



ARBITRATION AWARD

Case Number: **GPBC1268/2025**

Commissioner: **Nowethu Sangqu Ndiki**

Date of Award: **24 August 2026**

In the **ARBITRATION** between

PSA obo Makhoba and 15 others

(Employee)

And

Department of Transport (Eastern Cape)

(1st Respondent)

Department of Public Service and Administration (PSA)

(2nd Respondent)

DETAILS OF HEARING AND REPRESENTATION

1. The matter was scheduled to be heard on 12 December 2025. The parties decided that SPSA ought to have been cited as the 2nd Respondent because of its interest in the implementation of

the Applicant's payments. The matter was stood down to allow an opportunity to cite the 2nd Respondent. It was then scheduled for 05 May 2026 and the 2nd Respondent was cited and served accordingly. It was heard at the offices of the Respondent in Mthatha Airport. The matter was adjourned due to time constraints and rescheduled and heard on 28 July 2026 at the same venue being Mthatha Airport.

2. The Applicants Mr Makhoba as well as Ngozi were present and represented by Mr Ngcobo of PSA. The list of all other employees involved was submitted and Ngcobo carried the mandate of all the Applicants.
3. The 1st Respondent was represented by Mr Nxele from Labour Relations office of the Respondent. The 2nd Respondent, DPSA, was duly cited and served but failed to appear despite proper notice. The matter proceeded in its absence.
4. The proceedings were digitally recorded. Applicant submitted a Bundle of documents to be relied upon.

ISSUE TO BE DECIDED

5. I am required to decide whether the Respondent committed unfair labour practice by failing to pay the Applicants overtime after the agreement was reached that the Applicants should work above the required overtime (exceeding 30% of their basic salary) and payments will be arranged.

BACKGROUND TO THE ISSUE

6. The Applicants are employed by the Department of Transport (1st Respondent) as Firefighters based at Mthatha Airport.
7. The 1st Respondent has an Overtime Policy regulating payment of overtime that the overtime should not exceed 30% of the employee's basic salary.
8. It is common cause that a meeting was held in January 2025 between the Applicants and the 1st Respondent management. During that meeting an agreement was reached that the Applicants would work overtime in excess of the normal overtime threshold due to operational requirements / staff shortages at the airport, and that such extended overtime would be paid.

9. It is common cause that the Applicants worked the extended overtime hours as agreed.
10. Overtime was authorized even though it was above 30% of the Applicants' basic salary in line with the policy.
11. It is common cause that the hours worked were submitted and known to the Respondent.
12. It is common cause that the Respondent has not paid 100% for such extended overtime as agreed, only 30% as per policy was paid.

SURVEY OF EVIDENCE

Applicant's evidence

13. Mr Makhoba testified under oath that he was a firefighter, along with other Applicants based in Mthatha Airport.
14. Firefighters are required to work shifts to maintain mandatory aviation safety cover. Due to staff shortages and the request for extra hours by Airlink, management requested them to work overtime exceeding normal overtime limits being 30%. This was done in full knowledge of the policy, the Respondent held a meeting and promised that the overtime exceeded 30% will be paid despite the policy on overtime. The promise that a memorandum will be drawn and submitted was relayed to the Applicants. The Applicants believed that because it was stated by someone in authority, Deputy Director Labour Relations (Mr Phelisile Melane). At the time of the meeting they did not see this as an unreasonable instruction and they felt the responsibility to comply so that the aviation requirements were met. It would also benefit them in that they would get extra income.
15. A meeting was held on 19 January 2025 at the airport fire station. Minutes of that meeting were submitted as A3 on the bundle of documents. Management, represented by Melane
16. , agreed that all overtime worked even overtime exceeding 30% would be paid.

17. The Applicants worked the hours as per roster and timesheets. The hours are correctly captured and were verified.
18. On pages 3 -12 of the bundle of documents, signed memorandums requesting overtime work addressed to Head of Department from the acting Chief Director. There was no dispute that overtime was agreed upon and workers have complied. The only issue was that the Department failed to pay despite several inquiries from the workforce. Management then came with an excuse of DPSA arrangement which was not considered when the agreement was made that overtime should be worked. The workers were assured that funds were available therefore workers should not worry about exceeding the 30%, management would be responsible for that.
19. Despite working, they were not paid. When they enquired, management informed them that DPSA had not approved the payment.
20. Makhoba stated that they have done what was in their powers including lodging of grievances to no success. Referring the matter to the council was the last resort. The Respondent must be compelled to pay the exceeded overtime as it would have benefited them financially if it was paid.

