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

ARBITRATION AWARD

Panellist/s: Mr Martin Sambo
Case No.: GPBC105/2023
Date of Award: 30 July 2026

In the ARBITRATION between:

PSA obo H TSOTETSI

(Union / Applicant)

AND

DEPARTMENT OF HIGHER EDUCATION AND TRAINING

(Respondent)

Union/Applicant's representative: Mr Ololo Shiburi
Union/Applicant's address: PSA

Telephone:
Telefax:

Respondent's representative: Ms Rebecca Raphotle
Respondent's address: Department Of Higher Education, 121 Francis Baardt Street
Pretoria

Telephone: ____________________

Telefax: ____________________

ARBITRATION AWARD

DETAILS OF HEARING AND REPRESENTATION

This matter was scheduled for arbitration at 9h00am on the 03 & 04 October 2023, 04 & 05 April 2024, 08 & 09 July 2024, 05 & 06 November 2024, 03 & 04 April 2025, 22 & 23 September 2025, 17 & 18 February 2026, 02 & 04 March 2026 AND 09 & 10 June 2026 at the offices of the Respondent, Department of Higher Education, 121 Francis Baardt Street in Pretoria.

The employee party, Ms. H Tsotetsi (hereinafter referred to as the Applicant), was represented by her union representative of PSA, Mr. Ololo Shiburi. The employer party, Department of Higher Education (hereinafter referred to as the Respondent) was represented by its Labour Relations Officer, Ms. Rebecca Raphotle.

The proceedings were electronically recorded.

ISSUE TO BE DECIDED

I have to decide whether, in the circumstances detailed hereunder, the dismissal of the Applicant by the Respondent was substantively fair.

BACKGROUND TO THE ISSUES

The Applicant Ms. H. Tsotetsi was employed by the Respondent on the 01 March 2011. She was holding a position of Assistant Director (ASD): Conditions of Service at the time of his dismissal. The Respondent is national government department responsible for higher education.

The Respondent dismissed the Applicant on the 12 January 2023 for three counts of misconduct relating to, *(i)approving the salary adjustment of Ms Nsele NN on Persal without an approved submission; (ii) wrongfully capturing a shift allowance of Mr. MMN Ngubeni on Persal for an amount of R42 368 for the period 01 January 2018 to 30 April 2018 which resulted in irregular payment; (iii) wrongfully capturing a shift allowance of Mr. MMN Ngubeni on Persal for an amount of R42 368 for the period 01 April 2018 to 31 March 2019. which resulted in irregular payment.* It is important to note that there were four charges, and the Respondent withdrew the second charge during submission of evidence in this arbitration. The Applicant referred the dispute to Council, but could not be resolved through conciliation. The Applicant seeks retrospective reinstatement and backpay as a remedy.

The parties stated that they had no point in limine to raise and submitted bundle A for the Applicant and Bundles B and C for the Respondent. The parties further introduced bundles D and E during the course of the arbitration. The Respondent called five witnesses whereas the Applicant called three witnesses for her case. The Applicant disputes only the substance of his dismissal. On the substance the Applicant contends that she did not breach the rule in charge 1 as there was an approved submission. She also did not breach the rule in charges 3 and 4 as her capturing was not wrongful since the payment to Mr Ngubeni was due. The Applicant further disputes the existence of the rule as far as capturing and approving on Persal is concerned. The Applicant further disputes the consistent application of the discipline by the Respondent and the appropriateness of the sanction of dismissal.

SUMMARY OF THE RESPONDENT'S CASE

Ms. Suzan Mathabatha testified that:

Charge1

She is the Assistant Director (ASD): Labour Relations. There was correspondence from the principal (Dr Mthethwa) of CET college in KZN alleging transactions involving salary adjustment of Ms. NN Nsele of which him as Accounting Officer was not aware. She was assigned to investigate the allegation. She found two transactions elevating Ms. NN Nsele from salary level 5 to salary level 7 and the other adjusting her salary from entry notch of level 7 to the last notch 12 of salary level 7. The first transaction was captured by Ms. Lindi Ngubane and was approved by Mr. Desmond Mhlanga. This was on 01 with effect from 01 January 2018. She also found that the second transaction of notch elevation was approved a few days later by the Applicant.

