



GENERAL PUBLIC SERVICE  
SECTOR BARGAINING COUNCIL



**Physical Address:**  
260 Basden Avenue,  
Lyttelton, Centurion,  
Pretoria

**Postal Address:**  
PO Box 16663,  
Lyttelton, 1040

**Tel:** 012 664 8132  
**Web:** <http://www.gpsbc.org.za>

# ARBITRATION AWARD

Panelist: Mr. Khuduga Tlale  
Case No.: GPBC716/2022  
Date of Award: 30 March 2023

**In the ARBITRATION between:**

**PSA obo TM Ndumo**  
(Union / Applicant)

**And**

**Department of Agriculture & Rural Development – Free State**  
(Respondent)

**Union/Applicant's representative:** Mr. Nelson Mateza  
**Union/Applicant's address:** P.O. Box 7673  
Bloemfontein  
9300  
**Telephone:** 051 403 1300  
**Telefax:** 051 4031315/19  
**Email:** [nelson.mateza@psa.co.za](mailto:nelson.mateza@psa.co.za)

**Respondent's representative:** Adv. TL Manye  
**Respondent's address:** n/a  
**Telephone:** n/a  
**Email:** [lombaardc@dard.gov.za](mailto:lombaardc@dard.gov.za)

---

## ARBITRATION AWARD

---

### Details of hearing and representation

1. The arbitration hearing between PSA obo TM Ndumo ("the Applicant") and Department of Agriculture & Rural Development - Free State ("the Respondent") was held on 09 September 2022 and concluded on 13 March 2023 at the Respondent's Offices in Glen. The Applicant appeared in person and Mr. Nelson Mateza, union official; represented him and Adv. TL Manye, instructed by the State Attorneys in Bloemfontein, represented the Respondent.
2. These proceedings were conducted in English and were manually and digitally recorded. The parties agreed to submit written heads of argument on Monday, 20 March 2023. They both submitted.

### Issues to be decided

3. The issue to be decided is whether the Respondent committed an unfair labour practice relating to unfair suspension when they precautionary suspended the Applicant.

### Background to the issue

5. The Applicant dispute related to an alleged unfair precautionary suspension. It was the Applicant case that he was precautionary suspended on 22 March 2022 with full pay. He was served with the notice of the disciplinary inquiry ("the inquiry") that included the allegations against him on 20 May 2022, for the inquiry to be held on 01 June 2022. The Applicant was still on the precautionary suspension. At the time of his precautionary suspension, he earned R93 733, 72, per month.
6. The Applicant referred this unfair labour practice dispute to the Council on 30 May 2022, where it remained unresolved at conciliation on 22 June 2022. A certificate of non-resolution was issued, and the dispute was then referred for an arbitration on 24 June 2022.
7. Both parties submitted common bundle of document that was marked bundle "A".

### Survey of evidence

Applicant

First witness: Mr. Thomas Mokemane Ndumo

8. The witness testified under oath that he is the Applicant in this matter. He is employed by the Respondent as the Chief Director: Corporate Services. The Respondent failed to comply with clause 2.7(2)(c) of Chapter 7 of the SMS Handbook (SMS Handbook) as per "A25-A36". Documents "A37-A57" was the Public Service precautionary suspensions guidelines. According to these guidelines, the precautionary suspension should not exceed sixty (60) calendar days and his suspension exceeded sixty (60) days. He did not report for duty as per the guidelines.
9. It was not true that he would interfere with the Respondent witnesses if the suspension was uplifted. The issue of his suspension was raised with the chairperson of the inquiry, and he ruled that he had no authority about his suspension and he did not extend the suspension. He had been on a precautionary suspension for eight (8) months. This suspension damaged his image, integrity, and reputation. He could not be able to talk to his colleagues and subordinates. He was a family man and the suspension affected his health negatively. Not only that, but he had a chronic illness due to this suspension.
10. Under cross-examination, he stated that the inquiry commenced on 01 June 2022. The Respondent must hold the inquiry within sixty (60) days, and the chairperson of the inquiry must decide on further postponement. The inquiry commenced outside six (60) days, and the Respondent conduct amounted to unfairness. This proceeding was about the fairness of his suspension, not the reasonableness of it. It was a casting stone in the Public Service to hold the inquiry of a suspended employee within sixty (60) days.
11. He would not have any problem to work with anyone if his precautionary suspension was uplifted. His suspension was with full salary, but it had a negative impact on him as a person. This suspension harmed his dignity because his colleagues perceived him as a different person. It would be difficult for one to build his image and reputation after this conduct. He is in the mid-fifties and this conduct impacted negatively on his health.
12. He stated that his reputation and image built his career. He confirmed that he was not found guilty at any inquiry so far. He maintained that this suspension damaged his image and reputation. Furthermore, he stated that whether he would be found guilty or not, the harm would always be there.

