairness) and that it was effected in accordance with a fair procedure (procedural fairness).
104. In the present matter dismissal is not disputed.
105. In rendering this award, I have considered all the relevant evidence presented during the proceedings and have also taken cognisance of the closing arguments presented by the parties although I may not directly refer to such arguments in this award.
106. I will firstly deal with challenge to procedural fairness, no evidence was presented by the witnesses of the Respondent to rebut the submissions of the Applicant that he was not afforded an opportunity to present mitigation prior to sanction being imposed as is required by Clause 7.3(n) of PSCBC Resolution 1 of 2003, the Respondent in its closing arguments attaches a email from the chairperson of the disciplinary hearing where in statements are made about the closing arguments, however such evidence was not tested and closing arguments are not meant for the introduction of new evidence.

107. I therefore find on the evidence presented at the arbitration that the Respondent had failed to dismiss the Applicant in a procedurally fair manner.
108. In coming to substance, I must firstly state that it is important to look at the allegations brought against the Applicant, the first two allegations relate to the Applicant's alleged failure to correctly record information on the JDAS system and by doing so it is alleged that he contravened the policies of the Respondent and that the money he handled was unaccounted for, the third charge relates to his alleged failure to timeously record transactions on JDAS.
109. I must state that during the narrowing of the dispute the Applicant had indicated that he was not aware of the rules in the workplace and he denied that he had received training however he did not dispute the evidence of Kasibe that he had indeed attended third party funds training in October 2014, the evidence of Sinyanya that the Applicant had been performing his assigned duties without complaint was also not challenged, and I have no reason not to believe the version presented by the two witnesses in respect of this aspect.
110. Therefore, I find that the Applicant was indeed familiar as to the procedures which needed to be followed in the performance of his duties.
111. The Respondent again in its closing arguments refers to a zero tolerance policy that the Respondent has in respect of dishonesty, fraud and theft however no witness of the Respondent had mentioned such a zero tolerance policy, it must also be noted that the charges which the Respondent had levelled against the Applicant have their roots in negligence/failure to adhere to policy, they make no reference to dishonesty.
112. The Respondent did seek to establish theft of the money through the evidence of Sinyanya and Sitseke, this argument however does not tally with the evidence presented.
113. In respect of the 2nd allegation, it is clear that the Applicant had made an error in the performance of his duties when he recorded a cash payment as a EFT payment, the Respondent through Thobi attempted to show that the money was missing however what is clear is that when considered as a EFT payment the money would be missing as it does not reflect on the bank statement but it is present at the court and this was confirmed by Thobi.
114. I therefore accept that the Applicant had failed to adhere to the policies of the Respondent when he mistakenly captured a payment as EFT, but I cannot find that the Applicant had as was being alluded to taken the money or caused it to be lost to the Respondent.

115. In respect of allegation three the charge sheet lists a number of transactions dating from January 2015 to April 2015, the charge sheet and the sections of the Respondent bundle dealing with this allegation were not disputed by the parties, however this does not mean that is a common cause fact that the Applicant had committed the misconduct, the Respondent through Kobese did however present evidence on two transactions these being 104686 and 104687 and their accompanying JDAS receipts, these receipts show that the Applicant had only captured the transactions on JDAS on 28 and 29 April 2015 respectively, the manual receipts were done on 9 and 13 April 2015.
116. It was the undisputed evidence of Silengela, Sitsheke and Kobese that transactions should immediately be recorded on JDAS and that if the system is unavailable it should be recorded when the system becomes available, the Applicant did not challenge the accuracy of the dates on which the documents were captured and, in his evidence, did not present any version or explanation as to why he had failed to timeously capture the information.
117. I therefore find that the Applicant had committed an act of misconduct by failing to comply with the policies of the Respondent, however there was no evidence that such a failure was dishonest in nature.
118. In coming to allegation 1 firstly relates to the Applicant incorrectly making out a J399 receipt, he indicated a payment of R3000.00 in words and R300.00 in numerals, this is clear to see from the receipt itself, the Applicant submits that this error was corrected on the original invoice and that the Respondent had a copy of it and that Sinyanya had lost the document, it was however not put to Sinyanya that he was in possession of such a document.
119. What is also clear from the evidence which had been presented is that the Applicant had not captured the payment on JDAS as he was required to do, the submission by the Applicant is that he was instructed by Ximbi to give the money to Rhodes, but why this absolved him from capturing a payment made by a member of the public is never explained.
120. The evidence relating to the Masika money has many twists and turns, the Respondent submits that there is not record of the funds and as such it regards the funds as being missing, the Applicant presented the following version.
121. On 11 May 2015, he received a postal order and was told to collect it, he did as instructed and received R5000.00 for Rhodes (the postal order was for a Barker/n), he returned to the office with the money and gave it to Sinyanya who in turn told him to give it to Ximbi, Ximbi said that the money would be banked and that Thobi knew something of it, on 19 May 2015 he was told to capture the money as unclassified.

