

Case No: GPBC 1360 /2024
Date: 04 October 2025
Panellist: Vuyiso Ngcengeni

In the ARBITRATION between

PSA obo JA Van Rensburg

Employee

And

Department of Agriculture, Land Reform & Rural Development

Employer

Employee representative: Mr Mbongeni Mbanjwa

Employer representative: Ms Thandiwe Nxumalo

DETAILS OF HEARING

1. This award briefly records the evidence and the arguments submitted by the parties in arbitration that took place on the 2nd of June and the 3rd of September 2025. The hearing was held at the Employer's premises in Cedara, next to Howick.
2. The arbitration was held under the auspices of the General Public Service Sector Bargaining Council (the Council) and it was set down in terms of section 186 (2)(a) of the Labour Relations Act, no 66 of 1995 as amended (the LRA).
3. The Employee attended the arbitration and he was represented by Mr Mbongeni Mbanjwa from the PSA trade union. The Employer was represented by Ms Thandiwe Nxumalo.
4. The Employee submitted bundle A, which contains of the following –
 - 4.1 His written evidence which forms part of his entire evidence (page 9-16).
 - 4.2 Grievance records.
 - 4.3 Persal enquiry service records.
 - 4.4 Email communications regarding his claim.
 - 4.5 EPMDS – 2009-2010 annual performance
 - 4.6 Performance bonus spreadsheet and the pay progression assessment rating calculator.
5. The Employee also submitted annexure C – Kwazulu Natal department of agriculture and environmental affairs EPMDS.

6. The Employer submitted bundle B, which also contains of documents similar to those in bundle A, together with the Employee's quarterly reviews for the financial year 2009/2010.
7. The parties submitted closing arguments on 18th September 2025.

ISSUE TO BE DECIDED

8. It is required of me to determine whether the Employer conducted an unfair labour practice against the Employee in relation to benefits when it failed to pay the following for the 2009/2010 financial year –
 - 8.1 Performance bonus: R 46 207.00.
 - 8.2 Pay progression: R 87 174.33.
9. The Employee wants to be paid the amounts stated above.

BACKGROUND TO THE ISSUE

10. The Employee commenced employment with the Employer on 1st January 1985. He retired on 30th September 2024 and at the time of his retirement, he was employed as a Deputy Director – Farm Services.
11. On 19th April 2024, as he was preparing for his retirement, he was informed that there was an outstanding performance bonus and pay progression for him for 2009-2010 financial year. He raised the issue with the Employer, also lodged a grievance and after everything failed.
12. The grievance outcome was communicated to him on 19th July 2024 and on 1st August 2024, he referred the matter to the Council for conciliation.
13. The Council issued a certificate of non-resolution on 2nd September 2024 and on 12th September 2024, the union, on his behalf, referred the matter to the Council for arbitration.
14. The Council subsequently set the matter down for arbitration for 2nd June and 4th September 2025.
15. All the witnesses led evidence under oath.

SURVEY OF EVIDENCE AND ARGUMENTS

The Employee's case

The Employee testified as follows –

16. The Employer, through the Human Resources management informed him on 19 April 2024 of the non-payment of his pay progression and performance bonus for the 2009-2010 EPMDS cycle. The Human Resources department could not explain these non-payments.
17. He then enquired from EPMDS, which is part of the Human Resources department as to why he was not recognised and did not benefit as per the above. The EPMDS referred to his incomplete file as the reason. Seemingly, four documents were not on his EPMDS file documents which he did complete, signed and submitted.
18. Since no progress could be made by the EPMDS, he met the Human Resources Director, Ms Marina Oram (Oram), who first said the reasons were unknown and promised to look onto the matter. She further told him that the matter would have financial implications and it involves his salary notch.
19. Oram, during her enquiry interacted with Mr Spha Msibi (Msibi) as per her email on page 27-A, on 13 May 2024. Msibi replied on the same date (page 28-A) and partly wrote –

“Kindly note that a pay progression is not a given for one to receive, but there are issues that needs to be taken into consideration for one to qualify receiving it. Not only performance, but one of the primary issue is compliance with all the requirements. You contacted me regarding this matter over the phone and you were with my colleague Ms Hadebe who confirmed that the file for the employee in question has invalid documents (documents not signed by both parties) and some of the required documents were not in the file. If there are no records on persal for the payment of the pay progression, it means he was not assessed for the cycle in question.

