GPSSBC
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

Panellist/s: Caroline Hlongwane
Case No.: GPBC1670/2022
Date of Award: 16 May 2023

In the ARBITRATION between:

PSA obo T Sikhosana & 6 Others — Applicant

and

Gauteng Department of Agriculture and Rural Development — Respondent

---

Arbitration Award

Details of hearing and representation:

1. This is an arbitration award in terms of section 138(7) of the Labour Relations Act 66 of 1995 ("the LRA"), as amended. This award is in relation to an alleged unfair suspension dispute in terms of section 186(2)(b) of the Labour Relations Act 66 of 1995 ("LRA") referred by PSA obo Thulile Sikhosana, Thandeka Cherity Vuyisile Shangase, Stephan Rachidi, Nkosinathi Ngobeni, Peter Ramahlo, William Masemola and Joshua Mathebula ("the Applicants") to the General Public Service Sector Bargaining Council ("the Council").

2. The arbitration proceedings were held at the respondent's premises in Roodeplaat Nature Reserve on 17 April 2023. The applicants were present and were represented by Mr Archie Sigudla, PSA union official and the respondent was represented by Ms Ayanda Ngubeni. Ms Glorinah Letebele, Mr Pitso Sekome and Ms Khathu Rammbuda sat as observers.

3. The respondent submitted bundle of documents which was used as a consolidated bundle and the contents thereof were purported to represent what they were, further to that, the parties also submitted signed Pre-

arbitration minutes which were read on record. Parties were allowed to make oral submissions and requested to amplify their submissions in writing, and they were given until 04 May 2023 to exchange the written arguments and they duly complied. The proceedings were digitally recorded, and the recordings were sent to the Council.

ISSUE TO BE DECIDED:

4. I am required to determine whether the conduct of the respondent constitutes an unfair labour practice, that is unfair suspension or disciplinary action, as contemplated in terms of section 186(2)(b) of the Labour Relations Act, as amended.
5. In the event that I find in favour of the applicants, the applicants sought the upliftment of the suspension for those that are still suspended and compensation.

BACKGROUND TO THE MATTER:

6. The applicants are employed by the respondent as follows:
   6.1. Ms Thulile Sikhosana: Control Biodiversity Officer- Grade A
   6.2. Ms Thandeka Cherity Vuyisile Shangase: Biodiversity Officer Production- Grade C
   6.3. Mr Stephan Rachidi: Senior Foreman Nature Conservation Services
   6.4. Nkosinathi Ngobeni: Senior Foreman Nature Conservation Service
   6.5. Mr Peter Ramahlo: Nature Conversation Assistant
   6.6. Mr William Masemola: Nature Conservation Assistant
   6.7. Mr Joshua Mathebula: Nature Conservation Assistant

7. The applicants were issued with notices to attend disciplinary hearing on the following dates:
   7.1. Ms Thulile Sikhosana:20 September 2022
   7.2. Ms Thandeka Cherity Vuyisile Shangase: 21 September 2022
   7.3. Mr Stephan Rachidi: 20 September 2022
   7.4. Nkosinathi Ngobeni: 19 September 2022
   7.5. Mr Peter Ramahlo: 21 September 2022
   7.6. Mr William Masemola: 20 September 2022
   7.7. Mr Joshua Mathebula: 20 September 2022

SURVEY OF EVIDENCE AND ARGUMENT:

8. I have heard arguments from both parties and the parties also submitted written arguments.

APPLICANTS' CASE

9. The applicants' representative, Mr Archie Sigudla made submissions on behalf of the applicants, what follows hereunder is a combination of the oral and written submissions.

10. He stated that the applicants are employed by the respondent, Gauteng Department of Agriculture and Rural Development and thereby employed in terms of the Public Service Act in various positions and having started on different times.

11. The applicants' case is more of an academic exercise. The applicants were placed on suspension by the respondent on 26 July 2022 and were never charged by the respondent. item 6 of the PSCBC of Resolution 1 of 2003 provides that for serious misconduct, the employer may initiate a disciplinary enquiry.

