



GENERAL PUBLIC SERVICE
SECTOR BARGAINING COUNCIL



Physical Address:
260 Basden Avenue,
Lyttelton, Centurion,
Pretoria

Postal Address:
PO Box 16663,
Lyttelton, 1040

Tel: 012 664 8132

Web: <http://www.gpssbc.org.za>

RULING

Panelist: KESHREE KEMI _____
Case No.: GPBC1660/2024 _____
Date of Ruling: 02 MAY 2025 _____

In the ARBITRATION between:

PSA OBO M NAIDOO _____
(Union / Applicant)

and

DEPARTMENT OF JUSTICE AND CORRECTIONAL SERVICES _____
(Respondent)

Union/Applicant's representative: Mr R Lil-Ruthan _____
Union/Applicant's address: _____

Telephone: _____
Telefax: _____

Respondent's representative: Mr N Sithole _____
Respondent's address: _____

Telephone: _____

Telefax: _____

DETAILS OF HEARING AND REPRESENTATION

1. This matter was set down for an Arbitration hearing in terms of Section 191(5)(a) of the Labour Relations Act 66 of 1995 (the LRA), as amended, on the 08th April 2025 at 09:00am at the Respondent's premises, 52 George Sewpersadh Street, Verulam.
2. The Applicant was represented by Mr R Lil-Ruthan, a Union Official from PSA and the Respondent was represented by Mr N Sithole, Legal and Compliance Specialist of ETDP SETA (Education Training and Development, Sector Education and Training Authority).
3. The dispute relates to an alleged unfair dismissal based on misconduct.
4. The Applicant's representative raised a point in limine in respect of the locus standi of the Respondent's representative to represent the Respondent in the Arbitration hearing, which was opposed.
5. The Applicant's representative handed in written heads of arguments, which was marked "A" and supplemented them with verbal arguments.
6. The Respondent's representative presented verbal arguments and handed in a bundle of documents, which was marked "B".
7. A directive was issued after the verbal arguments as follows:
"In accordance with Rule 26(3) of the Rules for the Conduct of Proceedings before the GPSSBC, the Respondent's representative is directed to tender a copy of his latest payslip and the contract of employment between himself and his employer to the Council, by no later than the 15/04/25."
8. The Respondent's representative submitted documents, as per the directive, to the Council, which included a letter of appointment and payslip, marked "C", and "D", together with copies of the legislation referred to in his arguments.
9. I do not intend to repeat all the submissions, save for the salient aspects. It forms part of the record.

ISSUE TO BE DECIDED

10. I am required to decide whether the Respondent's representative, Mr N Sithole has locus standi to represent the Respondent in the Arbitration hearing.

SURVEY OF SUBMISSIONS AND ARGUMENTS

THE APPLICANT'S SUBMISSIONS

11. The Applicant's representative submitted as follows:
- 11.1. With reference to "A", which stated inter alia as follows:
- 11.1.1. The Applicant has gleaned from a document that purports to be a subpoena for witnesses, which stated that the "Employer representative" is Mr N Sithole, an employee from ETDP-SETA, who misrepresents that he's a Labour Relations Officer for the Respondent, when its evident he's not.
- 11.1.2. The appointment of the employer's representative in this matter is in direct contravention of the Collective Agreement governing the GPSSBC, as well as the provisions of the Public Service Act and Public Service Regulations. The representative in question does not meet the criteria to act as an employer representative, as he is no longer a public servant and not an employee of the Respondent and neither is he the Labour Relations Officer or their legal representative.
- 11.1.3. Legal framework –
- (a) Collective Agreement GPSSBC 4 OF 2024 – The Collective Agreement explicitly defines the representatives allowed in disputes under the GPSSBC. The appointment of an individual who is not a public servant undermines the integrity of this agreement, with reference to Part 5, paragraphs 25 and 26.
 - (b) Public Service Act – Section 8 of the Act defines a public servant as an individual employed within the public service. The representative in question, having resigned from the Department and subsequently joined entities such as SITA and ETDP- SETA, no longer qualifies as a public servant.
 - (c) Public Service Regulations, 2016 – Regulation 57 outlines the conditions for appointment and representation within the public service. The representative's current status does not align with these conditions.
 - (d) The cases of *Hospersa obo Tshambi v Department of Health, KwaZulu Natal, LAC*, *NEHAWU obo Kgekwanane v Department of Development Planning and Local Government, Gauteng, LAC* and *Limpopo Legal Solutions v Vhembe District Municipality, CC*, were referred to.
- 11.1.4. Application to the current matter – The representative in question has resigned from the Department and is currently employed outside the public service. This disqualifies him from acting as an employer representative under the GPSSBC Collective Agreement, the Public Service Act and the Public Service Regulations. Allowing such representation would set a dangerous precedent, undermining the principles of fairness and compliance with established frameworks.
- 11.1.5. Relief sought – That the Commissioner:
- (a) Declare the appointment of the employer's representative invalid due to lack of locus standi and he be immediately recused from the proceedings.
 - (b) Direct the employer to appoint a representative who meets the criteria outlined in the Collective Agreement and relevant legislation.

