



ARBITRATION AWARD

Panellist/s: Lizelle Wessels
Case No.: GPBC 1841/2023
Date of Award: 14th September 2025

In the ARBITRATION between:

PSA obo EA MALAZA

(Union / Applicant)

And

Department of Public Works and Infrastructure

(Respondent)

Union/Applicant's Representative: PSA Official: Mr. Flip van der Walt

Employer/Respondent's Representative: IR Officer: Mr. Vuyani Ngcuka

ARBITRATION AWARD



DETAILS OF HEARING AND REPRESENTATION:

1. The matter was set down for Arbitration between the Applicant, Mr. EA Malaza, and the Respondent, Department of Public Works and Infrastructure, in line with section 191(1)[191(5)(a)] of the Labour Relations Act, 1995 “the Act”; and the Award is issued in terms of section 138(7) of the Act.
2. The matter was heard in Arbitration on the 7-8th August 2024 and 4-5th September 2025 at the PSA Offices Mbombela.
3. The Applicant, Malaza, was present and was represented by PSA Official, Mr. F. van der Walt. The Respondent, the Department of Public Works and Infrastructure, was represented by its Industrial Relations, Mr. VA Ngcuka.
4. On the 5th September 2025, it was agreed with the Parties, that Heads of Argument will be submitted on or before the 12th September 2025.

ISSUE TO BE DECIDED:

5. The issue to be determined in this matter was whether the Applicant’s dismissal by the Respondent was in line with section 185 of the Act and or the Code of Good Practice: Dismissals, Schedule 8 of the Act “the Code”, i.e. as Arbitrator, I am tasked to determine the fairness of the Applicant’s dismissal for the Award below: -
6. The Parties entered into a Pre-arbitration Minute on the 26th July 2024 and confirmed on the record on the 7th August 2024.
7. The Applicant raised his dispute of Fairness on the following aspects: -
 - 7.1. Procedural Fairness in line with Item 4 of the Code was not placed in dispute and confirmed for the Award below:
 - 7.2. Substantive Fairness in line with Item 7 of the Code in terms of the Breach and the Appropriateness of the Sanction in terms of the Assault.



8. The relief to be determined, if applicable for the Award, is retrospective reinstatement, in line with section 193 of the Act.

BACKGROUND TO THE MATTER:

9. The Applicant was employed with the Respondent on the 1st August 2011, the Applicant worked as a Deputy Director: Provincial Enterprise, earned R 75 278.04 CTC and was dismissed on the 23rd October 2023 for alleged gross misconduct. The Respondent operates within the Public Sector. The Applicant did not find favour with his dismissal on the 23rd and referred his unfair dismissal dispute before the Council on the 24th October 2023. A Certificate of Non-resolution is reflected on the Council's record dated the 25th November 2023. A Request for Arbitration was delivered on the 30th November 2023. The Applicant seeks retrospective reinstatement as relief, and the Respondent seeks the dismissal to be upheld.
10. The following are COMMON CAUSE between the Parties, per Evidence before the Council: -
- 10.1. The Applicant and his Supervisor: Ratsela had a poor communicative – and interactive relationship since around 2018. The retrospect evidence suggests that both the Applicant and Ratsela interfered in each other's work functions. The Council will limit its consideration (interpretation) to afore in line with the nature of the charges at 10.6. below, and the unstable (volatile) incident on the 5th October 2021.
- 10.2. On the 4th October 2021, the Applicant and Ratsela, again on the same "merry-go-round", about the Monthly Productivity Report "A44" due on the 4th. Ratsela on the 4th at 17:04 mailed Ms. Myanga to the Applicant's failed submission of the inputs of the EPWP Reports "R44". On the 4th, the Applicant in turn forwarded a colleague Isaac Mothapo's mail "A35-A36" to the departmental management of the Respondent, and on the 5th Ratsela, per email, engaged the Applicant's act "A42".
- 10.3. The Applicant and Ratsela were involved in an incident on the 5th October 2022. The Applicant and Ratsela were involved in an altercation (disagreement), with raised voices, on the 5th October 2022.
- 10.4. Both the Applicant "A32" and Ratsela "R43" reported alleged assault on the 5th October 2022 to the Respondent.
- 10.5. A compiled Investigative Report dated 20th December 2021 "A26-A31" was submitted by Investigator Ronny Zitha. Note: "A30" at par 2.13. and 2.14. identified the Council's deduction (inferences) of the relationship between the Applicant and Ratsela.
- 10.6. Notice of Disciplinary Hearing dated 14th February 2022 "A37-A39" that reads: - Per Paragraph 2



- 10.6.1. On or around 5 October 2021 at the National Department of Public Works and Infrastructure in Nelspruit Regional Office, **you conducted yourself in an improper, disgraceful and unacceptable manner**, when you were involved in a fight with your supervisor, Mrs. EL Ratsela, during working hours; and
- 10.6.2. On or around 5 October 2021, you committed an act of misconduct, in that **you allegedly assaulted your supervisor**, Mrs. EL Ratsela, during working hours.

