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ARBITRATION AWARD

Case Number: GPBC1938/2024
Commissioner: Nowethu Sangqu Ndiki
Date of Award: 26 August 2025

PSA obo NK Zepe
(Union/Applicant)

And

Department of Public Works
(Respondent)

Union/Employee's representative: Mr Zigqibo Kahla

Employer's representative: Mr Luvuyo Busakwe

DETAILS OF HEARING AND REPRESENTATION

1. Arbitration process was scheduled and heard on 12 May 2025, due to time the process was adjourned to 05 and 6 August 2025. On 05 August 2025 the process started in time, the Respondent led its witness and closed its case. The Applicant took a stand and completed its evidence. The Applicant's representative indicated that there was no need for the other two witnesses who were doctors. He then closed the Applicant's case. At all material times the process continued at KD Matanzima building, the premises of Respondent in Mthatha, under the auspices of the GPSSBC. An alleged unfair dismissal dispute was referred to the council, a certificate of non resolution was issued and LRA 7.13 form referring a dispute to arbitration was received by the council. Hence this award .
2. The Applicant, Mr NK Zepe appeared represented by Mr Z Kahla , a shopsteward of a registered trade union PSA. The 1st Respondent was represented by Mr L Busakwe in his capacity as Deputy Director in Employee Relations Department. Having checked if all parties were properly notified of the arbitration, I was satisfied that all parties were properly served, accordingly they were all present. At all material times, Gladys Mbongisa was appointed as interpreter and she was present.
3. The proceedings were electronically recorded, handwritten notes were taken. The proceedings were conducted in English and interpreted to isiXhosa.

ISSUE TO BE DECIDED

4. I am required to determine whether the Dismissal of the Applicant on 17 October 2024 was fair or not, if not, I must decide on the appropriate remedy in line with Section 193 and 194 of the Labour Relations Act no 66 of 1995 as amended.

BACKGROUND TO THE DISPUTE

5. The Applicant was employed by the Department of Public Works since 20 January 1989. At the time of his dismissal he was serving the Department a senior Chief Artisan GradeB. He was based in the Respondent's depot at OR Tambo District. The Applicant was charged, appeared before a disciplinary hearing and dismissed for Misconduct which occurred in 2021. Even though the Applicant pleaded guilty during the disciplinary hearing, the Applicant will challenge the substantive as well as the procedural fairness of the dismissal. It will be proved during testimony that the Respondent delayed the outcome of the hearing which was contrary to resolution 1 of 2003. The Applicant will demonstrate that the Respondent showed an uncaring attitude as the Applicant was going through a difficult time due to the death of two family members being his brother and his mother.
6. Three witnesses including the Applicant will be called to testify. A bundle of documents which was accepted as what it purports to be was submitted as evidence.
7. The Applicant prays for reinstatement and 12 months salary payment. The Applicant further prays for a lesser sanction for misconduct committed in 2021.
8. The Respondent will argue that it did what it had to do. The Applicant committed gross misconduct which warranted dismissal. It will demonstrate how gross was the misconduct and how it followed a procedure to the core.
9. The Respondent submitted a bundle of documents which was accepted as what it purports to be. Two witnesses will be called to testify on behalf of the Respondent to prove its case. The Respondent prays that the Commissioner uphold the Dismissal of the Applicant.
10. It must be noted that although the applicant indicated that it would present three witnesses including two doctors, this did not happen. The Applicant led its witness being Mr Zepe and closed its case. I had to make sure that this was the Representative's decision in consultation with the

Applicant. I was assured that the decision was thought well and this is what the Applicant has decided.

SURVEY OF EVIDENCE AND ARGUMENT

The Respondent's Version

1st Witness

11. The witness introduced himself as Mpumzi Tunzi (Tunzi). He testified under oath as follows: He was an assistant Director at the Department of Health based in Frere Hospital. From 2019 - 2023 he was a chief Employee Relations Responsible for OR Tambo and Joe Gqabi Districts working for the Respondent. His Responsibilities included investigations as well as representing the Respondent when there were cases that require investigation and representation internally and outside tribunals.
12. According to Tumzi, in 2021 there was an investigation at Public Works. He explained that
13. he was going to talk more about the investigation that happened in OR Tambo District as this matter concerned that District. It was discovered that some employees were not reporting for duty but were marked as present on the register and paid accordingly.
14. As the investigation continued it appeared that the Manager of the Depot who was the Applicant in the arbitration, was implicated on the sale of scrap metal which belonged to the Department and that the money was never paid to the Department.
15. During the investigation, the Applicant was asked to submit a statement explaining what happened. Indeed the Applicant submitted the statement dated 30 November 2022. On the statement he did not mention that he received money from selling the scrap metal. According to the witness, such action was a sign of dishonesty.
16. He continued with his testimony saying that there was a need to give another opportunity that the Applicant write another statement as more evidence came up. The Applicant wrote the statement as appearing on page 15-16 of the Respondent's bundle of documents. Once again the Applicant did not take the opportunity to disclose the information regarding the exact amount he received. He only disclosed R12640.

