



IN THE GENERAL PUBLIC SERVICE SECTORAL BARGAINING COUNCIL

Held at Bloemfontein

Commissioner: K. Z. Garikue

Case No.: GPBC746/2024

Date of Award: 23/10/2025

In the Arbitration Hearing between:

PSA obo C. R. T. Papo

(Applicant)

and

Department of Statistic – Free State

(Respondent)

Applicant's representative: T. Morajane

Respondent's representative: E. Lamola



DETAILS OF PROCEEDINGS AND REPRESENTATION

1. This is an arbitration award issued in terms of section 138 (7) of the Labour Relations Act, as amended ("the LRA"). The dispute was referred for arbitration by Public Servants Association ("PSA") on behalf of the applicant to the General Public Service Sector Bargaining Council ("the Council"). The arbitration proceedings were heard on 07 & 08 August 2025, 04 & 05 September 2025 and were concluded on 01 October 2025. The proceedings were held at the respondent's offices in Bloemfontein.
2. In all the days, the applicant, Mr Collins Raymond Thabo Papo was present and represented by Adv Tebogo Morajane, instructed by PSA. The applicant's representative provided the proceedings with a letter from PSA to show that she was duly appointed to represent the applicant, as she forms part of the legal practitioners on its panel. The respondent, Department of Statistics South Africa – Free State was represented by Mr Edgar Lamola, its Director, Labour Relations.
3. The applicant party submitted bundles of documents and were marked A, B, B1, B2, B3 & B4. The respondent's bundle of documents was marked R. The bundles were purported to be what they presented and were admitted as evidence to the proceedings. Parties were allowed to call witnesses, chief examine, cross-examine and re-examine them.
4. At the end of the proceedings, parties agreed that they will submit their closing arguments in writing on or before 09 October 2025. I have received them and have been considered when writing this award. The proceedings were digitally recorded, and the record will be retained by the Council.

PRELIMINARY ISSUES

5. On 16 April 2025, the matter was scheduled to proceed as arbitration. The applicant was present and represented by Adv Tebogo Morajane and the respondent was represented by Mr Mike Mokwetli, former Head of Department at Public Works. The applicant's representative raised an issue that the respondent's representative did not have the right to represent the respondent as he was no longer an employee of the respondent and that he had resigned. She further submitted that the respondent's representative could not even represent the respondent in his capacity as a legal representative because he was struck of the roll since 2012.
6. The respondent's representative submitted that he was not representing the respondent in his capacity as a legal representative. He was representing the respondent since he retired from the Public Service and was the one who initiated for the respondent when it charged the applicant. He further submitted that he is drawing pension from GEPP, that is why he had a right to represent the respondent. A ruling was that he could not represent the respondent if he was no longer an employee.



7. The matter adjourned for the respondent to replace Mr Mike Mokwetli. The following day, 17 April 2025, the respondent was represented by Mr Mzwandile Hlanjwa to seek for a postponement. This was because the newly appointed representative for the respondent, Mr Edgar Lamola could not travel from Pretoria to Bloemfontein overnight on 16 April 2025. The postponement application was then granted.
8. The matter commenced on 07 August 2025 and parties had met to hold a pre- arbitration meeting before that date. Much time was spent on record to understand exactly what the applicant was actually challenging in his case. Both parties participated to clarify the applicant's challenge. This was done so to ensure that the respondent would respond exactly to what was the applicant's challenge when it started to lead its case.

ISSUES TO BE DECIDED

9. The existence of a dismissal is not in dispute. Therefore, I am required to determine both the procedural and substantive fairness of the applicant's dismissal. In the event that I find the dismissal to be unfair, I must determine the appropriate relief.
10. The applicant seeks reinstatement.

BACKGROUND TO THE DISPUTE

11. The applicant was employed by the respondent on 01 July 2002. At the time of his dismissal, he held a position of an 'Assistant Director, Finance: State Accountant' earning R43063.63 per month as basic salary. The applicant's dismissal was occasioned on 23 April 2024 after the respondent preferred the following charges against him

Charge 2

You are charged with allegation of misconduct of FAILING TO COMPLY WITH, OR CONTRAVENES AN ACT, REGULATION OR LEGAL OBLIGATION in that on or about 31st day of May 2021, alternatively for the financial year 2021/2022 at the provincial office in the Free State Statistics South Africa, you failed to comply with HRM internal circular number 2 of 2018 read with Determination and Directive on Performance Management and Development System of Employees other than members of senior management service for the implementation with effect from 1st April 2018 read also with section 16A(2) of the Public Service Act.

Charge 3

You are charged with allegation of misconduct of gross insubordination OF FAILING TO CARRY OUT A LAWFUL ORDER OR ROUTINE INSTRUCTION WITHOUT JUST OR REASONABLE CAUSE in that on or about 27th day of May



2021 at the provincial office in the Free State Statistics South Africa you failed to carry instruction of Mr. Pule Soke, who was your immediate supervisor to submit performance agreement of 2021/2022 in line with the internal policy regulating the performance agreement within the department of Statistics South Africa.

