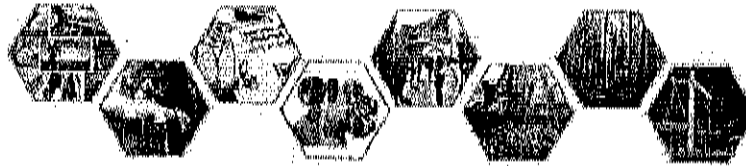




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ARBITRATION

AWARD

Panelist/s: PJ GREYLING

Case No.: GPBC483/2019

Date of Award: 08 MARCH 2021

In the ARBITRATION between:

PSA obo MM MAGODIELO
(Union / Applicant)

and:

DEPARTMENT OF HOME AFFAIRS
(Respondent)

Union/Applicant's representative:

A MORIBE

Union/Applicant's address:

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MAFIKENG

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Telephone:

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Telefax:

018 381 9611

Email:

abram.moribe@psa.co.za

Respondent's representative:

P TIKANE

Respondent's address:

CNR MODIRI MOLEMA AND VRYBURG ROADS

MOTSWEDI HOUSE

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Telephone:

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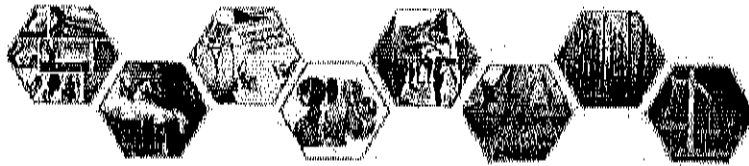
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08 MARCH 2021



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ARBITRATION AWARD

DETAILS OF HEARING AND REPRESENTATION:

1. The matter was heard on 01 October 2019, 17 July 2020, 02 November 2020, 02 February 2021 and was concluded on 26 February 2021 at the Respondent's premises in Mafikeng. The Applicant, Ms MM Magodielo was represented by Mr A Moribe, a trade union official. The Respondent, the Department of Home Affairs was represented by Mr P. Tikane.

ISSUE TO BE DECIDED:

2. It is to be decided whether the dismissal of the Applicant on 19 February 2019 was substantively fair. Procedural fairness was not placed in dispute.

BACKGROUND TO THE DISPUTE:

3. The Applicant was appointed as an administrative clerk on 03 May 1993. On 29 February 2019 she was promoted to a senior administrative clerk. The Applicant earned a salary of R15,000.00 per month.

4. The Applicant was dismissed after the conclusion of a disciplinary and appeal process on 19 February 2019. The Applicant was found guilty of the following transgressions:

***ALLEGATION: 1**

It is alleged that you committed an act of misconduct in that on or about 07 October 2016 at or near Mabeskraal Service point Home Affairs, you processed the passport applications of Mr Robin Nadasen I.D Number 8912305156083 and Mr Mubeen Hoosen Cassim I.D Number 7909025023081 without following the correct Departmental Procedure.

ALLEGATION: 2

It is alleged that on or about 07 October 2016 and 31 October 2016 at or near Mabeskraal Service point Home Affairs, you processed the passport applications of Mr Jodeche Remano

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Rajah I.D Number 9410295069084 and Mr Aslam Patel I.D Number 9310285320085 without following the correct Departmental Procedure.

ALLEGATION: 3

It is also alleged that on or about 03 October 2016 at or near Mabelskraal Service Point Home Affairs, you processed the passport application of Collin Charles Liddle I.D Number 7707285293083 without following the correct Departmental Procedure." (sic)

5. The Applicant wants to be reinstated.

SURVEY OF EVIDENCE AND ARGUMENT:

The Respondent's Evidence

6. The first witness for the Respondent was Mr BBG Keame. He testified under oath to the following:

6.1 The witness is an employee of the Respondent. He was the investigating officer in this matter. This particular matter was referred to his office by the manager of the Madikwe office. The manager suspected that certain passport applications were processed in an improper manner. Two of the passports were never collected and when he tried to make contact using the telephone number provided, it became apparent that a wrong number was provided. The Applicant worked at a small office at Mabelskraal. This particular office has no online facilities. Applications are therefore dealt with manually and then transferred to the Madikwe office to be processed. The investigation was done to establish whether there was any corruption or mistakes involved in the applications that were of concern to the particular manager.

