

ARBITRATION AWARD

Panellist/s: SITHEMBELE TSHWETE_____

Case No.: _GPBC 1888/2023_____

Date of Award: 28 MAY 2025_____

In the ARBITRATION between:

PSA obo D. Martin

(Union / Applicant)

and

Department of Higher Education and Training

(Respondent)

Union/Applicant's representative: Mr. Bongane Qankase _____

Union/Applicant's address: Westcol Corporate Office Park _____
42 Johnstone Street _____
Hectoron, Randfontein _____

Telephone: _____

Telefax: _____

Respondent's representative: Mr. Nkateko Zitha _____

Respondent's address: Westcol Corporate Office Park _____
42 Johnstone Street _____
Hectoron, Randfontein _____

Telephone: _____

Telefax: _____

ARBITRATION AWARD

DETAILS OF HEARING AND REPRESENTATION:

1. This an arbitration award in the dispute between the applicant, PSA obo of D. Martin consolidated with that of Ms. AN Tselanyane ("the Applicants") and Department of Higher Education and Training ("the Respondent"), referred by the Applicant in terms of section 186 (2)(b) of the Labour Relations Act No. 66 of 1995, as amended ("the LRA"). The dispute concerns alleged unfair suspension of both Applicants relating to the period of suspension they were subjected to by the Respondent.
2. The arbitration took place on 02 May 2025 at Westcol Corporate Office Park, 42 Johnstone Street, Hectoron, Randfontein, 1759
3. Both Applicants were represented by a union official, Mr. Bongane Qankane, while the Respondent was represented by Mr. Nkateko Zitha.
4. The arbitration proceedings were conducted in English and were digitally recorded, and recordings are stored with the General Public Service Sector Bargaining Council (GPSSBC) in terms of GPSSBC rules of proceedings.

ISSUE TO BE DECIDED:

5. I am required to determine whether or not the precautionary suspension of the Applicants constitutes unfair labour practice.

BACKGROUND TO THE MATTER:

6. The Applicants are both employed at the supply chain management office of the Respondent. Mr D. Martin was employed as an asset and fleet officer while Ms. Tselanyane was employed as an asset administration clerk.
7. Both employees were precautionary suspended pending investigations on allegations irregular supply chain practices or failure to follow due processes by officials of this unit.
8. Both Applicants were precautionary suspended on 15 August 2023 pending allegations of misconduct that happened at their place of work. Both suspensions were uplifted on 04 December 2023.
9. Both employees referred two separate disputes to the Council. The disputes that were consolidated in this arbitration hearing are: GPBC 1888/2023 and GPBC 1780/2023. A ruling in this regard was issued both parties and the Council.
10. The Applicants are claiming unfair labour practice in that the Respondent failed to follow policy on suspensions. They are claiming a compensation of eight (8) months' salary for Mr. D. Martin and 10 months' salary for Ms. AN. Tselanyane.

SURVEY OF THE PARTIES' EVIDENCE AND ARGUMENTS:

11. The Respondent submitted a bundle of documents which were submitted into evidence as Bundle "A" and called two witnesses, Mr D Martin and Ms. AN. Tselanyane (the "Applicants") who testified in persons. The Respondent submitted a bundle of documents which were admitted into evidence as Bundle "R" and called two witnesses, Mr Nkateko Zitha and Mr. Amon Maseko to testify on its behalf.
12. The following is a summary of the salient points arising from the parties' evidence and arguments:

APPLICANT'S EVIDENCE AND ARGUMENTS

13. The Applicants submit that the Respondent put them on precautionary suspension for more than 60 days without convening a hearing to extend the suspension. To this effect the Applicants submitted suspension letters dated 15 August 2023. They also submitted letters uplifting this suspension and are dated 04 December 2023.
14. The Applicants testified that during this period of suspension the Respondent only called them in once. They were called in on 22 November 2023 when the Respondent wanted to access their laptops for investigation purposes.
15. Mr. Martin testified that as Applicants they were not briefed about the reasons for their suspension nor were they updated about the status of their case.
16. The Applicants submit that this conduct by the Respondent is in violation of PSCBC Resolution 1 of 2003 and especially clause 7.2 (a) (c):
 - (a) *The employer may suspend an employee on full pay or transfer the employee if*
 - i. *The employee is alleged to have committed a serious offence; and*
 - ii. *The employer believes that the presence of an employee at the workplace might jeopardise any investigation into the alleged misconduct, or endanger the wellbeing or safety of any person or state property*
 - (c) *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 Applicants argue that the Respondent did not call for a hearing that would have decided on further postponements.
18. The Applicants further submit that the Respondent also acted against the *Public Service Guidelines for Disciplinary Sanctions and Precautionary Suspension (the Guidelines)*. These guidelines were

issued by the Minister of Public Service and Administration in addressing “*the delays in the finalisation of disciplinary cases due to precautionary suspensions*”.

19. The Applicants further submits that Ms. Tselanyane suffered depression as a result of this suspension. A letter from a doctor confirming the depressed state of Ms Tselanyane was submitted as evidence.
20. The Applicants seek 10 months’ salary for Ms Tselanyane as compensation. They also seek 08 months salary for Mr Martin as compensation.