122. On 19 May 2015 the control document arrived, and it indicated that the court fine had been reduced to R2000.00, he issued a receipt and was told by Ximbi that Thobi was going to allocate it on his return.
123. Rhodes then arrived at court to get his refund and the Ximbi gave the Applicant the instruction to pay the refund from monies he had collected on the day, the Applicant then took the money collected for the Masika fine and paid it to Rhodes.
124. When Thobi returned on 24 May 2015 he was informed of what had happened and set about entering the transactions on the system this was done by adding 1200 to the 800 the Applicant had in his till to make up the court fine from Rhodes and Thobi was thereafter going to allocate the money in unclassified to Masika, the Applicant indicates that this was interrupted by his arrest.
125. The version presented by the Applicant has several problems, the first being that the postal order was made out under the name of Barker/n S and that the payment of the admission of guilt for Barker/n S was captured on 20 May 2015 as is to be found on page 17 and 19 of the Respondent bundle, based on the version of the Applicant this could not have occurred as Thobi was required to capture the payment and he was not yet back at work as he only returned on 24 May 2015.
126. There has been no satisfactory explanation why money paid by Barker/n and captured against a fine for Barker/n is captured as Rhodes, if these are two different individuals it again shows the negligent way the Applicant performed his duties.
127. A further problem arises with the evidence of the Applicant namely that he submits that Rhodes had come to collect his money from the Court but the affidavit which the Applicant submitted to this arbitration purporting to come from Rhodes indicates that the money was paid into his bank account.
128. The only person who could have corroborated the version being presented by the Applicant namely Ximbi was not called to this arbitration and a negative inference needs to be drawn from that.
129. As the matter stands there is an amount of R3000.00 in unclassified for Rhodes, the money paid for Masika does not reflect on the system, now it was not the evidence of the Respondent that Masika had not paid the money as such R3000.00 must have been paid to the court, the question now is whether the money currently residing in unclassified is Masika's.
130. The Respondent argues that it is not, based on the evidence before me a payment does appear to have been made to Rhodes, in his affidavit he indicates that he received R3000.00 paid into his bank account but it must be borne in mind that this evidence was not tested and is taken from an affidavit as such it must

be viewed cautiously, there appears another document at page 7 of the third bundle submitted by the Applicant which shows a payment being made out of the unclassified account to the sum of R2000.00 but this document was not elaborated upon as such it is unclear as to where this payment went.

131. What can be said for certain is that there is no record on the JDAS system of the R3000.00 paid for Masika but there is also no evidence that the Applicant did not balance on 19 May 2015, this points to systemic failure as if there is record of a receipt in this case a manual receipt and no record of payment of equivalent value the money should be found to be missing.
132. I must therefore find that the money is indeed missing however, the Respondent has failed to make out a case that the Applicant had taken the money, I can accept that the Applicant had failed to comply with the Respondent's policies.
133. The question now becomes does the misconduct committed by the Applicant justify the sanction of dismissal, the Respondent in its closings made much of a breach of trust resulting from dishonest conduct but as I have found above the conduct of the Applicant related to his negligence and failure to comply with policy now this can be ground for dismissal should such actions be gross, the Applicant argued that he had not committed the acts and submits that in respect of the transaction there is not proof that he had issued the receipts that however is not accurate in respect of allegation 1 and 2 he admitted to performing the transaction and in respect of allegation 3 his name appears on the JDAS system and it was not challenged with Kobese that indeed the Applicant had been the person recording the transaction.
134. I must also take cognisance that it was argued by the Applicant that he had not been trained in cash handling but the evidence that he attended training on third party funds was not challenged as such on a balance of probabilities it must be found that he knew how to perform his functions.
135. It is clear to me that the Applicant had failed to perform his duties to a standard expected by the Respondent however from the evidence of the Respondent it does not appear of there was any performance management as Sinyanya indicated that the Applicant had correctly performed his duties prior to the incidents but that is not correct as there had been failures to perform according to standard prior to this but it seemingly went unnoticed.
136. When considering the matter in its totality, I find that the Applicant did indeed commit the misconduct as alleged however such negligence in the performance of his duties could have been corrected through progressive discipline as I find that there are no elements of dishonesty.

137. I therefore find that on a balance of probabilities the sanction of dismissal was too harsh, and the behaviour could have been corrected by issuing the Applicant a final written warning and conducting performance management.
138. In coming to relief, the Applicant seeks reinstatement, as stated above the Respondent argues that the trust relationship has been broken however based on my finding I do not agree with the argument as it is based on dishonest conduct which is not present, I therefore find that reinstatement is the appropriate remedy, however when considering that the Applicant did not come into this process with clean hands and that he furthermore did not completely take this arbitration into his confidence I find that there is no entitlement to back-pay between the period 5 March 2019 when he was dismissed and 30 April 2021 when he is to be reinstated.
139. The dismissal is furthermore to be substituted with a final written warning which is to be placed on the personal file of the Applicant, the warning having a validity period of 12 months commencing on 5 March 2019.

AWARD

140. The dismissal of the Applicant is procedurally and substantively unfair.
141. The Respondent is to reinstate the Applicant into the position which he occupied prior to his dismissal on 5 March 2019 by no later than 30 April 2021, the reinstatement is to operate retrospectively from 5 March 2019, however the Applicant is not entitled to payment of any back-pay or benefits for the period 5 March 2019 to 29 April 2021.
142. The dismissal is substituted with a final written warning which is to be placed on the personal file of the Applicant, the warning having a validity period of 12 months commencing on 5 March 2019.
143. There is no order as to costs.



Name: Andre Swart

GPSSBC Arbitrator