Applicant's 2nd Witness

21. Michelle De Kock was sworn in and testified that, she worked for the Department of Transport based at Mthatha Airport.
22. She confirmed that minutes on page 66 were taken and drafted by herself. She confirmed that the attendance register attached on page 70 was for the meeting held with the Applicants discussing overtime work and payment in January 2025.
23. Michelle explained that the date showing on the minutes as 03 March was a mistake, she used a template and overtyped on it but forgot to change the date.
24. No cross examination took place, the witness was released.

1st Respondent's evidence:

25. The 1st Respondent elected not to refute the presented evidence despite being given an opportunity to do so. No witness was called to dispute the agreement, the hours worked, or the existence of the Overtime Policy.
26. The only defense raised by the 1st Respondent in closing arguments was that it blames DPSA cited as 2nd Respondent, for failure to approve the payment of the extended overtime.
27. The 2nd Respondent did not appear despite being cited and served, and filed no papers.

ANALYSIS OF SUBMISSIONS AND ARGUMENTS

28. It is trite that where an employee works overtime at the behest or with the permission of the employer, the employer is obliged to pay.
29. The onus to prove that overtime was worked and not paid rests on the Applicants. The onus to prove that overtime was not authorized or not payable rests on the employer.
30. The 1st Respondent offered no defense or whatsoever, this then suggests that all what was presented before me must be taken as the truth in its entirety.
31. The employment relationship is between the Applicants and the 1st Respondent. The internal arrangement between the 1st Respondent and DPSA regarding approval of funds cannot be raised as a defense against employees who have rendered services. Particularly that this was arranged with senior management and promises were made. Memorandums were drawn up and sent to head of Department. This raised hope to the Applicants that the Respondent would pay them. The 1st Respondent cannot outsource its statutory obligation to pay and hide behind DPSA directives. The Respondent is the one who called a meeting and proposed the working of extended overtime beyond the normal accepted overtime.
32. The Applicants complied with the Respondent's instruction which was reasonable at the time. Until such time that the Respondent failed to pay them citing that DPSA does not allow payment of overtime beyond 30% even though this was discussed in the meeting and plans were made. This action by the 1st Respondent is devious and cannot be tolerated. The Employer should have been honest with the Applicants and let them decide on whether they will work or not at the

risk that they might not be paid. Respondent chose to deceive the Applicants which robbed them of their deserved overtime payment.

33. The existence of the agreement to work extended overtime is not disputed.
34. The Overtime Policy was not disputed.
35. The hours are not disputed.
36. The fact that a senior manager authorized the overtime exceeding 30% to be worked during April 2025, December 2025 as well as April 2026 was not in dispute.
37. The 1st Respondent led no evidence to rebut the Applicants' version. The Respondent however, stated in their closing arguments that the Commissioner should consider the timing of the award to allow them time to make necessary submissions to DPSA.
38. In the premise, I accept the Applicant's evidence as is. The failure of DPSA to appear does not absolve the 1st Respondent. The 1st Respondent remains the employer as defined in Section 213 LRA. It was the 1st Respondent who tempered with the overtime policy in a deceitful manner affecting the Applicants negatively.
39. In this matter, the Applicants have discharged their onus. Their evidence is uncontroverted, credible and supported by documentary evidence including minutes of the meeting and timesheets.
40. I therefore find that the Applicants worked overtime beyond the acceptable hours as instructed by the Respondent under false pretense that they would be paid beyond 30% cut off overtime. As agreed in the meeting, the Applicants are entitled to full payment thereof. The failure to pay overtime beyond 30% as promised amounts to unfair labour practice.
41. The Respondent must pay the Applicants' overtime as it appears on the tables below.

Mthatha Airport Overtime April 2026				
Name of the Applicant	Hours worked	Amount Claimed	Amount Paid	Amount owed
Ngonyama .B	24 Hours	R7,358.73	R6,102.91	R1,255.80

Sikhafini .A	15 Hours	R3,127.47	R3,007.26	R120.21
Ngala .SE	30 Hours	R7,529.34	R6,350.98	R1,178.36
Tofile .NL	42 Hours	R8,666.58	R5,777.78	R2,888.85
Lila .Z	33 Hours	R7,715.15	R6,350.98	R1,364.17
Ngozi .S	21 Hours	R6,933.27	R5,777.78	R1,155.49
Picane .S	27 Hours	R8,024.22	R7,715.61	R308.61
Tshaka .C	42 Hours	R14,851.08	R8,568.00	R6,283.08
Sikisi .Z	27Hours	R6,070.95	R5,837.73	R233.22
Mzulwini .SI	42 Hours	R9,198.42	R6,102.97	R3,095.45
Makhoba .M	45 Hours	R9,706.59	R5,777.78	R3,928.81
Dhlamini .S	27 Hours	R8,516.70	R8,189.28	R327.42

