



**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.gpssbc.org.za>

**IN THE GENERAL PUBLIC SERVICE SECTORAL BARGAINING COUNCIL  
HELD AT  
INDLELA, OLIFANTSFONTEIN**

**CASE NO: GPBC1113/2025**

In the matter between:

**PSA obo NR MODIKA**

**APPLICANT**

And

**DEPARTMENT OF HIGHER EDUCATION AND TRAINING**

**RESPONDENT**

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Panelist      Adv. IP Kgatla  
Heard:        on papers  
Delivered    16 April 2026

**Union/Applicant's representative:** Mr. ED Masango (PSA)

**Respondent's representative:**      : HS Dlamini (Labour Relations)

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## JURISDICTIONAL RULING

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### INTRODUCTION AND BACKGROUND OF THE MATTER

- [1] The above-mentioned matter was referred to **GPSSBC** for arbitration in terms of section 186 of the Labour Relations Act 66 of 1995 as amended. The arbitration was set down before on the 18<sup>th</sup> of February 2026 at Indlela, Olifantsfontein,
- [2] The Applicant appeared and was represented by **Mr. ED Masango** from the PSA as a Union Official. The Respondent was represented by **Mr. HS Dlamini** from the Labour Relations Department.

### POINT IN LIMINE

- [3] The Respondent raised a *point in limine* to the effect that the GPSSBC lacks the requisite jurisdiction on the basis that the matter was referred outside the 90 days prescribed by the LRA.
- [4] The Applicant is opposing to the point in limine based on the fact that he could not refer the matter while the internal proceedings related to the grievances were pending.
- [5] The parties are directed by the Commissioner to file written submissions in the following circumstances:
- Respondent founding –27 February 2026
  - Applicant answering-06 March 2026
  - Respondent reply (if any)-13 March 2026
- [6] The Respondent founding submissions were brought to the attention of the Commissioner on the 27<sup>th</sup> of February 2026 and the Applicant's answering submission were submitted on the 12<sup>th</sup> of March 2026.
- [7] For convenience, the parties in this interlocutory application are referred to as they are cited in the main application

### SURVEY OF EVIDENCE

- [8] The parties did not lead oral evidence but submitted written arguments and annexures in support of their arguments therein. It follows that the proceedings were partially recorded and that the written arguments of both parties form part of the record of the proceedings.
- [9] The Respondent's submissions in support of the *point in limine* can be summarized as follows:
- [10] An unfair labour practice dispute must be referred to the **GPSSBC** within 90 days of the act or omission constituting the unfair labour practice or 90 days of the date that the employee became aware of it, in terms of Rule 34 of the Council rules, and if the 90-day period has passed, the **GPSSBC** has no jurisdiction until the condonation has been dealt with.

- [11] The Applicant's dispute dates back to the 6<sup>th</sup> of November 2024 when the Applicant was removed from the Assessment Centre, which is about 1 year and 3 months, and the Applicant did not abide by the Council rules as obligated.
- [12] In **Maake v CCMA & Others (2024)**, the Labour Court held that without a formal application for condonation for failure to comply with statutory time periods, the court nor the Commissioner has no jurisdiction to assist the Applicant.
- [13] The *Danone case*, highlights that late referrals without applied-for condonation mean that the Council or CCMA lack jurisdiction to arbitrate, rendering any award invalid.
- [14] The Applicant's submission that the delay was caused by an internal process is incorrect and not supported by evidence. There is a clear email trail (12 November- 2 December 2024) wherein the reasons for **Mr. Modika's** removal from the Centre were fully explained to him. A Trade Test Centre is not permitted to conduct ARPL/ Trade Test for an individual employed at that same Centre.
- [15] The Applicant's submissions can be summarized as follows:
- [16] The Department's refusals and failure to resolve the grievance persisted into 2025. The referral in July 2025 followed immediately after the Department's own representation that external escalation was "premature" pending the Director General's approval. Therefore, the latest prejudicial occurrences lie well with 90 days for jurisdiction purposes.
- [17] The degree of lateness is minimal and/or measured from recent conduct. The employer induced delay also by not complying with the PSCBC Resolution 14 of 2002. on 25 March 2025, The Department's Deputy Director: Grievances (**Ms. Mtila**) expressly instructed that escalation would be "premature" as the grievance was before the Director General. The Applicant relied on this, waited in good faith, and referred once it became apparent that no resolution was forthcoming.
- [18] The merits are substantial. There will be no material prejudice to DHET if merits are heard, however, there will be serious prejudice to the Applicant if shut out procedurally.
- [19] The Respondent cannot tell an employee to "wait" for internal processes and later weaponize that wait as a jurisdictional bar. Where any lateness is traceable to the employer's own representation, the interests of justice demand that the *point in limine* be dismissed or, at minimum, condonation be granted.
- [20] In **NTEU obo Moeketsi v CCMA and Others**, the Labour Court held that internal processes either suspend the 90-day time bar nor are they a prerequisite to referral. The Labour Appeal Court in **HOSPERSA obo Tshambi v MEC KZN Health**, held that although s24 disputes have no statutory deadlines, they must still be referred in a reasonable time, and no condonation is required if the delay is

unreasonable. In *Mngandi v Jenkin NO & Others*, the Labour Appeal Court held that where conduct is continuing/ ongoing, jurisdiction may be grounded on the most recent occurrence, with earlier periods addressed via condonation if necessary.

- [21] The *point in limine* should be dismissed and the **GPSSBC** should assume jurisdiction. The matter must be set down on the merits. Alternatively, to the extent that any portion is considered late, condonation should be granted based on the explanation, prospects and prejudice addressed above.

