



ARBITRATION AWARD

Panellist/s: Joyleaf Boase
Case No: GPBC395/2025
Date of Award: 08 July 2026

In the ARBITRATION between:

PSA obo Molokele, OI

(Union / Applicant)

And

The Department of Correctional Services

(Respondent)

Union/Applicant's representative: Mr Nceba Baardman

Union/Applicant's address: PSA

Respondent's representative: Mr Chabi Emmanuel Sesoko

Respondent address: Labour Relations

ARBITRATION AWARD

DETAILS OF HEARING AND REPRESENTATION

1) The arbitration hearing took place on 13 and 14 April 2026 at the Respondent's premises in Mahikeng, CBD. The proceedings were electronically recorded. The Applicant, Mr Othusitse Isaac Molokele, was represented by Mr Nceba Baardman, an official from PSA union. The Respondent was represented by Mr Chabi Emmanuel Sesoko from Labour Relations.

2) Both parties agreed to file their closing arguments by close of business on 27 April 2026.

ISSUE TO BE DECIDED

3) I am required to determine whether the dismissal of the Applicant was both procedural and substantively fair. If I find the dismissal to be unfair, I must determine the appropriate relief.

NARROWING OF ISSUES

4) It was common cause that the Applicant was employed as an Area Coordinator Corrections at a level of Deputy Director, with 26 years of service prior to his dismissal on 21 November 2024. He later appealed the dismissal, which remained unsuccessful until he made a referral to the Council lodging an unfair dismissal dispute.

5) The issue in dispute was both procedure and substance.

6) The parties submitted a joint bundle A, A2 and camera/video footage.

7) The Applicant testified as witness-in-chief, while the Respondent called 3 witnesses, "Messrs" Abraham Joshua Muller, Mbutiza Obed Mkhali and Ms Hilda Quinte.

BACKGROUND TO THE MATTER

8) The Applicant was employed as an Area Coordinator Corrections, Deputy Director level or 2nd in charge at Rooi-Grond Prison Centre for 26 years, and he was earning a monthly salary of R73 094.75. He was dismissed on 14 February 2025 after a disciplinary hearing relating to 2 charges, in that he contravened the Disciplinary Code and Procedure (DBC), Resolution 1 of 2006: Annexure "A"(z), bringing the Respondent's name into disrepute, and Annexure "A"(jj), furnishing a false statement or evidence.

9) On that day, while in uniform, he was caught by a security guard outside Super Spar Lichtenburg after he had passed all till points/cashiers without paying for the dog food and failed to produce a slip for the item. When investigations were conducted, he gave wrong information that he paid R300 whilst he paid R600, a double payment made to evade a criminal case being opened against him.

10) The Respondent became aware of this incident when the Area Commissioner learnt that it was viral/trending in the media and later initiated the establishment of investigations. These investigations, on conclusion, found that the Applicant did indeed commit off-duty conduct when shopping at Spar. He was charged for the contravention of policy, dismissed, and later appealed, which was unsuccessful. He then referred the dispute to the GPSSBC (the Council) in terms of sections 191(1) and 191(5)(a) of the Labour Relations Act, 1995 (as amended), alleging unfair dismissal. The matter was conciliated on 11 May 2025 but remained unresolved. It was subsequently referred for arbitration on 25 May 2025 and was finalised on 13 and 14 April 2026. Both parties submitted their closing arguments on 27 April 2026.

SURVEY OF EVIDENCE AND ARGUMENT

11) I am not going to give an exhaustive survey of all the evidence and arguments led during the proceedings. What follows is a concise summary of the evidence relevant to my findings only. I have also taken into consideration the CCMA arbitration guidelines on misconduct and the parties' closing arguments.

