



ARBITRATION AWARD

Panellist/s: Segokodi Thoka
Case No.: GPBC1234-2024
Date of Award: 26 October 2025

In the ARBITRATION between:

PSA obo Keorapetse Tshenye:

(Union / Applicant)

Applicant

and

Government Employee Pension Administration Agency (GPAA) :
(Respondent)

Respondent

Union/Applicant's representative: Mr. Simon Sono

Union/Applicant's address: _____

Telephone: _____

Telefax: _____

Respondent's representative: Mr. Samson Mmakola

Respondent's address: _____

Telephone: _____

Telefax: _____

ARBITRATION AWARD

DETAILS OF HEARING AND REPRESENTATION

[1] This is the award in the arbitration between PSA obo Ms. Keorapetse Tshenye (Applicant) and Government Employee Pension Administration Agency (Respondent). The matter commenced on 11 December 2024 at the Respondent's offices in Pretoria and finalised on 26 September 2025. The arbitration hearing was held under the auspices of the GPSSBC in terms of section 191(5) of the Labour Relations Act 66 of 1995, as amended (the LRA). The award is issued in section 138 (7) of the LRA.

[2] The employee was present throughout the proceedings and she was represented by Mr. Simon Sono, the union's labour relations officer. The Respondent was represented by Mr. Samson Mmakola. At the conclusion of the proceedings, the parties agreed to file their closing arguments on 10 October 2025 and I will then write the award.

[3] The parties submitted the signed pre-arbitration minute and I read the material aspects of the minute into the record. They further submitted their paginated bundles and were marked as follows:

- a) The Respondent's representative submitted three sets of documents and were marked bundles **A**, **A1** and **A2** respectively.
- b) The Applicants' representative submitted two sets of documents and were marked bundle **B**, **B1** and **B2**, respectively.

[4] The proceedings were digitally recorded and handwritten notes were also taken. It would be apposite to state that section 138 (7)(a) of the LRA stipulates that I must issue the award with brief reasons. I do not intend to exhaustively survey the parties' evidence and arguments. However, I have considered all oral and documentary evidence referred to during the hearing. What follows is a brief summary of the evidence that have material for the determination of the matter.

ISSUE TO BE DECIDED

[5] In terms of paragraph 6 of the pre-arbitration minute, I must determine whether the dismissal was procedurally and substantively fair. If I find in favour of the Applicant, I must determine an appropriate remedy.

BACKGROUND FACTS

[6] The Applicant was permanently employed by the Respondent on 01 April 2010 and she was stationed a call centre agent within the CRM relations management (CRM). She was dismissed on 15 July 2024. Her union referred the matter to arbitration after the certificate of non-resolution of dispute was issued. The Applicant's monthly gross remuneration was R25076.00. In terms of relief, the Applicant's union stated that if I find in her favour, I must order the Respondent to reinstate the Applicant with retrospective effect.

SURVEY OF THE APPLICANT'S EVIDENCE AND ARGUMENT

Summary of the Respondent's case

[7] The Respondent's representative subpoenaed two witnesses and they testified as follows:

Mr. Wilfred Segoele (Wilfred)

[8] The witness is assistant director within forensic and fraud prevention unit. He was appointed to investigate the alleged fraudulent curriculum vitae (CV) of the Applicant. Mr. Segoele presented extensive evidence which entailed inter-alia, officials interviewed and documentation he considered. He testified that one the officials he interviewed was the Applicant .

[9] The witness was referred to points 6.1 and 6.1.1 of page 44 on bundle "A" and testified that the Applicant informed him that she was verbally appointed to act as supervisor under Ms. Maria Kwenaithe for the period 2017 to 2019 financial year. The Applicant told him that she acted as a workforce assistant for period 2019 to 2021 financial year under Mr. Baloyi. He further stated that in the second meeting with the Applicant on 18 March 2022 the Applicant stated that she made a mistake in her CV by stating that she acted in a supervisory capacity during 2017/2018 financial year. The Applicant and her representative undertook to depose to a statement regarding her mistake but she did not depose the statement.

[10] The witness was referred to point 10 on page 49 of the same bundle and he testified that he recommended that the Applicant should be charged with gross dishonesty for submitting a fraudulent CV. He mentioned that the Applicant's case was the only case reported to his unit. The witness stated that the Respondent has anti-corruption policy as reflected on pages 126 to 141 of bundle "A". He stated that page 142 is an email that was sent to all employees who had access within the Agency as a warning against CV embellishment. His unit attends orientation sessions and make slide presentations on fraud prevention.