RESPONDENT’S EVIDENCE AND ARGUMENTS

21. Mr Nkateko Zitha testified that item 7 (2) (c) of the PSCBC Resolution 1 of 2003 requires the Respondent to hold a hearing after 60 days or a month has lapsed after suspension. It the Respondent’s contention that not all investigations lead to holding of hearing. The investigation might absolve the suspended. It is the understanding of the Respondent that the disciplinary hearing will convene after the investigation has been finalised. In this case the investigation was not yet completed hence the hearing was not held.
22. The Respondent testified that upon the expiry of the 60 days as stipulated on the Guidelines and PSCBC Resolution 1 of 2003 the employee needs to come back to work. The Respondent wrote a letter to this effect and the employees’ suspension was lifted.
23. The Respondent testified that they are not aware of any prejudice suffered by the Applicants as they were suspended on full pay.

ANALYSIS OF EVIDENCE AND ARGUMENT:

24. It is trite law that in an unfair labour practice dispute the Applicant bears the onus to prove the existence of conduct that is deemed unfair.
25. Indeed, it is common cause between the parties that the Respondent precautionarily suspended the Applicants for a period of exceeding 06 months without extending this suspension as per Resolution 1

of 2003. The Respondent did not update the Applicants about the status of their suspension nor about any delays encountered as required by the Guidelines

26. The reasons advanced by the Respondent are that the investigation which are still ongoing are complex hence the period of exceeding 06 months. Also, that the hearing could not be held because the investigation had not concluded by the end of the 60 days.
27. In all fairness this is reason enough for the Respondent to follow peremptory procedure as laid out in the Resolution 1 of 2003: “...the employer **must** hold a disciplinary hearing within 60 days. The chair of the hearing must then decide on any further postponement”. The purpose of holding this hearing is for the chairperson to decide on further postponements. The Respondent is required to present the complexity of the matter and the length investigation justifying further postponement to the chair of the hearing. The chairperson will then decide, after deliberations in the hearing, whether or not to grant the postponement. The argument by the Respondent that the investigations have to be concluded first before this hearing could be held cannot stand.
28. Furthermore, the Guidelines sets out clear principles that need to underpin precautionary suspensions:
- Precautionary suspensions must be reviewed on a regular basis
 - Employees must, without delay and throughout the process be informed of the process steps that the Department is initiating
29. The Applicants were at the premises of the Respondent every Monday and Friday without any update on the status of their suspensions given to them as required by the Guidelines
30. It is trite law that precautionary suspensions bring a cloud over the suspended employees. In the Court Case: *Imatu obo Senkhane v Emfuleni Local Municipality and Others (JR1871/14) [2016] ZALCJHB 296 (29 July 2016)*: explains the compensation that needs to be meted out for feelings of pain that employees experience:

[23] *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 solatium¹ and it constitutes a solace to provide satisfaction to an employee whose constitutionally protected right to fair labour practice has been violated.² The solatium must be seen as a monetary offering or pacifier to satisfy the hurt feeling of the employee while at the same time penalising³ 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”.

31. The Respondents clearly did not observe the prescripts of Resolution 1 of 2003 as well the Guidelines. On a balance of probabilities, the Respondent did commit unfair labour practice by precautionary suspending the Applicants

AWARD:

32. The Respondent did commit unfair labour practice by precautionary suspending the Applicants beyond the 60 days stipulated by the Guidelines and Resolution 1 of 2003.
33. The Respondents are ordered to pay the Applicants the following respective compensation as a solatium: Ms. AN Tselanyane to be paid 02 Months salary which is equal to R48 854,9. Mr DR Martin to be paid 2 months salary which is equal to R70 210,9

¹ This was first raised in *Johnson and Johnson (Pty) Ltd v CWIU* (1999) 20 ILJ 89 (LAC) with regard to procedurally unfair dismissals.

² The LRA and the EEA in matter such as this give effect to the fair labour practice right entrenched in the Constitution of the Republic of South Africa Act 108 of 1996.

³ We do not need to enter into the debate on whether or not *solatium* contains a penal element suffice to say that the monetary prejudice the employee suffers must equate to some form of a punitive element but not a penalty in the context of criminal and criminal procedural laws. Compare S Vettori “The Role of Human Dignity in the Assessment of Fair Compensation for Unfair Dismissals” PER/PELJ 2012 (15)4 102/231-123/231 when he says “*The cap on compensation for automatically unfair dismissal is double that of “ordinary dismissal”, namely 24 months’ salary as opposed to 12 months’ salary. Perhaps this could be construed as an intention on the part of the legislature to introduce a punitive element in the amount of compensation awarded for automatically unfair dismissals since these reasons for dismissal seem to be morally reprehensible and repulsive to our sense of justice.*” At 109/231.

34. These payments in paragraph 33 above must be made by the Respondent by way of electronic fund transfer into the Applicants bank accounts known to the Respondent or as provided by the Applicants the Respondent. These payments must be made to these accounts by no later than 15 June 2025
35. The payments shall attract interest at a rate of 11,75% in the event that it is paid by the Respondent on any date after 15 June 2025
36. The GPSSBC is directed to close the file


Name: SITHEMBELE TSHWETE

(GPSSBC) Arbitrator