- (c) Direct that the matter proceeds immediately with Ms Melinda Mathews, as she is the Deputy Manager for Labour Relations in the Province and her name as Employer party details appears on the subpoena document as well, or another Labour Relations employee, as the employer representative.
 - (d) That wasted costs are granted against the Respondent, as they were personally alerted to this objection and were brusque about this when the Applicant's representative contacted Ms Mathews.
 - (e) A written ruling be handed down.
- 11.2. Part of "A" that is referred to in his arguments was Resolution 3 of 2024. His direct reference is to paragraphs 4, 25, 26.1, 26.2 and 26.3. He also made reference to the document being a signed agreement, where the signatures appear in the agreement.
 - 11.3. The Applicant's argument is submitted in respect of Part 5, paragraphs 25 and 26, which deals with who may appear in proceedings before the Council.
 - 11.4. Mr Sithole doesn't belong to a National Department or Provincial Administration.
 - 11.5. He has also attached the subpoena that was copied to the PSA, which was served on various of the Respondent's witnesses that they intend calling. It said that it was filed by the Representative of the Respondent..." The e-mail address provided was Nkanyiso@etdpseta.org.za...
 - 11.6. The notice of filing of request for subpoenas was attached, with reference to pages 48 and 49, "A", which stated "Dated ... Labour Relations Section...". The signature there appears to be that of Mr Sithole. The e-mail address recorded is again NkanyisoS@etdpseta.org.za... and he already argued that Mr Sithole is not from the Labour Relations Section of the Respondent. That will be a misrepresentation.
 - 11.7. His signature appears on page 55, "A", as well, in terms of the actual subpoena.
 - 11.8. Page 57, "A", reflected Mr Sithole's full details and the organization he represents, with the logo and his title, none of which qualifies him to be under the definition of the Collective Agreement, in terms of paragraphs 25 and 26 of the GPSSBC Resolution.

THE RESPONDENT'S SUBMISSIONS

- 12. The Respondent's representative submitted as follows:
 - 12.1. The preliminary issue raised by the Applicant's representative lacks merits, in terms of both the legal instruments relied on and the salient facts averred, to the extent that they apply to the legal instruments.
 - 12.2. With reference to the Applicant's representative's first argument, that he misrepresented himself, to the extent that he's the Labour Relations Officer of the Respondent, paragraph 2, page 1, "A", he drafted those subpoenas and there is nowhere in those submissions that he asserts or makes a claim that he's the Labour Relations Officer for the Respondent, with reference to the subpoenas on pages 44 to 48, "A", therefore he did not misrepresent himself. He has always said in the submissions "for the Respondent" or "the Respondent". With reference to paragraph 4, page 53, "A", in the submissions for the subpoenas, he patently stated what his role and involvement in the matter is.