[11] Mr. Segoale testified that during the investigation he perused the CV of one of the applicant by the name of Ms. Adonis and found some irregularities. During informal interview with Ms. Adonis, he established that Mr. Adonis embellished her CV in that she falsely stated that she acted as Assistant Manager. He mentioned that his manager advised him to first focus on the Applicant to avoid complicating the matter under his investigation. His manager further advised him that the matter related to Adonis must be dealt with later but the investigation did not take place because Ms. Adonis quickly left the Agency. The witness further stated that he is aware that Ms. Adonis has rejoined the Agency and he was surprised to learn that she has been appointed to the same position after it was readvertised.

[12] In cross-examination, the witness was extensively cross-examined and he maintained his evidence in all material respects. He reiterated that the Applicant submitted a fraudulent CV stating that she has supervisory experience which she did not possess. When asked why he recommended a formal disciplinary hearing instead of a progressive disciplinary action, he stated that he found that the Applicant acted grossly dishonestly. He stated that the Applicant knew that she did not possess the experience.

[13] The witness was asked whether the human resources section provided him with CV's Ms. Adonis and other employees who applied for the posts in order to verify their credentials. The witness confirmed that he was shocked to learn that Adonis applied for the same post after it was readvertised and was appointed into the post for which the Applicant applied. He admitted that the Respondent acted inconsistently by appointing Adonis but indicated that he is aware about an investigation into Adonis' matter.

[14] The witness was referred point 10.2 on page 49 of bundle "A" and he stated that his recommendation on point 10.2 was based on his finding that certain positions within the CRM do not appear on the structure of the Agency whereas the Applicant's CV indicates that she was the second in charge. He stated that even Mr. Kenneth Baloyi could not describe the meaning of "second in charge". The witness explained that he also interviewed a supervisor within the CRM on the definition of the 2IC who contradicted Mr. Baloyi's definition of a 2IC. He further stated that the managers he interviewed did not mention appointing employees as acting 2IC in writing, even Ms. Kwenaithe did not show him appointment letter of the Applicant.

[15] The witness was referred to page 46 of bundle "A" and he stated that Maselela informed him that the Applicant worked under her during 2017/2018 as the CRM agent and she did not appoint her as acting 2IC during that period. Ms. Maselela informed him that Ms. Maya acted as her 2IC during 2017/2018 financial year. He further mentioned that Ms. Kwenaithe confirmed that the Applicant acted as her 2IC during 2018/2019. The witness admitted that neither Messrs Maselela nor Kwenaithe produced appointment letters. He disputed the

proposition that his recommendations are inconsistent with the policy of the Agency in that the Applicant should not have been disciplined but disqualified.

Ms. Khabonina Eunice Maselela

[16] The witness stated that she is the Respondent's Deputy Assistant Director within the CRM. The essence of her evidence was that the Applicant had worked under her supervision and they signed performance agreement for 2017/2018 financial year. The witness referred to the relevant paragraphs of her affidavit and the forensic report on page 45 of bundle "A" and she explained that the Applicant was not appointed as acting second in charge during 2017/2018 performance cycle as reflected on page 59 of bundle "A".

[17] Ms. Maselela was referred to pages 25,26 and 61 of bundle "A" and she testified the duties which the Applicant listed on her CV do not appear on page 61 of the performance agreement. She testified that the official who was appointed as acting second in charge was Ms. Thandiswa Maya. She explained that a second in charge (2IC) is appointed to supervise the team when the supervisor is not available such as when the supervisor is on leave, sick leave but the 2IC does not have signing power.

[18] In cross-examination, the witness maintained her evidence that the 2IC's duties entail supervising the team. She was referred to page 45 of bundle ("A") and stated that she was interviewed by Mr. Segoale. She stated that according her recollection selection of employees as 2IC started in 2017. She was also selected as 2IC for about 6 months but she did not include it in her CV because she was formally selected.

[19] When asked as to who came up with the 2IC idea, the witness said it could have been Mr. Zwane. She explained that the main idea was to upskill employees within the CRM. The witness expressed the view that it would be wrong or offence if employees indicate that they acted as 2IC in their CV's. She was asked to explain how employees who were appointed to act as 2IC were assessed. The witness explained that in 2017/18 the CRM management decided that duties of acting 2IC should be part of the performance agreement although the position of 2IC was not on the Respondent's structure (organogram).

[20] When pressed to explain how the management decided to make 2IC duties part of employees' performance agreement if it was not part of the Respondent's structure, Ms. Maselela stated that the management decided to make it part of the performance agreement even if it was not part of the Respondent's structure. The witness maintained that Ms. Maya was selected as her 2IC during 2017/2018 performance cycle and she informed accordingly. She further stated that she made a mistake for her to use the words "appointed" in her affidavit as acting 2IC's was not done in writing. The witness was referred to point 6.3 on page 45 of bundle "A" and she said Ms. Maria. Kwenaithe was correct to use the word "appointed" in her affidavit

because she and the Applicant had signed performance agreement. Ms. Masilela was referred to point 9.4 on page 49 of bundle “A” and she read it into the record.

