

RULING

Panellist/s: Mohau Ntaopane _____
Case No.: GPBC445/2026 _____
Date of Ruling: 02 August 2026 _____

In the ARBITRATION between:

PSA OBO KOEITHING, R

(Union/Applicant)

and

DEPARTMENT OF EDUCATION

(Respondent)

Applicant's union representative: Yolanda Ralawe _____

Applicant's address: _____

Telephone: _____

Telefax: _____

Email: _____

Respondent's legal representative: Ismael Adams _____

Respondent's address: _____

Telephone: _____

Email: _____

RULING

DETAILS OF HEARING AND REPRESENTATION:

- [1] This is a ruling in the arbitration between R. Koeithing, as represented by the PSA, hereinafter referred to as “the Applicant”, and the Department of Education, hereinafter referred to as “the Respondent”.
- [2] The arbitration was held under the auspices of the General Public Service Sector Bargaining Council (GPSSBC) in terms of section 191(5)(a)(i) of the Labour Relations Act, 1995 as amended (“the Act”).
- [3] The arbitration proceedings sat at the Sedibeng West District Office, Sebokeng, on 24 July 2026. The Applicant was in attendance and was represented by Ms Yolanda Ralawe, an official of the PSA. The Respondent was represented by Mr Ismael Adams.
- [4] The process was conducted in English and digitally recorded. Both parties had prepared documentary bundles.

ISSUE TO BE DECIDED:

- [5] I am required to decide whether the documents at pages 206 to 233 of the Applicant’s bundle should be admitted into the arbitration record.

BACKGROUND:

- [6] The underlying dispute is an unfair dismissal dispute referred in terms of section 191(5)(a)(i) of the Labour Relations Act, 66 of 1995 (“the LRA”). At the outset of the arbitration, the Respondent objected to the inclusion and use of documents appearing at pages 206 to 233 of the Applicant’s bundle. The disputed documents are said to be relied upon by the Applicant for purpose of showing alleged inconsistency in the Respondent’s treatment of another employee. The present ruling does not determine the merits of the dismissal dispute, nor does it determine what weight, if any, will ultimately be attached to the disputed documents.

SURVEY OF SUBMISSIONS:

The Respondent's submissions

- [7] The Respondent objected to pages 206 to 233 of the Applicant's bundle. It submitted that those documents were never used at the internal disciplinary hearing, were not included in the common bundle, and were not obtained through subpoena. The Respondent further submitted that the documents are confidential, relate to another employee, and that their inclusion in the Applicant's bundle constitutes an irregular removal of information from the Respondent's office and a breach of the Protection of Personal Information Act, 4 of 2013 ("POPIA").
- [8] The Respondent argued that if the Applicant required those documents, she could and should have obtained them by subpoena. It contended that the Applicant was no longer entitled to access the relevant file, that somebody within the Respondent's office must have unlawfully released the documents, and that the documents should therefore be excluded from the arbitration record.

The Applicant's submissions

- [9] The Applicant submitted that arbitration proceedings are conducted *de novo* and that a party is not confined to documents that were used at the internal disciplinary hearing. The Applicant's representative stated that the documents are relevant because they concern another employee who, according to the Applicant, was treated differently and therefore bear on the issue of consistency.
- [10] The Applicant further submitted that the documents were not stolen or irregularly obtained. According to the Applicant, she had access to the documents while she was employed in the Human Resources environment, because she was involved in implementing the sanction relating to the other employee. The Applicant contended that the documents formed part of the district's records, were accessible to HR personnel, and that she retrieved the documents from the employee's file during the course of appealing her dismissal, as such she already had the documents before her dismissal was finally confirmed.

ANALYSIS OF SUBMISSIONS:

- [11] Section 138(1) of the LRA requires a commissioner to conduct arbitration in a manner that the commissioner considers appropriate in order to determine the dispute fairly and quickly, and to deal with the substantial merits of the dispute with the minimum of legal formalities. Arbitration under

section 191(5)(a)(i) is therefore not a review of the employer's disciplinary record, but a fresh hearing at which relevant evidence may be received and tested.