- 12.3. He was employed at the Department of Justice between the 01/11/2019 until the 31/08/23 and prior to that he had been employed by the PSA. During the time he was at the Department of Justice he was appointed as the Investigator into the allegations against the Applicant and consequently initiated disciplinary action against her, where he was appointed as the employer representative to do so.
- 12.4. With reference to pages i to iii, “B”, that “Mr Sithole”, referred to is him, therefore when it comes to knowledge that is required to assist the Commissioner in this matter, he is the most reliable and credible person, in so far as the Department of Justice is concerned because he implicated the Applicant and he initiated the disciplinary action that has brought her before the Commissioner. In these matters, facts are very important and one can only aver facts from personal experience and/or knowledge and that is where he comes in. Everybody else that can come before the Commissioner, as a representative, will not be presenting facts based on personal knowledge and experience is concerned, in so far as the dismissal of the Applicant is concerned, at the very least from the Respondent’s point of appearance.
- 12.5. With reference to the legal instruments and Section 138(1) of the LRA, the Commissioner has an application before her, that in his view, warrants her to deal with, in terms of the minimum of legal formalities, in so far as his appearance and locus standi is concerned.
- 12.6. The legal formalities should begin with discerning what a public service is versus public administration because it is argued that he is not a public servant. The question is, on a proper conspectus of GPSSBC Resolution 4 of 2024, in relation to the objection against his representation, with reliance on Rules 25 and 26, is there a mention of a public servant. His argument is that there is none, therefore one doesn’t have to be a public servant to appear before the Commissioner. The principles of interpretation are clear, that words must be given a plain and ordinary meaning, to ascertain the intention of the parties. If the word “public servant” doesn’t appear anywhere in Rules 25 and 26, therefore the intention of the parties would not have been to limit the representation to public servanthship but what Rules 25 and 26 say, is that one must be an official from a National Department or a Provincial Administration.
- 12.7. The question then is whether, he being an official of the ETDP SETA, is the ETDP SETA, by extension an affiliation regarded as either a public administration or a National Department. The identity of the ETDP SETA could be found in the Skills Development Act (SDA), Section 9. There are 21 SETAs in the country in total and they are established in terms of the SDA. They used to be under the Department of Labour and were entities of the Department of Labour. In 2013 they were moved from the Department of Labour to be under the Department of Higher Education and Training. Section 4 of the SDA was quoted, which makes up the provision, what the SETA is made of and “c” was quoted, which is important, therefore it is clear within the Section, especially the ETDP section, that there is a government department and that government department is the Department of Higher Education and Training. All the 21 SETAs report to the Department of Higher Education

and Training and Section 15 of the SDA allows that Department to place the SETAs under administration because they are its entities.

- 12.8. With reference to Section 195 of the Constitution of the Republic of South Africa, 1996, Chapter 10 talks about values and principles underpinning the public administration and determines what it is and any organ of the state defined in Section 239 of the Constitution is part of the public administration. Based on these provisions, the ETDP SETA or any of the 21 SETA's cannot be seen outside the public service by virtue of Section 11, which makes the Department of Higher Education and Training part of those that compose the SETA.
- 12.9. The Public Administration Management Act 11 of 2014 (PAMA) gives effect to the principles he spoke about, as envisaged in Section 195 of the Constitution. In terms of the Act, any official can be seconded or transferred in between the various state organs.
- 12.10. In South Africa we have two sectors, public and private. It's either the ETDP is a public sector or a private section and his submission is that it's a public sector, based on the arguments he already presented.
- 12.11. With reference to who the employer is in the public service, that issue is settled law, in terms of the case of *MEC for Transport and Others vs Jele*, a 2024 LAC judgement, which held that in the public service the employer is the State, not the internal entities or functionaries or departments that employees are attached to. That reasoning was also confirmed by the Labour Court in 2021, in the case of *The Department of Justice vs CCMA and Others*, which held that the State is the employer in the public service, therefore his employer is the State.
- 12.12. With reference to the Public Finance Management Act 1998 (PFMA), it has schedules and different parts and they tell you that all the State entities and the ETDP SETA (EPDSA) in Schedule 3, Part A of the PFMA, is listed as an organ of the state, hence they are saying that his employer is the State.
- 12.13. In government they have they have three spheres, Provincial, National and Local government, as contemplated in Section 40 of the Constitution, under Chapter 3. The question is where does the ETDP SETA fall, in terms of those sections, by virtue of it being attached to the Department of Higher Education and Training, which is a National Department. His submission is that the SETA falls under the National sphere of government and the National Department.
- 12.14. The most important aspect of GPSSBC Resolution 4 of 2024 is Rule 36, which overrides any of the Rules in that Collective Agreement. Even if it could be said that he does not have the locus standi by virtue of Rules 25 and 26, Rule 36 overrides that because the substance of what he's going to present before the Commissioner as a representative, other than the form that he's going to appear before the Commissioner as, matters the most, in terms of Rule 36 because the objectives of the LRA to deal with the dismissal of the Applicant will be