Summary of the Applicant’s case

[21] Mr. Sono led oral evidence of the Applicant, called two witnesses and subpoenaed three witnesses who testified as follows:

Ms. Keorapetse

[22] It should be stated that the Applicant presented extensive evidence challenging fairness of her dismissal. She explained that she worked under various supervisors and her last supervisor was Ms. Maria Kwenaitse. The essence of the Applicant’s evidence was that on 18 January 2022 she met the investigator (Mr. Segoale) and the latter informed her that he was appointed to investigate alleged misconduct against her. Wilfred showed her CV and Z83 form related to the position for which she had applied.

[23] The Applicant testified that the reason for including supervisory and workforce assistant experience in her CV was to show the work she performed since she joined the Agency. She explained that around 2013/2014 the CRM management (Solomon) came up with development initiative to improve customer service. She stated that development initiative was implemented after the management had done benchmarking with one of the insurance companies. The Applicant explained that management used to hold buzz meetings on Fridays where supervisors would show performance statistics and indicate top performers amongst call centre agents.

[24] She mentioned that employees who performed well and have qualifications were afforded an opportunity to gain experience so that they could apply for vacant positions. The supervisors would inform the call centre agents who the second in charge (2IC) was and the latter would assist the supervisor to manage the team. The Applicant further testified that previously the CRM management did not issue formal appointment letters to the CRM agents to act as supervisors.

[25] Ms. Tshenye testified that her supervisors assigned her the responsibility to act as 2IC and they trained her until they were able to perform her job as acting supervisor. She stated that Ms. Maria Kwenaitse was one of her supervisors who trained her in how to carry out her supervisory duties. The Applicant stated that the common practice in the CRM was that employees would include duties they performed as 2IC as reflected referred to pages 116 of bundle “B” where a CRM agent wrote “Workforce management” in her CV which is also an acting role. She referred to page 117 of the same bundle and mentioned that the CRM agent included “Quality Assurance” in her CV which entails informal duties.

[26] Ms. Tshenye stated that it was difficult to describe acting responsibilities in her CV because of informal manner in which they were appointed to act as 2IC's. She further explained after the investigation in connection with her CV, she was one of 4 employees who were appointed to act supervisor. She requested her supervisor (Ms. Kwenaita) to issue appointment letter and the senior manager (Mr. Phakiso Tladi) issued the letter. She testified that Mr. Kenneth Baloyi encouraged employees to include their acting roles in their CV's and she is not aware of any policy prohibiting employees from including their acting duties in their CV's.

[27] The Applicant contended that she did not commit act dishonestly as alleged in charge 1 because she performed the duties she listed in her CV over many years. She further mentioned that it would have been unfair of her not to include her acting roles in her CV. The Applicant testified that she was charged on 08 June 2023 without an explanation. She stated that the delay in dealing with the allegations negatively affected her case in that some information had been deleted and most of them left the Agency. She mentioned that she could not call Mr. Baloyi as her witness because the hearing took place after he had already left the Agency.

[28] The Applicant stated that she was not aware that her CV was shared with other people without her knowledge and it was unfair to share her CV with officials who were not her references. The Applicant stated that Ms. Tshiuda was not allowed to share her CV with other people. She testified that Ms. Siphokasi Adonis was not disciplined because Mr. Segoale was told to focus on her case. The Applicant stated that the Agency should have charged Adonis when she came back and occupied the same position. She pointed out that her application should have been eliminated because her work experience was questioned.

[29] In cross-examination, the Applicant disputed the proposition that she testified that the delay in charging her prejudiced her. She mentioned that she testified that the delay in holding internal hearing affected the preparation of her case. She was referred to page 26 of bundle "A" under "Customer Service Agent" and she said she worked for Agency from 2010 to 2017. The Applicant stated that she performed duties during 2014 but she did not include them in her CV. She maintained that Solomon trained her in 2014 and he was also assigned to act at that time. The Applicant was referred to page 55 of the same bundle and she explained that she informed Mr. Segoale that she made a mistake when she wrote that she acted as 2IC during the period 2017/2018 financial year as reflected on page 44. She further mentioned that she reported to Ms. Kwenaita in 2018/2019 financial year and she acted as her 2IC for 12 months.

[30] The Applicant disputed the proposition that according to Ms. Maselela's version, "acting position" does not have timeline and it was ad hoc in nature. She was referred to pages 14 to 16 of bundle "A" and it was put to her that she did not show she has 3 years' experience. She stated that her application should have been eliminated if she did not have 3 years' experience. She further disputed the version that the investigator found that she committed misconduct as indicated on point 9.3 of page 48 because point 9.4 is part of the investigator's conclusion.