The community members asked him whether he was not supposed to be at work, and he had to explain to them what happened. He stated that his suspension was linked with Vrede Farm. He further stated that his suspension had nothing to do with Vrede Farm or any criminal charges. Not only that, but he stated that his dispute was about the non-compliance with sixty (60) days and the way he was treated by the Respondent.

13. Under re-examination, he stated that clause 2.7(2)(c) of the SMS Handbook does not give the Respondent flexibility. The unfairness triggered in immediately after sixty (60) days lapsed. He stated that he would not interfere with the Respondent witnesses if the suspension was uplifted. He only worked for the Respondent in his entire career.

Respondent

First Witness: Ms. Catherina Elizabeth Lombaard

14. The witness testified under oath that the Respondent employed her as a Director: Human Resources Management. She is reporting directly to the Applicant. Their working relationship was initially good, and it changed when he became aware that she was going to be the State witness in his criminal case. The disciplinary action was not instituted against the Applicant when their working relationship became sour. She was also the Respondent witness in the Applicant inquiry. She does not think they would have a cordial relationship anymore.
15. The Applicant was placed on a precautionary suspension on 22 March 2022. The conditions of his suspension was not to contact the Respondent employees. The Applicant sent her WhatsApp messages that were work related on 02 June 2022, 02 August 2022, and 18 August 2022. The Applicant contacted the Respondent employees while on the precautionary suspension. If the Applicant return to work, it would be more problematic. The Applicant had a tendency of communicating directly with her subordinates without her knowledge.
16. Under cross-examination, she confirmed that the Applicant was not allowed to communicate with the Respondent employees. The WhatsApp messages sent by the Applicant had nothing to do with this dispute. Document "A13-A14" was the Applicant precautionary suspension letter. Document "A26" was the extract of the SMS Handbook. Document "A40" bullet 7 states that the employee must return to work should the hearing not be concluded within 60 calendar days.

17. Under re-examination, she stated that if the Applicant return to work, their sour working relationship would continue.

Second Witness: Mr. Takise Janki Masiteng

18. The witness testified under oath that he is employed as the head of department. He knew the Applicant as the Chief-Director: Corporate Services, and he reported directly to him. The Applicant was on a precautionary suspension with full pay. He was suspended on counts of misconduct relating to fraud and improper conduct. The allegations levelled against the Applicant were serious. Document "A13-A14" was the precautionary suspension letter, and he was the author of the said letter. The conditions of his suspension were not to enter Respondent premises and also not to communicate with the employees.
19. The contents of document "A58" were brought to his attention. They had a mutual relationship as a person who grew within the Respondent ranks. The Applicant started to have a problem with him, when he was promoted to his current position. He even made him aware that he was his project. It would be a misleading to say they had a good working relationship. The Applicant continue to communicate with him like nothing happened. The Applicant sent him messages on the following dates; 25 March 2022, 25 May 2022, 17 June 2022, and 27 June 2022.
20. He denied the allegation to say this suspension derailed his reputation to his community. Some of the Applicant's charges includes files that are in corporate services, supply chain management and rural development. He would not enjoy corporation from the Applicant. The uplifting of his suspension would have a negative impact at the workplace. The Applicant undermined his authority, and he indicated that he would deal with some employees when coming back. This suspension was for objective reasons.
21. Under cross-examination, he stated that he is the accounting officer. He confirmed that he was the author of document "A13-A14". He was familiar with document "A37" and annexure B of the precautionary suspension. Document "A40" was the principle of suspension. The Applicant was still on suspension and exceeded 60 days. Document "A19" was the notice of the inquiry that was signed on 19 May 2022, for the inquiry to be held on 01 June 2022. He confirmed that the inquiry commenced after 60 days.

22. The Applicant alleged misconduct investigation was completed. The guidelines stated that the employee must return to work after 60 days. There are circumstances that made the Applicant not to return to work. He confirmed that the Applicant communicated with him on the following dates; 23 March 2022 to 11 March 2023. He was not using these messages to prevent the uplifting of his suspension. The suspension was not only about investigation but included other issues like the relationship with other employees and himself.
23. Under re-examination, he stated that the charges levelled against the Applicant were about operational issues. The subject of his suspension was about operational issues. Document "A58" was the operational issues. The continuation of the suspension was for the objective reasons.