best served if he's allowed to assist this Arbitration, deal with the facts rising therefrom because he put her in this position.

- 12.15. There has been no prejudice that has been pleaded before the Commissioner, in relation to his appearance here and there is no injustice that will prevail. Justice will prevail, in that someone who is competent and knowledgeable will be assisting the Commissioner with the relevant facts that are required in this matter.
- 12.16. In respect of the issue of costs, if the costs were to be awarded, it should be awarded against the Applicant's representative because he knew as early as the 18/06/23, that they are going to be there today, representing the Respondent and at the very least as early as when the subpoenas were issued by the Council, on the 24/03/25 and instead of bringing an application in terms of Rule 32(1)(d) of the Resolution, he called Mrs Mathews. He was not privy to that discussion.
- 12.17. Rule 36 allows the substance rather than the form.
- 12.18. The objectives of the LRA are going to be better prevailed with substance over the form. Having started with Section 138 of the LRA, if the Commissioner removes him from this Arbitration as a representative, even though it's clear that he does have the locus standi, would that assist in dealing with the substantial merits of the dispute, as the LRA dictates and would that also give effect to the primary objectives of the LRA, expanding the right to fair labour practices in instances when the Respondent has to defend the decision that he put them through.
- 12.19. Without him the Respondent might not be able to properly deal with this Arbitration and if so, then the purpose of the LRA, which is to advance, amongst others, social justice and labour peace will not prevail. How so, the Respondent will not be able to accept the Arbitration Award, that it would have believed, that had he been involved, it would have been fully and properly represented. If so, there will be no labour peace because they might challenge it to the Labour Court, all the way to the Labour Appeal Court. If so, there will be no labour peace until the post arbitration litigation is exhausted but if he is permitted to appear, as he should be, the Respondent may accept the Award if it is against them.
- 12.20. With those submissions he submits that the point raised by the Applicant, in relation to his locus standi be dismissed.
- 12.21. He referred to the case of *North East Forest vs South African Agricultural Plantation and Allied Workers Union and Others*, 1997, LC judgement, where the judge held that the primary objectives of the LRA are best served through a practical application when it comes to interpretation of Collective Agreements.

- 12.22. The provision relied upon by the Applicant's representative under Rules 25 and 26 of Resolution 4 of 2024 does not actually assist him in ousting his appearance here because he only relies on a provision then, that should not be read in isolation but it should be read with all these instruments that he has submitted and all these supporting case authorities but even if he were to be wrong in his submissions, Rule 36 and Section 138(1) defeats his argument in total.