[31] Ms. Tshenye was referred to the point 8.2.5 of bundle "A2" and it was put to her that her line managers were required to confirm the shortlisting with Ms. Tshiuda and the latter was authorised to communicate with them. In response, the Applicant maintained that the sharing of her CV with officials who were not part of reference was unfair. In re-examination the Applicant was asked whether her mistake warranted a formal disciplinary hearing even though she was not shortlisted. She stated that she should have been issued with a warning as it was her first transgression.

Ms. Shandukani Tshiuda

[32] The witness stated that she is an HR officer of the Agency. She explained that on 19 November 2021 she sent an email to the Applicant's supervisor, Mr. Kenneth Baloyi, to verify the Applicant's supervisory experience as indicated in her CV. At that time she was screening CV's for the position of Deputy Director: Quality Assurance and Coaching. She explained that Messrs Tladi and Le Roux were not part of the screening process but she included them in her email as Mr. Tladi was a senior manager of the CRM and she had to report the screening process to Ms. Le Roux.

[33] The witness stated that she screened CV's alone as the 2011 policy of the Agency allowed her to do so until in 2023 when a panel was allowed to screen CV's. She disputed the version that the 2011 policy did not allow her to screen CV's alone and she explained that she complied with point 8.25 on page 12 of bundle "A2". She further stated that she shared information about all candidates with her line manager. She could not confirm if Ms. Siphokasi Adonis's CV was part of the first recruitment and selection process and if she shared Adonis's emails with her line manager.?

[34] Ms. Tshiuda stated that she did not reach the final shortlisting stage because the whole recruitment and selection process was halted and the post was advertised later. Under cross-examination by the Respondent's representative the witness maintained her evidence in all material respects. She further stated that she does not eliminate an application based on a wrong Identification number.

Mr. Matome Rapanyane

[35] The witness testified that he is the manager on level 12 (Deputy Director). After he was referred to point 7.3(b) on page 177 of bundle “B” the witness was asked whether he knew the rank level of the Respondent’s representative in the internal hearing and he answered in the negative. It was put to him that the rank level of the Respondent’s representative during the internal hearing was the same as his rank. He stated that the Respondent’s representative was appointed by the Agency. The witness was referred to pages 120 to 122 of the same bundle regarding the appointment of Mr. Samson Mmakola and he said he never saw appointment letters of Mr. Mmakola and he saw the for first time at the arbitration hearing.

[36] The witness was asked why he did not provide reasons on the Applicant’s preliminary issue relating to ‘formalities of the charge sheet’ as required on point 2.4 on page 173 of bundle “B”. The witness referred to point 3.2 and 3.3 pages 13 to 14 of bundle “BI” and stated that he furnished reasons for his ruling. He further mentioned that he had to determine whether there were merits of the Respondent’s allegations. When asked the number of charges levelled against the Applicant, Mr. Rapanyane mentioned that the alternative charge should have been part of charge 1. He further stated that he never added another charge against the Applicant.

[37] Mr. Rapanyane was referred to the transcript of the internal hearing on relevant pages of bundle “B” and it was put him that he begged Ms. Tshiuda not continue with her evidence because the Respondent’s case was weak. In response, he said he would not entertain the recordings referred to by Mr. Sono because the parties agreed to only use the Respondent’s recording. He mentioned that Mr. Sono did not formally raise the issue after he advised him to raise it but he raised during the subsequent hearing but the raised the issue with the Respondent after he released the sanction the parties. The witness stated that Mr. Sono’s recordings were unlawful and unprocedural because they relate to a private discussion he had with Ms. Tshiuda.

Mr. Mervin Kemp

[38] Mr. Kemp is the chief director for human resources for the Agency and his evidence mainly focused on procedural fairness of the dismissal. He was referred to pages 120 and 124 of bundle “B” and explained that he appointed Messrs. Mmakola and Rapanyane to represent the Agency and chair internal hearing, respectively. He stated that the rank level of the chairperson (Mr. Rapanyane) is deputy director but he is unsure about the rank level of Mr. Mmakola.

[39] The witness was referred to point 7.3(b) on page 163 of the same and he admitted that he appointed the chairperson whose the rank level is the same the representative of the Agency. He stated that his understanding was that the Agency representative could deal with the matter even if he was on the same level as the chairperson.

[40] The witness was referred to point 6.1.1 of bundle “A2” and resisted the proposition that the sharing of the Applicant’s CV with other officials contravened the HR policy of the Agency. Mr. Kemp further stated that Ms. Tshiuda was authorised to share the Applicant’s CV with her line managers in order to seek clarity on the Applicant’s CV. Mr. Kempt was further referred to point 8.1 on page 46 of bundle “B” regarding deficiencies identified by Mr. Segoale and he explained that the HR section is plays the role of appointing an employee in an acting capacity. The witness further mentioned that he is aware that Ms. Adonis resigned from the Agency and came back but he is not privy to allegations against her.