12. It is not in dispute that the allegations against the applicants were of a serious nature, however, suspension is not a sanction. The purpose of a suspension is to allow an investigation to take place. When a notice to suspend is issued should comply with certain requirements, for example, five days before the date of the hearing.

13. The applicants were given notices; in terms of the code, the notice must contain the charges, and the notices given to the applicants did not comply with clause 7.1 of the code. As it stands, three of the applicants are still suspended and four of the applicants, their suspension has been uplifted.

14. The applicants were placed on a precautionary suspension in terms of clauses 6 and 7 of the Disciplinary Code and Procedure for the Public Service as contained in PSCBC Resolution 1 of 2003. All the applicants were placed on the precautionary suspension with effect from 26 July 2022, and subsequently the four (4) applicants' suspension was uplifted on 7th November 2022, whereas three (3) were charged and remained under suspension to date of this hearing.

15. Pursuant to the protracted suspension which applicants contends the respondent was in violation of the clauses 7(1)(c) and 7(2)(c) of the Code, they lodged an unfair suspension dispute which is the dispute that the arbitrator has been assigned to determine.

16. The Disciplinary Code and Procedure within the Public Service**,** clause 7.2(c) provides-
"*If an employee is suspended or transferred as a precautionary measure, the employer must hold a disciplinary hearing within a month or 60 days, depending on the complexity of the matter and the length of the investigation. The chair* of *the hearing must then decide on any further postponement".*

17. The PSCBC Resolution 1 of 2003, by virtue of being a collective agreement is clearly binding on the parties, and the purpose of clause 2.7(2)(c), as I see it, is to address the problem of protracted suspensions which demoralize 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 Northwest 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'.

18. The fairness or unfairness of precautionary suspensions and the rights of employees in the Public Service who are placed on precautionary suspensions with reference to section 23(1) of the Constitution of the Republic of South Africa, 1996, which states that:
(1) "Everyone *has the right to fair labour practices*" Section 186(2)(b) of the Labour Relations Act 66 of 1995 defines what an unfair labour practice is with specific reference to a precautionary suspension. It reads thus:
(2) "Unfair *labour practice means any unfair act or omission that arises between an employer and an employee involving – (b) the unfair suspension of an employee or any other unfair disciplinary action short of dismissal in respect of an employee".*

19. As it has been submitted the applicants were placed on suspension by the respondent, their suspension letters were received as follows:
    - First applicant -Ms Thulile Sikhosana on 20th September 2022
    - Second applicant -Ms Thandeka Cherity Vuyisile Shangase on 21 September 2022
    - Third applicant – Mr Stephen Rachidi on 21 September 2022
    - Fourth applicant – Mr Nkosinathi Ngobeni on 20 September 2022
    - Fifth applicant – Mr Peter Ramahlo on 21 September 2022
    - Sixth applicant – Mr William Masemola on 20 September 2022
    - Seventh applicant – Mr Joshua Mathebula on 20 September 2022

20. Clause 7 of the Disciplinary Code and Procedure deals with how the employee should be notified to attend a disciplinary enquiry. [See Page 8 of Joint Bundle]

21. Clause 7(1) (a) provides, "The employee must be given at least five working days before the date of the hearing.

(b) The employee must sign the receipt of the notice. If the employee refuses to sign receipt of the notice, it must be given to the employee in the presence of a fellow employee who shall sign in confirmation that the notice was conveyed to the employee.

(c) The written notice of the disciplinary meeting must use the form of Annexure S and provide:

i. A description of the allegations of misconduct and the main evidence on which the employer will rely;

ii. details of the time, place and venue of the hearing; and

iii. information on the rights of the employee to representation by a fellow employee or a representative or official of a recognised trade union, and to bring witnesses to the hearing.

22. Evidence adduced shows that the applicants were served with the said notice and same can be categorized into two, namely those served on 20th September 2022 and secondly those served on 21st September 2022. And its common cause that the applicants were called for that hearing on 26th September 2022, as per the notice of disciplinary hearing documents marked page 1 to 7 of the joint bundle of documents.