THE APPLICANT'S REPLY

13. The Applicant's representative submitted as follows:
- 13.1. With reference to the Respondent's representative's assertion that he will be best suited to his role as a representative, the Arbitration hearing is a hearing de novo.
- 13.2. They are taken aback from the Respondent's representative's response, by the veiled threat that is being communicated through the representative, cautioning the Commissioner, that if the matter is then against them, the matter will be taken on review, to coerce the Commissioner to find in their favour.
- 13.3. A Collective Agreement that's signed between the parties, that's the trade unions and the employer gives further rights to the employee and these rights are ex contractus and ex lege. They become part of the employee's contract and cannot be deviated "willy nilly", on the part of the employer unless there's consent by the minority union and there is presently no consent to deviate from the Collective Agreement.
- 13.4. The Respondent's representative submits that the agreement encompasses his attendance at these proceedings, which is incorrect, because with reference to page 6, A, page 1 of the Collective Agreement, "SCOPE", Mr Sithole does not form part of the registered scope of the GPSSBC, neither the PSCPBC and he's not employed in terms of the Public Service Act, nor the Public Service Regulations.
- 13.5. With reference to Mr Sithole taking issue that costs should be awarded to the PSA for raising the point in limine or the timing of the point in limine, had the PSA raised this formally in an application, the employer would have done the same. The employer would not have brought Mr Sithole to the proceedings and raised that the PSA raised a premature application because he would have just stepped out of the proceedings. However the PSA, which has a working relationship with the Respondent in the Province, engaged the Head of Labour Relations for the Province for the Respondent, Ms Melinda Mathews and they pointed it out to her. He specifically did so and her response was to take it up to the Commissioner.
- 13.6. With reference to the arguments that the Respondent's representative has referred to in respect of the SDA, Section 9, he confirms through his own argument that the SETA to which he's employed is an entity to the

Department of Labour. It's not a government department but an entity. They are similar to PRASA, South African Airways and these types of organisations.

- 13.7. The SETA's are governed by a Board of Directors and by law, the Higher Education Minister or his duly designated representative forms part of the Board for oversight purposes. That does not mean that because the Minister or the Department is part of the board, that that would qualify ETDP SETA as a government department.
- 13.8. There are two seasoned Labour Relations Officers seated with the Respondent's representative, both of whom are able and capable to represent the Respondent and have been representing the Respondent in KwaZulu Natal. To suggest that only Mr Sithole holds the skill to complete this matter would be a direct expulsion of the skills of other employees in the Province, including nationally.

ANALYSIS OF SUBMISSIONS AND ARGUMENTS

14. GPSSBC RESOLUTION NO 04 OF 2024, AGREEMENT ON THE AMENDMENT OF RESOLUTION 3 OF 2017 – DISPUTE RESOLUTION RULES, provides inter alia as follows:

"1. SCOPE

This agreement applies to and shall bind:

the employer;

trade unions parties to this agreement;

the employees of the employer who are members of the trade unions parties to this agreement; and

the employees of the employer who are not members of any trade union party to this agreement, but who fall within the registered scope of Council".

15. Rule 25 provides inter alia as follows:

"RULES THAT APPLY TO CONCILIATIONS AND ARBITRATIONS AND CON-ARBS

Who may appear or represent parties in proceedings before the Council

- (4) In any arbitration proceedings, a party to the dispute may appear in person or be represented only by a legal practitioner, a member, and office bearer or official of that party's trade union or an employee of a national department or a provincial administration."

16. Rule 26 provides as follows:

"Objections to a representative appearing before the Council

- 1) A party to the dispute that challenges the right of appearance of a representative must furnish reasons showing why the representative does not have the right of appearance.

2) The panellist may call upon the representative to furnish reasons why the representative should be permitted to appear.

3) A representative must tender any documents requested by the panellist, in terms of sub rule (2), including but not limited to, constitutions, payslips, contracts of employment, documents and forms, recognition agreements and proof of membership of a trade union or employers' organisation."

17. Rule 36 provides as follows:

"GENERAL

Condonation for failure to comply with the Rules

- 1) The Secretary or a panelist may condone any failure to comply with any provision of these Rules, on good cause shown.
- 2) In exercising its powers and performing its functions the Secretary or a panelist may act in such a manner as it deems expedient in the circumstances in order to achieve the objects of the Act. In doing so it shall have regard to substance rather than form, save where the Act provides otherwise."