Note: The Council was only tasked to determine 10.6.2.

- 10.7. The Applicant was not placed on Precautionary Suspension. Per the Investigative Report "A30" pars 2.14. and 3.2. holds relevance – The Applicant and Ratsela was "divorced" by the Respondent pending the outcomes of the Disciplinary Hearings.
- 10.8. The Applicant was invited to Disciplinary Hearing on the 23rd February 2022. The Applicant's dismissal was sanctioned on the 20th September 2023 "A24-25" and confirmed in appeal on the 17th October 2023 "A15-16".
11. The following are IN DISPUTE between the Parties, per Evidence before the Council: -
- 11.1. The Applicant assaulted Ratsela on the 5th October 2022; the Applicant assaulted Ratsela on the 5th in his Office; or vice versa that Ratsela assaulted the Applicant on the 5th in his Office.
- 11.2. The Applicant alleges that on the 5th Ratsela visited his Office to engage in Mathapo's mail and Ratsela alleges that on the 5th she visited the Applicant's Office to engage the Applicant in his submission of his Monthly Productivity Report.
- 11.3. Ratsela claims that the Applicant head-butted her that is "why" she said, "beating me" and ran from the Applicant's Office on the 5th. Ratsela denied that she assaulted the Applicant. The Applicant in turn claimed that Ratsela pushed him, the chair fell backwards "he hit his head" and he followed-through with a J88 dated the 6th October 2021 "A17-A22" and Medical Certificate dated 26th March 2024 "A43".

12. **Inspection In Loco:** -

- 12.1. Exhibits: Video Clips on the Council's record. Video Clip 6 significant for the Award below: -
- 12.2. On the 7th August 2024 the Council held an inspection "walkabout" of the area reflective per the Video Clips; and drew Diagrams 1 and 2, respectively, in line with (a) the Applicant's Office space and (b) the associated passages in line with the Video Clips.



13. The Applicant tendered a Bundle of Documents marked "A1-45" for the record; and the Respondent's Bundle of Documents was marked "R1-122". Exhibits "Video Clips" tendered. The Applicant testified on his own behalf and led two (2) further witnesses: Mr. T. Maluleke and Mr. T. Nong. The Respondent led five (5) witnesses: Mr. R. Zitha, Ms. J. Mahasha, Ms. N. Mgwenya, Mr. L. Ntshangani and Ms. L. Ratsela.
14. The Respondent's inherent evidence before the Council was that on the 5th October 2021 the Applicant and Ratsela was involved in an incident which suggested improper conduct from both the Applicant and Ratsela when Ratsela engaged the Applicant on his Monthly Productivity Plan September 2021. The incident held two parts (a) in the Office with raised voices and utterances (Mgwenya) and (b) the passage per Video Clip 6 (and Ntshangani). The evidence suggests that Ratsela said "what are you doing", "you are beating me", screaming and Ratsela running into the passage from the Applicant's Office, followed by the Applicant, pointing of fingers towards Ratsela, observed shivering (Ntshangani) and or the hold-off of the Applicant in pursuance of Ratsela by a colleague, Ntshangani. The probabilities suggests that the Applicant assaulted Ratsela; and as such, the Respondent seeks the dismissal to be upheld.
15. The Applicant's inherent evidence before the Council was that on the 5th October 2021 Ratsela entered his Office, Ratsela confronted him about Mothapo's email and he refused to engage; whereafter, Ratsela shifted to the Monthly Productivity Plan "she called him stupid" and "that he talked nonsense", he ignored her. Ratsela then pushed him, the chair toppled towards the drywall, and he hit his head, she wanted to pursue him further but then started screaming "he wants to beat me" and ran from his Office; whereafter, in the passage she screamed "he is beating me". This is false. "Yes" he was angered but he did not assault Ratsela. "Yes" he was stopped by Ntshangani, but he was angered by Ratsela false claims. There is no evidence of assault on Ratsela other than his J88 as he pursued the true assault; and if he truly intended "to beat Ratsela as claimed", Video Clip 6 details ample time for him to have acted towards Ratsela. The Applicant held that he was unfairly dismissed for assault and seeks retrospective reinstatement.
16. The Parties was afforded the right, to tender Heads of Argument, in writing, on or before the 12th September 2025, and on record. Same has been read and considered.
17. The record of the Award is not verbatim, as the written- and digital records exists on the Council's dispute records. The analysis and or findings, on the evidence, on the factual enquiry of the alleged misconduct,



will only identify itself with the most relevant evidence delivered before the Council; and will be direct, as such, in its outcomes, for the Award below: -

18. The Council scheduled the arbitration on the 7-8th May 2025 in which the Applicant sought to change his representation before the Council. A Legal Representation Ruling was issued, and, on the Council's, records dated the 16th May 2025.