23. In order for the respondent to have complied with the provisions of clause 7(2)(c) of the Disciplinary Code and Procedure for the Public Service, they would have served the applicants with a notice at least five working days before the date of the actual hearing as contemplated in terms of clause 7(1)(a) of the Code.

24. Calender for September 2022

Categories of applicants	Five working days as provided for in terms of clause 7(1)(a) of Code					
	Wed	Thurs	Fri	Sat	Sun	Mon
A. Served on 20th Sept 2022	21 Sept 2022	22 Sept 2022	23 Sept 2022	24 Sept 2022	25 Sept 2022	26 Sept 2022
B. Served on 21st Sept 2022	Category B	22 Sept 2022	23 Sept 2022	24 Sept 2022	25 Sept 2022	26 Sept 2022

25. Gleaning from this calendar it would be clear that the Category A applicants were served within four (4) working days, whilst the Category B applicants were served within three (3) working days. It should be noted that Saturday and Sunday are not regarded as working days.

26. Further worth noting is that the notice issued by the respondent was not compliant with the requirements set out in clause 7(1)(c)(i).

27. In ***MEC: Department of Finance, Economic Affairs and Tourism, Northern Province v Mahumani (2004) 25 ILJ 2311 (SCA),*** the Court per Patel AJA said at para 10 and 11

> *'…. I, furthermore agree, that clause 7.1 (c) and 7(2)(c) is a fundamentally important provision of the agreement and that it should not lightly be departed from.*

28. The Court further submitted that the provisions of clause 7 (1)(c) and 7 (2)(c) of the Code is peremptory and binding.

29. In this matter, it is the applicants' submission that the respondent conduct is procedurally unfair as it deviated without just cause from the provisions of Code.

30. *In casu* it is clear that the respondent party has failed to comply with the provisions of the collective agreement which required it to hold a disciplinary enquiry within 60 days after having suspended the applicant, as prescribed by the agreement.

31. The applicants are fully aware of the right that the employer has in terms of placing the employee it suspects to be having misconduct allegations that needs to be investigated on precautionary suspension with full pay.

32. The applicants contend that, the unfairness of the precautionary suspension of this nature, is an unreasonably long period, or the protracted part thereof, as the collective agreement was designed in such a way that, if indeed the employer has a bona fide case that must be answered by the charged employee it be brought to a disciplinary enquiry within 60 days.

33. The Supreme Court of Appeal (SCA) has pronounced in ***Murray v Minister of Defence [2008] 6 BLLR 513 (SCA),*** about the contractual right not to be constructively dismissed from what it held to be a duty on all employers of fair dealing at all times with their employees (at 517C). This obligation, a continuing obligation of fairness that rests on an employer when it makes decisions that affect an employee at work, was held by the court to have both a procedural and a substantive dimension.

34. In so far as the substantive dimension of fair dealing in relation to suspension is concerned, Halton Cheadle has observed that suspension is the employment equivalent of arrest, with the consequence that an employee suffers palpable prejudice to reputation, advancement and fulfilment. On this basis, he suggests that employees should be suspended pending a disciplinary enquiry only in exceptional circumstances. The only reasonable rationale for suspension in these circumstances, Cheadle suggests, is the reasonable apprehension that the employee will interfere with any investigation that has been initiated or repeat the misconduct in question. (See Cheadle "Regulated Flexibility and Small Business: Revisiting the LRA and the

BCEA" DPRU Working Paper no 06/109 DPRU, University of Cape Town, June 2006, also published in edited form in (2006) 27 ILJ 663, at paragraph [71])

35. In ***SAPO Ltd v Jansen van Vuuren NO and others [2008] 8 BLLR 798 (LC)***, Molahlehi J stated: "*There is, however, a need to send a message to employers that they should refrain from hastily resorting to suspending employees when there are no valid reasons to do so. Suspensions have a detrimental impact on the affected employee and may prejudice his or her reputation, advancement, job security and fulfilment. It is therefore necessary that suspensions are based on substantive reasons and fair procedures are followed prior to suspending an employee. In other words, unless circumstances dictate otherwise, the employer should offer an employee an opportunity to be heard before placing him or her on suspension"* (at para 37).