18. Section 138 of the Labour Relations Act 66 of 1995, as amended, provides inter alia that:

"General provisions for arbitration proceedings

The commissioner may conduct the arbitration in a manner that the commissioner considers appropriate in order to determine the dispute fairly and quickly, but must deal with the substantial merits of the dispute with the minimum of legal formalities."

19. In this matter the Applicant's representative a point in limine in respect of the locus standi of the Respondent's representative to represent the Respondent in the Arbitration hearing.

20. In support of its point in limine the Applicant's representative maintained that the Applicant has gleaned from a document that purports to be a subpoena for witnesses, which stated that the "Employer representative" is Mr N Sithole, an employee from ETDP-SETA, who misrepresents that he's a Labour Relations Officer for the Respondent, when its evident he's not.

21. He further maintained that the appointment of the employer's representative in this matter is in direct contravention of the Collective Agreement governing the GPSSBC, as well as the provisions of the Public Service Act and Public Service Regulations, that he does not meet the criteria to act as an employer representative, as he is no longer a public servant and not an employee of the Respondent and neither is he the Labour Relations Officer or their legal representative.

22. He also maintained that he has resigned from the Department and is currently employed outside the public service, which disqualifies him from acting as an employer representative under the GPSSBC Collective Agreement, the Public Service Act and the Public Service Regulations and that allowing such representation would set a dangerous precedent, undermining the principles of fairness and compliance with established frameworks.

23. The Respondent's representative, Mr Sithole, presented detailed arguments in respect of why he has locus standi and should be allowed to represent the Respondent in the Arbitration proceedings, all of which I have taken into consideration.
24. With reference to the Applicant's representative's first argument, that he misrepresented himself, to the extent that he's the Labour Relations Officer of the Respondent, he maintained that he drafted those subpoenas and that there is nowhere in those submissions that he asserts or makes a claim that he's the Labour Relations Officer for the Respondent, therefore he did not misrepresent himself and that he has always said in the submissions "for the Respondent" or "the Respondent". Having perused the documents referred to by both parties, I agree with Mr Sithole, that nowhere in the documents does he indicate that he is the Labour Relations Officer of the Respondent. What is reflected in the documents is "Filed by: The representative of the Respondent", (page 44, A), "Labour Relations Section.. Devonshire Place...", (page 49, A) and "For the Respondent" (page 55, A).
25. Mr Sithole also submitted that he was employed at the Department of Justice and during that time he was appointed as the Investigator into the allegations against the Applicant and consequently initiated disciplinary action against her, where he was appointed as the employer representative to do so. He further submitted that when it comes to knowledge that is required to assist the Commissioner in this matter he is the most reliable and credible person, in so far as the Department of Justice is concerned because he implicated the Applicant, he initiated the disciplinary action that has brought her before the Commissioner and that everybody else that can come before the Commissioner, as a representative, will not be presenting facts based on personal knowledge and experience is concerned, in so far as the dismissal of the Applicant is concerned, at the very least from the Respondent's point of appearance. He also made submissions in respect of labour peace and essentially the Respondent being more likely to accept the Award, should he be the representative, which would more likely deter them from challenging the Award at the Labour Court or Labour Appeal Court.
26. I do not accept Mr Sithole's submissions in this respect and agree with the Applicant's representative that an Arbitration is a de novo hearing. The outcome of the Arbitration hearing will be based on evidence presented at the hearing, not on a representative's personal knowledge and experience. The Respondent would be at liberty to take the Award on review, irrespective of who it's representative is, which should reasonably be based on the merits of the application, not on whether or not Mr Sithole is representing the Respondent in the hearing or not. Whilst I accept that Mr Sithole may have personal knowledge and experience in the matter and with due consideration of all of his submissions in this respect, I do not believe that this would be a sufficient grounds to allow him to represent the Respondent in the Arbitration hearing.
27. With reference to Mr Sithole's submissions in relation to the legal issues, he submitted that the legal formalities should begin with discerning what a public service is versus public administration because it is argued that he is

not a public servant and maintained that there is no mention of the words 'public servant' in Rules 25 and 26 of GPSSBC Resolution 4 of 2024. In this respect I agree with his submission that the words "public servant" does not appear in Rules 25 and 26 of the GPSSBC Rules.