12. The applicant contends that he did not break any rule in the workplace in relation to the above charges. He further contends that the respondent failed to comply with the prescribed notice period of hearings when it issued the first notice to attend a disciplinary hearing. That according to him, denied him a right of representation. He furthermore contends that PSA was not properly consulted when he was charged because he was a shop steward at that time.
13. The respondent contends that the applicant has transgressed as alleged by the charges. It further contends that the notice period was adequate as the leading of evidence did not happen on the first day of the applicant's disciplinary hearing and only dealt with preliminary issues. According to it, PSA was properly consulted when the applicant was charged. It complied with the prescripts of schedule 8, code of good practice, item 4 and the respondent's resolution.

SUMMARY OF EVIDENCE AND ARGUMENT

Respondent's case

14. **Mr Mzwandile Hlanjwa ("Hanjwa")** testified under oath and stated that he is appointed by the respondent as a Director, Corporate Services since 2014. Some of his responsibilities are to ensure sound administration, good governance, compliance to prescripts and policies and inclusive of Performance Management Development System ('PMDS'). He is also responsible for labour relations issues within the respondent's employment.
15. He confirmed to know the applicant and submitted that he was charged and dismissed for not submitting his performance agreement ('agreement') for 2021/222 financial year cycle. He was referred to the Bundle B2, page 14 (B2,14) and submitted that the respondent complied with item 4 (2) of the code of good practice, schedule 8 ('Code'). It read as.. *Discipline against a trade union representative or an employee who is an office-bearer or official of a trade union should not be instituted without first informing and consulting the trade union.*



16. He was further made to read into record item 4(4) as...*In exceptional circumstances, if the employer cannot reasonably be expected to comply with these guidelines, the employer may dispense with pre-dismissal procedures.* He further confirmed that the applicant was a shop steward at the time of being charged. He referred the proceedings to R60 to show an email he sent to PSA on 27 October 2021 about the notification to consult PSA in relation to the applicant's matter. He read the letter he wrote on R61 on record.
17. He submitted that he wrote the letter to PSA because he was required to communicate. He referred the proceedings to R50, to show on paragraph 1 of HRM INTERNAL CIRCULAR NO. 7 OF 2021 that the due date to submit was 31 May 2021. He further submitted that the applicant had 2 supervisors at that time. The first supervisor, Mr Pule Soke ('Soke') made attempts to conclude an agreement with the applicant. Soke informed him that the applicant did not submit his agreement after their meeting. Soke then left the service of the respondent at the end of June 2021.
18. On 01 July 2021, Ms Sibonelo Pini ('Pini') became the applicant's supervisor and was instructed by him to conclude an agreement with the applicant. He was later informed that Pini met with the applicant to agree on certain Key Responsibility Areas (KRAs). There was still a disagreement after their meeting in October 2021. He referred the proceedings to R55, to show an email he wrote to the applicant informing him to be charged for non submission of an agreement for 2021/2022.
19. He submitted that a new function for municipality accounts had to be added to his KRAs. During 2020/2021 when the applicant had a problem with his agreement, a mediator was appointed to intervene and the applicant eventually signed it. According to him, for the applicant not to sign in 2021/2022 was a sign that he did not have any respect for PMDS.
20. He further submitted that in him consulting with PSA to discipline the applicant could be virtually, in writing or physical and confirmed that PSA had acknowledged the receipt of the letter he wrote to them. According to him, he complied with the item 4(2) of the code by writing the letter to PSA. His consultation ended there after he wrote that letter and PSA had acknowledged the receipt of it. Accordingly, PSA was aware of the respondent's intention to discipline the applicant.
21. He submitted that the notice period to inform the applicant of his disciplinary hearing was supposed to be 5 working days as stated on B2,8. He confirmed that the applicant received the notification on 23 June 2022 via email for a hearing to be held on 28 June 2022. He agreed that the days provided to the applicant were not in line with the prescribed 5 working days as there was a weekend in between. He confirmed that the hearing proceeded as planned on 28 June 2022 where parties exchanged documents and dealt with preliminary issues .
22. He further confirmed that the appointed chairperson of the hearing, Adv A. M. Ndiitwani was present on 28 June 2022. He submitted that he raised an issue to the respondent's representative (initiator), Mr Mike Mokwetli that the notification of the hearing was short. The hearing was then adjourned and did not proceed on that day, 28 June 2025 because of that. Further that there were no supporting documents. According to him, the trust and



working relationship is broken between the respondent and the applicant because it was not possible to allocate work to the applicant. The respondent further did not have a tool to measure the applicant.