Performance Management is also the employee’s responsibility by ensuring that they comply with its processes and procedures. It is very disturbing that after 14 years, the said employee is enquiring about his pay progression. The fundamental question is, why he did not appeal in 2010 when he did not receive the pay progression? And why he did not follow a formal grievance process in 2010 after not receiving a pay progression?

Please note that the records we are having are the ones in his file with invalid documents and other documents are not in the file. Please also note that there are no records of a submission with the name of the said employee for the cycle in question.

....”

20. He disputed the above since he had met all the EPMDS requirements, based on what he personally had done. Oram then advised him to lodge a formal grievance. He lodged a formal grievance and it did not address his concern.
21. In 2009/2010, he submitted his EPMDS documents to his supervisor, Mr Zondi and they are contained on page 29-A. These are the documents as he kept in his computer, all these were saved in his computer, they were also printed, assessed

by Zondi and signed off. He did not save the signed copies because of the enormity of the documents. The documents are:

- 21.1 His Ann A – Performance Agreement 2009-10
- 21.2 His Ann B – Work Plan for 2009-10
- 21.3 His Ann D – PDP Plan for 2009-10
- 21.4 His Ann F – Annual Performance Assessment for 2009-10

22. On page 39-A, annexure I is a summary of the outcomes for all EPMDS for the 2009/2010 year. It is a final document that needs to be signed by the Head of Department, so it is not correct for Msibi to he was not assessed, because his name appears in the document, which means he was assessed, if not, it should have indicated that he did not comply.
23. The Employer is the custodian of the documents and he signed the documents with his supervisor and left them with him. His signed performance documents should be kept with the EPMDS section, alternatively, they should be in his file indicating that he did not comply with the EPMDS requirements.
24. If he is wrong, by implication, he should have been disciplined for “alleged” non-compliance. No proof of such action against him is on his file.
25. Also, according to the April 2007 KZN Employee Performance Management & Development System document, on page 18 at the bottom, *“the role of the employee’s supervisor in the assessment is the following – review the employee’s performance assessment and work plan for validity...”*
26. If the four sets of documents were not compiled, signed and submitted, Zondi should have noted and should have taken corrective measures against him. No corrective action was taken because he complied.
27. Further, according to Internal Memorandum dated 24 February 2010, the following is to be noted *“Performance assessment section is embarking on Monitoring and Evaluation of the EPMDS effectiveness and compliance thereto....for 2009/2010 cycle as from 01 March 2010”*. Annexures to be provided were: Annexure A, B, D and E (see ann C). Again, if he was non-compliant, corrective measures would have been taken against him. since he complied, no corrective action was taken.
28. It is therefore obvious that the four sets of documentation must have been available and used during his performance evaluation.
29. The reasons for him to see the omission only in April 2024 could be any of the below –
 - 29.1 In those days, their payslips were deposited in the pigeon boxes at Hilton, making tracking of a salary advice, supplementary advices, S &T received and fuel payments received very difficult.

- 29.2 During those days, he had a manual bank account, not digital, which means making follow-ups was difficult, as he was not working in town.
- 29.3 Further, his financial position at the time was such that he did not live from salary to salary, financially, they were doing fine.
- 29.4 Also, he was redeployed from Sisonke district to Cedara in 2009-2010, and this could have led to him not picking these issues up.
30. The HRM circular no 26 2009 on clause 6 says *“Individual employees will be notified in writing on the outcome of the performance management process of this cycle.”*
31. No document or email was ever sent to him, stating that he failed to comply with the requirements.
32. At the bottom of page 38 as well as page 39 and 41 of A, two names of people who did not submit their documents are mentioned.
33. There is a clear instruction that the supervisor must ensure that an employee has complied and that the employee was duly assessed, and as he also had subordinates, he ensured that they complied. Zondi had the responsibility to direct him if there was any need. None of that was done.
34. Zondi signed his assessments documents on pages 4, 5 and 17-B, which means he concurred with the documents. He cannot be held liable for the fact that Zondi did not sign on F.
35. On pages 31 – B is the culmination of his review, signed by him and his supervisor. It can only mean that the assessment was accordingly done and that he submitted all the necessary documents, otherwise, Zondi would not have signed. The annual assessment is for the whole year.
36. Annexure C, which is the implementation of EPMDS 2009/2010 performance cycle, it reads –
- “... performance section is embarking on Monitoring and Evaluation of the EPMDS effectiveness and compliance thereto. This exercise will ensure minimization of the challenge experienced regarding the system. ...*
- Kindly be informed that Human Resources Development (Performance Assessment) will be visiting all offices within the Department to conduct Monitoring and Evaluation on EPMDS from level 1 to 12 for 2009/2010 cycle...”*
37. Zondi’s office must have been visited from 01 March 2010, given this rigid process of verification, it is impossible to say he was non-compliant, otherwise, some action would have been taken against him or something noted against him for failure to comply.