Respondent's Evidence and Arguments

1st Witness: Ms Hilda Quinte testified as follows under oath: -

12) That what transpired is that she is working as a security guard at Super Spar Lichtenburg. Then, on 29 May 2024, it was a busy month-end day while she was preparing to knock off duty around 6 O'clock in the evening; she saw the Applicant coming inside the store. The security officials in the store had been receiving reports about the Applicant stealing items from the store. Due to these reports, she wanted to prove that for a long time he had been stealing items. She followed him and stood at the chocolate shelves, making sure that he did not realise he was being followed. At that very same shelf, the Applicant grabbed a bag of dog food, went towards the tills and passed all of them without paying, including the last till which is at the kiosk.

13) She explained that next to the kiosk is the lotto machine till point, where the Applicant stood and disguised himself as if he was looking for something, then instantly went towards the entrance, while she was still following him. She immediately instructed her colleague, another security guard, to stop in front of him, and the colleague did exactly that. She was coming from behind, greeted him and said, "may I please have the slip for the purchase or did you pay for this bag". The Applicant responded to say he had left the slip at the lotto machine till point. She then said to him, let us go together to show the slip. Both came inside the store to search or look for the stated slip at the lotto machine. The Applicant started searching his pockets, saying he had lost the slip and further suggested they could go to the camera room. She agreed, "no problem", because she

wanted to see if he had paid, but this time, when going towards the camera room, the Applicant started refusing to go to the cameras he had initiated.

14) She then called Mr Macgill, one of the management/bosses, to access the camera room, and they joined them to be 3 in there. The cameras were searched/forwarded/rewinded until they showed the Applicant squeezing himself through, passing all till points/cashiers without paying for the bag he was holding. Seeing it for himself when the cameras were revealing his actions, he started apologising, saying he is sorry. Another manager arrived there and said they must call the police to arrest the Applicant, who all this time was still apologising and again said, please don't do that, and he removed his name tag or signal, putting it in his pocket. The Applicant then told them in the room that he did not have money with him as it was inside his vehicle, he was willing to pay, and they escorted him to the vehicle to collect cash. In that instance, Mr Macgill charged him double the amount for the dog food bag, which was R300, and she went with the Applicant outside to collect R600 to pay for the bag.

15) She mentioned that when outside, the Applicant opened the vehicle, took out the money and gave it to her and the other security guard. Thereafter, the Applicant left when they came back into the store from outside, and that was that, as she thought this incident was finished.

16) She read and indicated that Bundle "BA", on pages 27, 28 and 29, is the investigation report with pictures showing the Applicant behind the till points/cashiers, and showing another customer standing at the last till point, the kiosk, just before going outside the store. Accordingly, this shows that the Applicant did not stop at that last till point or kiosk but went on to stand/stop at the lotto machine point, which does not have a till point for instore items but only purchases lotto tickets. The Applicant then looked to his sides, thinking nobody was watching him, and went outside the store. Furthermore, she explained that her security duty is that security cannot ask a customer for a slip while still inside shopping; that is why they must wait for a customer to first go outside before they can ask for any slips, which is the case here with the Applicant, who was outside when asked about a slip for the dog food bag.

17) She stated that there was no way the Applicant had an intention to buy from the lotto till point because, if he wanted to pay, he would have stopped at the kiosk till point where customers buy cigarettes. Pages 29 and 30 show the exit door used by the Applicant, also showing the Capitec machine between the lotto till point and the exit. The video/camera shows or points at the Applicant, who was in a brown uniform, inside the store on the 07th and 09th seconds. She does not appear but was watching him all the time from the chocolate shelves, which are next to the dog food shelves, as he moved behind the till points/cashiers. Further, she explained that the movements made by the Applicant in these total 12 seconds of the video, when a customer goes to the last till point or kiosk, they pay or buy cigarettes, indicated by page 29, picture of the gentleman standing or where the chair is on the 13th seconds. The Applicant went in the same direction and stood at the lotto machine, having no intention to pay, especially to a point where the video ended.

