



GENERAL PUBLIC SERVICE  
SECTOR BARGAINING COUNCIL



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# ARBITRATION RULING

Panelist: Chance Khazamula  
Case No.: GPBC325/2023  
Date of Ruling: 01 August 2023

## In the Arbitration

### between:

PSA obo Kgaugelo Selolo  
(Union/Employee)

and

Department of Employment and Labour  
(Employer)

**Applicant's representative:** Mr A Sigudla – PSA Official

**Respondent's representative:** Ms N Ramulisa - Official

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## **RULING**

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### **BACKGROUND TO THE MATTER:**

1. The dispute was an Unfair Labour Practice related to suspension in terms of Section 186(2)(b) of the Labour Relations Act, 66 of 1995 as amended ("the Act") referred by the Applicant to the General Public Service Sectoral Bargaining Council ("the Council").
2. On 14 July 2023, the Respondent raised a jurisdictional point in that the Council did not have jurisdiction to arbitrate the dispute because the Applicant's referral of the dispute to the Council was premature.
3. I directed the parties to submit the heads of arguments in this regard.

### **ISSUE TO BE DECIDED**

4. I have to decide whether the Applicant's dispute was referred to the Council prematurely or not.

### **BACKGROUND TO ISSUE IN DISPUTE**

5. It was a common cause that on 11 January 2023, Applicant was placed on precautionary suspension by the Respondent.

6. On 29 March 2023, the Applicant referred the dispute to the Council stating that the dispute arose on 13 March 2023<sup>1</sup>.
7. On 14 July 2023, the Respondent's raised a jurisdictional point and submitted that the Applicant's dispute was referred prematurely because the Respondent was within the 60 days requirement to hold a disciplinary hearing in terms of Section 7.2(c) of the PSCBC Resolution 1 of 2003<sup>2</sup> ("the Resolution 1").
8. The Applicant on the other hand submitted that the Respondent failed to hold a disciplinary hearing within 60 days in terms of the Resolution 1 and therefore the suspension of the Applicant ought to have been uplifted but the Respondent failed to do so.

## **ANALYSIS**

9. The issue to be determined is whether the dispute was prematurely referred to the Council or not by the Applicant. The other issue is whether the Respondent was within the 60 days to hold a disciplinary enquiry or not.
10. It was common cause that the Applicant's referral was made following the GPSSBC rules<sup>3</sup> which was a collective agreement and the parties to this dispute are the parties to the collective agreement. Rule 3 (a) and (b) of the GPSSBC rules provide that the calendar days must be used to calculate any period in terms of rules.
11. The GPSSBC was established based on the constitution of the PSCBC and Clause 1.1 that deals with the application of dispute resolution procedures of the PSCBC and provides as follows: "Sectoral Councils may use these procedures (PSCBC Annexure A) to establish their own procedures. The

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<sup>1</sup> Page 28 of Common Bundle

<sup>2</sup> Page 19 (7.2) of Common Bundle

<sup>3</sup> Rules the conduct of proceedings before the GPSSBC

procedures may be amended in accordance with the needs of that particular Council".

12. Annexure A of the PSCBC constitution defines the calculations of days as calendar days. The CCMA rules also define the calculation of days as calendar days. This in my view was to ensure uniformity and consistency of the application of rules for calculating time periods, in this case, for referring the dispute to the Council. These definitions are derived from Section 4 of the Interpretation Act 33 of 1956.
13. It was correct that Resolution 1 of 2003, on the Disciplinary Code and Procedure for the Public Service, was silent on the definition of days to calculate the 60 days requirement by the Respondent to hold a disciplinary enquiry after the employee was placed on a precautionary suspension however to calculate the last day of the 60 days to hold an enquiry, I find that the PSCBC constitution would be the relevant starting point because the Resolution 1, find its existence from the PSCBC constitution.
14. The last day of 60 days from the date that the Applicant was placed on a precautionary suspension ended on Sunday, 12 March 2023. I agree with the Respondent that the 60<sup>th</sup> day will be on 13 March 2023 when applying the above definitions.
15. Practically, the Respondent would not have been able to hold a disciplinary enquiry on Sunday, hence the 60<sup>th</sup> day, which fell on Sunday, was excluded and Monday would be the 60<sup>th</sup> day and that would be consistent with PSCBC constitution and the Council rules.
16. This meant that the Applicant's dispute would have arisen on 13 March 2023 rather than 12 March 2023. I, therefore, find that the Council lacked jurisdiction to arbitrate the dispute because the Applicant referred the dispute to the Council prematurely when the Respondent was still within the prescribed period

of 60 days to institute a disciplinary enquiry against the Applicant. The dispute would exist if the Respondent failed to hold a disciplinary enquiry after 13 March 2023.

17. According to the Respondent's argument, the disciplinary enquiry was scheduled on 17 April 2023. From this premise, it appears that the Respondent did not conform to the requirement to hold the disciplinary enquiry within 60 days which ended on 13 March 2023.
18. I have considered the reason advanced by the Respondent however it was a must that the Respondent had to hold the disciplinary enquiry on 13 March 2023 as per Resolution 1, even if there would not be charges proffered against the Applicant because of continuing investigation.
19. The purpose of the disciplinary enquiry would have to update the Chairperson of the disciplinary enquiry about the progress of the investigation and to request for further postponement<sup>4</sup> however I cannot make any finding in that regard because I lack jurisdiction to deal with the substantive merits of the dispute.
20. In conclusion, the Applicant's referral of the dispute to the Council was prematurely referred because the dispute did not exist as of 23 March 2023. The Respondent was within the prescribed time limit in terms of the Resolution 1 of 2003 to institute a disciplinary enquiry against the Applicant.

## **Ruling**

21. I, therefore, rule as follows;
- 21.1. The Applicant's application of an Unfair Labour Practice dispute relating to suspension was prematurely referred by the Applicant to the Council.

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<sup>4</sup> Page 19 (7.2) ( c )

- 21.2. The Council lacks jurisdiction to arbitrate the dispute.
- 21.3. The Applicant's application of Unfair Labour Practice relating to suspension is dismissed.

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**CHANCE KHAZAMULA**  
**GPSSBC Arbitrator**