6.2 The witness explained that if someone wants to apply for a passport while outside the country, such a person must approach the office of the South African mission. If an individual is inside the country, he/she will approach the offices of the Department. It became apparent from the investigations that an application was made inside the country, but the passport was used for the first time when someone entered the country. The question therefore is how a person, if he applied inside the country could leave the



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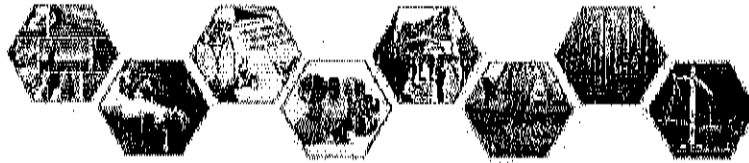
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country without a passport. Certain passports were also never collected by the applicants but it can be seen on the system that the individuals crossed borders apparently using other passports.

- 6.3 The witness testified that he interviewed the Applicant. She indicated to him that the applicants referred to in the charge sheet came into the office with the application forms already completed. The witness referred to the Applicant's statement (BoD R, p43). In her statement the Applicant indicates that the passport applicants informed her that they were in the process of completing their forms at the Rustenburg office. The process however could not be completed due to a power failure and they were therefore advised to come to the Mabeskraal service point where the applications could be dealt with manually. The Applicant enquired from them why they did not go to the Madikwe office. Their explanation was that they wanted to avoid long queues. According to the Applicant she then consulted her supervisor, Mr Lephunye about the applications and he instructed her to help the particular individuals. She also contacted the manager, Mr Moleta who also advised her to assist the applicants. The Applicant then received payment and processed their fingerprints.
- 6.4 The witness stated that an official who is assisting passport applicants may not accept an already completed form. In this instance the fingerprints were already attached to the form. He further stated that the Rustenburg office did not do any manual applications. He further liaised with the Applicant's supervisor and manager. Both of them denied instructing the Applicant to proceed with the applications. The supervisor and manager stated that it was impossible for the Applicant to verify the fingerprints and the photographs as it was already attached to the form and therefore not endorsed.
- 6.5 The witness referred to BoD R, p13 reflecting the identity document of Robin Nadasen. The application was made using the old green identity document. This document was obtained by Nadasen through an application dated 25 April 2007. However, it was established during this investigation that the same person now has a different identity document which was issued to him in October 2016. When the fingerprints were compared it became apparent that the prints belong to a totally different person. The



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applicant should therefore not have accepted the application. She should have gone through all the steps of processing.

6.6 The witness then referred to the application of CC Liddle (BoD R, p34). In this particular instance, the individual requested that his passport be delivered in Centurion. The system however does not show that the passport was retrieved at Centurion. The entry records show that this particular person entered the country on 07 October 2016 and on 16 October 2016. The application was accepted on 03 October 2016.

6.7 With regard to "ALLEGATION: 2", which refers to the applicant JR Rajah, the witness stated that this passport was never collected. During processing a request was made to see this applicant's original identification document. There was also a problem with his fingerprints. He never turned up at the office for the necessary verification.

6.8 In respect of "ALLEGATION:3", the witness stated that with regard to applicant Liddle it is apparent that this specific individual also travelled with a different passport which was issued with other fingerprints used to support the application. It is further apparent that the photograph then used was a different photograph than the one reflected on the identity document of the applicant.

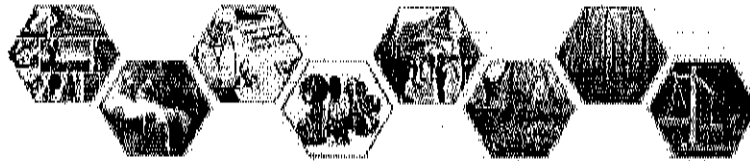
6.9 The witness further stated that the Applicant should have refused these applications. It is further submitted that the Applicant's argument is that other persons involved in the processing should have noted any discrepancies.

7. The second witness for the Respondent was Mr DE Mogomotsi. He testified under oath to the following:

7.1 The witness is an employee of the Respondent for the past 39 years. He is the head of the department in Rustenburg. He further indicated that his office does not do manual applications as from 2013. All applications are done online. He further stated that the office has backup generators in case of any power failures. The office will not process applications manually.



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8. The third witness for the Respondent was **Mr ME Moleta**. He testified under oath to the following:

8.1 The witness is the manager of the Applicant. He is the manager of the local office situated in Madikwe. He stated that the Applicant worked in a small office where all applications are dealt with manually. It is the responsibility of the official to take the applicants' fingerprints and to endorse photographs to ensure that it is the specific individual's documentation submitted for the passport. He further stated that the Applicant at no stage made contact with him to ask for his instructions regarding these particular applications.