In Public Service, there must be an authorizing submission approved by the delegated authority for such transactions. She has requested that submission from Ms. Ngubane (the capturer), the Applicant (the approver of the second transaction) and Mr. Mbatha the Deputy Principal (DP) Corporate Services who was implicated by the principal in his letter of complaint. None of them provided that authorizing submission. Mr. Desmond Mhlanga (the approver of the first transaction) was no longer with the Respondent at the time of the investigation. The only document that was provided was the HR-6 form. According to Ms. Venetia Kruger of HR and supervisor to the Applicant, this form alone would not be sufficient to give authority of salary adjustment. It must be attached to the authorizing submission as a supporting document.

The Applicant in her response stated that she received the supporting documents from the capturer and returned them to the capturer after approving. There was no action taken against the Deputy Principal Mbatha because he only submitted a request to HO. HO had an option to approve or disapprove his request. The action to adjust the salary was taken by the capturer and the approver.

Mr. Jabulani John Dlamini testified that:

Charge1

He was the Presiding Officer (PO) in the initial hearing of the Applicant. The Respondent called five witnesses for its case. Three witnesses testified to charge1. The Investigator, Ms. Mathabatha testified that the Applicant approved the salary adjustment of Ms. Nsele from the first notch to the last notch of salary level 7. She testified that the Applicant was a senior manager and ought to have known that an authorizing submission is required for such a transaction. The second witness, Ms. Venetia Kruger was the supervisor for the Applicant. She testified that the HR-6 form alone cannot authorize anyone to elevate the salary and that the form did not eve state that the salary of Ms. Nsele be elevated from first to last notch of level 7. She also said that the Applicant is a manager and ought to have known better. The third witness Mr. Nkosi testified that he is a manager and that salary adjustments cannot be done without Job evaluation as such will be irregular. Ms. Olivia Manoko from PERSAL Control at Head Office testified that the second transaction was approved by the Applicant two days after the initial transaction was done on 07 May 2018. She said there were no supporting documents in the file at Registry other than the HR-6 form and no documents on the LOBO system. Further there was no approved submission from the principal at the college. The Applicant on the other hand testified that she relied on the HR-6 form to elevate the salary of Ms. Nsele since it did not specify to which notch she must be elevated. She also testified that she did not rely on the HR-6 form alone. The Applicant called one witness Mr. Mbatha who testified that the HR-6 form was only submitted to HO as a mere request to consider and make an informed decision. The Applicant's representative asked Mr. Mbatha if the adjustment of Ms. Nsele was in line with his instruction or not? To this Mr. Mbatha responded that; "As a collective we needed to submit to the DHET, for them to decide whether they accept it or not". Looking at all that he was convinced that the HR-6 was not an instruction at all. The Applicant had said that there was a submission which went with the HR-6 forms and that it was lost and that it could have contained instructions to elevate. She was not certain.

Charge 3 and 4

The Respondent witnesses showed that the Applicant had captured this transactions of Mr. Ngubeni but that there were no sufficient records to support that he has worked on those days that he was paid. The Applicant testified that the monies were due to the Applicant but did not provide proof. There was no confirmation that Ms. Kruger established that there were attendance registers before she signed. Ms Kruger mentioned that she was charged in another hearing. He, however, did not capture that in his notes. His consideration was that the payments to Mr Ngubeni was not backed up by evidence.

Mr. Sibusiso Vincent Mthethwa testified that;

Charge 1

He is the principal of KZN CET College. He is the Accounting Officer of the College and is responsible for 3 sub-directorates, being Academic, Finance and Corporate Services. At the time his staff component was between 4000 and 5000 but currently is around 2 348. Ms. Nsele is one of the support staff who was based at Phindangene Community Learning Centre (CLC) when he arrived. She used to come to the Central office to assist with administrative tasks as and when she would be needed like any other lecture who did so. It came to his attention that there was a salary increase of Ms. Nsele, which he was not aware of. A salary increase could happen through a promotion process or after an internal job evaluation process. Neither of those processes occurred and either would have to be authorized by him. He did not authorize any such process and Ms. Nsele did not do any additional work which would warrant a salary increase. He then requested an investigation by Head Office since one of the people involved was the Deputy Principal: Corporate Services Mr. Mbatha and he was only delegated to discipline staff up to rank level 8. He has requested the authorizing submission and to date he has not received it. He only saw the HR-6 in 2024 when he was called to testify. But that HR-6 form signed by Mr. Dlamini his PA and his supervisor Mr. Mbatha is not authority to increase staff salary. He disputes that he has given them authority to increase the salary of Ms. Nsele and is still awaiting the authorizing submission that he has requested.