18) During **cross examination** she stated that this is not the first time the Applicant came to the store with slips claiming items; this was going on because some of her colleagues, named Mr Johannes and Ms Pauline, were reporting these activities to her. She told them, as she does her work properly, that once he is in the store, they must tell her and she will catch him personally. That is how, on 29 May, she followed him inside the store to see for herself. She remembered these reports made by colleagues when they were made. Security sometimes, as part of their work, goes to the camera room to check the description and to confirm the person/customer mentioned, as they do not work with hearsay. She accepted that, due to there being no records of previous incidents they had on videos or reports made by colleagues, these would not be entertained in the proceedings as they no longer had them.

19) She mentioned that she followed the Applicant even when he was at the kiosk; she was behind him at that time when he also went outside without paying for the dog food bag, which the video does not show. She is not concerned with how the questioning is translated, whether the Applicant was standing next to the kiosk on the camera, no chair in the camera while the chair and the cashier only appear in the pictures, as these were only made to confuse her, but the fact on her version is that the Applicant was far away from the till points and he left without paying for the bag. Furthermore, the Applicant went to the lotto till point, but there is no till to pay for instore items, which clearly shows an intention not to pay. Again, there were no cashiers, agreeing that the cashier was assisting another gentleman at the kiosk, not at the lotto machine.

20) On page 29, to suggest that the Applicant is not appearing on the picture at the kiosk again is just to complicate things; what she saw was that the Applicant looked to the sides, thinking nobody was watching, and went outside, then she stopped him. He cannot mention that he wanted to play lotto as the lotto machine is closed long at 6 O'clock and there will be no cashier around that time, while at the same time agreeing that it is possible for the cashier at the kiosk to also service customers at the lotto till point, but it is not true if the Applicant wants that to be his version on 29 May. She also agreed that the camera does not show that part. When he was stopped outside and then asked about the slip for the dog food, he said he left it at the lotto till point. Both came back to the store to look for the slip, and he is the one who proposed that they go look at the cameras. When he started to refuse to go to the cameras, she then called Mr Macgill.

21) She disagreed with the version that she asked for the dog food slip while the Applicant was still inside the store. She does not have any grudges against him because, around that time, customers were taking videos and pictures of what was happening. According to her, the Applicant's statement on page 07 and what the video shows is that there were long queues as it was month end. In paragraph 2, she remembers the version very well that, due to long queues even at the kiosk, as the cashier was working on both till points, he followed to play lotto, aiming to come back and pay for the dog food bag, but she does not agree with that. This is the time she approached the Applicant, who was still inside the store, for the slip.

22) In the camera room, it was her, the Applicant and Mr Macgill, whom she does not know if he has the video, but she remembers that on the day of the incident, when the

Applicant was standing at the lotto till point, the video was there, and the one used in the proceedings does not show all the parts, and it was supposed to be here in the proceedings. She insisted that raising this part of the video not showing everything is because the Applicant does not have a defence. There was nothing deliberate about the shortness of the video, and later she said she would not answer that part because she found him outside the store, period. It is not true that the Applicant showed the lotto slips on the day, as the lotto was closed at that time, or as he suggests on Bundle "B", page 08, first paragraph; but it is not that she is refusing, it is okay. She stated that because the Applicant was apologising and taking out his name tag, that is how the double payment for the bag came about. The store policy is that when a thief is caught, they pay double the amount of the item caught with, and it is not true that he had no money or bank card on him; they went to his vehicle.

23) The Applicant was searched and no bank card was found. Money was collected after accompanying him to his vehicle. The standard practice in the store is that they must open a police case, but they could not because customers were taking pictures/videos, and he was apologising and mentioning that he was afraid he would lose his job. However, in these proceedings, if he says he did not apologise, it is fine with her. She does not agree that the Applicant paid R300, as stated in his statement on page 08, paragraph 04, but he paid R300 and went to collect another R300 from the vehicle outside, which totalled R600.

24) On **re-examination** she mentioned that the truth is that the Applicant did not pay for the dog food bag, there was no cashier at the lotto till point at the time he was there, the video used in the proceedings does not show her as she was standing at the back at the chocolate shelf that was next to the dog food shelf, and that customers were taking pictures and videos of the incident during that time.