38. He was honestly not aware of the fact that he was not paid his performance bonus and pay progression. Also, he was not notified that he failed to do so, and he complied with all the requirements.
39. Circular no 9 of 2010 deals the 2010/2011 financial cycle, not 2009-2010. Provision for payment of bonuses and progressive pays is done in the previous year and paid in the current year.
40. He performed his job as best as he could for almost 40 years, serving the Employer.
41. The amounts that he requires were calculated by the Employer as indicated on page 44 and the total on page 49-A, and they are: R 46 207 for the bonus and R 87 178.33 for progressive pay.
42. **Under cross examination** – He assessed his subordinates but he was not part of internal review committee (IRC). He presented their assessments to the regional review committee (RRC) after feedback, he has the responsibility to give them some kind of an idea as to what happened, but not the scores as those could change.
43. He cannot remember if Zondi had the feedback session with him afterwards. He knows that Zondi is no longer in the employ of the Employer.
44. The Human Resources department was responsible to ensure that he gets what was due to him, secondly, he was also responsible to ensure that he was duly paid. The Employer was responsible to ensure that it paid him what was due to him.
45. It might have been a good practice when receiving his manual bank statement to verify it, but it was not an obligation.
46. He may have asked Zondi once or twice for feedback, but he is not sure. Given the quality of his performance, he knew he had done well, had Zondi told him that he did not qualify for the bonus and progressive pay, he would have asked him to explain and give guidance.
47. Had Zondi told him three years later, that would not have been necessary, it would be irrelevant as that cycle would have been closed and concluded in terms of the paper work.
48. However, where there is monetary value, he would have asked Zondi when would the money be paid to him, because monetary value remains relevant.
49. On page 4, 5 and 17 of B are his quarterly reviews, and Zondi signed on subsection B – generic assessment factors. The documents are signed by Zondi.
50. Zondi was his director, so he could not tell Zondi where to sign. It is Zondi who chose to sign on B, not F – Supervisor's comments.

51. He denies that because of the lack of signature on B, the documents are invalid.
52. His understanding of the circular no 9 of 2010 where it says on second bullet *“Non payment of performance bonuses from 2010/11 was identified as one of the agreed reductions to implement the cost-cutting measures. In essence this means that the Department will only implement EPMDS without effecting performance bonuses for the cycle 2009/10 since the effective date (01st April 2010) is within 2010/11 financial cycle,”* is that the effective date is 01 April 2010, not 2009-2010.
53. The effective date is clear as well as the financial year. The Employer is responsible for payment, as he looked up to it as his father. It should have paid him what was due to him. he was compliant, he did what he had to do, did not infringe on other people’s responsibilities, such as telling Zondi where to sign.
54. As a human being, he has committed an error when not checking that he was not paid accordingly. He is a human.

55. Arguments

- 55.1 The file Mrs Oram later received from the EPMDS section, contained all Mr van Rensburg’s Quarterly Performance evaluation documents, excluding:

Annex A Perf Agreement 2009-10
 Annex B Work Plan for 2009-10
 Annex D PDP Plan 2009-10
 Annexure F Annual Review form 2009-10.