Charge 3 and 4

He accepts that as per page 70 bundle C in 2018 January he has signed a fixed term lecturer contract with Mr. Ngubeni and that he will be paid with the lecture rates. Mr. Ngubeni accepted the contract. He notes the HR-6 form on page 85 bundle A signed by Mr. Mbatha and Mr. Dlamaini whereby a claim of 15 months payment is made for Ngubeni. He was not aware of this case of Ngubeni. He was not given an opportunity to make submissions as the Accounting officer on this matter. The matter should have been brought to him

Mr Sandile Chamane testified that;

He is the Director Labour Relations. It is not correct for the Applicant to say Mr. Desmond Mhlanga and Ms. Kgamanyane were not disciplined by the Respondent since he was appointed as an initiator and the Applicant was a witness in that case. However, when he was pointed to a case involving Mhlanga and Kgamanyane, whereby on 25 June 2018, his supervisor Chief Director HRM&D instructed that "*action be taken against officials who implemented the upgrade without the approval of the DG. Labour Relations should investigate the matter as there are financial implications involved*", Mr. Chamane claimed that he is not aware of the case and contended that the Applicant should have made them aware of the case since she is a manager.

<u>Ms. Venetia Kruger testified that;</u>

Charge 1

The Applicant was as ASD: Conditions of Service, holding a junior management position and was reporting to her. Amongst her duties the Applicant was responsible for amendment of salaries. An Hr-6 form is mandate document submitted from College to HO requesting HO to do some change or amendment as per the remark on that form. In page 3 bundle B is an HR-6 form signed by Ms. N Dlamini and her supervisor Mr. Mbatha who was the DP Corporate Services. The remarks on the form states that: "*Kindly change the Nature of appointment of Ms. Nsele NN From salary level 5 to 7 due to permanent additional duties that warrants remuneration*". This form should come with supporting documents like authorizing submission by the principal and a new job description since it speaks of additional permanent duties. Then HO will implement if the submission is within relevant legislation. The form alone cannot be used to effect salary change.

The circumstances under which an official's nature of appointment and salary can be changed are through promotion, grade progression, job evaluation and counteroffer. In all these instances relevant supporting documents and authorizing submission from the principal would be required since he is delegated to approve officials from level 1 to 8 in those circumstances. An employee salary cannot be changed from entry notch on a short-term basis. Given that on PERSAL an event code for this transaction is 0009. That is the event code for cost-of-living adjustment. The movement will be on the same notch depending on the percentages decided. It will not be to the next notch. Further, clause 3.6.2.9 of PSCBC Resolution 3/2009 stipulates that: "No employee who was appointed on salary level 4, 5 and 6 can grade progress to salary level 6, 7 and 8 respectively i.e. grade progress over to salary levels. These employees must apply for vacant funded posts graded on those salary levels". This means there is no two-level change in salary.

At the time when the matter of the Applicant started, she went looking if the supporting documents for Nsele could be found. She also looked at the Registry and could not find it. She also checked on the LOBO system. The document would have been scanned by Registry on that system. She also checked if there was a hard copy but could not find it. On the LOBO system she only found the HR-6 form that is on page 3 bundle B.

Charge 3 and 4

On charge 3 she has signed the calculation with the Applicant that indicated that Mr. Ngubeni was entitled to 16 months payment of R10 592.12 per month as from January 2017 to April 2018 which is at the rate of a Centre Manager. The contract on page 68 bundle C indicates that he was a Centre Manager for a period of only 12 months up to December 2017. The next contract that he signed on page 70 bundle C is that of a Lecture and it starts on 08 January 2018 but has not end date. This means that the Applicant should have been paid at the rate of a lecture from January 2018 to April 2018. So, the payment at the rate of a Centre Manager for those 4 months was irregular. The rate of a lecture is R5 292.12. She was also charged and she attended a disciplinary hearing.