9. The fourth witness for the Respondent was **Mr KM Lepunye**. He testified under oath to the following:

9.1 The witness was the Applicant's supervisor. He also acted as a driver and serviced outlying offices by conveying documentation from the outlying offices to the office in Madikwe. He is also responsible for assisting in the completion with applications and the verification of certain applications on the system.

9.2 The witness denied that he was ever approached by the Applicant about the applications as mentioned in the charge sheet. He denied that he told the Applicant that she should service clients despite the status of the application forms.

9.3 It was put to the witness that he specifically instructed the Applicant to assist the particular applicants which allegation was denied. He was further told that he conveyed the particular applications to the Madikwe office. He further confirmed that he did not concern himself with these particular application forms when he arrived at the Madikwe office.

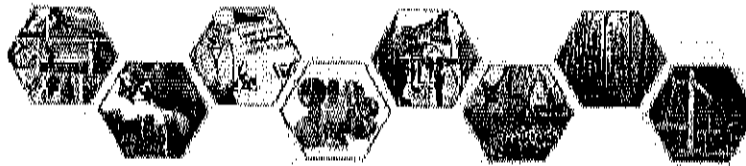
Evidence by the Applicant

10. The Applicant, **Ms MM Magodielo**, testified under oath to the following:

10.1 The Applicant stated that she was a frontline officer working at the Mabeeskraal service point. Her responsibility was to accept applications for death and birth certificates as well



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as passport applications. She also accepted payments for particular applications. In this particular instance she accepted payments for the passport applications.

- 10.2 The Applicant confirmed that the individuals with the names as reflected in the charge sheet visited the service point on the reflected dates in the charge sheet. The particular individuals arrived with partially completed application forms. The forms however were already fingerprinted and photographs were attached to the forms. The Applicant was supposed to take the fingerprints of applicants to ensure that each individual is properly identified. She is also supposed to endorse the photographs at the back of the photograph before the photograph is attached to the form.
- 10.3 Due to the fact that these forms were already completed, the Applicant approached her supervisor, Mr Lephunya as she believed that she was not supposed to assist the clients on that basis. He however advised her to assist the clients. As this particular office does not have an online link, she was unable to verify the validity of the identity documents. The Applicant pointed out to her supervisor that he came with the mobile truck and that the "062" verification could be done from the link installed in the vehicle. He then informed her that the link was not working. The Applicant further stated that the code 062 and 035 is used in the offices to verify the data as and when the data is captured. For example, if an ID document presented is faulty, the system would indicate the discrepancy. The Applicant stated that she also made contact with Mr Moleta, the manager. He also instructed her to continue assisting the clients.
- 10.4 Under cross-examination the Applicant confirmed, in respect of all the applications, that she confirmed in Block B of the application that the particular applicant appeared before her, that she endorsed the photographs and that the thumbprint as reflected on the form was taken by her and that it belongs to the particular applicant.

SUBMISSIONS BY THE PARTIES

11. Both Parties have submitted heads of argument which were considered in the analysis.



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ANALYSIS OF SUBMISSIONS AND ARGUMENT:

12. The Code of Good Practice: Dismissal sets the following guidelines when determining whether a dismissal for misconduct was fair or not:
 - 12.1 whether a rule or standard was contravened, if so;
 - 12.2 whether the rule was valid, reasonable or standard;
 - 12.3 the employee was aware, or could reasonably be expected to have been aware of the rule or standard;
 - 12.4 the rule or standard has been consistently applied by the employer;
 - 12.5 dismissal was appropriate for the contravention.

13. In considering whether a dismissal was fair or not, a Commissioner is not given the power to consider afresh what he/she would do, but simply to decide whether what the Employer did was fair. In arriving at a decision, a Commissioner is not required to defer to the decision of the Employer. What is required is that he/she must consider all the relevant factors and circumstances (see *Sedumo and another v Rustenburg Platinum Mines Ltd and others* [2007] 28 ILJ 2405 (CC)). It is further expected of a Commissioner to determine the fairness or otherwise of a decision to dismiss by considering the reasons advanced for the dismissal by the employer at the time of the dismissal (see *Fidelity Cash Management Services v CCMA and others* [2008] 3 BLLR 197 (LAC)).