23. He confirmed that the due date for the applicant to submit his agreement was 31 May 2025. He read into record the *HRM INTERNAL CIRCULAR NO.2 OF 2018* that the due date to submit agreements to all staff members was supposed to be 31 May of each year. He referred the proceedings to R50, to show that the *HRM CIRCULAR NO. 7 OF 2021* that it confirmed the due date to submit to be 31 May 2021.
24. Under cross-examination, he did not deny that he wrote a letter to PSA on R61. He confirmed that Mr Aubrey Nappie ('Nappie'), PSA official responded on B1,45 that they (PSA) received the notification letter. He further confirmed that consultation with PSA was in a form of a letter he wrote to it. He did not have any records of telephonic engagement with PSA regarding the applicant's disciplinary enquiry. He disagreed that his last consultation communication with PSA, was with the letter he sent.
25. According to him, the letter the respondent had sent to NEHAWU on R166 to consult it about instituting disciplinary action against its shop steward, is the same letter he sent to PSA about the applicant. He was asked to produce the same letter the respondent wrote to NEHAWU as a follow up to the letter sent on R166. In it, the respondent informed NEHAWU about the date, time and venue of the consultation meeting on R168. He did not have it and submitted that the respondent in consulting for the applicant, only relied on the letter it sent to PSA on B1, 44.
26. He was shown on B1,46 that his next communication with PSA about the applicant's disciplinary enquiry was on 23 June 2022 to Mr Nceba Baardman ('Baardman'), PSA official. He disagreed to the applicant's notion in that regard and submitted that there was a telephonic communication. He could not produce proof to that effect. He did not recall if he responded to the letter Baardman wrote to him on B1, 47 informing of his availability on 28 June 2025 (Date of hearing).
27. He did not have an answer when it was put to him that the email Baardman wrote, was to make the respondent aware that the respondent did not comply to the prescribed 5 working days notification period and that the applicant's representative would not be available. He submitted that parties met on 28 June 2022 to exchange documents and on that basis, the applicant's hearing did not proceed. Parties also dealt with preliminary issues. He confirmed that as per B1, 47, Baardman's letter to him, the preliminary issues were dealt with whereas the applicant was not represented.
28. He reiterated that the applicant did not want to do anything, but expected to earn a salary. He submitted that the additional work the applicant was allocated with of municipal accounts, was there before. He further reiterated that the applicant was disrespectful of PMDS in not submitting the agreement. He furthermore reiterated that, the applicant's supervisor, Soke had to share work amongst the 2 state accountants he had.
29. He was aware of the applicant's comments on B3,63 that he commented that... *The amount of work in line with the agreed KRA is not sufficient to meet the minimum requirements.* He submitted that the



applicant would refuse to perform work allocated by his supervisor, Soke saying that it was below his level. According to him, it was wrong for the applicant to do so because other state accountants would perform cashier work from time to time. He further submitted that when he personally assessed the applicant, he gave him a score of 1 instead of 3 because he did not perform anything.

30. The applicant disagreed to that score of 1. Accordingly, the respondent could not have 2 people performing one job as state accountants. He referred the proceedings to R53, to show an email written by Soke to the applicant on 27 May 2021 inviting the applicant to a meeting to be held on 31 May 2021 at 10:00 am. He confirmed that the 2 *HRM CIRCULARS, 2018 and 2021*, they all prescribe for all the respondent's staff members to submit their agreements before the 31 May of each year.
31. He agreed that a mediator should have been appointed if there were disagreements. He submitted that the mediator's work was to assist parties to arrive at an agreement and sign for it. He agreed that the email the applicant wrote on 24 May 2021 to Soke on B1,2, was addressing the obstacles that he was facing into signing the agreement. Soke replied to him on 27 May 2021 that KRA2 and KRA4 to be removed by him. He agreed that when Soke sent this email, he was still discussing with the applicant about his agreement.
32. It was put to him, that as per B1,1, the applicant sent his 2021/2022 draft agreement to Soke on 30 May 2021 via email, he replied that Soke would speak for himself. He was referred to B1,20 to be shown that the applicant sent an email to both himself and Soke on 29 May 2021, where according to him (the applicant) his agreement was still being discussed. His comment was that submission date was supposed to be on 31 May 2021.
33. He confirmed that the mediator could have been considered if there was no agreement as per B2, 48. He reiterated that the applicant did not comply with the submission date of 31 May 2021. Accordingly, the applicant was insubordinate because he never attended the meeting invited by his supervisor, Soke. He was shown that on B1,22, the applicant had expected the involvement of a mediator as happened the previous year.
34. He was referred to B1,41 to be shown that the applicant had complained to his supervisor that 2012 job description was used to assess him. It was put to him, that in terms of the respondent's policy, job descriptions should be revised every 5 years. He confirmed that he was the one who decided that the applicant's issue at that time, was not necessary for a mediator.
35. He explained that since he wrote a letter to PSA about consultation and he was informed that Baardman was to be the applicant's representative, he expected an engagement from him (Baardman). He confirmed that he had since informed PSA about the respondent's intention to charge the applicant on 27 October 2021 and the charges were levelled against the applicant the following year.