ANALYSIS OF EVIDENCE AND ARGUMENT:

19. Section 192 of the Act describes the principled onus of a dispute; in present, it was not in dispute that the Applicant was dismissed for alleged serious misconduct on the 23rd October 2023. Section 192 (2) then establishes that the Respondent will bear the onus to prove the fairness of the dismissal in line with section 185 of the Act. Fairness is further guided through Item 4 and Item 7 of the Code of Good Practice: Dismissals, Schedule 8 of the Act ("the Code"); read with the "balance principle" determined through *Numsa v Vetsak Co-operative Ltd and others* 1996 (4) SA577 (A) which addresses fairness, value judgments and the objectives of the Act; together with *Sidumo v Rustenburg Platinum Mines Ltd & Others* [2007] 12 BLLR 1097 (CC) that addresses the holistic approach, the reasonable decision-maker and the appropriateness of the sanction.

Substantive Fairness:

The Breach of the Rule or Standard?

20. **"Assault"** is generally recognized as a common law crime of "unlawfully and intentionally applying force to the person of another or inspiring a belief in that immediate force will be applied to the person"; important premise "the intention of" or "the apprehension of harm" to be tested.
21. **"Assault in the Workplace"** is generally recognized in acts of physical violence, threats, or intimidation, potentially leading to a negative working environment or impacts on the interests of the employer. "Assault in the Workplace" can also be drawn from employees - fighting in the workplace, -horseplay, and -verbal abuse. Coming to the workplace, "assault" has a broaden interpretation which seemingly moves away from the criminality of the behaviour, and rather suggests that, when coming to the workplace, not all forms of assault necessarily mean dismissal.



22. In the case of **ASA Metals (Pty) Ltd (Dilokong Chrome) v CCMA & others (2013) 34 ILJ 350 (LC)** the court held that a clear distinction must be drawn between a deliberate act of assault and an assault which is brought about the scuffle between two or more employees. The court cautioned that surrounding circumstances should not be ignored when employers weigh the guilty of- or fairness of a dismissal in the workplace.
23. In **Nelson Mandela Bay Metropolitan Municipality v IMATU obo Tshabala and others [2019] 3 BLLR 239 (LAC)** the court reviewed the evidence where an assault resulted from a historical poor relationship, the employer's past attempts to reconcile the employees, and the nature of the assault. The court held further where the evidence shows a fight or an intense physical altercation, then it remains to consider factors like provocation or self-defense; or whether the circumstances allowed either employee to walk away. The court considered that latter in line with the appropriateness of the sanction.
24. In present, it is the Council's first deduction that neither the Applicant, nor Ratsela is completely honest about the incident of the 5th October 2021. Before the Council "it is not me, it's her; it is not me, it's him" is the shortest version of the evidence of the Applicant and Ratsela. These are mutually destructive versions. **What is of interest before the Council is the evidence of Mgwenya and Ntshangani which gives a more credible version of events to be interpreted in line with Video Clip 6.** It is the Council's inferred probable version that a confrontation (raised voices) escalated in the Applicant's Office on the 5th, Ratsela uttered "you are stupid" and "you are talking nonsense" (Mgwenya) which in turn angered the Applicant. The utterances also more in line and reactive to the Applicant's insistence that his report is due on the 5th against Ratsela's directives of the 4th.
25. The Applicant pushed back against his chair, it toppled over, and in fright (scare or shock) Ratsela fled from the Office and screamed "he wants to beat me". **There is no evidence that the Applicant was assaulted against the wall, nor that Ratsela was head-butted.** With respect observance of a reasonably injured person per Video Clip 6 does not favour either the Applicant or Ratsela; nor did the Applicant's J88 engage a head injury or did Ntshangani observed head injuries on his attendance with "a shaken Ratsela". No evidence suggests that either was physically assaulted. Seriousness in line with criminality removed.
26. Then, further observance, does not conform to Ratsela's claim or the Respondent's that the Applicant pursued an assault on Ratsela. Video Clip 6 is clear "Yes" he shouted at her, "Yes" he pointed fingers at her, BUT he returned into his Office. The Applicant made himself guilty of verbal assault. No physical assault or threat of assault followed Ratsela. Nor an intense altercation or a fight between the Applicant and



Ratsela followed or broken-up by colleagues. Again, the Respondent's proposed "apprehension of harm" was removed. Looking at pars 25 and 26 the evidence does not conform to the rigid idea of assault.

