



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>

ARBITRATION AWARD

Panellist: Grace Mafa-Chali

Case No.: GPBC1162/2022

Date of Award: 08 August 2025

In the ARBITRATION between:

PSA OBO S M MAPHOTO & 29 OTHERS

APPLICANT

AND

DEPARTMENT OF TRANSPORT & COMMUNITY SAFETY

RESPONDENT

THE DETAILS OF THE HEARING AND REPRESENTATION

1. The arbitration hearings were held on 10 and 11 September 2024, 07 and 08 April 2025, 08 July 2025 and finalised on 09 July 2025 at Respondent's offices, 40 Church Street, Polokwane, Limpopo Province.
2. The Applicants were represented by PSA official, Ms Deidre Reyneke. The Respondent was represented by Mr Lucas Munyai, the Director Legal and Labour Relations.
3. The arbitration was held under the auspices of the General Public Service Sector Bargaining Council (GPSSBC) in terms of section 186(2)(a) of the Labour Relations Act 66 of 1995, as amended (the LRA) and the award is issued in terms of Section 138(7) of the LRA.
4. At the end of the proceedings, both parties requested to present their closing arguments in writing and they were directed to do so by 18 July 2025. Both parties have obliged and I have taken into account their arguments in my analysis of evidence and arguments hereunder without necessarily quoting them verbatim.
5. Parties have agreed to use common bundle of documents packed for each Applicant's performance assessment documents marked Bundles A, C, D, E, H, I, F, G, K, L, and N; and Limpopo Provincial Administration Policy on Performance Management and Development System effective 1st April 2018, marked Bundle B (PMDS Policy).
6. Originally, the dispute was referred on behalf of 44 Applicants. However, as at the commencement of the proceedings, not all Applicants pursued the matter and only 16 were in attendance until the last date of the arbitration hearing.
7. I then exercised my discretion and dismissed the claims of the Applicants who were not in attendance.
8. The matter proceeded only in respect of the 16 Applicants who testified below. The claim for the rest of the other Applicants has been dismissed due to their non-attendance during the arbitration proceedings until the matter was finalised.
9. The proceedings were digitally and manually recorded.

ISSUES TO BE DECIDED

10. I must determine whether or not the Respondent committed unfair labour practice against the Applicants in terms of Section 186 (2)(a) of the LRA relating to a benefit of a performance bonus.
11. If so, determine the appropriate relief.

BACKGROUND TO THE ISSUES

12. The Applicants were employed in various positions by the Respondent, in the Chief Corporate Services Directorate except only one (1) who falls within the Transport Directorate.

13. The Applicants alleged that they qualified for payment of once-off performance bonus for the financial year performance assessment of 2020/2021. It is common cause that the performance assessment review processes and rewarding of individual performance in relation to performance bonus are regulated by the PMDS Policy to qualifying employees. The policy or instruments governing performance management and rewards are not in dispute.
14. It is also common cause that the Applicants submitted their annual performance assessments for the 12 months' financial performance cycle year of 2020/2021 which were moderated by the Branch Moderation Committee (the BMS) with rating of 4 as agreed with their supervisors.
15. In November 2021, the BMS conducted moderation and captured the performance assessments outcomes of the Applicants on the form titled: Standard Form for returning PMDS documents when deviations are identified during Moderation or When There Are Disagreements with The Provisional Assessment Ratings (PAR) indicating that they should either reduce the score or put in additional motivations for the 4 rating in some KRAs.
16. Some Applicants submitted additional motivations and others did not. In March 2022, the Department Moderating Committee (DMC) finally moderated and reduced all their scores from 4 to 3 ratings disqualifying them to be rewarded a performance bonus in terms of the PMDS policy.
17. It was the Respondent's submissions that some of the Applicants did not add any motivations to their performance assessments in the KRAs as requested whilst others did but it was still not sufficient to justify rating of 4, hence they did not qualify for a performance bonus.
18. The Applicants prayed that the Commissioner to order the Respondent to pay their performance bonuses and the Respondent submitted that the Applicants' claims must be dismissed.

SURVEY OF PARTIES' EVIDENCE AND ARGUMENTS

The Applicants' Evidence

Sinah Maserole Maphoto testified under oath as follows:

19. She is the Deputy Director: HR Administration with 23 years' experience in government of which 21 years is in HR. She is shopsteward and also attends the PMDS Committee meetings as an Observer representing the union PSA.
20. During 2019 tenure, she and some of the employees were given permits to work and other employees with comorbidities worked from home. As the Respondent could not provide her with tools of trade to work from home, she came to work at the office everyday rotating like others.
21. During the performance assessments of 2020/2021, the PMDS documents were submitted by the employees for evaluation and BMC for Corporate Services dealt with employees' files. However, she observed some unfairness as during the deliberations by the BMC members, other employees' files were not looked at thoroughly and when motivations were read, the Chairperson said so and so are doing those activities.
22. The Chairperson also agreed to some Supervisors verbally motivating for their subordinates. There were some discrepancies in the assessments and in some departmental sections, some employees were paid and others were not when they did the same job in the same positions.
23. The Committee asked that she be excused when her file was moderated. Out of 109 files assessed, only 7 passed in Corporate Services and were paid the once-off performance bonus. The 7 employees who were rated 4 and paid the performance bonus, their supervisors motivated for them verbally in the BMC. The committee should have allowed all the supervisors to motivate further for their subordinates during the moderation but there was no consistency with regard to that. The files should have been given to supervisors when BMC did not agree on the rating of 4 so that the supervisor and the employee reduce to 3 rating or motivate further, but this was not done in this case. The files were presented to employees by secretary of the BMC. Page 20 of Bundle A is a form used by the BMC to return files. The supervisor must receive the files and engage the employees to check if the score can be reduced or further motivate to the BMC in terms of the PMDS Policy.
24. She submitted the additional motivation but her score was reduced from 4 to 3. She was prejudiced and not paid the once-off performance bonus when she was supposed to be working from home during the COVID-19 as a person with comorbidities but she had to come to work. She performed duties outside of her performance agreement to process deceased persons' withdrawal claims assisting the bereaved families, assisted with passwords for financial disclosures at the end of April 2020 to July 2020 as an Ethics Officer. She assisted the Secretariat for Police with appointment of Community Structures as abnormal appointments. She was assisting with those duties.
25. She did the motivation on her own on 4 ratings score and her supervisor did not motivate further. Clause 9.3.2 of PMDS Policy is relevant for supervisors to motivate on scores agreed. They wrote grievances for non-payment of the once-off performance bonus. She prayed for the performance bonus to be paid as agreed with her supervisor on 4 rating.