36. **Ms Sibonelo Pini ("Pini")** testified under oath and stated that the email on B1,41, is hers. She wrote it to Hanjwa on 25 October 2021 informing him that the applicant was not willing to finalise his agreement. At that time, the applicant was reporting to her. She submitted that the due date to submit agreements was 31 May 2021. She was informed that the applicant's agreement was not concluded when she came in July to act for Soke. She then had to draft a new one with the applicant.
37. She submitted that the applicant eventually submitted his draft agreement after some disagreements but she did not get a copy. She further submitted that the applicant was complaining about an old job description for 2012. The applicant wanted to be assessed based on a job description that was not older than 5 years and the respondent did not have it. She furthermore submitted that the applicant did not sign the agreement even if they had an understanding.
38. Under cross-examination, she agreed that the PMDS is between an employee and his or her supervisor. She did not deny that she was part of the emails on B1, 22 and B1,23 where the applicant's agreement was discussed. The exchange of emails were on 26 July 2021. She did not have a comment when she was asked whether during her engagement with the applicant, a mediator was considered.
39. She further did not have a comment when she was asked if according to the emails, did the applicant show any unwillingness to sign. She did not deny that what the applicant was arguing about the weights, was part of the assessment process. She confirmed that in all the emails she sent, she wanted Hlanjwa to be involved all the way when she dealt with the applicant's agreement.
40. **Mr Pule Joseph Soke ("Soke")** testified under oath and stated that he was the applicant's supervisor before he left the respondent's services on 30 June 2021. He submitted that every year the respondent's employees are supposed to conclude their agreements with their supervisors. He further submitted that employees' performance must be assessed so that they are not paid for doing nothing.
41. He explained that good performers would be rewarded with a bonus and in other instances, a notch would be raised. He confirmed that what is found on R24-26, is the mediation report between himself and the applicant for 2020/2021. A mediator was invited in that year because he could not agree with the applicant about his agreement. As a result they both signed for that disagreement. The mediator's name was Ms Wessels who was appointed at that time.
42. He confirmed that they (himself and the applicant) eventually found each other through a mediator and the agreement was signed. He further confirmed that the applicant was charged because of the HRM CIRCULAR NO.7 OF 2021 found in R50 where it prescribed the due date to submit the agreements. The due date thereof was 31 May 2021.
43. He referred the proceedings to R53, the applicant's email to him, to show that the applicant was raising concerns of the previous year when the mediator was involved. He submitted that the applicant's concerns were his views and he held a different one to his. He confirmed that in the same page, the



applicant was instructed to come to a meeting to discuss his draft agreement on 31 May 2021. The applicant did not honour the instruction or the invitation.

44. He further submitted that the meeting he invited the applicant to, did not materialize and he then resigned. He confirmed that it was only the applicant who did not submit before due date in that year. He explained that the respondent could not appoint a mediator at that time like the previous year because the disagreement was not signed by both of them. Accordingly, if the disagreement was signed, a mediation process would have followed.
45. Under cross-examination, he reiterated that when he left the respondent's services, the applicant had not submitted anything. He did not deny that as per the charges that were levelled against the applicant, it was based on the meeting he had invited him on 31 May to discuss his agreement. He did not deny that in the email he sent to the applicant on R53, he did not indicate the meeting venue.
46. He confirmed that the last time he was involved with the applicant's agreement was on 27 May 2021 when he sent the applicant an email inviting to a meeting. He was not sure if the email on B1, 19 was sent by the applicant to him on 30 May 2021. In it, the applicant sent him his draft agreement. He was further not sure if the applicant's email was to further discuss his agreement.
47. He submitted that he was informed that the applicant was working from home on 31 May 2021. He denied that the applicant was at work on 31 May 2021 because according to him, he could have come to the meeting. His office was next to the applicant's office cubicle. He was in his office waiting for the applicant to arrive and he concluded that he was not coming.
48. He submitted that a mediator was not considered as an option because there was no point where he had signed with the applicant about a disagreement. He agreed that he wanted the applicant to remove certain KRAs for them to finalise his agreement on 27 May 2021. He reiterated that a formal document about a disagreement was needed to involve a mediator, signed by both parties.
49. He confirmed that all meetings with the applicant were held at his office. He reiterated that the applicant did not comply with what he had expected from him to come to a meeting. According to him the applicant was always a problem like he did the previous year when the mediator was involved. In that year, the applicant was not willing to sign his agreement.
50. **Adv Azwidihwi Ndiitwani (Azwidihwi)** testified under oath and stated that since 1998, he has been dealing with industrial relations work investigating cases and chairing disciplinary hearings. He confirmed that on R63, is his appointment letter as the applicant's disciplinary hearing chairperson by the respondent. He signed the letter on 27 June 2021 and the hearing was supposed to proceed the following day on 28 June 2021.
51. He submitted that the hearing did not proceed on 28 June 2022 as per B22 notification because he was not available. In that week, he had to organize his mother's burial. He further submitted that the hearing commenced on 29 September 2022 as per R65. He further submitted that the applicant was not



represented at that time and he raised a preliminary point that PSA was only informed of his hearing as per R66, para 2.2.