On charge 4 it indicates a rate of R6000. She can't explain how it was arrived at. It is a rounded figure, and she believes it is irregular.

SUMMARY OF THE APPLICANT'S CASE

<u>The Applicant Ms. Hlengiwe Tsotetsi testified that;</u>

Charge 1

She was the ASD: Condition of Service. Ms. Nsele was translated out of adjustment from salary level 5 to salary level 7. There was no process for that out of adjustment process. This meant that an official could be at level 5 but still be paid at level 7. That is why there was no advertisement for the position and on page 6 bundle A it shows her position still as Admin Officer despite her being at level 7. This was a tool that the college used in other circumstances. She was not part of this first transaction. When the colleagues executed the first transaction, they made a mistake of not considering the notch that the college wanted Ms. Nsele to be. That is how she got involved to assist with correcting the notch as the movement to salary level 7 was already done. There are different circumstances in which one can correct the notch. In this case they did an adjustment or a notch correction for Ms. Nsele. Unfortunately, their division does not have an SOP or Policy for that procedure. There was no plan as to what should happen and how. They did things as they understood them. Her colleague Lindi corrected the notch and she approved it. There were calculations in the submission and a motivation as to why Ms. Nsele should be on the last notch. Unfortunately, that document has been lost by Registry. Everything went well for two years and there were no complaints.

These transactions happened in May 2018 and on the same year on 14 August 2018 the Chief Director: HR Ms. Mapheto gave a directive in a memorandum on page 62 bundle A whose aim was to regulate capturing of all transactions within Human Resources Management and Administration. The memo reads as follows:

"*2. I have noted with serious concerns certain irregularities happening within Human Resources Management and Administration regarding the capturing of transactions on PERSAL.*
3. This is due to lack of control and supervision by managers and supervisors. Most transactions are captured without having been verified and quality assured by those given the responsibility of management and supervision….
4….
5. As a result of these irregularities; I have taken the following decisions:
5.1 All personnel are prohibited from capturing any transaction on PERSAL without any approval
5.2 All requests must be implemented as follows:
5.2.1 ….
5.2.2 All requests from colleges which the human resources practitioners used to capture without an approved submission; must from hence forth be captured on PERSAL after a submission to implement the request has been generated and approved by the Chief Director HRM&D. No request shall be processed without an approved submission; this includes matters approved by the colleges' principals".

These transactions were said to be wrong, but she only knew after 2 years when the principal wrote a letter of complaint to Ms. Mapheto in 2020 about a salary adjustment of Ms. Nsele. When she reads that letter, she assumes that the problem was not the salary adjustment but the fact that he had to deal with the animosity of other employees and the union regarding the adjustment. She believes it is the reason this matter is reported after so many years. However, the principal has at all those months signed a payroll certificate where he declares that all persons on the payroll are entitled to their payments. If this was wrong, he as Accounting Officer could not have continued to sign it. It was therefore not wrong, but he was pushed by the circumstances. There is a similar case where colleagues Mr. Desmond Mhlanga and Ms. Mildred Kgomanyane implemented the upgrading of jobs without approval. This led to some officials been upgraded and some not. The Chief Director HRM&D has on page 61 bundle A, instructed that this be investigated since it was done without approval. None of those colleagues were disciplined and she understood that it is because there was no rule or policy or SOP. Officials did as they understood.

Mr. Chamane testified that Labour Relations was not aware of these cases. The Investigator Ms. Mathabatha testified that she was told of the rule by Ms. Kruger. When she questioned her about the existence of documents about the rule she did not produce. Ms Kruger spoke of rule 63 but could not provide it for the arbitration and did not even suggest that she trained her in it, being her supervisor. When she approached Registry, she found that the documents were misfiled and could only find the HR-6 form and page5 bundle B which were scanned twice but the Investigator did not bother to find out why.