Mahlako Jemina Mphahlele testified under oath as follows:

26. She is the Assistant Director: HRD since 2009. She agreed to a rating of 4 with her supervisor but the BMC reduced her score to 3 rating. She was advised to lodge a grievance. She received a letter requesting her to write more motivation and that was done. She discussed the motivation with her supervisor, Mr Rasefate on KPA 2 and KRA 3 and she resubmitted on 02 January 2021.
27. She believed that she deserved the 4 rating and also expected her supervisor to motivate for her score as the Committee was not aware of her duties. She motivated on KRA 2 and did so many things over and over facilitation and co-ordination. She did work of 4 people in Skills Programme, Employee and SMS. She always got 4 rating and was paid performance bonus every year but in 2020/2021 she was not, whereas she did more work and even performed beyond the previous years. Her work is not assessed in numbers but in quality. She had additional work for co-ordinating learnership and fund and bursaries from SASETA, and she implemented 2 learnership programmes instead of 1 in that financial year. They were understaffed and co-ordinating and facilitating was not part of work she was contracted to do. She performed more work.

Francis Wilson Matlou Motshwene testified under oath as follows:

28. She is the Admin Officer in HR. She agreed with her supervisor Mr Mpe on a rating of 4 but her score was reduced to 3 rating and she was asked to motivate more. The PMDS Officer returned her file to her whereas it must normally be motivated by her supervisor. She did submit the motivation and also added some functions done during the COVID-19 for attendance registers, service terminations from the district to verify (Capricorn, Mopani, Waterberg and Vhembe). She did overtime work for expenditure for traffic officers of more than 30%, which was not part of her duties but for finance section. Her duty is only to capture expenditures not their names, their authorities and perusal numbers. This was added work.
29. Her supervisor did not add to her motivation as she expected and never had discussions with her about the motivation. For the past years, she had received the performance bonus and expected the same for 2020/2021.

Kgwedi Ezekiel Mokwena testified under oath as follows:

30. He is the Personnel Practitioner since 2010. He agreed on a performance rating score of 4 with his supervisor for 2020/2021 financial year assessments. His supervisor is Jonathan Phihlela. The BMC reduced her score of 4 to 3. He did not submit additional motivation because what he had submitted was

the work that he did. He expected his supervisor to motivate on his part at the BMC as that is how it is normally done in terms of Clause 9.3.2. of the PMDS Policy. He discussed with his supervisor and they agreed that he has no further motivation to submit. He was required to motivate KRAs 1, 2, 3 and 4. He resubmitted the same motivation which was submitted initially with no change in the contents. Page 42 of Bundle A in his motivation contained additional work that he did compared to the previous years after the merger with Department of Community Safety. They had asked him to work to capture on perusal. The BMC did not take into account the additional work they did in the financial year compared to the previous years.

Mokopu Yvonne Rammala testified under oath as follows:

31. She is the Personnel Practitioner Level 7 since 2009. She initially agreed on a performance score of 4 with her supervisor. The BMC reduced the score to 3 and asked her to motivate for 4 rating. She received the feedback from Ms Khaphathe. Assistant Director from PMDS who called her to her office to receive the letter from BMC and explained that she must add her motivation for 4 rating agreed with her supervisor.
32. She then agreed with her supervisor to add up the motivation and submit it. She drafted adverts for all the positions within the department from cleaner position to the last post. She also added her motivation on restructuring of salary packages and administration of transfers, placements, relocations and secondments. She had to do additional work after the merger with The Department of Community Safety, and APTAP and EPWP were added to her job. She prepared the additional motivation with her supervisor Ms Phihlela. She expected BMC to call her supervisor to motivate for her 4 rating score.

Victoria Hluyeyi Motsepe testified under oath as follows:

33. She is the Personnel Practitioner and her supervisor is Ms Phihlela. She has been working in HR for 10 years and was transferred to Community Safety in 2022. She agreed with her supervisor on a score of 4 for 2020/2021 financial year. The BMC sent back her file to do additional motivation. She told her supervisor about the returned file and her supervisor told her to go and add the motivation.
34. In that year, because of the merger and the operation plan in HR from Community Safety with programmes they did not include like community projects, community safety forums, young civilians on patron and crime preventions. They had to appoint them on perusal system, pay them per sittings, check all their documents and verify if they have worked before making payments. This was a lot of work and her additional job. This was not part of their contract for that financial year.
35. She also did about 130 of their transfer letters and it was not part of her duties. They had to call them to get documents, make copies and get banking details. They had a lot of frustrations and their supervisor

was aware of that. Since 2010, she has been receiving performance bonus and has never had to submit additional motivations. 2020 was a different year and even after the additional motivations, she still did not get a 4 rating score to qualify for a performance bonus. Her supervisor could have assisted in motivating for her 4 rating score as well.

Ramokone Johanna Phihlela testified under oath as follows:

36. She is the Senior Personnel Practitioner and has been working in HR for more than 20 years. She agreed with the testimonies of her subordinates Ms Rammala, Ms Motsepe and Mr Mokwena that she agreed on a score rating of 4 with them during the 2020/2021 performance financial year and that their scores were reduced by BMC.
37. She was never at any time called by BMC regarding the requirement to add their motivations. She was not part of the Committee. In terms of the PMD Policy, if a score is not agreed with the supervisor, it goes to the next supervisory level. If BMC did not agree with the scores she agreed with her subordinates, they were supposed to return the documents to them so that it can go to the next level of supervision. Since she was the supervisor, she was never called to BMC about their ratings. The subordinates were told to add up their motivations. She agreed with Mr Mokwena that he could not in any way add to his motivation already submitted.
38. Her supervisor was Ms Mpe previously and now Amika. Her score was also reduced from 4 to 3 rating and she was also asked to add up her motivation which she did. She just added here and there in her motivation. She had to add up in KRA1, KRA2 and KRA 4. Her motivation showed that she had done more than her normal duties. During the merger with Community Safety, the functions were centralised and she did Head Office and district work which was not part of her job description. She did not submit additional motivation for KRA 2 and KRA 4 but only KRA 1 as it was just the same.