52. He furthermore submitted that Baardman came at a later date to represent the applicant. He confirmed that when he signed the preliminary point ruling on 04 October 2022 as per R68, the applicant's actual hearing had not commenced, even the pleading part was not done yet. After dealing with all the preliminary points, he ruled that the matter would proceed on merits on 03 and 04 May 2023.
53. He disagreed that the applicant was prejudiced in handling his disciplinary hearing because when he dealt with some preliminary points, he was not represented. Further that at that time, the merits were not dealt with. He confirmed that the applicant was represented by PSA when the hearing was concluded. He submitted that the dismissal sanction he had arrived at after finding the applicant guilty on charges 2 and 3, was based on various facts. He referred to the respondent's disciplinary code and found that the transgressions were gross.
54. According to him, it was important for the respondent's employees to comply with the PMDS so that they could be measured. He further submitted that the applicant could have complied to submit his agreement before due date and further that the trust relationship between him and the respondent was broken for that.
55. Under cross-examination, he submitted that he issued a preliminary point ruling in October 2022. It was put to him that the hearing commenced on 28 June 2022 as per Hanjwa's testimony. On that day, preliminary issues were dealt with. He was referred to B1, 47 to show that Baardman had sent an email to Hlanjwa on 27 June 2022 to indicate his unavailability on 28 June 2022. He did not have a comment.
56. He submitted that as per R82, Baardman was representing the applicant and was later replaced by Colette. He confirmed that the applicant was not found guilty on charge 1. He submitted that if he was present on 28 June 2022 and the applicant had raised that, given 2 days to prepare was not enough, he would have agreed with him. Accordingly the respondent was supposed to comply with the prescribed 5 working days to prepare for a disciplinary hearing.

The applicant's case

57. **The applicant** testified under oath on his behalf. He submitted that the issue of being paid for doing nothing came as a shock to him when Hlanjwa testified. According to him, in the past 22 years of his service, he has been diligent. He started to have challenges when Soke came in as his supervisor. The amount of work allocated to him started to diminish. As 2 state accountants, they had to work the same thing and that resulted in them rotating.



58. He further submitted that the last job description he was provided with by the respondent was for 2009 since he started working. He kept on asking his supervisor to be given work to do. He was made to read a paragraph on B1,1, an email he wrote when was required to draft an agreement. He complained about gaps that prevented him to conclude his draft agreement. According to him, charge 3 relates to the email Soke sent to him on B1,1 on 27 May 2021.

59. He was made to read the email as....*Good day*

The points you are making in KRA2 and KRA4 are your opinion and not facts and hold a different view on them, however please remove the all activities you highlighted below from your performance agreement.

Please finalise your draft so that we can have a discussion on it.

*I hereby invite to meeting to discuss your draft performance agreement on **31/05/2021 at 10:00am.***

60. According to him, Soke in the email, did not specifically state the date to finalise the draft agreement. Accordingly he had already submitted his draft agreement as per the email he sent on 30 May 2021 to Soke and also copied Hlanjwa on B1,1. He submitted that the instruction is Soke was to submit a draft agreement not a performance agreement as according to him, they were still discussing.

61. He referred the proceedings to B1,4-13 to show a draft agreement he had submitted. In it he was instructed to remove certain KRAs and he complied. He confirmed that he did not meet with Soke on 31 May 2021. He submitted that after he submitted his draft agreement on 30 May 2021, he went home to prepare for the following day's meeting with Soke. On 31 May 2021, he arrived at work and sat at his cubicle (working area) next to Soke's office. According to him, no one had seen Soke at work on that day.

62. Soke came out of his office after a while and informed him that the meeting was over as he failed to attend it. He then realised in his email that Soke had actually sent a link on 30 May 2021 for their meeting on 31 May 2021 as per B1,15. He responded to him on 01 June 2021 as per B1,16 that the email sent by Soke did not specify date and time of the meeting. He confirmed that prior this, there were other engagements between himself and Soke regarding his draft agreement as per B1,19. Soke had invited him to a meeting on 21 June 2021.

63. He was referred to B2,30 paragraph 4 and his understanding of it, was that if the respondent's employee and a supervisor cannot reach an agreement about the performance and sign, then a mediator will be appointed within 30 days. The main aim is to develop an agreement to be signed. According to him, on 31 May 2021, he had a disagreement with Soke and the respondent could have appointed a mediator.

64. He submitted that the previous year, where the mediator was appointed for his agreement, nothing was submitted in order for it to be available. He referred the proceedings to R27 to show an appointment letter of the mediator for his previous year assessment. He further submitted he and Soke did not sign



anything for the availability of a mediator. According to him, a mediator should have been appointed within 30 days.