28. He further maintained that the question then is whether, he being an official of the ETDP SETA, is the ETDP SETA, by extension, an affiliation regarded as either a public administration or a National Department, with reference to the wording in Rule 25, "by an employee of any national department or provincial administration".
29. He maintained that the identity of the ETDP SETA could be found in the Skills Development Act (SDA), Section 9, that there are 21 SETAs in the country in total, that they are established in terms of the SDA, used to be under the Department of Labour, were entities of the Department of Labour and were moved in 2013 from the Department of Labour to be under the Department of Higher Education and Training.
30. He also referred to various sections of the SDA and maintained that it is clear within the ETDP section, that there is a government department, which is the Department of Higher Education and Training, that all the 21 SETAs report to the Department of Higher Education and Training and that Section 15 of the SDA allows that Department to place the SETAs under administration because they are its entities.
31. He also referred to the Constitution of the Republic of South Africa, 1996, and maintained that based on the provisions referred to, the ETDP SETA or any of the 21 SETA's cannot be seen outside the public service, which makes the Department of Higher Education and Training part of those that compose the SETA.
32. With reference to the Public Administration Management Act 11 of 2014, he maintained that that any official can be seconded or transferred in between the various state organs and with reference to the Public Finance Management Act 1998 (PFMA), he maintained that the ETDP SETA (EPDSA) in Schedule 3, Part A is listed as an organ of the state, hence they are saying that his employer is the State.
33. He also submitted that in South Africa we have two sectors, public and private and that the ETDP is a public sector and with reference to various judgements, he submitted that that the employer in the public service is the State, not the internal entities or functionaries or departments that employees are attached to, therefore his employer is the State.
34. He also submitted with reference to the three spheres of government, that the ETDP SETA, by virtue of it being attached to the Department of Higher Education and Training, which is a National Department, falls under the National sphere of government and the National Department.
35. Section 9 of the Skills Development Act No. 97 of 1998 provides as follows:

“(1) The Minister may, in the prescribed manner, establish a sector education and training authority with a constitution for any national economic sector.

(2) The Minister must determine a discrete sector for the purposes of subsection (1) by reference to categories of employers and for the purposes of that determination take into account –

(a) the education and training needs of employers and employees that –

(i) use similar materials, processes and technologies;

(ii) make similar products; or

(iii) render similar services;

(b) the potential of the proposed sector for coherent occupational structures and career pathing;

(c) the scope of any national strategies for economic growth and development;

(d) the organisational structures of the trade unions, employer organisations and government in closely related sectors;

(e) any consensus that there may be between organised labour, organised employers and relevant government departments as to the definition of any sector; and

(f) the financial and organisational ability of the proposed sector to support a SETA.

(3) On the establishment of a SETA, the Minister may provide assistance to the SETA to enable it to perform its functions”.

37. I have perused Mr Sithole's offer of appointment letter, from the ETDP SETA, which he has accepted, which states inter alia as follows:

“OFFER OF EMPLOYMENT

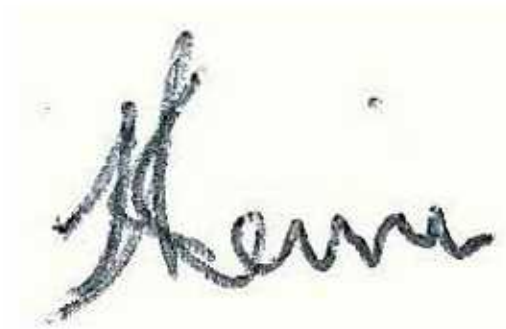
We take pleasure in confirming our offer of employment to you as the Legal and Compliance Specialist based at the ETDP SETA office in Johannesburg. Provided you have confirmed your acceptance thereof, your appointment will be effective from 04 August 2024 ("date of commencement") or on the day of your assumption of duty (whichever comes first).”