### **Survey of argument**

#### **Applicant**

24. The Applicant representative submitted that the purpose of the precautionary suspension was to afford the investigation to continue without the interference of the Applicant. The 60 days period lapsed, and the Applicant remained suspended to date, which then make the suspension unfair. The Applicant representative in his submission referred me to the case of **Mashiane v Department of Public Works (J1773/12) (2012) ZALCJHB 69 (18 July 2012)** the Courts states the following:

"I am satisfied that the provision regarding a 60 days' time limit within which a disciplinary enquiry must be held was intended to be peremptory and the discretion to extend the enquiry beyond that date rest with the chairperson. It seems to be reasonably incidental to the exercise of that discretion that he must consider the extension of the precautionary suspension, since the purpose of the provision is to prevent lengthy suspensions without disciplinary steps being brought to a conclusion. The chairperson will need to consider after 60 days whether the reasons to the suspension remain valid depending on the progress of the enquiry".

25. The Respondent had the right to proceed with the inquiry even after his return to work. The Respondent failed to comply with clause 2.7(2)(c) of the SMS Handbook. When SMS Handbook states that the Respondent must hold a hearing within 60 days, it means physical hearing not serving of the notice of the hearing. This provision was peremptory and does not provide any discretion to the Respondent. The Respondent had not given any justifiable reasons for the prolonged suspension of

the Applicant. It is the Applicant undisputed evidence that the suspension was beyond the prescribed period.

26. The Applicant representative stated that the Applicant suffered palpable prejudice to reputation, psychological, dignity and advancement and fulfillment. The Applicant precautionary suspension was unfair. The continuation of the Applicant suspension was without reasons. The Applicant sought the uplifting of the suspension and compensation for 12 months.

Respondent

27. The Respondent representative submitted that the Respondent failed to hold an inquiry within 60 days of the Applicant's suspension. The inquiry was held seven (7) days over the expiry of 60 days. The Applicant continue to make threats and interferes with operational functions of the Respondent notwithstanding his suspension. It was submitted that for the maintenance of integrity and moral of the Respondent's employees does require and makes it necessary to continue suspension of the Applicant as a measure of promoting orderly administration of the Respondent to conduct business without fear of intimidation.
28. The Respondent representative submitted that the suspension of the Applicant does not carry with it an apprehension of irreparable harm for him while awaits finalization of the disciplinary proceedings. The suspension tends to be on full pay, with the consequences that the prejudice flowing from the action was significantly contained and minimized. The Respondent representative in his submission referred me to the case of **Ada v Department of Cooperative Governance, Human Settlement and Traditional Affairs Limpopo Province and another 2016 JOL 37301 (LC)** as his authority.
29. It was submitted that it remains the fact that until an ultimate finding is made in the disciplinary proceedings, such proceedings have not been completed, and as such the same need for risk averment and implementing precautionary measures still exists. It is submitted that there are objective reasons to deny the Applicant access to the workplace and his right to integrity and reputation does not outweigh the risk alleged. Continue suspension of the Applicant beyond 60 days was thus could not be said to be offensive and objectionable. The Applicant had not made out a proper case for the relief sought.

### **Analysis of evidence and argument**

Introduction

30. Section 186(2)(b) of the Labour Relations Act, as amended (“the Act”), states that ‘unfair labour practice’ means any unfair act or omission that arises between an employer and an employee involving – unfair suspension of an employee or any other unfair disciplinary action short of dismissal in respect of an employee.
31. The precautionary suspension is not in itself punitive, but is permitted for a reasonable period if the employer bona fide believes that such action is necessary for good administration and the employer continues to pay the employee. The issue that I have to determine is whether the Respondent acted fairly towards the Applicant when they precautionary suspended him. The Applicant bears the onus to prove that the Respondent conduct constituted an unfair labour practice and in discharging the onus, the Applicant led the evidence.

The following are brief reasons for the award:

Whether there was valid reason to suspend?

32. Clause 2.7(2)(a) of the SMS Handbook states that the employer may suspend or transfer a member on full pay if the member is alleged to have committed a serious offence, and believes that the presence of a member at the workplace might jeopardize any investigation into the alleged misconduct, or endanger the well-being or safety of any person or state property.
33. The principles applicable to fair “preventive” suspension were summarized in **POPCRU obo Masemola and others v Minister of Correctional Services (2010) 31 ILJ 412 (LC)** the Court held, relying on **Mogothle v Premier of the North West Province and others (2009) ILJ 605 (LC)** that- fairness requires the following before suspending an employee pending an investigation or disciplinary action:
- (a) first that the employer has a justifiable reason to believe, prima facie at least, that the employee has engaged in serious misconduct; and
  - (b) secondly, that there is some objectively justifiable reason to deny the employee access to the workplace based on the integrity of pending investigation into the alleged misconduct or some other relevant factor that would place the investigation or the interests of the affected parties in jeopardy.