65. He confirmed that as per Hanjwa's email on R38, his agreement was not yet signed on 18 October 2021. At that time he was reporting to Pini. He disagreed that the trust relationship between himself and the respondent is broken because of this happening. It is only this issue of an agreement. He confirmed that he had asked for revised job description several times without success. He submitted that this whole thing has affected his pay progression.
66. On procedure, he submitted that he received a notification to attend his disciplinary hearing was sent on 23 June 2022 by Hlanjwa via email as per B1,46. The hearing was to be held on 28 June 2022. According to him, the number of days that were there for him to prepare was 2 days in accordance with the respondent's prescripts of 5 working days. He received it physically on 28 June 2022 when he arrived for his hearing. At the hearing he raised an issue that he was not properly served.
67. He further submitted that as per B1,47, his representative, Baardman had sent an email to Hlanjwa on 27 June 2022 to indicate his unavailability on 28 June 2022. Baardman in his email also made Hlanjwa aware that the respondent was not complying to the prescribed 5 working days to prepare. He confirmed that indeed he attended the hearing alone without representation.
68. At the hearing, he raised preliminary issues about how he was served and that he was not represented. He asked for a postponement and was not granted. He was requested to plead and Soke as the respondent's witness was chief examined. He could not cross-examine Soke because he was not represented. The hearing was adjourned for that purpose.
69. When the hearing resumed on another day, he was then represented by Baardman. He (Baardman) raised a preliminary point to be provided with the recordings of the previous sitting for him to perform cross examination. That was denied and Baardman proceeded to cross examine Soke. Baardman did not represent him until the end as he wasn't replaced by another representative.
70. Under cross-examination, he confirmed that when he ultimately signed the agreement the previous year after the mediator intervention, a 2009 job description was used. He submitted that he had raised the issue of job description even when the mediator was involved the previous year. He could not sign the agreement for 2021/2022 because issues he had raised the previous year were not resolved.
71. He did not deny that he had signed his agreement for 2022/2023 even if his issue are still pending. There was an understanding that his issues would be resolved when the new chief director was appointed. He agreed that he was aware that the closing date to submit agreements was 31 May 2021. He confirmed that on that date, he had not submitted his agreement, but had submitted his draft. Accordingly there was a disagreement between him and Soke. He submitted that he did not follow the instruction of Soke



on 31 May 2021 because it was not clear. He reiterated that he waited for Soke at his cubicle to enter his office so that their meeting about the draft agreement could happen.

72. He further submitted that he did not knock at his door office because no one had seen him at work when he asked so. He further reiterated that on 31 May 2021, there was a disagreement about his draft with Soke. He furthermore submitted that the disagreement was because of he was given cashier work and it was below his appointment. He reiterated that job descriptions should be revised every 5 years.
73. He confirmed that it was wrong for the respondent not to comply with the prescribed 5 working days to prepare for a hearing. According to him, he was not properly served by Hlanjwa via email. Accordingly he was supposed to be served physically and sign the receipt of the notification.
74. He was referred to R164 to show him a letter the respondent had sent to NEHAWU with the intention to discipline its shop steward. He was further referred to R 166 to show that NEHAWU responded to the respondent to schedule a meeting. It was put to him, the same procedure was followed by the respondent to consult PSA in contemplating to discipline him.
75. He agreed that he had attended a disciplinary hearing on 28 June 2022 in order for him to comply to the notification. He insisted that the chairperson was present during his hearing on 28 June 2022. He referred to R63 to show the letter appointing the chairperson on 27 June 2021 for a hearing to be held on 28 June 2021.
76. He did not have an attendance register for the hearing on 28 June 2022, but insisted that he completed it together with everyone. He reiterated that the reason he asked for a postponement on 28 June 2022, was because he was unable to represent himself. He did not know that the chairperson issued a preliminary issues ruling off issues he had raised on 04 October 2022.
77. It was put to him that on that day, the hearing had not commenced and he had no comment. He reiterated that the date of the hearing was on 28 June 2022. He confirmed that Hlanjwa testified that on 28 June 2022, preliminary issues were addressed. He further reiterated that as of 31 May 2021, issues he had raised about his draft were still there.
78. **Raymond Sandy Matsemela ('Raymond')** testified under oath and stated that he was Assistant Director, Human Resource department of the respondent. He submitted that as per B4,12, the role of the job description is to maintain accuracy and relevance to operations. It is also used for job evaluations and to develop agreements.
79. He further submitted that if there is a dispute about an agreement, a mediator must be appointed. He confirmed that in the past, a mediator was appointed for his draft when there was a disagreement. At that time, there were no signatures required from him and his supervisor to call a mediator. He disagreed that disciplining an employee for a dispute about his or her agreement is the correct way to operate. Accordingly, if there is a disagreement, mediation is the next step.



80. Under cross-examination, he confirmed that he terminated his services in February 2022. He confirmed that as HR official, he was responsible for job evaluations. It was put to him that job evaluations had nothing to do with HRM circulars. His comment was that, in provinces, they work with all of them. He agreed that if he had refused to sign an agreement, a disciplinary enquiry would follow against him.
81. **Nceba Baardman ('Baardman')** testified under oath and agreed that he was aware of Hanjwa's email on B1,46 to him and the applicant on 23 June 2022. According to him, it was meant to notify him and the applicant about the applicant's disciplinary hearing as per the contents of it where also the respondent's bundle was attached. He confirmed that before the email was sent, he had not received anything about the applicant's case from the respondent.
82. He submitted that there was an email sent by Hlanjwa to Nappie (the other PSA official) consulting PSA about the applicant's case. As per B1,45, Hlanjwa sent an email on 27 October 2021 and Nappie responded the same day. In his response, he acknowledged the receipt of the notification and advised that he (Baardman) would be responsible for handling the applicant's case.
83. He submitted that as per B1,46, an email from Hlanjwa on 23 June 2022, prior to it, he never received any communication pertaining the applicant's case. The last communication from the respondent in relation to the applicant's case was on 27 October 2021 when Nappie informed that he would be handling the matter going forward. According to him, he had expected communication from the respondent about a meeting to discuss way forward before the actual hearing.
84. He further submitted that an email he sent as per B1, 47 to Hlanjwa on 27 June 2022, was to make him (respondent) aware that it was not complying with the resolution. According to him, the respondent failed to comply with the prescribed 5 working days for the applicant to prepare for his case. In this instance, it gave the applicant only 2 days to prepare. He was also asking for a postponement as he would not be available.
85. He confirmed that the next thing he was involved with the applicant's case was in 2022 when the case was part heard. He came in during cross examination of Soke and requested the previous records to be prepare and was not successful. He did not represent the applicant until the end of the disciplinary hearing because he was then suspended.
86. Under cross-examination, his understanding of the letter from Hlanjwa to Nappi on B1,44 was that the respondent was intending to charge the applicant. He agreed that PSA had received it and acknowledged the receipt of it. He expected the respondent' to liaise with him after the email sent by Nappi to Hanjwa on 27 October 2025.
87. He reiterated that there was no action from the side of the respondent since it knew that he would be representing the applicant. He could not raise an issue of consultation with Hanjwa in an email he sent