2nd Witness: Mr Abraham Joshua Muller testified under oath as follows: -

25) That before going on retirement on 31 December 2024, he was employed by the Respondent as the Head of Correctional Centre (HCC) at Polokwane Prison. He explained that during the same year, around July, he was appointed as an investigator in this matter of the Applicant, where, upon finalisation, he was further tasked around October of the same year to initiate the disciplinary hearing by the delegated authority. He stated that the initial hearing commenced from 19 to 21 November 2024, and his co-initiator was Mr Rambou from Baviaanspoort Prison Centre, located in Gauteng.

26) He mentioned that what transpired was at the pre-hearing held on the day of the Applicant's disciplinary hearing, where, on a plea-bargain arrangement with the Applicant after he pleaded guilty to charge 1, and for him to say he promised him to plead guilty as there is no dismissal is only a lie. Further, on this lie, when he met with him on the 19th, the day of the hearing, he did show him this part that, on his appointment letter, clear on paragraph 05, an initiator cannot make a commitment or agreement regarding the proposed sanction. However, he does not know if he saw it or not. Suggesting that he relied on this for him to plead guilty is far from the truth. If it is true he had misled him, he

had an opportunity, which he does not remember him using, to raise that in the hearing with the chairperson after their pre-hearing, if his allegations are serious.

27) He mentioned that the Applicant must not mislead the proceedings, as during that period before his dismissal he was a Deputy Director, responsible for employees who reported directly under him or to discipline, knew the policies or code of the Respondent very well, was expected to know Resolution 1 of 2006, and lastly, that the chairperson, not him, must be the one who hands down sanctions in disciplinary hearings. Again, he was with him in his appeal hearing as another opportunity, and he never raised what he is alleging, that he misled him to plead guilty. It is a story with no merit. In his recommendation to the chairperson, he held a strong view that the Applicant be dismissed, whereas in his appeal he came pleading for leniency of the sanction, no longer arguing the dismissal.

28) He mentioned that Bundle "BA", page 21, paragraph 06, is the Applicant's statement where he mentions that he does not blame Ms Hilda, the lady security, acknowledging that he passed all till points/cashiers with the 1 Kg dog food bag, linking with paragraph 01, that it was on the 29th, at Spar. In paragraph 03, he stated that he passed all till points to go to the kiosk till point to pay for the dog food and play lotto, but the queues were very long. Regarding the video, he was familiar with its contents and could identify the Applicant on it, confirming his movement on the video going away from the till points, wearing a brown uniform with a black ERT cap, walking while holding the 1 Kg dog food bag in his left hand, and also confirming seeing 2 cashiers at the kiosk till point.

29) All this is an exaggeration from the Applicant to say the queues were long because the video does not show this, including his movements which he can see. The only thing he told him during the interview was that the reason was that he went to the front line or kiosk only to play lotto. The long queues story is the first time he hears about it. Again, he can remember him telling him that he does not want to put the name of Respondent into disrepute; now he lies and changes everything. On paragraph 06, he claims he was still inside the store when approached by the security, prepared to pay, but he passed all the till points. How is that possible? No: when he interviewed management and security at the Spar, it was evident they caught him outside the store, unable to produce a slip for the dog food in his possession.

30) In his interview at Spar, he was told that the Applicant was escorted to the camera room. Further, he is used to this stealing, as they put an eye on him, or many eyes for some time. He would go to Spar, take items from shelves and leave with items without paying for them. The store was looking for him all this time until the day, on the 29th, when he was caught. That is how this incident came to the attention of the Respondent, where the sister of one employee working at Lichtenburg Prison Centre, who works at Spar, was sharing the video with people and it spread like wildfire: people talking about the person in a video wearing uniform stealing dog food from Spar. The Applicant is the one who told him that one white manager with a beard, wearing Spar uniform, told him it is not the first time he was seen or caught stealing from them, acknowledging on paragraph 04 his dishonesty.