- 55.2 These four sets of documents were compiled, saved on his work computer, signed and submitted by Mr van Rensburg to Mr Zondi, see screenshot in Bundle C, 3A. These documents were then supposed to be placed and kept in safe keeping by the Department as the EPMDS custodian. Seemingly this did not happen.
- 55.3 If these four sets of documents were never compiled, signed and submitted, a letter of non-compliance should have been issued and placed on his file, indicating that Mr van Rensburg was non-compliant. No non-compliance correspondence was received by him, since Mr van Rensburg were EPMDS compliant. However, non-compliance was noted and reported in writing for other non-compliant officials: examples are Bundle A, bottom page 38, bottom page 39 and bottom page 41.
- 55.4 Ms Zwane **tried to portray Mr van Rensburg as non-compliant** since Mr van Rensburg’s supervisor, Mr ME Zondi, did not sign all the blocks on all pages of Mr van Rensburg’s Quarterly Reviews. It is to be noted that Mr van Rensburg was not the supervisor of Mr Zondi – Mr Zondi was his senior and Director, knowing well what was to be signed. **The missing signatures for Mr Zondi, have no bearing on Mr van Rensburg’s EPMDS compliance.** The EPMDS section should have noted

the omission of some signatures of Mr Zondi, and requested Mr Zondi to correct it.

- 55.5 Fortunately, critical signatures were rendered by Mr Zondi during the reviews of Mr van Rensburg. Since the missing signatures are still not there, this matter was seemingly not fully addressed by the EPMDS section, see Bundle C, page 3C, with reference to the EPMDS section's annual compliance visits to all offices. The EPMDS section obviously failed to fulfil their mandate and responsibility re ensuring EPMDS compliance.
- 55.6 It is highly possible that Mr van Rensburg's 2009-2010 Pay Progression and Performance Bonus were not captured and not paid, due to the missing signatures of Mr ME Zondi.
- 55.7 Compliance: Mr van Rensburg performed well above the norm as per the Assessment Rating Calculator Bundle C, page 5. He has not been reprimanded by his supervisor or the EPMDS section for non-compliance regarding Performance Agreements and Evaluations. No proof pointing to the claimant's "alleged" non-compliance, was produced and was made available to the Arbitration meeting.
- 55.8 Finally, regarding Mr van Rensburg's EPMDS compliance: His details were captured in Annexure I, the HOD's summary of all Departmental officials, indicating officials' EPMDS status and compliance (Bundle A, page 36, the starred row, row 614).

55.9 CORRECTIVE MEASURES TO BE TAKEN REGARDING THE OMISSION

55.10 SALARY PAY PROGRESSION

The "Payment of Salary Pay Progression to all qualifying officials" was approved in the Submission of 17/12/2010, Bundle A, page 35. Since Mr van Rensburg was compliant, he should have been paid the outstanding Salary Progression due to him.

The calculated and verified amounts are:

• Basic Salary	R73 640. 39
• NP Cash Allowance	+ R 7 496. 51
• Service Bonus	+ R <u>6 041. 43</u>
TOTAL TO BE PAID	R 87 178. 33

The amounts to be paid was calculated by HR, Mrs M Oram, signed and dated on 23/7/2025, Bundle A, page 49.

55.11 **PERFORMANCE BONUS PAYMENT**

Payment of a Performance Bonus was guided by an employee's performance assessment and Departmental approval, see Bundle A, page 37, Circular No 9 of 2010.

The cycle in question is 2009-2010, when Mr van Rensburg did not receive a Performance bonus. The DARD argued that Performance Bonusses were not to be paid during the said cycle. This is contrary to the above-mentioned Circular, stating:

“Non-payment of Performance Bonuses from 2010-11 was identified as one of the agreed-to reductions to implement the cost-cutting measures”.

55.12 The effective date (1st April 2010) for non-payment of bonusses is within the 2010/11 financial cycle.

- The Circular was dated 02 March 2010, the beginning of the new Performance cycle (2010 -2011).
- The Circular was signed by the Acting HOD.

55.13 The Performance Bonus amount payable to Mr van Rensburg is as per the HOD’s approved

Annexure I.

The amount is: **R46 207**

55.14 The Employee’s total claim amount to the sum of:

R 87 178. 33

+ R 46 207. 00

R 133 385. 33

55.15 Given the above, we hope and pray that the Commissioner will rule in favour of the applicant, Mr JA Janse van Rensburg.