Mamokgari Violet Rapotu testified under oath as follows:

39. She is the Performance Specialist at level 7. In 2020/2021 when they did the performance assessment, her score rating of 4 was reduced to 3 by the BMC. She was asked to motivate and she motivated in KRA1 and KRA2. She did indicate in her first motivation about the shortage of staff after the merger with the Department of Community Safety as she had to do more files for the employees, they had to realign their assessment documents to be in line with Department of Transport and she assisted 201 employees. She also captured their documents. she rated herself 4 with her supervisor because of the workload. She had to step in and do more work as her manager's PA was transferred to Capricorn District. Her additional motivation has two signatures, hers and that of Ms Lebombo as she attended to

some tasks and Ms Lebombo took some of her duties in the office, hence they did the additional motivations together and signed them off.

40. She has been receiving performance bonus for the past years before 2020/2021. She deserved to be recognised for hard work done with a performance bonus.

Mosadimogole Catherine Chueu testified under oath as follows:

41. She is the Assistant Director: Organisational Design and Job Evaluation. She submitted her first motivation for her annual assessment and it was not enough for the BMC. She was told to add up on her KRA1 and KRA2 and she did. She had an agreement on a rating of 4 with her supervisor. She agreed with her supervisor on a score rating of 4.
42. She was not happy with the outcome of the BMC to reduce her score from 4 rating to 3 rating. On KRA 1, she indicated that she maintained and reviewed the organisational structure due to the proclamation that was passed about the merger. She made some additions in the second motivation, as she was working during COVID-19 without permits, as they had the new MEC, and they had to work shifts during level 1 and 3.
43. She reached her targets of performance and even exceeded some in her job description. She did 225 job descriptions when the target is 200, therefore she exceeded her target. When the BMC returned her file, he had a meeting with the supervisor and she was told to add her motivation.

Tshebela Tjale testified under oath as follows:

44. She is the Personnel Practitioner, and was not happy about the performance rating score given by the BMC of 3 rating. In her motivation, she indicated that she captured 1855 documents after verification process. During COVID-19, she had to administer new COVID-19 registers at 1st floor, ground floor, lower ground and Senabasa Building at entrances for everyone to register. She and her colleagues had to check the registers and on Mondays put new ones and coordinate them until Friday, and put new ones for Mondays.
45. Her colleague was not reporting for duty due to sick leave from October 2020 to March 2021. She had to do that work alone. She received the leave applications and captured them. She also added her motivation on the KRA for administer service terminations. She agreed with her supervisor Ms N F Mpe on a score rating of 4.
46. She deserved a 4 as in terms of the turnaround times, she did extra work and that of her colleague who was on sick leave for a long time. She had not initially included a lot of things in the motivation and they did not in the past. They accepted her motivation but this time it was different. She then included information on Traffic Officers capturing in perusal.

47. She discussed her motivation with her supervisor and still agreed on a score of 4. BMC should have called her supervisor if they did not agree with their score of 4 so that she could mitigate for more. She received the performance bonus in the previous years.

Basani Daphney Magadi testified under oath as follows:

48. She is the Assistant Director: Partnership Section. She submitted her performance assessment for 2020/2021. After her submission, she went on maternity leave on 19 July 2020 until 18 November 2020. In March 2021, she got a letter stating that her rating was reduced from 4 rating to 3 rating. She agreed on a 4 rating with her supervisor Ms M.F Dali.
49. It was for the first time during the arbitration hearing to hear that she was required to submit the motivation. The reason her file was returned was that BMC wanted her to submit the additional motivation for all KRAs rated a 4. She did not sign the letter from BMC. The comments on the letter were made by her supervisor Ms Dali.
50. She was never at any stage told about another additional motivation. She never received a call or a message from her supervisor about additional motivation. If she had received a call or a message, she could have come as she wanted money as well. She expected the performance bonus on the motivation she submitted. She came back to work on 21 January 2021 and nobody said anything to her about the additional motivation. During her maternity leave, she was at her village home Tshikhavhani in Makhado and is not close to Polokwane.

Manthapeng Clarah Phoshoko testified under oath as follows:

51. She is the performance Specialist in HR. She was told in 2021 that she did not qualify for the performance bonus for a score rating of 4. She was upset by that as she was the only one working in Capricorn District with PMDS in 2019. It was the two of them but due to the restructuring, her colleague was transferred to another section. It was over work as the person was never replaced.
52. On KRA1, she exceeded the performance targets over 200 targets by achieving 387 at mid-term and 384 at annual reviews. She issued communications for workshops, made representations to employees on how to do performance agreements and reviews. Due to the amalgamation, she received 384 PAs from districts and 3 officials. During mid-term, she received 376 mid-term reviews even though Circular 22 of 2020 did not require the employees to submit. She did verbal and telephonic workshops for Generic Assessments Factor (GAF) to ensure that employees were covered due to prescripts. She sent communications through emails.