Mthatha Airport Overtime December2025				
Surname G Initials	Hours worked	Amount Claimed	Amount Payed	Amount owed
Sikhafini .A	34 Hours	R6,957.62	R6,132.66	R824.96
Ngala .SE	48 Hours	R11,098.32	R6,381.81	R4,716.81
Tofile .NL	53 Hours	R10,666.06	R5,636.67	R5,029.39
Lila .Z	35 Hours	R8,200.43	R6,320.15	R1,880.28
Ngozi .S	21 Hours	R4,166.58	R4,166.58	R0.00
Picane .S	29 Hours	R8,339.09	R8,066.32	R272.77
Tshaka .C	35 Hours	R11,802.81	R9,853.20	R1,949.61
Mzulwini .SI	30 Hours	R6,250.06	R6,043.98	R206.08
Makhoba .M	58 hours	R11,610.88	R5,694.47	R5,916.41
Dhlamini .S	35 Hours	R10,256.93	R8,561.52	R1,695.41

Mthatha Airport Overtime April 2025				
Surname G Initials	Hours worked	Amount Claimed	Amount Paid	Amount owed
1.Makhoba .M	79 Hours	R8 429, 10	0	R8 429,10

2.Mhlatywa .M	27 Hours	R4 337,19	0	R4 337,19
3.Ngonyama. B	65 Hours	R8 597,19	0	R8 597,19
4.Sikhafini . A	83 Hours	R9 701,50	0	R9 701,50
5.Ngala .SE	88 Hours	R11 602,38	0	R11 602,38
6.Tofile .NL	75 Hours	R10 290,10	0	R10 290,10
7.Lila .Z	84 Hours	R13 060,38	0	R13 060,38
8.Ngozi .S	75 Hours	R10 290,10	0	R10 290,10
9.Picane .S	57 Hours	R13 249,00	0	R13 249,00
10.Tshaka .C	53 Hours	R 14 279,58	0	R14 279,58
11.Sikisi .Z	86 Hours	R 9904,82	0	R 9904,82
12.Mzulwini SI	110 Hours	R11909,01	0	R11909,01
13.Cingo A	86 Hours	R10 187,72	0	R10 187,72
14.Naki P	99 Hours	R10 514,80	0	R10 514,80
15.Loliwe	99 Hours	R10 979,72	0	R10 979,72
16.Dhlamini .S	39 Hours	R11 979,72	0	R11979,72

AWARD

42. The 1st Respondent, Department of Transport's actions amount to unfair labour practice.

43. The 1st Respondent is ordered to pay the Applicants the outstanding extended overtime as per the verified timesheets for the period April 2025, December 2025 as well as April 2026.

44. The payment must be made to each Applicant as listed on the table below on or before **30 September 2026**, less any statutory deductions.

Name	April 2025	December 2025	April 2026	Amount to be paid by the Respondent
Makhoba .M	R8429.10	R5916.41	R3928.81	R18274
Mhlatywa .M	R4337.19	R	R	R4337.19

Ngonyama. B	R8597.19	R	R1255.80	R9852.99
Sikhafini . A	R9701.50	R824.96	R120.21	R10646.67
Ngala .SE	R11602.38	R4716.81	R1178.36	R13197.55
Tofile .NL	R10290.10	R5029.39	R2888.85	15608.34
Lila .Z	R13060.38	R1880.28	R1364.17	R16304.83
Ngozi .S	R10290.10	R	R1155.49	R11445.59
Picane .S	R13249.00	R272.77	R308.61	R13830.38
Tshaka .C	R14279.58	R 1948.61	R6283.08	R22511.27
Sikisi .Z	R9904.82	R	R233.22	R10138.04
Mzulwini SI	R11909.01	R206.08	R3095.45	R15210.54
Cingo A	R10187.72	R	R	R10187.72
Naki P	R10514.80	R	R	R10514.80
Loliwe	R10 979,72	R	R	R10979.72
Dhlamini .S	R11 979,72	R1695.41	R327.42	R14002.55

45. I make no order as to costs.

Signature:



Commissioner:

Nowethu Sangqu Ndiki

Sector:

Department of Transport