Employer’s case

Ms Nelisiwe Zwane (Zwane) testified on behalf of the Employer as follows –

56. She is employed as the Deputy Director Human Resources Development. The process is that if a payment has to be made for pay progression, a performance agreement with a work plan review form and annual assessment must be concluded by the employee and a supervisor. Then it should be served to the Internal Review Committee (IRC) and then approved by the Head of Department (HoD).

57. The Employer cannot effect payment if the above process has not been complied with. If the Employer does not have all the documents, duly signed by an employee and the supervisor, the documents will be invalid and the Employer will therefore not pay. Otherwise, paying under such conditions would result in irregular expenditure and an audit query.
58. The Employee quarterly review documents therefore, as shown on pages 4-5 of bundle B, have not been signed by his supervisor on A – Key Results and on Supervisor's comments. As such, the document is invalid.
59. In a case such as the above, they would contact the supervisor, inform him that the documents are incomplete, specify the areas which need to be attended to.
60. In a case where the supervisor is no longer in the Employer's employment, she cannot say that they would contact such a person (the ex-supervisor). These issues also have time frames.
61. **Cross examination** – She does not know if the human resources contacted the Employee's supervisor, Zondi, regarding the incomplete documents. She was not employed by the Employer at the time.
62. The completion of the EPMDS documents is the responsibility of the employee and the supervisor and both have the responsibility to ensure that all the documents are in order. But the supervisor has the responsibility to submit the documents.
63. It is correct that the Employee sat together with Zondi, as reflected on pages 4-5 of B, and Zondi signed on B, which is that *"My own and Supervisor's ratings have been discussed"* on 27 May 2010. The two had the responsibility to ensure that the documents are duly signed.
64. The fact that the Employee may not have contacted Zondi does not mean the Employee had no responsibility to ensure that the documents are duly signed.
65. On page 31 – A is an assessment calculator and it comes when all the assessments have been done and she the compiled the annual performance assessment. That means the calculation was done and duly signed.
66. But having the calculator done, does not mean the assessments are duly signed.
67. Human resources was going to inform Zondi that the forms are not fully completed. There is no proof that Zondi was contacted. Zondi might have been contacted, but failed to come through to correct the documents.

68. The pay progression was supposed to be effected from 01 July 2010.

69. Discipline is the supervisory function.

70. The directorate where the Employee fell, was supposed to go back and review it submission.

71. Arguments:

- 71.1 The Employee entered management echelon in 1996 as the Assistant Director and progressed to middle management from 2001 as the Deputy Director until his retirement in September 2024.
- 71.2 Middle management level by its nature encompasses managing people who report directly and indirectly to the incumbent, and that involves managing their performance assessments. This compels the manager or supervisor at this level to be familiar with the processes and procedures.
- 71.3 The Employee, under cross examination did not deny that he had people reporting to him. There is therefore no grey area about his knowledge of the performance management system. He was fully aware of the fact that at a particular period after performance assessment with his supervisor, he was due to receive cash bonus and pay progression. Moreover, pay progression pushes one's salary notch higher, which remains his responsibility to notify the Employer if his salary remained the same.
- 71.4 The public service guided by the Department of Public Service and Administration had and continues to assert a clear policy which guides the management of the performance management system including the timeframes as reflected on page 57-80 of bundle B. The performance of employees is assessed and awarded per financial year with the budget that is set aside for that specific year.
- 71.5 In order for the performance award to be paid, all the necessary documents: Performance agreement, work plan, personal development plan, Annexure E and F or quarterly reviews in 2009/2010 and prior with the calculator must have been made available by the supervisor and the Employee at the assessing committee concerned.
- 71.6 In this case, the Employee has failed to prove that he submitted all the documents. Zondi has long retired from the public service. The Employer has provided as proof that the documents in its possession are the quarterly reviews (p4-55) – B.

- 71.7 At his level, the Employee ought to have known that he bears the responsibility to check his benefits and report any omission to the Employer accordingly within regulated timeframe, while the information is fresh within the memory of those who must account, further while they are within the reach to account.
- 71.8 The time period between 2010 and 2024 is 14 years. The period is unreasonably long for the Employee to expect the Employer to recollect in the memory what transpired in 2010. It is also for this reason that the PSCBC Resolution 14/2002 dictates the 90 day period to submit grievances.
- 71.9 The Employer is therefore not in a position to process the performance bonus and the pay progression to the Employee.