53. She was the first to be issued with a permit during COVID-19 to help other employees. She was taken to COVID-19 Workshop on 26 April 2020 to be able to handle documents submitted and issues of PPEs. She worked even though it was a risky environment. Employees were given rotation dates but she came to work every day.
54. She had to come to the office to print-out salary advises. She worked more than 50% of her target to qualify for the performance bonus. She submitted motivations on KRA 1, KRA 2 and KRA 3. She exceeded target on 200 PA and captured 387. She also indicated that she did work for 2 officials. She did 7 quality answer sessions on a target 1. She over achieved there. She furthermore did 4 motivation sessions and the target was 1 so she also exceeded the target.
55. She has been getting 4 ratings all the previous years. She also did additional work on prescripts as the person responsible for the work was working remotely at home. Those duties are mentoring, coaching, learnership employees (HRD, finance-salary advises), did subsidised vehicles for those who qualified, and record management is also additional work. She had to open files for individual employees to keep their documents safe. Another additional work is Special Programmes for which she was taken to a workshop to ensure people in the office wear PPE's, use sanitisers and were COVID-19 compliant.
56. She agreed on a score of 4 with her supervisor and when she additional motivation, she endorsed the document and signed it. She also expected her supervisor to be called at the BMC to explain what she was doing, her duties in terms of her job description and additional work she did alone.

Zanele Ester Mayimele testified under oath as follows:

57. She is the Performance Specialist in Performance Management and Development System. Her rating of 4 was reduced by BMC to rating of 3. She was not told add up the motivation On KRA 1, KRA 2, KRA 3, KRA 4 and KRA 5. But in her performance assessment, she only had 2 KRAs with a rating of 4 and the other two KRAs were rated a 3 rating. It was clear to her that the BMC did not go through her documents but just did an umbrella decision which was unfair as they did not pick up that she had 2 KRAs rated at 3 and the other two rated at 4.
58. She added her motivation with Ms Rapotu and they both signed as they worked in the same office and did the same job. Her duties were aligned to her performance and she did extra work in assisting employees in the department during COVID-19 with other employees from the Department of Safety with no extra hands. They assessed all employees from level 2-12. Her performance contract has no targets but outcomes. She did not add target numbers in her additional motivation but explained shortage of staff and extra files from Department of Community Safety were done with no person from the former department.

59. She could not remember how many employees were from the Department of Community Safety but it has a lot of files. She agreed on a score of 4 with her supervisor Ms Khepathe. When the letter came from BMC, she discussed it with her supervisor and again agreed on a 4 rating. Her supervisor is the secretary of the BMC and she expected her to motivate on her behalf due to extra work she did and her supervisor knew about it.
60. The chairperson of the corporate services sits in the BMC together with directors under the corporate services and they were aware of the merger of Community Safety to Transport. She also spoke to Mr Mthebule who also sat in the committee and he is also aware of the extra work. The previous years she received the performance bonus after submitting motivation and agreed 4 rating with her supervisor.

Mmapitlana Hansman Pheeha testified under oath as follows:

61. He is employed as an Admin Clerk at level 8. In 2020/2021, he submitted his performance assessment review. When the results came back, they said there was no alignment between his KRAs to his performance agreement and evidence that he qualified for 4 rating. He agreed with his supervisor, Mkhonazi on 4 rating but his score was reduced to 3 rating.
62. He was not assessed by the BMC because it was said that he did not align his performance assessment to the relevant KRAs. He was also told to beef up the motivation. He was told to revisit the KRAs. The realignment must be done in the beginning not by him. His documents were correct and all in order.
63. For the past 12 years, he was getting the performance bonus but for 2020/2021 he did not get it. He thought maybe it was due to COVID-19 but in 2020 his section was working. His supervisor brought him back his file and told him there was not enough evidence as in the letter dated 05 November 2021. He could not remember if he did the realignment as directed in the letter. According to him, he was not assessed.

Tlou Calvina Lebogo testified under oath as follows:

64. She is the Admin Officer: Facility Management at level 7. She is aggrieved in that during the PMDS assessment for 2020/2021, her file was returned to indicate that the score she agreed with her supervisor of 4 was reduced to score of 3 and she add up her motivation. She then did another motivation and indicated additional information in KRA 2 and KRA 3.
65. She also added information on office furniture, office management and facilities management and other additional work she did during COVID-19 as some of the officials with comorbidities worked from home. She was asked to work in records, receiving documents from HR salaries, retrieved files from personnel and if full, open files with annexures, updated all public permits into the files in public transport records. Those duties were not part of his performance contract.

66. In the previous years, he was getting performance bonus. Whereas those officials working in records who worked from home as they had commodities received the performance bonus, he did not get it. Specifically, one official who worked from home in records got a bonus. Others who were paid bonus are JJ Mashatole and other 3 officials as well as J Mahlakoana, RV Mazwi and J Magabula.

Mmabore Melidah Lepulana testified under oath as follows:

67. She is the Personnel Practitioner: HR Provisioning since July 2008. After the submission of her performance assessment for 2020/2021, the BMC reduced her 4 rating score to 3 rating and she was told to add up her motivation on KRAs 1, KRA 2, KRA 3 and KRA 4 which she did. It was for the first time that happened, as in the previous years she used to get the performance bonus.
68. She responded and added her motivation with additional information. In KRA 1, she mentioned the duties she performed in condition of service section, which was additional work for her since Tshikudu who worked there resigned and her supervisor asked her to perform her duties since 2018. Her job is in HR provisioning not conditions of service. She also added some additional functions in the conditions of service like administer adverts, facilitate transfers and placements, maintain records on perusal and render PMDS.
69. The BMC only considered her duties and did not consider the additional functions including those of HR provisioning and conditions of service. She explained a number of activities which she did as additional functions in the additional motivation, like maintain establishment, maintain records on perusal, annual reviews, performance agreements and maintain reviews including the numbers but it was not considered.

The Applicants closed their case.

The Respondent's Evidence

Fundani Dali testified under oath as follows:

70. She knew Ms Nkuna Basani Dephney. She is her supervisor and they work in the same directorate. In 2021 performance assessment, she received a message from HR that they wanted extra motivations. She tried to call Ms Nkuna but could not get hold of her., She also sent her a WhatsApp message but she did not return her call or message. Ms Ravhambebela her supervisor was told that she tried to call Ms Nkuna and sent her a WhatsApp message with no response. At that time, Ms Nkuna was on maternity leave. If she knew where she lived, she could have gone to her place.