36. It is the applicants' averment that the respondent in this case also effected a groundless suspension towards the applicants, as it has already been placed on records that until 07th November 2022 when the suspension was uplifted in respect of the four (4) applicants and withdrew such alleged charges formulated against the applicants, that's precisely what our courts has warned employers against.

37. The Collective Agreement (Resolution 1 of 2003) provides guidelines, which provide guidance in terms of the process, it is imperative that the employers complies with the Disciplinary Code when dealing with misconduct cases within the Public Service, these sentiments were echoed in a plethora of judgments, in ***Changula vs Bell Equipment (1992) 13ILJ 101(LAC)***; ***SA Clothing and Textiles Workers Union & Another vs Martin Johnson (Pty) Ltd (LAC),*** wherein Murphy AJ at the time, went on to say that "… *Where the employer's Disciplinary Code and Policy provide for a particular approach it will generally be considered unfair to follow a different approach without legitimate justification. Justice requires that employers should be held to the standards they have adopted".*

38. The applicants right as enshrined on section 23(1) of the Constitution of the Republic of South Africa, provides for a protection to every employee, "Everyone has the right to fair labour practice", and those rights must be protected and in an event one's right is invaded or destroyed, the principle ubi jus ibi remedium (where there's a right there is a remedy). As such the following principles laid down by the Labour Appeal Court in ***ARB Wholesalers (Pty) Ltd v Hibbertand SA Clothing and Textiles Workers Union & Another [2015] 11 BLLR 1081 (LAC)*** per Waglay JP [Ndlovu and Coppin JJA concurring] (2015) 36 ILJ 2989 (LAC), the LAC held as follows: " [22] *The compensation that an employee, who has been unfairly dismissed or subjected to unfair labour practice, may be awarded is not aimed at making good the patrimonial loss that she/he has suffered. The concept of loss or patrimonial loss may play a role to evince the impact of the wrong upon the employee and thus assists towards the determination of appropriate compensation, but compensation under the Labour Relations Act (LRA) is statutory compensation and must not be confused with a claim in delict. Hence, there*

is no need for an employee to prove any loss when asking compensatory relief under the LRA".

39. Compensatory relief in terms of the LRA is not strictly speaking a payment for the loss of a job or the unfair labour practice but in fact a monetary relief for the injured feeling and humiliation that the employee suffered at the hands of the employer. Put, differently, it is a payment for the impairment of the employee's dignity. This monetary relief is referred to as a solatium as articulated in ***Johnson and Johnson (Pty) Ltd v CWUI (1999) 20 ILJ 89 (LAC)*** and it constitutes a solace to provide satisfaction to an employee who's constitutionally protected right to fair labour practice has been violated.

40. The solatium must be seen as a monetary offering or pacifier to satisfy the hurt feelings of the employee whilst at the same time penalizing the employer. It is not however a token amount hence the need for it to be "just and equitable" and to this end salary is used as one of the tools to determine what is "just and equitable".

41. The determination of the quantum of compensation is limited to what is "just and equitable". The determination of what is "just and equitable" compensation in terms of the LRA is a difficult horse to ride. There are conflicting decisions regarding whether compensation should be analogous to compensation for breach of contract for a delictual claim. It is the applicants' view, that as we have submitted earlier because compensation awarded constitutes a solatium for the humiliation that the applicant has suffered at the hands of the Gauteng Department of Agriculture and Rural Development (GARD) and not strictly a payment for a wrongful dismissal, compensation awarded in unfair dismissal or unfair labour practice matters are more comparable to a delictual award for non-patrimonial loss.

42. While a delictual action (ie action injuriarum) for non-patrimonial loss is fashioned as a claim for damages, it is no more than a claim for a solatium because it is not dependent upon patrimonial loss actually suffered by the claimant.