Page 76 bundle A is an Operational Risk Register of the Respondent for 2018/19 financial year and it recorded that the risk in HR Records Management was the possible loss/ misplacement of HR records. These were known challenges, but she was charged for lack of documents that led to adjustment. No one has shown her the rule that she breached.

Charge 3 and 4

She has paid the Applicant based on a contract on bundle E page 1 and also on a mandate form on page 85 bundle A. This is an HR-6 form signed by Mr. Mbatha and Mr. Dlamini that states that "*kindly back pay Ngubeni MMN as Centre Manager and backdate the salary of the employee starting from January 2017 to date*". It was signed on 01 April 2018. We don't know if the HR-6 was received at the end of April so that April was covered. We have worked with what we confirmed with the college. She is specifically speaking about Mr. Mbatha. There were discrepancies whereby officials were regarded as Lecturers whereas they were Centre Managers. Page 129 bundle A is a submission she did to correct that.

As to charge 4 when doing a recon with Ms. Kruger her supervisor, we found that Mr. Ngubeni was owed R13000 by the Respondent. We both agreed and signed. That is why she initially said she sees nothing wrong. The source for this payment was the HR-6 or the request. This was an underpayment for May 2018. We were supposed to pay him R10 592.12. We were still owing him some money after paying him R6000. The college will come and explain why he was paid as a Centre Manager and not as a Lecturer.

Ms. Lindiwe Ngubane testified that;

Charge 1

She is appointed as the Senior Personnel Officer: Conditions of Service since 01 September 2015. The Applicant is her supervisor. Amongst her duties she does salary adjustments. Her role in charge 1 is that she captured the second transaction and the Applicant was the authorizer. For her to capture the transaction she was given the HR-6 and the submission from the college by her supervisor Mr. Mhlanga. After receiving the documents, she had used the DPSA notches to arrive at the first notch of level 7. After submitting it to Mr. Mhlanga, he showed her that she had to put the last notch of level 7 as it was in the submission. She did so and submitted to the Applicant to approve. There are no policies that govern the transaction of translation. Translation can put one on a maximum notch if the submission says so. They are being directed by supervisors. They rely on instruction of supervisors and what is on the submission.

She cannot recall the contents of the submission, but she recalls that a notch of 226 943 (entry notch) was mentioned, it had the details of Ms. Nsele, and it was signed by the principal. She cannot recall if there were calculations in the submission but in HR, they usually calculate the months to backdate. The notches were given but not calculated. Page 5 is a printout from PERSAL awaiting approval. Page 6 is the printout after approval by the supervisor, the Applicant and demonstrates that the transaction has been done. After she receives the documents back from the Applicant she as HR scans the documents on the LOBO system and found only the HR-6 with documents from another official from Limpopo. So Nsele documents were mixed with those of the Limpopo official. There were no hard copies at Registry. The file was missing.

After capturing the transaction, she was charged with the same charge 1 of the Applicant and was dismissed on 02 May 2021. She was, however, reinstated after 3 years due to the Respondent having failed to review the matter in time.

Mr. Mhlumiseni Mbatha testified that;

Charge 1

He is the Deputy Principal: Corporate Service. The principal tasked him and Mr. Dlamini to facilitate that Ms. Nsele's salary be upgraded due to additional work she was doing. As a result, the principal tasked his PA Mr. Dlamini prepare the authorizing submission and the principal signed it. He (Mr. Mbatha) personally took it to HO and handed it to Mr. Mhlanga of HR.

Charge 3 and 4

Mr. Ngobeni was a Centre Manager and was having issues with payments. He was underpaid and the Respondent was correcting paying him as if he only had matric whereas he had a degree. Before everything was put together, there were issues of others being paid as interns whereas they were Lecturers or Centre Managers, but this was corrected. There were also challenges of titles whereby others were called Interns, other Lecturers and other Centre Managers called Lecturers. Those who were doing admin were also seen supervising others. There was a big issue with titles at the time. This was until 2021 when this was rectified.