Ms. Maria Kwenait

[41] Ms. Kwenait stated that she Assistant Director within CRM and the Applicant reported to her during 2018/2019 financial year. She was referred to pages 53 and 54 of bundle “A” and she stated that she deposed to the affidavit regarding her relationship with the Applicant. She explained that Mr. Segoale told her the Applicant listed her name in her CV and she allegedly misrepresented her CV. She was asked to describe the concepts “Workforce Assistant, “Second in charge (2IC), Workforce planner, “Acting supervisor” and “Workforce management team”. She stated that a “Workforce Assistant” manages CRM production which entails scheduling production and adherence to schedules to ensure floor optimal performance, giving out production statistics.

[42] The witness mentioned that a “Second in charge” is nominated to assist the supervisor in managing the team. She mentioned that during 2018/2019 the appointment of the “Second in charge” was verbally done internally as part of development and there is no remuneration. The witness further stated that later a senior manager identified a gap in appointing 2IC and decided that the appointment of a 2IC should be done in writing. Maria explained that “Workforce planner” is the same position as “Workforce Assistant”(her description of a “Workforce planner contradicts Mr. Baloyi’s description of the role). The witness stated that “Acting supervisor” is appointed to manage the team and a manager and a supervisor would appoint an employee based his or her qualities. She further stated that a manager must submit a memorandum to the HR for the approval of an employee as “Acting supervisor”

[43] Ms. Kwenaithe testified that she worked with the Applicant and nominated her as her 2IC during 2018/2019 as part of development project. She pointed out that she could only testify about the period the Applicant worked under her(2018/2019). The witness was referred to point 8.1 of bundle “A” and she concurred with the deficiencies identified by the investigator regarding appointment of employees as 2IC. She testified that Ms. Adonis resigned as a CRM agent and came back later.

[44] Under cross-examination, witness was asked if a 2IC has team reporting to her. She explained that the 2IC does everything because she would have taught her what to do. She mentioned that a team has 11 members and the 2IC steps into her shoes to manage the team. Maria testified that the 2IC attends management meetings and gives her feedback and the Applicant carried out those duties during 2018/2019. She further explained that the appointment of 2IC was done yearly on rotational basis and the Applicant could not have acted as 2IC in 2019/2020 financial year.

[45] The witness was referred to page 74 of the same bundle and she stated that “Component Management” was added to the performance agreement to cover acting 2IC appointment and it is not part of the Applicant’s performance agreement because she was not appointed to act as 2IC during the period 2017/2018 financial year.

[46] She was further referred to pages 29 to 30 of the same bundle and she mentioned that she worked with the Applicant for 12 months and expressed the view that Mr. Baloyi might have mixed dates and it would be better if Mr. Baloyi is called to substantiate his statement. She reiterated that she could only account for the period during which the Applicant worked with her and she acted her 2IC.

Mr. Mawethu Zigana (Mawethu)

[47] Mr. Zigna stated that he joined the Agency in 2008 as a CRM manager and he relocated to Durban in 2016. He worked with the Applicant as a CRM agent and the CRM management became up with incentives to reward employees who exceeded their targets. The witness explained that employees who exceeded their targets would be selected to act on different positions. He testified that the Applicant was one of the best performing employees and she was selected as a resource planner but they did not issue appointment letters as it was an internal arrangement. The witness was referred to pages 5 to 7 regarding calculating 3 years’ experience if they did issue appointment letters. He stated that the Applicant had acted as a supervisor and resource planner but he was not sure about the period.

[48] In cross-examination, the witness maintained that the Applicant had acted as a supervisor although he is unsure of the dates. He further stated that the CRM management used rotate employees and the Applicant played a supporting role. The witness was referred to paragraph 4 on page 55 of bundle “A” of Ms. Maselela’s affidavit in which she stated that the Applicant did not perform any duties as acting supervisor during 2017/2018 financial year. He admitted that there is an omission on his part regarding 2018 as he was no longer in the Agency but he maintained that the Applicant had acted as a supervisor when he was a manager.

ANALYSIS OF THE APPLICANT’S EVIDENCE AND ARGUMENTS

Applicable legal principles

[49] In the present case, I am required to determine whether the dismissal of the Applicant was procedurally and substantively fair. It is trite primacy of the LRA is inter-alia, to give effect to section 23 of the Constitution and ensure that a dismissal is substantively fair.

[50] Section 188 (1) of the LRA provides as follows:

‘A dismissal that is not automatically unfair, is unfair if the employer fails to prove-

- (a) That the reason for dismissal is a fair reason-
- (i) related to the employee’s conduct or capacity; or
- (ii) based on the employer’s operational requirements; and
- (iii) that the dismissal was effected in accordance with a fair procedure.