43. We, therefore, submit that awards made under a delictual claim for non-patrimonial loss may serve as a guide in the assessment of just and equitable compensation under the LRA. In ***Minister of Justice & Constitutional Development v Tshishonga [2009] 9 BLLR 862 (LAC)***, the Labour Appeal Court in award of solatium referred to the delictual claim made under the action iniuriarum for guidance in what would constitute just and equitable compensation for non-patrinomial loss in the context of an unfair labour practice. The court stated that since compensation in these cases included but were not limited to: "….the nature and seriousness of the iniuria, the circumstances in which the infringement took place, the behavior of the defendant (especially whether the motive was honourable or malicious), the extent of the plaintiff's humiliation or distress, the abuse of the relationship between the parties, and the attitude of the defendant after the iniuria taken place…." At para [18].

44. The applicants, therefore, urges the commissioner that the above dictum should serves as an appropriate guideline in determining what is just and equitable compensation that can be awarded under the Section 194(3) of the LRA.

45. The applicant contends that the respondent had a legal duty to set the suspension aside at the expiry of the 60 days and such a duty is not dependent on the suspended employee or trade union, as such in this case the respondent has failed in its duty conferred in terms of the law.

46. The applicants pray for a maximum compensation of 12 months in this regard, solatium for the humiliation of the applicants at the hands of the respondent, whom we submit ought to know better what the law requires of them. Further take note, we have attached a copy of applicants' salary advised for your assistance, see pages 9 to 15 of the joint bundle of documents.

RESPONDENT'S SUBMISSIONS

47. Ms Ayanda Ngubeni on behalf of the respondent made the following submissions:

48. The respondent has complied with clause 7.2 (c) of PSCBC Resolution 1 of 2003 in that the employer invited the applicants to a disciplinary hearing within 60 days.

49. The reason the charges were not proffered was because the investigation was still underway. It is not correct that the notices were sent in less than five days, the notices were sent to the applicants via email on 19 September 2022 and the applicants were only able to sign them on the dates reflected on the notices because they were on suspension.

50. The reason that the employees were kept on suspension is because the respondent was trying to prevent further transgression and they could not be transferred anywhere else because that would require them to be reskilled.

51. The applicants suffered no prejudice as a result of their suspension because they were paid throughout their suspension.

52. Section 186(2) of the Labour Relations Act states: "unfair labour practice means any unfair act or omission that arises between an employer and an employee. Subsection (b) of the Act mentioned above specifically deals with suspension. Section 186(2)(b) of this Act regards "the unfair suspension of an employee or any unfair disciplinary action short of dismissal in respect of an employee" as unfair labour practice.

53. An employee may be suspended pending a disciplinary hearing to enable the employer to investigate the alleged charges against the employee.

54. The Arbitrator is required to decide whether the suspension of the applicant was unfair; and if so, to consider whether to grant the applicant the requested 12 months compensation.

55. Clause 7.2 precautionary suspension states the following:

a. The employer may suspend an employee on full pay or transfer the employee if:

ii. the employee is alleged to have committed a serious offence; and

iii. the employer believes that the presence of an employee at the workplace might jeopardise any investigation into the alleged misconduct or endanger the well-being or safety of any person or state property.

b. A suspension of this kind is a precautionary measure that does not constitute a judgement and must be on full pay.

c. If an employee is suspended or transferred as a precautionary measure, the employer must hold a disciplinary enquiry within a month or 60 days, depending on the complexity of matter and the length of the investigation. The chair of the hearing must then decide any further postponement."

56. It is evident from the clause above that an employer such as the responded may elect to suspend or transfer as a pre-cautionary measure in circumstances set out 6 in the clause. Both of these actions are a disciplinary measure short of dismissal and may amount to an unfair labour practice if the employee establishes that the employer's conduct was unfair.

57. With the most recent case law in terms of suspending an employee as a precautionary measure pending disciplinary action, the courts have not over-emphasised the audi alteram partem principle. In the matter of *Allan Long vs South African Breweries Pty (Ltd)*, CCT 61/18 the Constitutional Court of South Africa handed down judgment on the 19th of February in an application seeking leave to appeal against a judgment of the Labour Court relating to Mr Long's suspension prior to dismissal.