17. All the evidence that was collected was used during the Applicant's hearing. The documents presented were not contested.
18. He said during cross examination that, the investigation was not concluded within the 60 days period, which meant that the matter could not be concluded in 90 days due to the lengthy investigation.
19. The witness said that the sanction against Mr Zepe was fitting the charges and Zepe pleaded guilty.
20. The witness could not explain whether the material was just dumped at the depot, but he said that the material belonged to the Respondent until such time that it was written off and disposed of accordingly and there would have been paper work to that regard.
21. He confirmed that the Applicant was given an opportunity twice to disclose the money he received on the statements he made but did not use such an opportunity, that was dishonesty.
22. He confirmed once again that the amounts paid to the Applicant was R12640 as well as R33320. both amounts were never paid to the Department.
23. He confirmed that the Applicant did this for his personal gain because he did not pay the scrap proceeds to the Respondent and that was not acceptable.

Respondent's 2nd Witness

24. The Witness introduced himself as Nkosivumile Gabayi (Gabayi). Gabayi testified under oath as follows: He was an employee of the Respondent based in Mthatha Depot. He worked as artisan grade A in Mthatha Depot.
25. He confirmed the signature on page 20-22 of the Respondent's bundle to be his.
26. She said that he was asked to write a statement and that was the statement as appearing on the above pages. He still stood by the statement as it was the true reflection of what happened.

27. In his testimony he said that Zepe called him and asked that he should make a braai stand. There was no paper work given to him as it should be. Zepe told him that he should do it even though there was no paper work. According to Gabayi, Zepe told him that the braai stand was for Ndamase in Lusikisiki.
28. Ndamase brought in the material and braai stand was done and painted, said Gabayi.
29. According to the witness, Tunzi visited the depot and saw the braai stand. The witness assumed that Tunzi thought that the witness was doing odd jobs during working hours. When the witness told Tunzi that Zepe authorized him to do the braai stand Tunzi said Zepe said he did not give such instruction. That is when the witness told Tunzi that there was no paper work even though he asked the Applicant for paper work. It was the Applicant that told him to continue without paper work. He did so because he was his senior and he obeyed the instruction.
30. The witness said that he had to convince Tunzi and made an example that Zepe would tell him to do the job even if there was no paper work. He told Tunzi that at some stage Zepe told him to do the burglars at Thembelihle rehab and there was no paper work. Only when they were sitting for PMDS he asked Zepe to give him something for the extra work he did.
31. At some stage in 2020 Zepe asked him to make a stampers for the project building. He collected him from home and he did the stampers as was asked to do so by Zepe. He was then taken back home, no paper work was given, the witness said.
32. Gabayi said a truck from Dees came to the depot and collected about three loads of scrap that was there.
33. The witness went on to say that as workers they were called by Zepe and showed them an envelope with R3000.00. Zepe gave the envelope to Maqinana who opened it, counted and said it was indeed R3000. Zepe told them that the money was given to them by Mr Maqokolo. The workers including the witness bought meet with all the money.
34. According to the witness, Zepe and Mbewu went to Hilcrest Spar and bought drinks including alcohol. Zepe gave them bread, drinks including alcoholic drinks that they could drink. It was still working hours when they ate and drank alcohol at the depot.

35. Gabayi confirmed during cross examination that there was a braai in Mthatha Depot and the money used for the braai was a R3000 given by Zepe in an envelope.
36. He also confirmed that Zepe told the workers that the money was from Maqokolo.
37. He reiterated that Mr Zepe brought alcohol in to the workplace and it was drunk at the workplace during working hours.
38. When asked if he also drank, he confirmed to have drunk the non alcoholic drink because he was not an alcohol drinker.
39. Gabayi said that he did not say the things he said for Zepe to be dismissed, in fact he did not want him to be dismissed because he was a good person.

Applicant's version

40. The witness introduced himself as Ndiphiwe Kenneth Zepe (Zepe). He took oath and testified that he was appointed by the Department of Public Works on 20 January 1989 until his services were terminated on 17 October 2024. During his tenure at the Department he grew in ranks until he was in a position of Depot Manager based in PSJ in September 2023. In total he worked for Public Works for 35 years without any hearing or written warnings.
41. It was his testimony that he worked in PSJ where they had projects from schools and he was also there to rescue the municipality. He was happy working in PSJ with his subordinates.
42. He said that he pleaded guilty at the hearing because at the time he committed these mistakes he was depressed. He lost his brother and his mother on the same year. The Respondent failed to support him. He committed the mistakes because he was not fit at the time.
43. It was his evidence that the Department never considered his circumstances like the fact that he was not fit at the time. He also had a clean record. He was not given any support by the Department when he lost his mother and brother on the same year.