[51] Subsection (2) provides that any person considering whether or not the reason for dismissal is a fair reason or whether or not the dismissal was effected in accordance with a fair procedure must take into account any relevant code of good practice issued in terms of the LRA. In terms of section 192 of the LRA the onus rests with employer to prove on a balance of probabilities that the dismissal was procedurally and substantively fair. Further, section 138 (6) enjoins commissioners to take into account any code of good practice issued by NEDLAC.

[52] In **Sidumo and Another v Rustenburg Platinum Mines Ltd and others [2007]12 BLLR 1097 (CC)**, the Constitutional Court held that the decision whether the sanction of dismissal was fair must be determined by the commissioner and the commissioner’s sense of fairness is what must prevail.

[53] The Constitutional Court enjoined the commissioner to consider the following factors:

- a) the totality of the circumstances.
- b) the importance of the rule that had been breached.
- c) the reason the employer imposed the sanction of dismissal.
- d) the basis of the employees' challenge to the dismissal.
- e) the harm caused by the employee's conduct
- f) whether additional training and instruction may result in the employee not repeating the misconduct.
- g) the effect of dismissal on the employee and his or her long-service record.

Procedural fairness of dismissal

[54] Based on the aforesaid authority, the question is whether the Respondent has discharged to onus on a balance of probabilities to prove that the dismissal was procedurally fair. In terms of the arbitration minute, the Applicant identified the follow procedural issues:

- "4.1 The applicant was not given sufficient time to respond to the investigation;
- 4.2. The investigator was not fairly appointed to investigate the applicant's allegations;
- 4.3 Procedure in terms of the charges lacked particularity;
- 4.4 The Applicant was charged 18 months after the alleged incident;
- 4.5The procedure was unfair in terms of the appointment of the chairperson and the employer's representative."

[55] An evaluation of the evidence reveals that Mr. Segoale interviewed the Applicant on two occasions and the last meeting was on 18 March 2022 in the presence of her representative. Mr. Segoale was referred to page 33 of the Respondent's bundle which shows that he was properly appointed. With regard to "the charges lacked particularity", the Rapanyane explained the justification for dealing with the charges.

[56] In terms of appointment of the chairperson and the Respondent's representative, Mr. Kemp admitted that he did not comply with the relevant provisions of Resolution 1 of 2003. He explained that he laboured under impression that he could appoint the Respondent's representative even though he was on the same level as the chairperson. Mr. Rapanyane stated that he did not know the level of Mr. Mmakola because he did appoint the Respondent.

[57] It is instructive to mention that the Applicant did not explain how those procedural issues have prejudiced her case. With regard to the delay in initiating disciplinary hearing, the Applicant stated that the delay did not prejudice her but it has affected the preparation of her case. It should be noted that the Applicant continued with her work during the investigation.

[58] Although Mr. Rapanyane was referred to the transcribed recordings which reveals apparent biasness on his part in manner, it is trite that parties are bound by the content of the pre-arbitration minute. Hence, I did not consider the issue of procedural bias as it was not part of the pre-arbitration minute. I must indicate further that the I did not consider the issue related to alleged sharing the Applicant's CV with other officials as it was not part of the pre-arbitration minute(check pre-arb minute). Consequently, I find that the dismissal of the Applicant was procedurally fair.

Substantive fairness of the dismissal

[59] For purposes of completeness, the charge preferred against the Applicant is as follows:

“ Allegation1:

Gross Dishonesty, in that you responded to an internal vacancy of a Deputy Director(Manager):Quality Assurance and Coaching(Ref: MNG/QA/2021/10-P) by submitting a fraudulent Curriculum Vitae in which you deliberately misrepresented yourself as having attained a working experience as an Acting Supervisor with qualities of supervision within the CRM Management(CRM) of GPAA for period including May 2017 to February 2019 and continued work of supervision as a Workforce Assistant.”

[60] It is clear from the above charge that the reason for the Applicant's dismissal is mainly that she allegedly acted dishonestly by stating in her CV that she attained working experience as “an Acting Supervisor” since May 2017 to February 2019 and “continued to work as a “Workforce Assistant” The Respondent's main case is that the Applicant did not attain a 3 years' working experience as an acting supervisor and workforce assistant. The Applicant's main case is that has she has the experience as stated in the advertisement. The critical question is whether or not the Applicant has a 3 years' working experience as “Acting Supervisor and Workforce Assistant.”

[60] An evaluation of the evidence reveals that the genesis/ trigger for this case can be traced back to 2013/2014 when the CRM management came up with an unregulated development initiative in terms of which call centre agents were allowed to perform supervisory duties with a view to improve customer service and develop high performers.

[61] It should be noted that although the initiative was noble, it led to unintended consequences in that the management came up with different titles such as a “Second -In-charge (2IC)”, Workforce Assistant” “Workforce Planner” and “Acting supervisor”. Further assessment of the evidence reveals that the CRM management verbally appointed employees to act in those positions on a rotational basis in the absence of supervisors.