The complaint of Mr. Ngubeni at the time was that he was not paid correctly and needed intervention. He also complained of not being paid a shift allowance. He would not know the period. Mr. Ngubeni deserved every payment he got. He was not there in January 2017 when Mr. Ngubeni arrived. He joined the Respondent in June 2017. He has seen those contracts of employment and has also given staff some contracts to sign like pages 82 to 89 bundle A. The contract says Lecturer, but all lecturers, supervisors i.e. Centre Managers were all called Lecturers. One will be a Centre manager and go to a class and teach. Yes, there will be a difference in remuneration. Everyone signed a contract for 4 hours, but when it comes to claiming one would put his administrative time as Centre Manager. Lecturers only claim for teaching. This would not be explained in the contract as the contract was generic. It is the claim that will show if one does the teaching or also the admin. The contract that would say Lecturer was used for both lecturer and Centre Manager.

The remuneration of the Centre Manager was double that of a Lecturer since it was about teaching and administration. The appointment letter on page 68 bundle C was written by the principal and correctly refers to Mr. Ngubeni as the Centre Manager and depicts him as the enquiries. This is because these letters were prepared towards the end of the year but were backdated to January 2017. The aim was to correct so that people could get their payments from January 2017. He insists that Mr. Ngubeni was a Centre Manager yearly until 2021 when he was permanent. Mr. Ngubeni did not return to be a Lecturer, there was no demotion of him. The overlap in dates was finally addressed in 2021. They did not see it as contradiction but saw it in the context of continuation of teaching and learning.

ANALYSIS OF EVIDENCE AND ARGUMENTS

The Labour Relations Act 66 of 1995, as amended (LRA), provides in the Code of Good Practice(the Code): Dismissal in Schedule 8, Article 2(1) that a dismissal is unfair if it is not effected for a fair reason and in accordance with a fair procedure, … In this case the Applicant indicated that he disputes only the substance and not process of his dismissal. On the substance the Applicant contends that he did not breach the rule, and that the Respondent does not apply discipline consistently, and that the sanction is not appropriate.

Process

Not disputed

Substance

Article 7 of the Code states that a person considering the fairness of a dismissal for misconduct must consider the following:

a whether or not the employee contravened a rule or standard regulating conduct in, or of relevance to, the workplace; and

b if a rule or standard was contravened, whether or not-

i) the rule was valid or reasonable rule or standard;

ii) the employee was aware, or could reasonably expected to have been aware, of the rule or standard;

iii) the rule or standard has been consistently applied by the employer; and

iv) dismissal was an appropriate sanction for the contravention of the rule or standard.

This case deals with alleged breach of three rules, namely; *(i) approving the salary adjustment of Ms Nsele NN on Persal without an approved submission; (ii) wrongfully capturing a shift allowance of Mr. MMN Ngubeni on Persal for an amount of R42 368 for the period 01 January 2018 to 30 April 2018 which resulted in irregular payment; (iii) wrongfully capturing a shift allowance of Mr. MMN Ngubeni on Persal for an amount of R6000 for the period 01 April 2018 to 31 March 2019 which resulted in irregular payment.*

<u>Was there a rule or standard?</u>

Charge1: Approving the salary of Ms. NN Nsele on PERSAL without approval submission.

At the commencement of the case as we were narrowing issues, the Applicant seemed to indicate that she is disputing the existence of this rule. She has also indicated in her testimony that the incident occurred in May 2018 and that only on 14 August 2018 did the Chief Director HRM&D stipulate in a memorandum that "*All requests from colleges which the human resources practitioners used to capture without an approved submission; must from hence forth be captured on PERSAL after a submission to implement the request have been generated and approved by the Chief Director HRM&D. No request shall be processed without an approved submission; this includes matters approved by the colleges' principals*".

Before this question is answered, it is important to understand what the rule is. An approval submission is an authorizing memorandum/document that is signed by the delegated authority. It is important to understand that the Applicant was not charged for approving the salary on PERSAL under incorrect circumstances. She was charged for approving the salary on PERSAL without approval submission. The Applicant conceded during her testimony that she was aware that approval submission is required for this transaction. So it became common cause that a rule that "approval submission is required to approve salary upgrade on PERSAL" does exist. I therefore find on a balance of probabilities that there was a rule or standard.