to ask for a postponement on 27 June 2022 because he wanted to address such a thing before the hearing's chairperson.

88. He reiterated that for the applicant to be given 2 days to prepare was not complying with the resolution. He agreed that he cross examined Soke and that submitted that he was not available during his chief examination.

ANALYSIS OF EVIDENCE AND ARGUMENTS

89. For the sake of brevity and as per the requirements of the LRA in Section 138(7) (a), only the salient points that assisted me in determining this dispute will be mentioned in the award. However, it must be noted that despite this, all the submissions have been considered in detail, including the closing arguments in the writing of the award.

90. Section 188 of the LRA stipulates that a dismissal that is not automatically unfair, is unfair if the employer fails to prove that the reason for dismissal is a fair reason related to the employee's conduct and that the dismissal was effected in accordance with a fair procedure. It is further stipulated in section 192 of the LRA that if the applicant has established the existence of a dismissal, the burden of proof, on a balance of probabilities that the applicant's dismissal was procedurally and substantively fair, rests with the respondent. The applicant challenged both procedure and substantive fairness of his dismissal.

91. In determining the substantive fairness of a dismissal, I am guided by Schedule 8, Item 7 of the Code of Good Practice: Dismissal. The aspects that I need to consider are the following:

- a) whether or not the employee contravened a rule regulating conduct in, or relevance to, the workplace; and
- b) if a rule or standard was contravened, whether or not-
- c) the rule was a valid or reasonable rule or standard;
- d) the employee was aware, or could reasonably be expected to have been aware, of the rule or standard;
- e) the rule or standard has been consistently applied by the employer;
- f) dismissal was an appropriate sanction for the contravention of the rule or standard.

92. In terms of charge 2, it was alleged that the applicant had failed to comply with Circular no 2 of 2018. It was found that the respondent at some point referred to Circular no 7 of 2021 in relation to the applicant not complying. For the *mere* fact that the 2 circulars were to inform the respondent's employees that the



due date to submit their agreements was to be 31 May of each year. It means for purposes of this award, the due date was 31 May 2021. Hlanjwa confirmed at the beginning of his testimony that the applicant was charged and dismissed for not submitting his agreement for 2021/2021 financial year cycle.

93. The reasons the applicant advanced for not complying to the 2 circulars, was because there were still some disagreements with Soke, his supervisor at that time. As per R53, Soke wrote an email to the applicant on 27 May 2021 inviting the applicant to a meeting to be held on 31 May 2021 at 10:00 **to discuss draft performance agreement**. Soke specifically stated that the applicant should finalise his draft so that they could have a discussion on it. The meeting did not proceed as planned and there is no need to determine as to who was wrong for that. Soke then left the services of the respondent at the end of June 2021 and Pini came in on 01 July 2021.
94. What is surprising here, is that Pini was instructed to conclude an agreement with the applicant even beyond 31 May 2021 after she came in as the applicant's supervisor. This according to me corroborates what Soke had invited the applicant for, *to discuss a draft agreement*. A further instruction was later issued by Hlanjwa to charge the applicant for not submitting his agreement. It was known when Soke left that there was no agreement. It appears that the applicant in this charge was punished for not meeting Soke on 31 May 2021. It is my considered view that since Soke's invitation to a meeting was to discuss the applicant's draft, it goes without saying that the applicant did not fail to comply with the deadline of submitting his agreement on 31 May 2021.
95. There was a provision to involve a mediator where a supervisor and supervisee could not agree. The respondent argued that there had to be signatures from both parties to confirm a disagreement. I do not see where the respondent satisfied itself between 31 May 2021 until it decided to charge the applicant to proof that there were no signatures to could consider mediation. Based on the above reasons, it is my finding that the respondent has failed to discharge its onus to proof charge 2.
96. Charge 3 relates to the applicant allegedly being insubordinate towards Soke by failing to carry out lawful order of failing to submit his agreement of 2021/2022 in line with the internal policy on 27 May 2021. It is still not clear as to which policy did the respondent refer to. If I were to align myself with the email Soke sent to the applicant on 27 May 2021, was not to say submit a performance agreement, but to say.. **hereby invite you to meeting to discuss your draft performance agreement on 31/05/2021 at 10:00 am**. This is contrary to the charge and consequently the respondent failed to discharge its onus to proof charge 3.
97. It should be noted that as it was expected for the respondent to have a fair reason to dismiss, all aspects of the charges it used to dismiss the applicant had to be proved. In this instance, it failed to do so. A mediator was not involved where it could have been considered. I mean the respondent had an ample time to exhaust all avenues that were available at its disposal, than to rush into laying charges against



the applicant. There is nothing that was presented before me to suggest that the applicant had been gross insubordinate when he had to conclude his agreement for 2021/2022.