[62] In his evidence in chief and under cross-examination, Mr. Segoale was referred to his report where he identified deficiencies regarding the appointment of employees as “Second In Charge”. Some of the deficiencies identified are that the CRM management verbally appointed employees to act as “Second-In-Charge” for the entire financial year, and the position does not appear on the structure of the Agency. Mr. Segoale also indicated that employees appointed to act as “Second In Charge” claim it as experience attained for the entire duration of their tenure even though they might not have acted as “Second- In- Charge” for entire period.

[63] Mr. Segoale was further referred In point 9.4 on page 49 of bundle “A” where he stated as follows:

“9.4 We conclude that that the process of appointing Acting Supervisors, Second-In-Charge and Team Leaders at Call Centre is flawed, because proper roles and periods are not outlined to the incumbents.” In point 10.2 on page 49 of the same bundle Mr. Segoale recommended that the CRM must engage Human Resources Management to assist in developing guidelines on appointing and managing unofficial positions such as “Second-In-Charge, Team Leader etc. (Own underlining).

[64] It would be apposite to state that the deficiencies identified by Mr. Segoale were considered by Acting CEO where the Acting CEO stated on page 51 as follows: “Please ensure that all recommendations are implemented. There is clearly a challenge when there is informality in selection of “second in charge “ responsibilities which requires urgent redress.”

[65] It is clear from deficiencies identified by Mr. Segoale that the process of appointing Acting Supervisors, Second-In-Charge and Team Leaders at Call Centre is flawed. A careful evaluation of the Applicant’s evidence reveals the supervisory experience she allegedly attained relate to a flawed process. What is intriguing is that after he found that the process was flawed, he recommended that the Applicant must be charged with “Gross Dishonesty”. What is intriguing is that Mr. Segoale did not deem it meet to recommend any action against the CRM for a flawed process save to recommend that the CRM management should engage human resources management to assist in developing guidelines to appoint and manage unofficial positions.

[66] Although it is unclear how Mr. Segoale arrived at 24 months, Mr. Segoale could only have arrived at 24 months based on an appointment that he found to be flawed. Further, apart from the fact that Mr. Segoale identified deficiencies with the manner in which employees are appointed to perform supervisory duties, the Respondent did not present oral or documentary evidence on how long employees should perform supervisory duties in order to include them in their CV's.

[67] It is important to mention that in her evidence in chief, the Applicant stated one of her references was Mr. Kenneth Baloyi and Ms. Maria Kwenaithe. In view of this, the Applicant would not have mentioned Messrs Baloyi and Kwenaithe if intended to misrepresent her CV. What is intriguing is that on point 7.10 of bundle "A" Mr. Segoale states that 'the possible period where Ms. Tshenye might have performed supervisory duties is not more than twenty-four (24) months.'

[68] I must point out that Ms. Kwenaithe disputed Mr. Segoale's conclusion that the Applicant has embellished her work experience because according to her the Applicant acted as her 2IC during 2018/2019 financial year. Ms. Kwenaithe further mentioned that as part of rotation, the Applicant was appointed to act as her 2IC for 12 months during 2018/2019 financial year. It is clear that according to Ms. Kwenaithe the Applicant attained supervisory experience for performing supervisory duties during 2018/2019 for the entire period even though she did not perform those duties for the entire period but she acted as when she was absent.

[69] In her evidence in chief, Ms. Kwenaithe stated that a "Workforce planner" is the same as a Workforce Assistant" and the Respondent did not contradict her evidence. The Applicant stated in her CV that she worked under Mr. Baloyi as a "Workforce" during 2019 to 2021. It must be mentioned that in cross-examination, Segoale was referred to point 7.3 on page 44 of bundle "A" and he confirmed that Mr. Baloyi failed to distinguish the roles of a "Workforce Planner and Workforce Assistant. It is worth noting that the Applicant stated that one of her supervisors (Mr. Kenneth Baloyi) told them that they were allowed to mention the experience they attained in their acting capacities.

[70] An assessment of the evidence reveals that according to Ms. Maselela confirmed her affidavit in which she stated that she did not appoint the Applicant to act as her 2IC and perform supervisory duties during 2017/2018 financial year. She mentioned that the employee who performed supervisory duties was Ms. Thandiswa Daya. Further analysis of the evidence discloses that on 22 March 2022 the Applicant informed Mr. Segoale that she made a mistake in her CV by mentioning that she performed supervisory duties during 2017/2018 financial year. In her evidence in chief, the Applicant admitted that she indeed made a mistake by

including 2017/2018 financial year in CV. It is clear that by her own admission, the Applicant committed a misconduct.