71. She endorsed on the letter from HR, page 26 of Bundle D, that she tried to call her and also sent her a WhatsApp message but there was no response. She wrote on the document on 08 November 2021. She could not write an extra motivation for her as she could not talk to her. She signed her initial motivation of 4 rating as her supervisor after their discussion but the extra motivation for 4 rating, she could not be able to motivate it without talking to Ms Nkuna.

John Joel Ngoako Mangena testified under oath as follows:

72. He is the Chief Director: Corporate Management Services. In 2020/2021, he played the role of the chairperson of the BMC in his capacity as the Chief Director for the Directorate. He also chaired the DMC. He is fully aware of the PMDS Policy and its relevant clauses.

73. The performance assessments for 2020/2021 were done during the COVID-19 and there were challenges as most employees were not coming to work but were working from home and did rotational work. The budget allocated was reviewed affecting performance targets and therefore they had to relax some targets. Things were not as usual and employees were not expected to be fulltime at work.

74. He conducted PMDS assessment meeting of BMC with other 5 or 6 Directors under Corporate Services and made determinations on the performance assessments which were over 100. Ratings of 3 scores were condoned due to the circumstances of that year. They checked if those with ratings of 4 met the test for the requirements.

75. The PMDS Policy indicates how they must rate the performance. On a rating of 4, the employee must satisfy all the expected performance and far beyond the targets. The Committee checked those requirements and returned a lot of files as they did not meet those requirements. Some of the files returned were brought back whilst others were not brought back by supervisors. There were others brought back without any effort to justify or add to the motivations. Those motivated went back and were checked if they qualified for the rating of 4 or not.

76. Clause 82 of the PMDS Policy has a table with some categories of performance ratings. For 3 rating, a person must be fully effective, and for a rating of 4, it must be highly effective. When they do assessments, they use a tool and they assess per each KRA in terms of the performance contract between the employee and the supervisor. The standard set for 4 rating is that it must be fully effective and more than half. When they found challenges, they asked for motivations on KRAs.

77. He could not justify that the Applicants who alleged that they did additional functions and expected a rating of 4 are wrong or right. For him, a team had assessed and done its part. If someone says he did a valid motivation, it will be fine. However, subject to performance agreements and targets, for that year, each KRA must be fully effective plus more than half extra mileage beyond.

78. Performance could not be generalised. If the committee needs to reassess, it can do so with another eye as perhaps some of them were overlooked. Clause 7 deals with prolonged absence during

performance cycle provided performance instruments have been submitted. If absent for approved leave for months, the PMDS policy is clear that in such instances like maternity leave, and the person was at work, the person would have performed fully effective and get 3 rating.

79. The BMC considered all those factors, COVID-19 year, employees were not fully at work, rotation employees with comorbidities could not be allowed to work and since they were away for 3 or 4 months, they gave them 3 ratings. They were not penalised.
80. If a person like Daphney Nkuna submitted the motivation before she left for maternity leave, it must be put for a test, subjected to a tool of rating of 4 and more than half of that performance. Performance must be aligned to key performance areas. If the supervisor tried to contact her and there was no reply, the person must submit motivation and it let it be assessed and checked if a person can get a 4 in terms of the rating.
81. Ms Maphoto is her subordinate even though not direct. If she submitted her motivation on 11 November 2021 when closing date was on 09 November 2021, it means she submitted after the deadline. She was given leave due to comorbidities and she was not full time at work. Although she may have motivated, she was required to motivate KRA 1 and KRA3 and the Committee decided she still did not qualify for 4 rating, it meant she executed the duties of what was expected of her. The using of her cellphone in one occasion cannot uplift an employee to a rating of 4, if other critical areas in the KRA were not addressed. Again, if she did not motivate KRA 1 and KRA 3 as requested but KRA 3 and KRA 4, policy will be implemented and as there is no alignment and it is irrelevant to what the committee requested, it cannot justify a rating of 4.
82. The employee M.H Pheeha, is the Transport Admin Officer. If the BMC said there was no alignment of his performance contract and performance assessment, the performance assessment would not be made until there is such alignment with KRAs signed in his performance contract with his supervisor. He will not even be given a score of 3 as he has not responded when requested to do an alignment.
83. Regarding M.C Chueu, BMC requested her to submit motivation of KRA 1 and KRA 2 and she submitted. He could not dispute the motivation unless the motivation is put to a process to re-check if there are no omissions which could justify against the targets to be fully effective and more than what is expected of her. It may need to be reassessed.
84. It must be noted that individual assessments are not in isolation. They must also be geared with Directorate's performance and the Department's performance to qualify employees' entitlement to bonus. If employees deserve 4 rating, it means the Department has been assessed as high performing, however without being harsh, where individual employees deserve bonus, they must get such against what is being assessed.

The respondent closed its case.

ANALYSIS OF PARTIES' EVIDENCE AND ARGUMENTS

85. I have considered all the evidence and arguments. Section 138(7) of the LRA requires an award to be issued with brief reasons for the findings. I shall only briefly summarise the evidence and arguments. If I do not refer to particular evidence and argument, it does mean that I did not consider it.
86. The Applicant referred a dispute in terms of section 186(2)(a) of the LRA for unfair labour practice relating to benefit of a once-off performance bonus for 2020/2021 financial year. The onus is on the applicant to prove, on a balance of probabilities, an unfair act the part of the respondent that gives rise to the unfair labour practice.
87. Section 186(2) (a) of the Act provides that:
- “Unfair labour practice” means any unfair act or omission that arises between an employer and an employee involving—*
- unfair conduct by the employer relating to the promotion, demotion, probation (excluding disputes about dismissals for a reason relating to probation) or training of an employee or relating to the provision of benefits to an employee.”*
88. It is common cause that all the Applicants have submitted their performance assessments for the period 2020/2021, with overall rating of 4 which was agreed with their various supervisors, which would have qualified them for the payment of a once-off performance bonus.
89. It is also common cause that the performance assessments were determined by the BMC and it was decided that the Applicants have not satisfied the requirements of rating of 4 in terms of the PMDS Policy, and were requested to submit additional motivations on certain KRAs. Some Applicants received the feedback directly from the PMDS secretary whereas others received them through their supervisors.
90. However, ultimately on reassessments, it was determined by the DMC that the Applicants have still not met the requirements to be paid a once-off performance bonus.
91. The Applicants' testimonies are that they submitted additional motivations, and others did not. It is the Applicants' submissions that their motivations were not fairly assessed but overlooked the fact that they did additional functions over and above their job descriptions, others performed duties of colleagues who were working from home on rotational basis or for employees with comorbidities due to COVID-19.
92. For the sake of brevity, I am going to categorize the Applicants into 3 groups of categories, out of the 16 Applicants who testified in this matter, as there were those who submitted the additional motivations and those who did not submit the additional motivations, and the third specific cases of the Applicants S M Maphoto, M C Chueu, B D Nkuna (Magodi), and M H Pheeha whom the Respondent strongly contested their claims.
93. The Respondent submitted that S M Maphoto was instructed to motivate KRA 1 and KRA 3 but she submitted additional motivation for KRA 2 and KRA 4 and therefore he did not comply with the