98. In **SAMMU obo Felicia v CCMA and others (JR 2195/14 (2016) ZALCJHB 338**, the Court enunciated the principles that govern insubordination. It held that the employee's defiance must be 'gross' to justify dismissal. It held further that the insubordination must be serious, persistent and deliberate, and that the employer must adduce proof that the employee was guilty of defying an instruction. The court's view was that for an employee's conduct to constitute gross insubordination evidence is required to demonstrate a persistent and wilful refusal to comply with an instruction, which constitute gross insubordination.
99. Based on the above jurisprudence, I could not find any evidence of the applicant being insubordinate or gross insubordinate towards Soke. The issue was that the applicant had certain things he wanted to be addressed about his draft agreement. There was a provision to deal with that if there was a disagreement, but was ignored by the respondent. Instead of all things, charges were levelled against the applicant.
100. On procedure the applicant argued that the respondent did not comply with the prescribed 5 working days when it issued the first notification to attend a disciplinary hearing. According to him, that denied him a right of representation on that day. It is common cause that the applicant was given 2 days to prepare. Hlanjwa confirmed that the applicant was served via email on 23 June 2022 for a hearing to be held on 28 June 2022. He further confirmed that the hearing proceeded on 28 June 2022. Accordingly if that happened, the respondent indeed failed to comply with its prescripts.
101. It cannot be denied that, that on its own denied the applicant a right of representation on 23 June 2022. Hlanjwa was aware of the email sent by Baardman on 27 June indicating his unavailability. Nothing could have stopped him to postpone the hearing on his own accord after being aware of that. Preliminary issues were dealt with, where the applicant was not represented as submitted by Hlanjwa. According to me, preliminary issues play an important role during the actual hearing and subsequently I find that the applicant was affected in that regard of not being represented.
102. Azwidihi's testimony that the hearing commenced at a later stage does not change the fact that the applicant was given 2 days to prepare for his disciplinary hearing and that affected him not being represented on that day. Accordingly his testimony did not assist in relation to the applicant's challenge. It should be noted that most of what the respondent responded on about the applicant's challenge of the short notification, was irrelevant. The respondent was supposed to deal exactly with what the applicant had raised as his challenge.
103. The applicant's further argument was that PSA was not properly consulted when the respondent decided to charge him because he was a shop steward at that time. Hlanjwa confirmed that the last communication he had with PSA in relation to the applicant's case, was when he sent an email to Nappi.



Baardman also confirmed that he never received any communication from the respondent until the applicant was charged.

104.Consultations with PSA and NEHAWU were compared to, on how the respondent consulted for disciplining their shop stewards. For NEHAWU, there was a follow up letter from the respondent to schedule a meeting to discuss a matter. In my view, Baardman was reasonable to expect such a meeting with the respondent before it could charge the applicant. I mean from 27 October 2021 when Hlanjwa sent an email to Nappi until 23 June 2022 when the applicant was officially charged, was a long time.

105.I do not understand how Hlanjwa expected Baardman to make a follow up with him whereas, it is the respondent who initiated the consultation. I think for PSA to acknowledge the receipt of the email was enough. It could not do anything further than to wait for a formal meeting to discuss the way forward. With HEHAWU, such an invitation to a meeting was there. So the applicant should be believed that PSA was not consulted properly. Consequently, I conclude that the applicant's dismissal was procedurally unfair.

106.Having pronounced that the applicant's dismissal was both procedurally and substantively unfair, I must now turn to the appropriate sanction. For that purpose, I am guided by section 193 of the LRA. The applicant submitted that he wanted reinstatement. Accordingly, there is nothing that may persuade me not to grant the relief the applicant has prayed for. I therefore find reinstatement to be an option in this instance, and it will be retrospective. (23 April 2024 to 31 October 2025) = 18 Months – R43 063.63 × 18 = R865 134.00.

AWARD

107. I make the following award:

108.The dismissal of the applicant was both procedurally and substantively unfair.

109.The respondent, Department of Statistics, Free State to reinstate the applicant to his position of Assistant Director, Finance: State Accountant.

110. The applicant must report for duty on 01 December 2025.

111.The respondent is ordered to pay the applicant an amount of R865 134.00 on or before 15 December 2025.



112.Should the respondent fail to comply with this award, the applicant may invoke prescripts of section 143 of the LRA.

GPSSBC Commissioner: K.Z. Garikue



Signature: _____