[71] It is common cause that Ms. Tshenye was permanently employed as a call centre agent on 01 April 2010. It is common cause that the Applicant applied for the post in question in November 2021 and she had worked for approximately 11 years when she applied for the post. The Applicant testified that the development initiative in terms of which higher performers were appointed to perform supervisory duties started around 2013/2014.

[72] The Applicant's evidence was corroborated by Mr. Zigana and the latter stated that the Applicant performed supervisory duties as she was one of the higher performers. The evidence of Messrs Maselela, Kwenaitse and Zigana reveals that the appointment of employees to perform supervisory duties was done verbally. In regard to the fact that the development initiative commenced around 2013/2014, the Applicant's version that she performed 3 years' supervisory duties cannot be gainsaid. Consequently, I find that the Applicant performed 3 years supervisory duties. Further, I find that the Applicant committed an act of misconduct by stating in her CV that she performed supervisory duties during 2017/2018 financial year.

[73] The next question is whether the dismissal was an appropriate sanction. In determining the appropriateness of the sanction that was imposed by the Respondent, I shall be guided by Authorities in **Sidumo v Rustenburg Platinum Mines 2008(2) BCLR 158 (CC); EDCON LTD v Pillemer (2008) 29 ILJ 616 (LAC) and EDCON LTD v Pillemer NO and others (2010) 1 BLLR (SCA).**

[74] The Constitutional Court in the Sidumo judgement held that in determining the fairness of a dismissal, Commissioners should bear in mind that security of employment is a core value of the constitution. It was held that the constitutional core value is the protection afforded employees who are vulnerable. Their vulnerability flows from the inequality that characterises employment in modern developing economies.

[75] In **Edcon** judgement (as confirmed by the Supreme Court of Appeal), the court emphasised that the Commissioner should in performing their tasks be guided by the principle of progressive discipline which inter-alia, would entail assessing the prospects of correcting behavior and using the incident as a learning process. It was further held that the attitude and response of the employee when called upon to account for his or her conduct would serve as a useful indicator of the willingness of the employee to continue with the employment relationship and in particular he or she is willing to learn from the experience, per **Ngcobo J in Sidumo**.

[76] Schedule 8 of the Code of Good Practice on Dismissal states that dismissal is the most serious step an employer can impose, and the employer should only resort to it in cases where the continuation of the employment relationship becomes intolerable. It is only where the Courts or Arbitrators are convinced that the actions of an employee are such that they have rendered the continuation of the employment relationship intolerable that termination would be accepted.

[77] It is evident that at the time of her dismissal, the Applicant was in the employ of the Respondent for 14 years and she stated that she has clean disciplinary record. The Applicant admitted before she was charged that she made a mistake when she stated that she performed supervisor duties during 2017/2018 financial year. It is my considered view that although the Applicant admitted her mistake, she should have been charged with negligence for failing to ensure the veracity of the information in her CV. It is apparent that the Applicant started to verify information in her CV after her interview with the investigator. The fact that the Applicant stated that the Agency should have given her a warning for her mistake is an admission that she did not pursue her clean hands.

[78] It should be stated that in terms of the arbitration minute and during her evidence in chief the Applicant also challenged the fairness of her dismissal on basis of inconsistency. The Applicant's main issue is that the Respondent acted inconsistently in that it failed to take disciplinary action against Ms. Adonis who alleged acted dishonestly. The difficulty I have with the Applicant's inconsistency claim is that she did not admit that she committed an act of dishonesty.

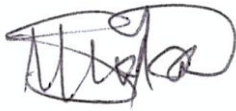
[79] Authorities have consistently held that inconsistency should in reality be a live issue where an employee owns up to the misconduct and then offers the defence that another person committed the same misconduct but was not dismissed. It was further held that an employee who claims inconsistency while denying that she or he committed the misconduct is opportunistic. I therefore find that the Applicant's claim that the Respondent acted inconsistently while she is adamant that she did not act dishonestly is rather opportunity and stands to be rejected.

[80] Having considered all the circumstances of the matter, I am not persuaded that the dismissal of the Applicant was an appropriate sanction. I therefore find that the sanction of a dismissal was inappropriate. The dismissal of the Applicant is therefore found to be procedurally fair and substantively unfair.

AWARD

[81] In the premises, I make the following award:

- a) the Respondent, Government Employee Pension Administration Agency (GPAA), is ordered to reinstate the Applicant, Ms. Keorapetse Tshenye with retrospective effect from her date of dismissal on the same terms and conditions that were applicable but for the unfair dismissal.
- b) the aforesaid reinstatement is without the back-pay because the Applicant did not approach the Bargaining Council with clean hands.
- c) the Applicant is ordered to report for duty within 14 days of the award being served on her.

A handwritten signature in black ink, appearing to read 'Segokodi Thoka', enclosed within a hand-drawn rectangular box.

Name: Segokodi Thoka

(Council name) GPSSBC Panellist