14. On the front page of the application form for a South African passport or travel document (Form DHA-73) it is required of the official who assists an applicant with the completion of the particular form, to make a specific declaration regarding the particulars of the particular applicant (Block B). It is required of the official to certify the following:
 - (a) *The applicant appeared before me and produced the following means of identity.....*
 - (b) *The accompanying photos are a true image of the applicant and have been endorsed by me as prescribed, and*
 - (c) *The thumbprint below has been taken by me and belongs to the applicant...."*

15. The Applicant was accused that she did not comply with the procedures as mentioned above in respect of certain individuals as mentioned in the charge sheet above. It was then further



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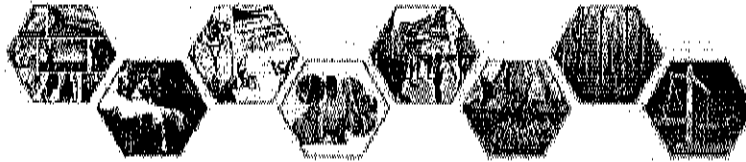
submitted by the Respondent that this failure of the Applicant resulted in passports irregularly been issued and that these passports were issued to the wrong individuals and were therefore fraudulently used. The Respondent emphasised the Applicants' duplicity when the issue of taking the fingerprints and endorsing the photographs were dealt with in evidence. It was pointed out that it was only in cross-examination that the Applicant admitted that she did not take the fingerprints and that she failed to endorse the photographs.

16. The Applicant confirmed that she did not comply with the procedures in that she did not take the fingerprints of the particular applicants as they were already printed on the application form. Since this form was not processed in her presence, she had no way of knowing whether the fingerprints presented was that of the actual applicant. She further confirmed that the photographs were also already attached to the form. She therefore did not certify the photographs as being that of the particular applicants.
17. In her defence the Applicant submitted that the departmental office in Mabeskraal is not electronically linked to the departmental network and all applications for passports and other documents therefore have to be processed manually. In an office that is linked to the network an official can immediately electronically establish the validity of an ID document presented in such an application. In her situation it was impossible to do such identification.
18. She further explained that the applicants in question arrived on the particular day at the Mabeskraal office with completed application forms. They explained that they were in the process of applying for passports at the Rustenburg office when a power failure occurred. They needed to process the applications and therefore came to this particular office as they were advised that manual applications were being done there. They apparently further told her that they did not want to go to the Madikwe office, which is linked to the network, as the queues were too long.
19. The applicant further explained that her supervisor, Mr Lupunye was present at the office and when she explained the problem to him namely that she was unable to certify the fingerprints and photographs, he told her to continue and to assist the applicants. He then, amongst others, took the application forms to the Madikwe office for processing. She further testified that she also phoned the manager, Moleta who was stationed at Madikwe, for his advice and instructions. He advised her to follow the instructions of her supervisor. Both the mentioned officials testified at

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the proceedings and denied ever discussing this issue with the Applicant. The Applicant's representative argued strongly that questions must be asked as to the supervisors' responsibility in ensuring that policies are being complied with. It was evident that this small office was targeted for irregular transactions and that supervisory staff should also take responsibility for the lack of control and that the applications were not properly scrutinised when it arrived at the Madikwe office. It is correct that certain questions regarding the supervisory staffs' conduct can be asked but that does not explain the conduct of the Applicant.

20. It is evident that the Applicant was fully aware of the policy and procedures and the implications of failing to comply with the procedures in establishing the true identity of a particular applicant. What is important to note is that the Applicant, despite her concerns, certified in "Block B" of the application form that she has complied with the necessary procedures. She could just as well have stated in the particular block that she was unable to take the applicants' fingerprints and endorse their photographs. She could have further certified that she processed the forms on instruction of her supervisor and the manager. This would have ensured that the deviation from procedure was properly recorded and more senior officials could then have taken a decision whether to process the applications or not. It is difficult to understand why an official with the length of service and experience of the Applicant (26 years) would make a false statement knowing full well the implications thereof.
21. I must therefore conclude that the Applicant was fully aware of the applicable rules, that she was fully aware of the implications of not complying with the rules and that she made a false statement knowing full well that on that basis, passports will be issued. I must therefore conclude that the Applicant made herself guilty of the alleged transgressions.
22. With regard to the appropriateness of the sanction, it is noted that the making of the false declaration has far-reaching implications for the Department as it affects the credibility of the documents issued by the said Department. The Applicant did not present any evidence as to why a different sanction should be considered. A dismissal in such circumstances therefore appears to be appropriate.



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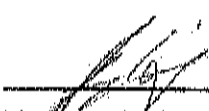
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AWARD:

23. In view of the above, I must conclude that the dismissal of the Applicant 19 February 2019 was substantively fair.


Name: P.J. GREYLING
(GPSSBC) Arbitrator