instruction. For M C Chueu, the Respondent argued that she only verbally motivated but the motivations and did not put additional work motivation for the BMC to reassess.

94. In respect to B D Nkuna, she testified that as she went on maternity leave after the submission of the performance assessments, she was never told by her supervisor or anyone that her file was returned for submission of additional motivation, and if she was contacted, she would have positively responded as she also wanted money. It only came to her knowledge in January 2022 on her return from maternity leave about the request for additional motivation. She disputed the evidence of her supervisor Ms F Dali that she called her on her cellphone and even sent her WhatsApp message that she must submit an additional motivation as she never received such call or WhatsApp message.
95. Ms Dali could not dispute Ms Nkuna's evidence that she never received her call or WhatsApp message, and furthermore Ms Dali did not contest Ms Nkuna's argument that she did not try enough to get hold of her, or to even find out where she was staying, or ask colleagues so that she can get the letter delivered to her, and as a result of her not making much efforts, she was prejudiced.
96. In so far as M H Pheeha is concerned, he was asked to realign the KRAs in his performance assessment with KRAs in his performance contract. He conceded that he responded in the outcome letter and wrote that the review aligned to the PA confirming that the instruction to realign was complied with.
97. Clause 9.3.2 of the PMDS Policy states the following about the role of the BMC:
- "The Branch Moderating Committees play a critical role in assessing/moderating the Provisional Assessment Rating of employees. It receives the Provisional Assessment Ratings from the PMDS Unit for validation. In the process the Branch Moderating Committee may agree or disagree with the PAR. In case of disagreement, the PAR must be referred back to the employee's supervisor to try and reach consensus on its view. When a need arises, supervisors will be expected to motivate further to the Branch Moderating Committee. If the supervisor cannot convince the employee of a change in the rating, the Branch Moderating Committee rating is forwarded to the Departmental Committee together with reasons for its decisions."*
98. It is common cause that in some instances the performances assessment outcomes were not sent to supervisors of the Applicants but given by the secretariat of PMDS to the Applicants directly with an instruction to submit additional motivations on specific KRAs, which was a contravention of the above PMDS policy provision.
99. Cause 8.2 of the PMDS policy gives guidance on how the performance of employees should be assessed on the annual performance over the 12 months' cycle using the 4-point rating scale. The 3 and 4 ratings are defined as follows: "A 3 rating if fully effective and the employee's performance fully meets the standard expected in all areas of the job as specified in the performance agreement and workplan. In a 4 rating, it is highly effective performance, the employee far exceeds the standard expected

performance better than fully effective results against more than half or in all the areas of the performance criteria and indicators as specified in the performance agreement and workplan and maintained throughout the performance cycle.”

100. The evidence of the first category of Applicants who submitted initial motivation for 4 ratings performance assessment reviews and did not submit additional motivations on the specific KRAs were able to show that they performance were highly effective in more than half or in all areas of the jobs achieved.
101. The Applicants' evidence was consistent and in collaboration with each other in particular to the additional work that they did and how they exceeded their normal duties targets. I find that the Respondent has not successfully challenged their evidence or shown how their motivations were not highly effective performance, thereby unfairly assessed by the BMC. Most of the KRAs they were required to submit additional motivations, contained additional functions the Applicants executed during the period as well as motivations showing that the Applicants exceeded far some of the targets set in their performance agreements, they did work of other colleagues with comorbidities during COVID-19 or worked on rotational basis, or did additional work due for those who resigned, went on retirement, more work due to the merger of the Respondent with Community Safety with a lot of work pressure and understaffing causing them to do work outside of their job descriptions. Furthermore, some of the Applicants did work which were done by officials who have resigned and not replaced. Most importantly there were those that had to administer the COVID-19 safety compliance and attendance registers.
102. I fully agree with the Applicants that the BMC should have taken those factors into consideration and not just merely overlooked them because there was an assumption that employees were not working fulltime in that year, and due to CIVID-19 challenges and budget constraints, apply a blanket rule to disqualify the Applicants. It was prudent that under the circumstances, the BMC should have called the supervisors to further the ratings of their subordinates as provided for in the PMDS policy. Ms Maphoto led undisputed evidence that the Chairperson allowed some supervisors to motivate but other supervisors were not called. It is unknown for what reasons was that done. In fact, Mr Mangena conceded that supervisors were not called to come and motivate for their subordinates scores, when the BMC was not in agreement with the Applicants' ratings agreed with their supervisors.
103. In the second category of Applicants, of those who submitted additional motivations, their evidence with regard to what was further motivated is similar to those who did not do submit further motivation as indicated above. I have also found that based on the uncontested evidence the Applicants presented they were unfairly assessed by the BMC based on the same reasons as indicated above.
104. The Applicants argued that in the previous years, they have been given a 4 rating as agreed with their supervisors like in 2020/2021 and were rewarded with performance bonus and their performance have not changed to deteriorate as compared to the previous years, and in fact it was even more functions

with COVID-19 challenges and mergers with Department of Community Safety. This calls for the Respondent to have only deviated from the practice on very justifiable reasons for non-performance, which was not the case. It was not the Respondent's case that the Applicants could not be awarded 4 ratings as their performance was not aligned to the Directorates, or departmental performance.