34. It is important to state that the requirement for representations prior to a precautionary suspension is no longer mandatory. The crux of this dispute turns on the issue of whether the Respondent had reason, prima facie, to believe that the Applicant had committed serious misconduct which warranted precautionary suspension. Every employer is obliged to treat its employees fairly and that employees may be suspended only for good reason. The precautionary suspension is a unilateral act by the employer, which at the time of implementation thereof need not be supported by knowledge of actual existence of misconduct. Based on the evidence before me, I am satisfied that the Respondent complied with clause 2.7.2(a) of the SMS Handbook. I say this because it was the Respondent undisputed evidence that the Applicant was suspended for alleged fraud and improper conduct.

Whether inquiry was held within required time-frame?

35. Clause 2.7(2)(c) of the SMS Handbook state that if a member is suspended as a precautionary measure, the employer must hold a disciplinary hearing within 60 days. The chair of the hearing must then decide on any further postponement. It is common cause that the Applicant was suspended on 22 March 2022, and he was served with the notice of the inquiry on 20 May 2022, for the inquiry to be held on 01 June 2022.
36. Clause 2.7(2)(c) states that the employer must, the word **must** is a mandatory. This provision is not saying the Respondent must institute disciplinary action, but **must** hold the inquiry within 60 days of a precautionary suspension. Based on the evidence presented before me, it is clear that the Respondent did not comply with the provisions of clause 2.7(2)(c) of the SMS Handbook.

Whether the suspension was fair?

37. In **SAPO Ltd v Jansen Van Vuuren NO & others (2008) 8 BLLR 798 (LC)**, the court held that a suspension, even whilst investigations are underway, amounted to an unfair labour practice, if the period of suspension exceeds the period stipulated in a disciplinary code, collective agreement, regulations or contract of employment.
38. Turning to the specific issue in the present instance, it could never have been the intention of the parties that clause 2.7(2)(c) of the SMS Handbook should take away the right of an employer to discipline an employee on the expiry of the 60 days from the date of suspension. The suspension falls away after 60 days, unless the chairperson of the disciplinary hearing extends that period. The purpose of clause 2.7(2)(c), is to address the problem of protracted suspension, which demoralized

and unfairly prejudice the suspended employee. It would appear that the mischief which the parties sought to address with the provisions of clause 2.7 was to deal with what Van Niekerk J in **Mogothle v Premier of the North-West Province & another (2009) 30 ILJ 605 (LC)** regarded as the tendency by certain employers to-

“regard suspension as a legitimate measure of first resort to the most groundless suspicion of misconduct, or worst still, to view suspension as a convenient mechanism to marginalize an employee who has fallen from favour”.

39. The discretion to extend the inquiry beyond the 60 days rests with the chairperson. The same discretion must be used by the chairperson to consider the extension of the precautionary suspension, since the purpose of the provision is to prevent lengthy suspension without disciplinary steps being brought to a conclusion. The chairperson will need to consider after 60 days whether the reasons for the suspension remain valid, depending on the progress of the inquiry. I, therefore, conclude that the only reasonable relief is to uplift the Applicant precautionary suspension.

#### Conclusion

40. In these circumstances, I find the precautionary suspension of the Applicant by the Respondent is unfair. The Applicant discharge the onus to prove that he suffered an unfair labour practice in the hands of the Respondent.

#### Remedy

41. The Applicant sought uplifting of the suspension and compensation. Section 193(4) of the Act states that an arbitrator appointed in terms of this Act may determine any unfair labour practice dispute referred to the arbitrator, on terms that the arbitrator deems reasonable, which may include ordering reinstatement, re-employment, or compensation.
42. In deciding the compensation for the Applicant, certain factors were taken into consideration. The disciplinary hearing held outside 60 days and inquiry still continuing, the length of the precautionary suspension, and he is still on the suspension, the Applicant failed to substantiate his claim of saying his chronic illness was caused by this suspension, and his precautionary suspension is with full pay. Therefore, I believe that compensation equivalent to two (2) months under the circumstances is just and equitable, which is calculated as follows: R93 733, 72, per month x 2 months = **R187 467, 44**.

**Award**

43. The Applicant, Thomas Mokemane Ndumo, proved that he suffered an unfair labour practice relating to a precautionary suspension in the hands of the Respondent.
44. The Applicant, Mr. Thomas Mokemane Ndumo, precautionary suspension is uplifted and he must resume with his duties on Tuesday, 11 April 2023.
45. The Respondent, Department of Agriculture & Rural Development – Free State, is ordered to compensate the Applicant, Mr. Thomas Mokemane Ndumo the total amount of R187 467, 44, for an unfair precautionary suspension, which must be paid into the Applicant's bank account known to the Respondent on or before 15 May 2023.



**Signature:** \_\_\_\_\_

**Commissioner: Khuduga Tlale**

**Sector: Public Service**