31) During **cross examination** he stated that he called the Applicant on 17 October 2024 to inform him that he had been appointed again, now as an initiator of his disciplinary

hearing and that he would be writing to management at Rooi-Grond in the first week of November, on the 05th, for him to be issued with a charge sheet. It happened that prior to that week, the Respondent introduced cost containment, asking for grading, where he asked the Employee Relations unit at Rooi-Grond to issue the Applicant, on his behalf, with the investigation report so that he could prepare for his disciplinary hearing. Later it was confirmed that he received it, stating his signature.

32) He mentioned that is when, on the 12th of November, the Applicant called him with an intention to postpone the hearing as his representatives were not available on the scheduled dates. His response was that it is his right to request the postponement but not a right to a specific representative, and they left it there since. In the main, on the 19th of November, it was agreed that the pre-hearing would be held before the disciplinary hearing. They were 2 in the pre-hearing, with the Applicant still insisting that he was confronted by the security lady while he was inside the store, not outside the store, while his investigations or evidence before him was that the confrontation happened outside the store.

33) The Applicant is misinforming or lying when he says that, while in the discussion, he told him he must not worry a lot because this matter is not a dismissible offence and only raises this because he is in hot water, wanting to blame everybody. According to him, the Applicant was occupying a senior position by then, was expected to know policies, can discipline his subordinates, and knows that an initiator cannot have a deal with an accused. On whether he needed a representative, he could have raised that with the chairperson of the hearing, and due to him lying he could not raise it; he is just coming with something from the air or his mind.

34) He stated that the pleading of guilty was clear in their pre-hearing minutes and he withdrew charge 2, as it had 50/50 chances on the versions of Ms Hilda and that of the Applicant regarding the amount paid after it was decided by Spar management that they would not be opening a police case. During their deliberation, this time he cannot recall him disputing that he was outside the store. He remembers that, at the least, he pleaded guilty, meaning he agreed with the facts and summary presented to the chairperson of his disciplinary hearing. The presentation was that the Applicant was not confronted at the lotto till point machine; currently it is only him who thinks that because even the evidence does not show the confrontation at the lotto machine. The other factor was that, in the pre-hearing, he told him he was going to dispute, where he responded that he would call witnesses who would be confirming that the confrontation happened outside the store, not inside. Maybe he changed that position of disputing after he told him of those witnesses, footage and sworn statements.

35) On **re-examination** he maintained that the reason the Applicant was charged with bringing the name of the Respondent into disrepute is that he showed admission of guilt on what happened at Spar after he did not pay for the dog food bag. It is a fact, and the charge is well deserved. Whether he paid R300 or R600 is not an issue or does not

change the facts on the relevancy of the charge. The Applicant forgets he was in uniform, with people talking about this incident as it was in public view in the afternoon or late hour.

3rd Witness: Mr Mbutiza Obed Mkhali testified under oath as follows: -

36) That he is employed by the Respondent as an Area Commissioner since 01 October 2023, at Groen-point Prison Centre in Free State and Northern Cape, and he was appointed as a chairperson in the disciplinary hearing of the Applicant. On the 19th, the day of the hearing, he began by reading him his rights as procedure dictates. Specifically, he went on this one of representative, as he was alone, where in admission the Applicant indicated he would represent himself. He insisted on it and he was suggesting to him that it is his right to call a shop steward or a fellow employee of choice, but he responded that he is comfortable to do it. Mr Muller then presented the charge sheet, and the Applicant was asked if he agrees with the presentation/summary here; if he agrees with the presentation, it would be taken that he pleads guilty, and if not agreeing, it would be taken or recorded that the plea is that of not guilty.

37) In the disciplinary hearing, the Applicant agreed with Mr Muller that the charges were a true reflection, where he also pleaded guilty, and he recorded it as such. Mr Muller mentioned that page 15 is the charge sheet of the Applicant; however, in their submission, charge 2 would be withdrawn, now only having to deal with charge 1. He went on explaining that on page 23, 2nd paragraph below charge 2, what happened in the disciplinary hearing and the Applicant did what he did voluntarily so, as it says "the Applicant opted to represent himself even though it was emphasised about his rights. On that he has a right to use the services of a shop steward of a recognised union or a fellow employee, further asked if he understood the charges and responded to say he did, also entered into a plea of guilty, and further, asked if he was coerced, with a response, and he stated that it is through his own evolution".