58. The following explanatory note is provided by the Constitutional Court:

"*Mr Long was previously employed by South African Breweries (Pty) Limited (SAB) as its district manager for the Border District. He was responsible for legal compliance in respect of SAB's operations in the Border District, including the requirements pertaining to a fleet of vehicles. On 10 May 2013, a trailer owned by SAB was involved in a fatal accident. The vehicle, before the accident, was in a state of disrepair and unlicensed.*

This accident prompted an investigation by SAB into the vehicle fleet. It turned out that many of the vehicles for which Mr Long was responsible were not roadworthy and had invalid licence discs. After further investigation and a disciplinary hearing, Mr Long was found guilty of dereliction of duties, gross negligence and bringing the company name into disrepute. He was dismissed on 14 October 2013. Mr Long had also been suspended from work from the time the investigations began until he was dismissed.

59. *Two arbitrations followed in the Commission for Conciliation, Mediation and Arbitration (CCMA). The first related to Mr Long's suspension prior to dismissal. The arbitrator held that Mr Long's dismissal constituted an unfair labour practice because Mr Long had not been given a hearing before his suspension and the suspension was unreasonably long. The arbitrator awarded compensation equivalent to two months remuneration. SAB reviewed the arbitration awards before the Labour Court. The Labour Court held that where a suspension is precautionary, and with full salary, as in this case, there is no requirement that an employee be given an opportunity to make representations. The Labour Court set aside the arbitrator's finding that the suspension was an unfair labour practice. In a unanimous judgment written by Theron J, the Constitutional Court partially upheld the application for leave to appeal. The Constitutional Court refused leave to appeal on the merits of the review, holding that the Labour Court had correctly held that an employer is not required to give an employee an opportunity to make representations before a precautionary suspension".*

60. The Respondent denies the Applicants case and puts them to proof thereof.
61. The respondent pleads that it has complied with clause 7.2 (c) of PSCBC Resolution 1 of 2003 by holding a disciplinary hearing on 26 September 2022.

ANALYSIS

62. Section 138(7) of the LRA provides that the commissioner must issue an award with brief reasons. It is therefore not my intention to provide a detailed record of all the evidence that was placed before me. Even though all evidence was considered, I have only referred to the salient points that I found to be the most pertinent to deciding this matter. However, it should not be construed that I overlooked some of the evidence submitted in these proceedings as I have considered all the submissions.

63. The crux of the matter is that the applicants were put on precautionary suspension by the respondent and were subsequently issued with notices to attend disciplinary hearings on the dates mentioned in paragraph 7 above. It is common cause that the notices issued by the respondent did not contain charges. Furthermore, the respondent issued the notices to attend disciplinary hearings on 21 and 22 September 2022, less than five working days before the date of the hearing as per clause 7.2 (c) of PSCBC Resolution 1 of 2003.

64. The question of precautionary suspension is governed by Resolution 1 of 2003 being a collective agreement in terms of section 23 of the LRA.

65. *Section 186 (2) (b) states the following:*
"Unfair labour practice" means any unfair act or omission that arises between an employer and an employee involving -
(b) unfair suspension of an employee or any other unfair disciplinary action short of dismissal in respect of an employee".

66. An unfair labour practice arises out of an unfair act or omission committed by an employer. In the present matter, the respondent's conduct in issuing the notices less than five working days before the date of the hearing and its failure to outline the charges on the notices raises the question of fairness.

67. It is, however, important to consider the submissions as to the reasons provided by the respondent on both aspects. The respondent's submission on the first issue, that is, non-compliance with clause 7.1(a) of Resolution 1 2003 is that it complied with the five working days period. Its initial submission was that the notices were initially sent via email to the applicants and undertook to provide proof; such proof was not forwarded to the Council for my attention. As a result, without any confirmation from the respondent, the applicants' submissions that they did not receive notices via email stands as undisputed, therefore, I find that the respondent failed to comply with clause 7.1 (a) of PSCBC Resolution 1 of 2003.