Charge 3 and 4. (ii) wrongfully capturing a shift allowance of Mr. MMN Ngubeni on Persal for an amount of R42 368 for the period 01 January 2018 to 30 April 2018 which resulted in irregular payment; AND (iii) wrongfully capturing a shift allowance of Mr. MMN Ngubeni on Persal for an amount of R6000 for the period 01 April 2018 to 31 March 2019 which resulted in irregular payment.

The existence of the rule in these charges was not disputed by the Applicant

<u>Was the rule or standards reasonable or valid? –</u>

The validity or reasonability of the rules was not disputed by the Applicant.

<u>Was the Applicant aware of the rules/standards or ought to have been aware of the rule/standard?</u>

Charge1: Approving the salary of Ms. NN Nsele on PERSAL without approval submission.

As stated under the first question above, it is clear that the Applicant conceded during testimony that she is aware of the rule.

Charge 3 and 4

The Applicant did not dispute awareness of the rules in these charges.

Has the Applicant has contravened the rule or standard? –

Charge1: Approving the salary of Ms. NN Nsele on PERSAL without approval submission.

The Respondent called Dr Mthethwa who testified that he was the principal and the delegated authority to approve salary upgrades of officials from salary level 1 to 8. He testified that he has never authorized upgrade of Nsele salary and that he has requested the authorizing submission from the DP Corporate Services and those involved but did not get it. Ms. Kruger testified that she looked for the authorizing submission at Registry and on the LOBO system but did not find it. The Investigator Ms. Mathabatha says she has asked those that are implicated to provide her with the authorizing memo but did not get it. The Respondent therefore argues that there was no authorizing memo, hence the charges to the Applicant.

The Applicant on the other hand claims that she approved after she saw and was guided by the authorising submission which stated to which salary level Ms. Nsele had to be. She claimed that there were calculations that were made in the submission to motivate why Ms. Nsele had to be at the last notch. Ms. Lindi Ngubane who was the capturer, also testified that she was given the authorizing submission by her supervisor Mr. Mhlanga and captured guided by that submission and her supervisors. However, she could not recall if she saw the calculations in the submissions. She stated that HR usually do calculations to determine backpay. Mr. Mbatha, the DP Corporate Services testified that the principal tasked him and Mr. Dlamini to facilitate that Ms. Nsele's salary be upgraded due to additional work she was doing. As a result, the principal tasked his PA Mr. Dlamini prepare the authorizing submission and the principal signed it. He (Mr. Mbatha) personally took it to HO and handed it to Mr. Mhlanga of HR.

When assessing the two versions one wonders how the principal and the deputy principal could have versions that seriously contradict like this. The problem I have with the Applicant's version is that her recollection of the content of the submission differs to that of the person who captured and gave her the submission. It makes me doubt whether such authorizing submission was before them when they were capturing and approving. Secondly, the response of the Deputy Principal, who claims that he handed in the authorizing submission signed by the principal to HR, is a dubious response. When he was asked by the Respondent and the principal about the existence of this submission or the circumstances of Nsele's salary upgrade, at no stage did he say that the principal had signed an authorizing submission to enable the transaction. He seems to speak mainly to the HR-6 which he signed. At no stage does he emphasize that the principal is the one that authorized the transaction. It is on this basis that I find the version of the Respondent more probable.

From the circumstances outlined above, I find on a balance of probability that the Applicant has breach the rule or standard.

Charge 3 and 4

On charge 3, the essence of the Respondent's case is that the Applicant should not have captured on PERSAL, payment of shift allowance at the level of Centre Manager to Mr. Ngubeni for the first four months in 2018 because he was a Lecturer and not a Centre Manager. As a Lecturer he should have claimed half of that amount. The Respondent witness Ms. Kruger was unsure of her story since she has signed calculations with the Applicant confirming that the payment was due to Mr Ngubeni. Even in her testimony she said she sees nothing wrong with that payment. However, in re-examination when confronted with page 70 bundle C appointment letter, she changed her version again to say the payment was irregular. I was, however, persuaded by the testimony of Mr. Mbatha who was quoted on that letter on page 70 who explained that Lecturers and Centre Managers were all called Lecturers since they were both responsible for teaching.