## **ANALYSIS OF EVIDENCE, ARGUMENTS AND FINDINGS**

- [22] The Respondent's submission is to the effect that the Applicant ought to have referred the matter within 90 days of the act/ omission or of becoming aware of the act/ omission.

- [23] It is common cause that this matter was referred to the **GPSSBC** outside of the 90 days prescribed period and the Respondent is, on that basis alone, of the view that the Commissioner and the **GPSSBC** are not clothed with the requisite jurisdiction to entertain and make a determination in this matter unless condonation is granted on application.

- [24] The Applicant is of the view that condonation is not necessary on the basis that the matter is not late, in that the 90 days should start counting from the date of exhaustion of the internal processes. Differently put, it is the Applicant's argument that it would have been pre-mature to refer the matter to the Council while internal processes are not finalized or exhausted.

- [25] It is true that the Applicant's dispute arises from events dating back to the 6<sup>th</sup> of November 2024, and the referral was made in July 2025, which is clearly outside of the 90 days prescribed period.

- [26] It is the Applicant's submission that he relied on the outcomes of the grievance, which was receiving attention of the Director General in good faith, and referred the matter once it became apparent that no resolution is forth-coming.

- [27] For purposes of completeness, the grievance form was signed by the Applicant on the 2<sup>nd</sup> of December 2024, and a follow-up email was sent by the Applicant to the Respondent on the 11<sup>th</sup> of April 2025 regarding a delay in finalization of the grievance.

- [28] From the evidence and/or documents on record, it is clear to me that a grievance was launched though it is not clear if the outcomes of the same were ever presented to the Applicant.

- [29] The Court in the case of *NTEU obo Moeketsi v CCMA and Others (JR1157/20) [2022] ZALCJHB 226 (16 August 2022)* opined as follows as per Mashoana J

[58] *The effect of having to exhaust internal remedies as provided for in the above provisions does not extinguish the applicant's right to proceed to the bargaining council to determine the alleged unfair dismissal; it simply required the applicant to take a compulsory procedural step before doing so.' (Own emphasis)*

[29] *In conclusion, I firmly take a view that the CCMA's jurisdictional powers to resolve a dispute are not ousted by the possibility to subject a dispute to some internal remedies. Accordingly, there was nothing in the LRA that could have prevented NTEU and Moeketsi to refer a dispute to the CCMA timeously. Any decision that suggests otherwise is not binding on this Court, since, for the reasons outlined above, it is, with respect, wrongly decided."*

[30] The Court in the case of **City of Johannesburg Metropolitan Municipality v South African Municipal Workers Union obo Matsheka and Others (JR214/2016) [2017] ZALCJHB 469 (14 December 2017)**, as per Sedile AJ, opined as follows:

"[19] *Therefore the dispute remained unresolved, and the employee had to refer the grievance to the Municipal Manager in terms of step 3 of the grievance procedure.*

[20] *The employee decided to ignore step 3 and referred the grievance to the bargaining council. The MCA which the representative trade union of the employee is a party is certainly binding on all the parties and should have been followed by the employee.*

[21] *The Second and Third Respondents were obliged and bound to apply the provisions of the MCA and which they failed to adhere to. The Third Respondent is obliged to exhaust all the processes as prescribed by the MCA before any dispute can be adjudicated by the Second Respondent."*

[31] What is clear is that there are Two (2) conflicting decisions on this important aspect of the law, both of which have been decided by the same Court, in this case, the Labour Court, which decisions are both having a binding effect on the Commissioner for the proper determination of this dispute.

[32] The Court in the case of **Manasing Surajsingh v The State of Maharashtra (1968) 70 BOMLR 654**, the High Court of Bombay, as per Tarkude J, and drawing wisdom from Salmond<sup>1</sup> concluded that:

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<sup>1</sup> Salmond on Jurisprudence, 12<sup>th</sup> ed., page 153

*“where authorities of equal standing are irreconcilably in conflict, a lower court has the same freedom to pick and choose between them as the schizophrenic Court itself. The lower Court may refuse to follow the later decision on the ground that it was arrived at per incuriam, or it may follow such decision on the ground that it is the latest authority. Which of these two courses the Court adopts depends, or should depend, upon its own view of what the law ought to be”*

[33] The Commissioner, as already stated above, is bound by the decisions of the Labour Court in terms of hierarchy, and it appears from the above foreign case law that, in the case of conflicting judgements from courts of equal status, the lower court has got a discretion between differing with the Court decision if the lower court is of the view the decision was arrived at without paying attention to certain legislative provisions or precedent (*per incuriam*) and choose to be bound by the most recent decision. In this case, I elect to be guided by the latest decision(s) of the Labour Court, merely on the basis that it is the most recent decision.

[34] For purposes of completeness, it is my conclusion that the internal grievance procedure is one of the well-established processes aimed at preventing pre-mature referrals to the external labour dispute resolution tribunals to avoid unnecessarily inundating such tribunals.

[35] It was in my view peremptory for the Applicant to exhaust the internal remedies first before the matter is referred to the Council for determination. Therefore, the correct date of the dispute, in my view, and on the strength of the case referred to in paragraph 30 above, is the date on which the Applicant lost faith in the internal processes of the Respondent.

[36] In light of the above, I come to the following conclusion:


**RULING:**

[37] The Respondent's *point in limine* is dismissed

[38] The Applicant's referral of the dispute to the Council is within the prescribed timeframe and the **GPSSBC** is clothed with the requisite jurisdiction to entertain and make a determination in this matter without condonation being granted.

[39] The **GPSSBC** is requested to set the matter down for arbitration as soon as reasonably practicable.

[40] I make no orders to cost.



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**Name: Adv. Itumeleng Kgatla**

**Arbitrator: GPSSBC**