105. The Respondent's evidence seemed to support the Applicants' versions in that Mr Mangena, who was the Chairperson of both the BMC and DMC, conceded that if there were such instances where the Applicants have motivated as such even with further motivations, it may be so that the Applicants have gone an extra mile and or even performed beyond their expected standards and there is no objection if the Respondent could reassess them, as perhaps their motivations and even additional motivations could have been overlooked and they could have been assessed at 4 rating. He also highlighted the COVID-19 as the most contributing factors to the challenges experienced in that year, employees working from home, others on rotational basis and budget constraints. Mr Mangena further conceded that no supervisor was called to BMC to motivate further for their subordinates scores.

106. The arguments of the Respondent also relied on clause 7.1.1 of the policy which provides as follows:

"When an employee is absent with permission or on precautionary for a continuous period of three (3) months or longer, the affected employee shall be regarded as having performed fully effective for that period of absence performance cycle".

107. I find that this argument *does not hold water*, as the Applicants submitted uncontested evidence that there were other colleagues who were working from home due to comorbidities and others worked on rotation and not reporting for work on normal working days due to COVID-19, but have been paid a performance bonus for that year, whereas they were not paid. The Respondent argued that the Applicants would not have been paid a performance bonus because they were remotely at that time. If this argument is to be accepted, it is my considered view that the Respondent should not have paid any other employee who worked remotely then, but instead the Respondent paid some and not paid others when the same categories of employees worked under the same conditions remotely. This was an inconsistent application of the policy and I find that this policy application towards the Applicants was unfair, unreasonable and irrational, and in particular the blanket approach that all KRAs rated 4 were returned without applying their mind and assessing if the performance indeed deserves a 4 rating or not.

108. The Respondent seems to understand that clause 7.1.2 of the PMDS policy was also applicable for Ms Nkuna as she was on maternity leave from July 2021 to January 2022 for prolonged period of absence. The clause provides as follows;

"Periods of prolonged absence with permission for purposes of paragraph 7.1.1 above includes all types of approved leave, including study leave with full pay provided performance instruments have been submitted". This clause is certainly not relevant and not applicable to Ms Nkuna and therefore the Respondent's argument is misplaced since Ms Nkuna's prolonged period of absence for maternity leave

did not fall within the performance cycle in question of 2020/2021 but of 2021/2022. She commenced her maternity leave after the submission of the 2020/2021 annual performance reviews, and her performance was not affected by her prolonged absence from work, which could have warranted that she be assessed a 3 rating for fully effective performance. The issue here is that Ms Nkuna has not been able to submit her additional motivation on some KRAs.

109. In the case of Ms Nkuna, what needs to be determined is whether her performance assessment was fairly determined by the BMC despite the absence of the additional motivation, and whether there was a justifiable reason for her not to submit the additional motivation. Ms Nkuna submitted evidence that she submitted her performance assessment with motivation why she deserved a 4 rating as the agreed score with her supervisor like the previous years, and therefore, she expected a performance bonus based on such performance assessment. She showed the areas where she exceeded her normal performance targets and additional functions she executed. This piece of evidence was not contested by the Respondent at all.
110. The Respondent took an issue with the fact that Ms Nkuna failed to submit an additional motivation even though her supervisor informed her to do so by calling her and sending her WhatsApp. It is my considered view that Ms Nkuna disputed that she was ever called or sent a message by her supervisor or anyone from the workplace, and that if she received such a call or message she could have reasonably responded as she wanted the performance bonus. This explanation makes sense. The supervisor could not be able to show with any tangible evidence that Ms Nkuna indeed was called and received the calls or calls and also sent the WhatsApp messages and received that as well, and failed to respond. Records of the calls to Ms Nkuna's cellphone number could have been more tangible. It is also not known which number Ms Dali used to contact Ms Nkuna, and whether that was her correct cellphone number called or sent messages. The only document that was presented as proof is the comments written by Ms Dali on the standard form for returning PMDS document. She also wrote comments on a portion where the jobholder must put the comments. The form has no provision for the supervisor to put comments. It is well known that sending a message is not proof that the message has been received. On that basis, I find that Ms Nkuna's performance assessment should be treated like those who did not submit additional motivation, and should have been accordingly and fairly assessed as well to qualify her a performance bonus.
111. Regarding the Respondent's argument that Ms Chueu did not submit her motivation as requested but motivated her performance by her word of mouth evidence. It is so that Ms Chueu did testify about a number of functions she performed as additional and she did not put them in the additional motivation, but I tend to disagree with the Respondent that she did not submit additional motivation on KRAs 2 and 3 as requested. In her testimony, Ms Chueu also showed in her additional motivation the areas where she added the motivations in KRA 1 with comprehensive and detailed business case packaged, submission

of DPSA OMF Status Implementation Report. Under KRA 2, she added that she worked during the COVID-19 lockdown and was instructed to provide the job description to the newly appointed MEC on 09 July 2020. Furthermore, the target for job descriptions was 200 and she exceeded that as she did 225 job descriptions; and agreed with her supervisor Mr Mashao for the 4 rating. It is not known how the Respondent assessed such performance as her evidence was not successfully challenged in that regard.