27. Then, from Clip 6, the Applicant only emerged and showed an aggravated state once Ntshangani was present, and from Ntshangani he testified that the Applicant was angered and uttered "why are you saying I beat you" and "it is not true". Ntshangani regarded it as a volatile (unstable) state between the Applicant and Ratsela; and from Clip 6 one can see the advancement of the Applicant in his verbal assault on Ratsela when Ntshangani intervenes. Again, shouting and finger pointing is visible, interpretative of verbal assault. But, Ntshangani stopped the Applicant and returned with the Applicant to his Office, the situation was then successfully defused by Ntshangani.
28. It is therefore the Council's findings that the Applicant made himself GUILTY of assault, but not the rigid interpretation of the common law definition of assault. The Applicant's assault is found in his verbal assault – shouting at, finger pointing at and aggravated accusations to Ratsela on the 5th.

The Appropriateness of the Sanction?

29. "Yes" the Council found the Applicant guilty of assault, however, the Council's findings follow the train-of-thought of the Respondent in line of Charge 1. In short, the Applicant and Ratsela made themselves guilty of verbal assault (Ratsela's in premise of verbal abuse); and Ratsela was found guilty of only the **"conduct that is considered as improper, disgraceful and unacceptable"**. Reasonably, both made themselves guilty of both Charges 1 and 2; but the premise of splitting of the charges on the same misconduct, comes to mind.
30. Further, the Applicant has been in the Respondent's employ since 2011, the Applicant has had a clean disciplinary record since 2011 to date of incident, the Applicant further "on the divorce from Ratsela" maintained a relationship with the Respondent in the 2022-23 periods, i.e. a sustainable trust relationship.
31. The Council also had regard that the Respondent through Chief Director Abrahams 'R58' carried reasonable notice to the unstable relationship of the Applicant and Ratsela since April 2021 which suggests a interpretative reasonable joint liability on the part of the Respondent to the incident on the 5th.
32. Could the findings in par 27 be aligned to self-defense or provocation? The Council considers reasonably "Yes" in the indirect form of self-defense, a form of "someone to listen" as Ntshangani testified that the



Applicant was angered and uttered “why are you saying I beat you” and “it is not true”; and walking away where the management has a considered disregard of the poor- or difficult working relationship between the Applicant and Ratsela seems improbable in the moments on the 5th.

33. In retrospect, the Council finds that the circumstances allow for a lesser sanction than dismissal, like a Final Written Warning or Suspension, and **find the Applicant's sanction of dismissal for assault inappropriate.**

Relief

34. The Applicant sought retrospective reinstatement in line with section 193(1) of the Act as a relief for the award: - Afore is the referenced primary relief in context of unfair dismissal disputes; and per pars 29 to 32 that informs reasonable considerations, I award accordingly: -
- 34.1. The Applicant is retrospectively reinstated to the date of dismissal on the 23rd October 2023. The Applicant's reinstatement should be on the same terms and conditions (not less favourable) that prevailed prior to his dismissal on the 23rd October 2023; and without loss of service period. The Applicant's reinstatement should also not be without loss of benefits since 2023.
35. The Applicant's backpay is awarded and calculated in line with the consideration of (a) the dismissal date (23rd October 2023), the dispute record before the Council (October 2023 to September 2025 (24months)), the appropriate sanction (proposed suspension, without pay, like Ratsela), and retrospect prejudice; and I accordingly award the Applicant twelve (12) months backpay as just and equitable: $R75\,278.04 \times 12 \text{ months} = R\,903\,336.48$ (Nine Hundred and Three Thousand Three Hundred and Thirty-six Rand and Forty-eight Cents) less SARS Tax Directive on lumpsum; due and payable by the 15th October 2025.

AWARD:

36. The Respondent's (Department of Public Works and Infrastructure) dismissal of the Applicant (EA Malaza) was procedurally fair, but substantively unfair.
37. The Respondent is ordered to reinstate the Applicant into its employ effective from the 20th October 2025; and the Applicant is ordered to report to the Respondent on Monday, the 20th October 2025 at its offices at 30 Brown Street Nelspruit Central. The Applicant is to report to the Human Resources on the 20th for implementation of the reinstatement under the award.



38. The Respondent is further ordered to backpay the Applicant the amount of **R 903 336.48** (less deductions, if applicable) as determined under par 35 above on or before the 15th October 2025. The Applicant to confirm his Banking Details to the Respondent on or before the 30th September 2025.



Name: Lizelle Wessels

(GPSSBC) Arbitrator