- [12] The fact that a document was not used at the internal disciplinary hearing is not, by itself, a proper basis to exclude it from arbitration. The accepted approach is that the arbitration is heard afresh and the commissioner determines fairness on the evidence admitted at arbitration. Relevance remains the primary consideration. A document may be admitted if it is relevant, capable of being authenticated, and if its admission does not render the proceedings unfair.
- [13] In **Sidumo and Another v Rustenburg Platinum Mines Ltd and Others**¹ the Constitutional Court confirmed that commissioners are required to decide the fairness of dismissal with reference to the totality of the evidence, while recognising that the commissioner's task is to determine whether the employer's decision to dismiss was fair. In **South African Sports Confederation and Olympic Committee v CCMA and Others**², the Labour Court similarly proceeded from the premise that arbitration is a new hearing and that disclosure and reliance on documents must be assessed principally through relevance to the fair determination of the dismissal dispute.
- [14] The disputed documents are not being admitted in order to decide whether the other employee was guilty of misconduct, or to make any finding about that employee's rights or disciplinary outcome. Their relevance is narrower. The Applicant seeks to rely on them only to support her contention that the Respondent treated a comparable employee differently in the imposition or implementation of discipline. Because consistency is a recognised consideration in determining the substantive fairness of a dismissal, the documents are potentially relevant to the issues in dispute.
- [15] The Respondent's reliance on confidentiality and POPIA is a serious consideration, but it is not an automatic bar to admissibility. POPIA regulates the processing of personal information and requires lawful, fair and purpose-related processing. Arbitration proceedings are a lawful dispute-resolution process created by the Act. Where documents containing personal information are relevant to the adjudication of a labour dispute, the appropriate response is ordinarily to admit them subject to controls that protect privacy and fairness, rather than to exclude relevant evidence altogether.
- [16] I accept the Respondent's submission that the disputed documents were removed from another employee's file without the Respondent's permission and without a subpoena or other formal process.

¹ (CCT 85/06) [2007] ZACC 22; 2008 (2) SA 24 (CC); 2008 (2) BCLR 158 (CC); (2007) 28 ILJ 2405 (CC); [2007] 12 BLLR 1097 (CC), decided on 5 October 2007.

² (JR 2642/2019) [2021] ZALCJHB 23, Labour Court, Johannesburg, decided on 1 March 2021.

The Applicant's explanation is that she had access to the documents because she worked in the Human Resources environment and was involved in implementing the sanction relating to that employee. That explanation does not establish a right to remove or retain documents from another employee's file for use in her own dispute. Access to records by virtue of one's official duties is not the same as permission to remove, copy, retain, or use those records for a private litigation purpose. Whether the Applicant had already been finally dismissed at the time, or whether her pending appeal meant that she remained at work, does not alter that essential conclusion.

[17] I therefore find that the manner in which the Applicant came to possess the disputed documents was improper. That finding gives proper effect to the Respondent's concern that employee files are confidential employment records and that documents may not be removed from such files merely because an employee had physical access or proximity to them while working in Human Resources. It also explains the Respondent's submission that, had the documents been provided to the Applicant by someone else after the fact, that person would have had to account for the disclosure.

[18] The finding of impropriety does not, however, automatically determine the separate question of admissibility. The documents are relevant to the Applicant's pleaded purpose of showing alleged inconsistency, and the Respondent has not shown that their admission would prevent a fair arbitration. The appropriate course is therefore to admit the documents for a limited purpose, while recognising that the improper manner in which they were obtained may affect the weight to be attached to them and may justify protective directions regarding confidentiality and further disclosure.

RULING:

[19] The Respondent's objection to the admission of pages 206 to 233 of the Applicant's bundle is dismissed. However, I find that the Applicant's removal, retention or use of documents from another employee's file, without permission or formal process, was improper. The documents are admitted for the limited purpose for which the Applicant tenders them, namely the alleged inconsistency in the Respondent's treatment of comparable disciplinary matters.

[20] The following directions apply: the documents may be used only for purposes of this arbitration; the parties must avoid unnecessary disclosure of personal information of the third-party employee; the Respondent may challenge authenticity, reliability and weight during the evidence phase; the Applicant may not further distribute or use the documents outside these proceedings; and nothing in

this ruling prevents the Respondent from dealing internally with any breach of its document-control, confidentiality or personal-information safeguards.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the bottom.

Name: Mohau Ntaopane

GPSSBC Arbitrator