68. The second issue raised by the applicants was that the notices issued by the respondent also did not comply with clause 7.1(c) (i) of the PSCBC Resolution 1 of 2003 in that they did not contain charges. The respondent's submissions in this regard are that the charges were not included because the investigation was still underway. Clause 7.1 (c) (i) states that the written notice of the disciplinary meeting must use the form of Annexure D and provide a description of the allegations of misconduct and the main evidence on which the employer will rely. The notices issued to the applicants only contained the date, time, venue of the hearing as well as the rights. This means that the respondent only complied with clause 7.1(c) (ii) and (iii).

69. Furthermore, clause 7.2 (c) provides that if an employee is suspended or transferred as a precautionary measure, the employer must hold a disciplinary hearing within a month or 60 days, depending on the complexity of the matter and the length of the investigation. The chair of the hearing must then decide on any further postponement. Based on the submissions made by the respondent, it appears as if its main concern was to comply with the 60 days rather than complying with all the requirements listed under clause 7.1.

70. Despite the respondent being well aware of the reasons the applicants were suspended, one could have expected them to draft the charges based on the information received before the applicants' suspension and

after the conclusion of the investigation accordingly amend the charges if necessary. For this reason, I find the respondent's submissions to be unpersuasive.

71. Having said that, I, therefore, find that the applicants have on the balance of probabilities discharged the onus that the respondent subjected them to an unfair labour practice by not adhering to clauses 7.1(a) and 7.1(c) (i) of PSCBC Resolution 1 of 2003.

RELIEF

72. Three of the applicants, that is, Thulile Sikhosana, Nkosinathi Ngobeni and Joshua Mathebula sought upliftment of the suspension and compensation should I find in their favour, while four of the applicants, that is, Thandeka Cherity Vuyisile Shangase, Stephan Rachidi, Peter Ramahlo and William Masemola only sought compensation.

73. I, therefore, deemed it just and fair to award the applicants compensation having considered that the respondent failed to comply with both clauses for no justifiable reason. Section 194 of the LRA, uses the broad guideline that compensation for unfair labour practice must be "***just and equitable in all the circumstances***." For this reason, it is my view that awarding each applicant five months is "***just and equitable under the circumstances***".

74. The applicants' salary ranged from R13 084.62 to R50 907.87 per month. Accordingly, compensation is calculated as follows:

    73.1Thulile Sikhosana: R50 907.87 x 5 (number of months) = R254 539.35

    73.2. Ms Thandeka Cherity Vuyisile Shangase: R36 029.87 x 5 (number of months) = R180 149.35

    73.3. Mr Stephan Rachidi: R17 880.12 x 5(number of months) = R89 400.60

    73.4.Nkosinathi Ngobeni: R17 804.07 x 5 (number of months) = R89 020.35

    73.5.Mr Peter Ramahlo: R14 159.62 x (number of months) = R70 798.10

    73.6.Mr William Masemola: R26 740.87 x 5(number of months) = R133 704.35

    73.7.Mr Joshua Mathebula: R13 084.62 x 5 (number of months) = R65 423.10

AWARD:

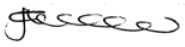
74. I therefore make the following order:

    74.1. The respondent, Gauteng Department of Agriculture and Rural Development is ordered to uplift the suspension of Thulisile Sikhosana, Nkosinathi Ngobeni and Joshua Mathebula with immediate effect.

74.2. The respondent's failure to comply with clauses 7.1(a) and 7.1(c) (i) of PSCBC Resolution 1 of 2003 amounts to an unfair labour practice as contemplated by Section 186(2)(b) of the LRA as amended.

74.3. The respondent, Gauteng Department of Agriculture and Rural Development is further ordered to pay the amounts stipulated in paragraph 73.1 to 73.7 above by no later than 15 August 2023

Thus dated at Centurion on this 16th Day of May 2023.



GPSSBC Commissioner: Caroline Hlongwane