38) On page 33 is the Applicant's written mitigation submissions dated 20 November 2024, directed to him, stating that "he acknowledges the impact the incident caused to the image of the Respondent, mindful of the severity thereof; this occurrence is highly regretted, which he wishes never occurred; he is currently 51 years old, married with 1 son and 1 daughter, with service of 25 years and 9 months, with dedication, commitment, still intending to serve if the opportunity is still available or made available. He takes full responsibility where he can do better; he pleads for a corrective approach because he is still paying for the house/bond of R12 257.87, vehicle R5 584.00, transportation including other expenses as R12 500.00, children school fees for the son at Stryfing Mines Nursing Academy and for the daughter at Vuselela Technical College in Rustenburg, he is the only hope as his wife is currently diagnosed with cancer, and that he pays municipality bills, further pleading that the sanction not be punitive but corrective.

39) He stated that he made a sanction of dismissal as the charges are of a serious nature, blowing the image of the Respondent, mainly affecting trust or the relationship being irretrievably broken. The charges issued were speaking for themselves, as he brought disrepute to the Respondent, which happened in full view of customers while he was in full uniform, because Spar management had been monitoring his actions for

some time, where he was taking items from time to time, ending up getting caught while stealing. He narrated that this action by the Applicant is not a coincidence but a premeditated action. If he can be asked about issues of trust, here it is clear that the Respondent is dealing with a serial offender who cannot be trusted because, out of his 25 years of service, such a person cannot repent or it is not possible that he repents. The worst is that he is 2nd in charge; when the Area Commissioner is not on duty, he acts on his behalf. Again, he must deal with the entire security of the prison centre, search operations, and confiscate contraband, which must be accounted for. Imagine this under him and how much can we trust; the answer is that we cannot trust him.

40) During **cross-examination** he stated that he was appointed to be chairperson by the Respondent in the Applicant's disciplinary hearing held around 2024, and this is what he has been doing by bringing in his huge experience since 2005. In his previous experience, when in these hearings, he would encounter employees appearing without representatives, he would read for them this specific afforded right: to say who the representative is, where they respond by saying they will represent themselves, and if they insisted, he would allow it because it is their choice. He personally has not been subjected to a disciplinary hearing; therefore, he would not know how stressful it is for the employee subjected to it, but it goes without saying that it is a stressful period for an employee facing it.

41) He mentioned that he did the same process in the Applicant's disciplinary hearing, where the Applicant indicated that he did not need one or opted to represent himself. That is also the first time he is hearing that the Applicant raised or disputed before him in the hearing that his representative would not be available for the dates scheduled, as committed elsewhere. However, had this aspect been raised, he was going to afford an opportunity for the Applicant to go out and seek another representative, fellow employee or a shop steward. In the event of not finding one or no alternative representative on the day, obviously he would have granted him a postponement to another day until a day the representative of his choice was available. Maybe the Applicant might have raised something about that, but according to him, at the end of the day, he said he would represent himself; that is why the hearing commenced.

42) He testified further that he does not recall the Applicant informing him that he spoke with Mr Muller, the initiator, about his representative issues or suggesting that he would require someone to represent him or that he was having stress. He can only remember when the initiator told him that he would be withdrawing charge 2, which was confirmed or agreed upon in the pre-hearing, and he was not given reasons as to why it was withdrawn. Furthermore, he was not informed that in the pre-hearing the Applicant was told his matter is easy and not a dismissible offence. He asked them if they were ready to proceed, whether he received charges in time, including if they held a pre-hearing, and that is exactly what they both confirmed. He asked him if he understood the seriousness of the charges, which he confirmed, and he pleaded guilty because he acknowledges he committed the offence as per the charge sheet.