Further his version that Mr. Ngubeni was a Centre Manager in 2017 and was not demoted in 2018 was not meaningfully disputed by the Respondent. From the circumstances outlined above, I find on a balance of probability that the Applicant did not breach the rule.

On charge 4, the Applicant did not show the basis for capturing on PERSAL the R6000 payment to Mr Ngubeni. I therefore find on a balance of probabilities that the Applicant has breached the rule.

Was the rule/s or standard/s consistently applied? –

Charge 1

Mr. Chamane, the Director Labour Relations testified that it is not correct for the Applicant to say Mr. Desmond Mhlanga and Ms. Kgamanyane were not disciplined by the Respondent since he was appointed as an initiator and the Applicant was a witness in that case. However, when he was pointed to a case involving Mhlanga and Kgamanyane, whereby on 25 June 2018, his supervisor Chief Director HRM&D instructed that "*action be taken against officials who implemented the upgrade without the approval of the DG. Labour Relations should investigate the matter as there are financial implications involved*", Mr. Chamane claimed that he is not aware of the case and contended that the Applicant should have made them aware of the case since she is a manager. It was in July 2024 when Mr. Chamane was testifying in this arbitration. This means that the Respondent has for a period of six years not disciplined officials who committed this same offence despite the instruction from the supervisor of Labour Relations.

Further, if the case of the Respondent is that an authorizing submission is required to do a transaction done by the Applicant, and that there was no such submission, it is then surprising as to why the Respondent opt to charge the Applicant and not the Deputy Principal who according to their version, is misrepresenting the facts when he claims that there was a submission memo signed by the principal. This sounds like gross dishonesty on the part of the Deputy Principal. Therefore, the reason by the Investigator that the Respondent opted not to charge the DP because he was only making an enquiry is baseless.

It is on this basis that I find on a balance of probabilities that the Respondent did not apply discipline consistently.

Charge 3 and 4

The consistent application of discipline by the Respondent was not challenged in these charges.

Was dismissal an appropriate sanction? –

Article 3(4) of the Code states that, "generally it is not appropriate to dismiss an employee for a first offence except if the conduct is of such serious nature and gravity that it makes a continued employment intolerable".

Charge 1
In this case the presiding officer testified that the sanction was appropriate because the Applicant used an instruction that was not directed to her to elevate the notch of Ms. Nsele. She did not admit her fault or realize the wrongfulness. She should be advising Clerks as to the circumstances when salaries should be elevated. This was not an administrative error but a deliberate act by the Applicant. The conduct had an element of dishonesty.

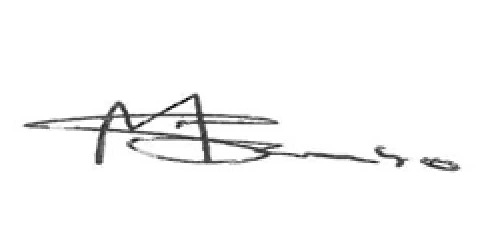
Charge 3 and 4
The presiding officer testified that he has dismissed because the evidence against the Applicant was overwhelming that a wrong has occurred. Actions of the Applicant had an element of dishonesty. She did not show remorse. Her actions were not a mistake, but she acted deliberately

I have considered the evidence submitted by the parties, the fact that the Applicant is a junior manager, the environment that she worked in. That environment is summarized by the Chief Director HRM&D in her memorandum dated 14 August 2018 and makes official the rule that transactions on PERSAL should not be made without authorizing submission. I also took into consideration that the incident in charge 1 took place on 09 May 2018 but the rule was officialized by the Respondent only on 14 August 2018. I have also considered the fact that the Respondent did not always discipline those who committed same or similar offence as mentioned under the paragraph on consistency above. Based on these reasons I find dismissal not to be an appropriate sanction. I find dismissal too harsh and would replace it with a sanction as specified below.

From the circumstances outlined above, I find the dismissal of the Applicant to be substantively unfair.

AWARD

1. The Respondent is ordered to reinstate the Applicant with immediate effect.
2. The sanction of dismissal is replaced with Final Written Warning.
3. I make no order as to costs.



PANELLIST: MARTIN SAMBO
Date: 30 July 2026