38. I have also perused the copy of his payslip submitted, which confirms his job title, that of a Legal and Compliance Specialist.
39. A SETA is a government mandated entity, each aligned within a specific economic sector. It is a supporting structure and is an entity, which is distinct and has an independent existence. In 1998, the South African Parliament developed the Skills Development Act, which defined a new Sector, the Training and Education Authority (SETA). The goal was to develop a series of sector skills plans within a clearly defined framework for the National Skills Development Strategy. On the 29th April 2010 the Minister of Higher Education and Training Minister, Dr Blade Nzimande, gave a statement detailing the public release of the proposed new SETA landscape, which reduced the then current 23 SETA's down to 21 SETA's. The functions and responsibilities of the SETA's are set out very clearly in Chapter 3 of the Skills Development Act.

40. A SETA is a statutory body, which means that they are established by an Act of Parliament and they are given clear responsibilities to be discharged in the public interest, as they are custodians of public funds (levies). They must report to the Director-General of the Department of Higher Education and Training on the efficient and effective use of the funds and are governed by the Public Finance Management Act, which is designed to ensure that public bodies operate in a manner that is not wasteful or irresponsible.
41. This does not however, mean that a SETA is a national department or provincial administration
42. From all of the submissions presented before me, I am not satisfied that Mr Sithole, being an employee of the ETDP SETA, translates or extends into him being an employee of “any national department” or “provincial administration”, as required by Rule 25 of the GPSSBC Rules. He is not bound by the Collective Agreement in the Sector in which the Applicant is employed, neither is he bound by any of the GPSSBC Resolutions, more specifically Resolution No 4 of 2024. He is also not answerable to the Respondent in this matter, nor to the GPSSBC and would be representing the Respondent in this matter, simply in his individual capacity, as he is no longer employed by the Respondent, but by the ETDP SETA.
43. With reference to Mr Sithole's submissions in respect of Rule 36 of the GPSSBC Rules and Section 138(1) of the Labour Relations Act, whilst I agree that substance over form must be taken into consideration, I do not believe that I have a discretion or am empowered to favor this consideration over and above the GPSSBC Rules. The Rules have been agreed to by the parties, who signed the Resolution, for important reasons, which exist to create a fair and orderly environment, and as indicated in the rules themselves, they are “RULES FOR THE CONDUCT OF PROCEEDINGS BEFORE THE GPSSBC” and with reference to Part Five, they are “RULES THAT APPLY TO CONCILIATIONS AND ARBITRATIONS AND CON-ARBS”, where Rules 25 and 25 fall under.
44. I have taken into consideration all the submissions presented before me and from all the submissions presented I am not satisfied that the Respondent's representative, Mr N Sithole has locus standi to represent the Respondent in the Arbitration hearing.
45. I find that the Respondent's representative, Mr N Sithole, does not have locus standi to represent the Respondent in the Arbitration hearing.
46. The Respondent is directed to appoint a representative to represent them at the Arbitration hearing, in compliance with Rule 25 of the GPSSBC Rules.
47. In respect of the issue of costs, I have taken into consideration the submissions of both parties in respect of this issue and I do not find that it would be just or equitable to order either party to bear the costs.

RULING

- (a) The Respondent's representative, Mr N Sithole, does not have locus standi to represent the Respondent in the Arbitration hearing.
- (b) The Respondent is directed to appoint a representative to represent them at the Arbitration hearing, in compliance with Rule 25 of the GPSSBC Rules.
- (c) This matter is to be set down for Arbitration.
- (d) There is no order as to costs.

A handwritten signature in black ink, appearing to read 'Keshree Kemi', is written on a light yellow background.

Name: KESHREE KEMI

Arbitrator