112. On the performance assessment of Ms Maphoto, she testified about although she was one of the employees with comorbidities, she was given a permit to come to work in the office during the high level of COVID-19 lockdown, whilst other employees worked from home and she had to come to office as she was not provided with tools to work from home. She further testified that she worked on deceased employee's pension withdrawals as speedily as possible, did disclosures for financial interest status passwords resets on smart phones with DPSA as the Ethics Officer and this was an additional work, further assisted Secretariat for Police with appointment of community structures. It was also Ms Maphoto's evidence that she agreed with her supervisor with a rating of 4 like the previous years, and was requested to submit additional motivation which she did. It is apparent from the documentary evidence that she was requested to motivate for KRA1 and KRA 3 but she motivated on KRA 1 and KRA 4. It is also not known how the BMC came to reject her additional motivations on those KRAs motivated further as she also included additional functions outside of her job description.
113. There was also an issue raised by the Respondent of late submission of the additional motivation by Ms Maphoto, which was not pursued by the Respondent to the effect that her non-compliance with the submission date rendered her submission null and void. It is apparent that the BMC still considered her performance assessment regardless of the late submission and as such I find that her late submission was condoned. In so far as the Respondent's version is concerned regarding Ms Maphoto's evidence, it became apparent that Mr Mangena did not challenge her evidence entirely and seemed to be amenable to the reassessment of her performance to check if she did qualify for rating of 4 for performance bonus, although he was certain that Ms Maphoto was not working from office for a long time during COVID due to her comorbidities, he could not rule out the possibilities of having overlooked some areas and may need to be reassessed.
114. In so far as Mr Pheeha is concerned, it is common cause that he submitted his performance assessment with an agreed rating of 4 with his supervisor and on 05 November 2021, it was returned for him to realign the KRAs with his performance agreement. He was not required to submit additional motivation. Mr Pheeha resubmitted his performance assessment with comments that *"review aligned to the PA"* and he also read and signed the document.
115. Mr Pheeha testified that he understood what he was required to do. Initially Mr Pheeha insisted that he was not assessed although he agreed with his supervisor Mkhonazi on a rating of 4 entitling him to a

performance bonus like the previous 12 years, and that his motivation should have been considered by the BMC. In this instance the further motivation by the supervisor would not have been of any assistance to Mr Pheeha's case as the assessment tools documents were not in order. However, it became evident due to his failure to realign the KRAs to his performance plan, the BMC awarded him a performance rating of 3 on 07 March 2022 for fully effective.

116. Even though Mr Pheeha testified that before resubmitting he checked the KRAs and saw that they were aligned, he finally conceded under cross-examination when a comparison of the KRAs was shown to him with scrutiny that the KRAs were not aligned and the targets were not the same. It was just unfortunate that he did not have a discussion with her supervisor about the reasons for returning his assessment and how he must have been aligned them, as according to him his supervisor required him more extra evidence to support his performance ratings rather. On this basis, as Mr Pheeha's KRAs in the performance assessment document were not aligned to KRAs in his performance plan, and I cannot therefore fault the BMC in not agreeing with his 4 rating score and reducing it to a rating of 3 giving him a pay progression and not a performance bonus. I find that this was a fair decision by the BMC.
117. Based on the evidence presented to me as indicated above, the Applicants have been able to show that the conduct of the Respondent in conducting their performance assessments for 2020/2021 based on the motivations submitted, and also on the additional motivations submitted, was unreasonable, unfair and irrationally and clearly prejudiced the Applicant by declining them a once-off performance bonus; and have therefore discharged their onus of prove on a balance of probabilities that the Respondent committed unfair labour practice towards them.
118. In the Labour Appeal Court of *Apollo Tyres SA (Pty) Ltd v CCMA & others (2013) 34 ILJ 1120 (LAC)*, it was established that a bonus constitutes a benefit as intended by section 182(2)(a) of the LRA and a benefit includes a right or entitlement to which the employee is entitled, either *ex lege*, or *contractu* and advantages or privileges granted to an employee in terms of a policy or practice subject to an employer's discretion. This discretion must therefore not be exercised arbitrarily, capriciously or for no justifiable reason by the employer
119. On the above basis, it is my finding that the Applicants have discharged their onus to prove on a balance of probabilities that the Respondent committed unfair labour practice in terms of section 186(2) (a) towards them by falling to pay them the benefit of a once-off performance bonus, with the exception of Mr H Pheeha.
120. Turning now to the issue of the remedy, in terms of Section 193(4) of the LRA, an arbitrator appointed in terms of the Act may determine any unfair labour practice dispute on terms that the arbitrator deems reasonable, which may include reinstatement, re-employment or compensation. Under the circumstances, I deem it reasonable to grant the successful Applicants the remedy sought to order the Respondent to pay the Applicants the once-off performance bonus for the financial year 2020/2021 in

accordance with the approved percentages which was determined by the Executive Committee of the Respondent for that year calculated at 2.77 % for Level 1-10, and 2.15 for Level 11-12, presented by the Applicants as follows:

1. Sinah Maserole Maphoto-R16 893.62
2. Mahlako Jemina Mphahlele-R15 110.16
3. Francis Wilson Matlou Motshwene-R8 907.07
4. Kgwadi Ezekiel Mokwena-R8 155.77
5. Mokopu Yvonne Rammala-R8 402.49
6. Victorai Hluyeyi Motsepe-R8 155.77
7. Ramokone Johanna Phihlela-R10 184.07
8. Mamokgari Violet Rapotu-R8 402.49
9. Mosadimogale Cathrine Chueu-R13 818.78
10. Tshebela Tjale-R8 402.49
11. Basani Dapheny Nkuna (Magodi)-R13 614.69
12. Manthapeng Clarah Phoshoko-R8 907.07
13. Zanele Ester Mayimele (Lebombo)-R8 155.77
14. Tlou Calvania Lebogo-R8 402.49
15. Mmabore Melidah Lepulana-R9 313.93

AWARD

121. I find that the Respondent committed an unfair labour practice towards the above-mentioned Applicants listed in paragraph 120 above concerning a benefit of a once-off performance bonus.
122. The amounts listed in paragraph 120 above are subject to less statutory SARS Tax deductions.
123. The Respondent is hereby ordered to pay the listed Applicants in paragraph 120 above the amounts of performance bonus as listed or before 15 September 2025.
124. The Respondent has not committed unfair labour practice against Mr Pheeha relating to benefit of a once-off performance bonus and his claim is hereby dismissed.
125. The claim for the other remaining Applicants in this matter is hereby dismissed due to their non-attendance.



GRACE MAFA-CHALI

GPSSBC PANELLIST