43) Immediately after he pleaded guilty, it was up to the chairperson to come to facts or findings as presented by Mr Muller, that he went to Spar with the intention to buy the dog food but did not purchase it, where the security asked for the slips and claimed he left it at the lotto till but could not find it. When shown the video, he started apologising, removed his name tag and he was made to pay by being escorted to his vehicle to collect the money after the owner suggested calling the police, and his apologies assisted as police were not called. Again, on his statement page 23, he is the one who presented that he was told that it is not the first time or that he had been monitored for some time when in the store taking items without paying for them. It is not true that he disputed that the security approached him inside but outside the store, which he never at all rebutted that he was outside the store. There is no transcript and it never happened that way, or him disputing anything, nothing at all. The disciplinary hearing held, he was never given/received any documentation, but he mostly relied on Mr Muller's presented summary, aggravating circumstances, seriousness of the charges or transgression, and mitigation circumstances. It cannot be correct that aggravating circumstances were not tested because this incident went viral in full view of the public.

44) No **re-examination**.

Applicant's Evidence and Arguments

1st Witness: Mr Othusitse Isaac Molokele testified under oath as follows: -

45) That he was employed as an Area Coordinator Corrections at a level of Deputy Director since 1999, bringing his service with the Respondent to 25 years and 09 months to date. What transpired on 29 May 2024, after he knocked off from duty around 5:30 pm, was that it was the day of the elections. On his way going home to Lichtenburg, he was informed the dogs had no food. He proceeded to Spar, where he always makes his purchases/shopping, and just after parking his vehicle, he took his bank card and a R100.00 note. The R100.00 note was for the purchase of lotto because lotto transactions are done with cash, and the bank card would be used for purchasing the 1 kg dog food bag. He entered the store, which was very busy, by going straight to the dog food shelves, as it was the only item he was looking for, including playing lotto/lottery.

46) He then, after picking up the dogfood bag, went to the front and passed through via the last till point, number 08, going straight to the front line facing the entrance/exit door of the store. His movement was because the store was busy with long queues, and he could use the kiosk till point, which by then did not have long queues, to pay for the dogfood bag, again as it is next to the lotto till machine, where he once purchases lotto. Indeed, what he thought was advantageous because when he arrived at the 2nd kiosk till point, it had 5 customers in a queue and him being number 06 in that queue. It happened that the kiosk had 2 till points, but on the day the 1st till point at the kiosk was not operating; only the 2nd till point was operational, the one next to the lotto till point.

47) He then, after realising that the cashier was servicing 2 till points at the same time, meaning the kiosk 2nd till point and the lotto till point, or to say the cashier was moving between the 2 till points. He was number 06 in the queue; the cashier by then had just

served 2 customers who were in front, which now made him number 04 in the queue. At number 05 there was a lady customer. From those 2 customers who were served in front, 1 went to the lotto till point to make a lotto purchase after the kiosk purchase. The cashier moved to the lotto till to serve this customer and immediately after assisting 2 customers at the lotto till, she moved back to the kiosk till point. He then spoke to this lady customer, number 05, to please leave the dogfood bag in front of her on the floor, so as to book a space in that queue while he went to play lotto and come back. He moved from the queue after the lady customer, number 05, agreed. Now at the lotto till point, beginning to tick his ticket, Ms Hilda, the security guard in the store, approached him right there requesting a slip for the dogfood. To his surprise, he said to her that he was still inside doing the shopping when quarrelling started between them.

48) Ms Hilda then called Mr Macgill, one of the managers in the store, to intervene because his concern/problem was that she could not ask about the slip while he was still inside the store. They both went towards Mr Macgill to the store camera room and were joined by another male security guard, making them 04 in the room. According to him, that is when he started wanting to explain, but it seemed they did not believe what he was saying, and the camera footage was instantly forwarded and rewinded until his movements were spotted. What amazes him was that even when they played the cameras, they were still adamant he wanted to steal the 1kg dogfood. This camera video footage was playing everything, including when he was standing at that lotto till point, even when Ms Hilda was approaching him, to a point when it ended as they were about to enter the same camera room.