ANALYSIS

72. Right from the start, it is crucial to mention that the back ground factors above lay out the common cause issues that are critical to this dispute. And to mention just a few are –
- 72.1 That the Employee was not paid the performance bonus for the year 2009/2010,
- 72.2 That he was not paid the grade progression that would have resulted from his performance, as stated above,
73. In addition to the above, it is not in dispute that the Employee held discussions with his supervisor, Zondi, regarding his performance review and he duly signed the performance documents. This is reflected on pages 4-5 of bundle B. I need to mention that the two pages mentioned afore, are for the quarterly review for the period: 1st April 2009 to 30th June 2009 and the engagement by the two was on 27th May 2009.
74. The documents are quite voluminous and on pages 30-31 are the same documents for the quarter of 1st October 2009 to 31st December 2009. Again, the documents are duly signed by the Employee in all areas where he needed to sign, whilst Zondi signed on others and did not sign on section F – Supervisor's comments. However, he signed on sections A and B on 21st May 2010, stating that the discussion between himself and the Employee was held.

75. There is no suggestion by the Employer that the Employee has failed to sign the documents, all what the Employer said is that the Employee also shared the responsibility to ensure that the forms are duly signed.
76. Actually, when it was pointed out to the Employee during cross examination that Zondi failed to fully sign the documents and that he (Employee) should have ensured that Zondi signed fully, the Employee responded by saying Zondi was his director, so he could not tell Zondi where to sign and it is Zondi who chose to sign on B, not F (Supervisor's comments).
77. Zwane said both the employee and the supervisor have the responsibility to ensure that all the documents are in order, but the supervisor has the responsibility to submit the documents.
78. What becomes apparent from the above, is that it is Zondi who failed to fully sign the documents, and in this case, Zondi represented the Employer to the Employee.
79. The suggestion by the Employer, that the Employee could have held Zondi by hand, showed him where to sign is misguided, as the two were in an unequal position, with Zondi having authority over the Employee.
80. Zwane's submission that in a case such as the above, they would contact the supervisor, inform him that the documents are incomplete and specify the areas which need to be attended to is indeed plausible, and accords with the normal logic.
81. It is unfortunate that the matter has been brought to this level (Arbitration) about 15 (fifteen) years after it happened, and that means there will be difficulties in securing some documents and details, as well as the exit by certain staff members, which in this case is Zondi himself.
82. The above notwithstanding, it has to be borne in mind that when the Employee held the respective discussions with Zondi, and attached his signature and then moved on with his daily activities, he did so because he had trust and belief in the system, that he has done his part and all that was left was for the system, which is largely driven by the human resources department, to take the process to the finish line.
83. It is unfortunate that when the Employer realised that the Employee's documents were not fully signed, appears to have simply placed the documents aside, as there is no record that it contacted Zondi nor the Employee. And this was done by the people who were trusted and entrusted by the Employer to carry out the process to its final conclusion.

84. At the very least, there should have been an indication that some calls or requests by emails were made to Zondi, and perhaps with the Employee being copied, to consult with the human resources department regarding the incomplete forms. Due diligence was not only expected to be done at the level of the Employee and Zondi, but should have been conducted throughout the process.

85. Whilst it is not disputed that these issues have time frames, as submitted by Zwane, such time frames are also the very reason that those tasked with carrying out the performance review process bear the responsibility to communicate whenever additional information or action is required from a particular person involved in the same process.

86. In the circumstances, the Employee is entitled to the performance bonus and the pay progression arising from 2009-2010 financial year.

87. The amount is as stated above, and that is:

87.1 Performance bonus: R 46 207.00.

87.2 Pay progression: R 87 174.33.

87.3 Total: **R 133 385. 33**

AWARD

88. The failure by the Employer to pay the Employee performance bonus and pay progression for the financial year, 2009-2010 constitutes an unfair labour practice.

89. The Employer is ordered to pay the Employee a total amount of **R 133 385. 33 (One Hundred and Thirty Three Thousand Three Hundred and Eighty Five Rands and Thirty Three Cents)**, by no later than 30 November 2025



Commissioner: Vuyiso Ngcengeni