44. He said that he was very disturbed when he got the letter of dismissal. He had children to support and soon he would be turning 60 years old. At least the Respondent could have given him a three months suspension without pay.
45. He went on to say he was guilty of the charges even during the proceedings he was still maintaining that he was guilty but he asked if the Respondent could retract the dismissal and give him at least three months suspension.
46. During cross examination he maintained that he could not recall how much he got from Dees for the scrap metal.
47. The witness maintained that he was guilty of the offence but, he was close to retirement and had a long service with the Respondent.

ANALYSIS OF EVIDENCE AND ARGUMENT

48. The Labour Relations Act no 66 of 1995 as amended (LRA) provides every employee with the right not to be unfairly dismissed. In any alleged unfair dismissal dispute, the employee must prove the existence of the dismissal, and the employer must prove that the dismissal was fair, in this case, there is no dispute about the existence of the dismissal. It is therefore the duty of the Respondent to prove on a balance of probabilities that the dismissal was fair in all respects.
49. Section 188 of the Labour Relations Act (LRA) provides guidelines for fair dismissal. To be fair, a dismissal must be for a fair reason and in accordance with a fair procedure. The Respondent therefore must prove the fairness of this dismissal considering the above provision.
50. In this case, I have considered all evidence as presented by the parties to make my finding. I may not have repeated the evidence verbatim but captured all relevant submissions. The closing arguments that were submitted by the parties have also been considered in arriving to the finding below.
51. Tunzi testified for the Respondent to give a clear picture of why did it take so long to conclude the investigation. The deeper the investigation got the more evidence was found. The Applicant was

not helpful in bringing the truth in that he still concealed the information regarding the amount of money received.

52. On the other hand Gabayi testified as the person who was personally involved in that, he was one of the employees who were presented with the alcohol by Zepe at the depot. He also gave testimony about Dees truck that came to pick up metal which was at the depot. Not that the Applicant refutes all these, but the Applicant is unhappy with being dismissed. The evidence of both witnesses of the Respondent was clear and it stood the test.
53. The Applicant on the other side pleaded guilty but was not happy that he was dismissed instead of being suspended for three months. His submission was that at the time of committing the mistakes he was depressed by the death of his brother and mother. He is also complaining that the Respondent did not show sense of caring in that EAP was not activated to assist with his health condition.
54. The Applicant ought to have known that his actions were malicious and no responsible manager could have done what he did. Particularly dishonesty, the Applicant carried on during these proceedings to play a victim of circumstances even though he did what he did for personal gain. At no stage did the Applicant offer to pay back the money that he made out of the Respondent's scrap sold to Dees. It is my considered view that the employee owes a duty of loyalty to the employer which includes honesty and sense of care while serving the employer.
55. In the closing arguments it is argued that he shows remorse, when one is showing remorse that should be done in its entirety. At no stage did he show any remorse for bringing alcohol at the workplace and open a drinking spree during working hours, instead he defended it by saying it was after 2. In my view, adherence to rules and regulations and in the Applicant's case, apply such rules so that his subordinates are reliable and obey the rules as employees is the employee's duty. The Applicant failed to carry out this duty.
56. The Applicant was hoping for a lesser sanction because he was close to retirement and had a long service with the Respondent. With his long service and his position as a manager, the applicant ought to have known that his actions were unacceptable and could lead to dismissal. The Applicant is pleading that the Respondent retracts the dismissal and give him a suspension without pay. I would understand and empathize with the Applicant in a case where he did all these acts

mistakenly. The fact that he still does not see a point of disclosing the amount he got from Dees even during these proceedings creates mistrust.

57. With regards to the evidence that he was depressed and unfit at the time he committed the acts of misconduct, the Applicant was not charged for non performance, but charged for misconduct. Misconduct is an act of malicious, improper, dishonest, unacceptable and nonprofessional behavior by an employee in the workplace. The Applicant's actions to sell the scrap metal belonging to the Respondent and not disclose to the Respondent is dishonesty. Further to this, the actions to coerce the employees to drink on duty is unprofessional. One of the witnesses, Gabayi was said that Zepe is dismissed, probably because he would let them do as they wished.

58. To prove that he was fit and competent, the Applicant's work was never faulted, instead it was applauded. Judging by the fact that the Respondent would put him in PSJ to rescue the Department means he was able and was competent. From the evidence presented. I am persuaded that the employee's conduct damaged the trust relationship between the employee and the employer particularly that the Applicant was in a position of trust.

59. Having considered the above analysis with all the material placed before me, I am not able to temper with the Respondent's decision to dismiss the Applicant for misconduct. In the premise, I find the Applicant's dismissal to be procedurally and substantively fair.

AWARD

60. The Dismissal of the Applicant **Ndiphiwe Peze** was procedurally and substantively fair.

61. The Applicant is not entitled to any relief.

62. I make no cost order.

Signature:



Date: **26 August 2025**

Commissioner: **Nowethu Ndiki**

Sector: **Public Service**