49) He mentioned that this in-store camera room is at the front of the store, visible for everyone to see. Due to the quarrelling, being in full uniform, he showed the lotto tickets he bought. This meeting drew the attention of customers in the store, where some started taking pictures and videos of him being with Spar staff/security at the time. He disputed that he apologised to Mr Macgill and the 2 security guards who were with them in there. This attention from customers in a busy store, as he values the uniform he was wearing, led him to remove his name tag. When Mr Macgill instructed him to pay for the dogfood bag, he took out a bank card from his jacket pocket and handed it over, but Mr Macgill said to him he would have to use cash for the payment as they did not have a speed point machine in the room. Another white manager with a beard came to the room, also very angry, saying it is not the first time he steals items from the store and the police must be called, a point he rebuts that he apologised so that police must not be called as he fears losing his job.

50) He explained that, as Mr Macgill was not interested in his bank card, he remembered that after taking out the R100.00 note, there was some money/notes in the vehicle that he could use to pay, and he was escorted outside to collect the money from the vehicle. He took out R300.00 and came back with the security to Mr Macgill, who took it. Thinking that this proved he could pay and that he was not paying a fine, and not being given his change as the dogfood bag was R285.00, he asked if they were finished so that he could go. However, when he was just about to pick up the dogfood bag, Mr Macgill told him he could not leave with the bag. Out of respect for the uniform he was wearing, although frustrated, he left in peace, but this still hurts him to date. It is not true that this incident

ended up going viral to a point of attention or complaints being raised with the Respondent. Around July 2024, he then received a call from Mr Muller informing him that he was being appointed as an investigator to investigate this incident at Spar Lichtenburg. He gave him a statement on how this transpired, nothing less, until again meeting with Mr Muller at his pre-hearing scheduled on the 19th of November 2024, after he had been appointed in the matter as an initiator around October 2024.

51) During **cross-examination** he stated that the charges state that he passed all till points/cashiers, to which he pleaded guilty, but he always gave an explanation that when the security lady approached him, he was at the lotto till point, not outside as per the charge. Nowhere was he outside: the only time he went outside the store was when security escorted him to collect cash from his vehicle at the parking lot. That does not mean he was agreeing with Mr Muller, including the chairperson, to say he found himself guilty, because it was his intention that from playing lotto, he would come back to the kiosk to pay for the dogfood.

52) On Bundle A2, regarding him representing himself, this was after he wanted to ask for a postponement, which was included in their pre-hearing sitting, where Mr Muller refused him that option. He even mentioned to the chairperson about the 2 representatives he was eyeing by informing him that they were engaged elsewhere. On the minutes of A2, for him to say he was fine and not coerced to proceed without a representative was based on an understanding he had with Mr Muller that his matter was not so serious or one for which he could be dismissed. Therefore, to mention on page 33 that he acknowledged this incident caused harm to the name of the Respondent or its severity was, according to him, because he was in full uniform. However, it will not be correct for the Respondent to state that the matter went viral/trending on social media, as this is not true. Removing his name tag in that moment was when their meeting was getting attention from customers as they were quarrelling, terming the situation "permutation".

53) In the main, he was at Spar not with the intention to steal, but the approach of the security or the discussion he was having with management and security personnel in the camera room in front of customers: any person seeing that would conclude that he was caught stealing, based on their conclusion or when they permutate, which is the point he was emphasising in the pre-hearing with Mr Muller in pleading for a corrective measure, not a punitive sanction. He felt misled by Mr Muller, who, after their discussions, was changing the tone on their agreement in the pre-hearing because, in the first place, the dismissal sanction according to him is punitive even if he was caught as alleged outside the store. He disputed that, due to the video not being complete, it would not show when he moved from the kiosk till point, leaving the dogfood on the floor, to the lotto till point, which on the day was clear for management to see what was happening, but they insisted on not wanting to believe what he was telling them. The video on the 19th played until they were about to enter the camera room very clearly.

54) Indeed, he agrees it was possible for him to be patient and pay for the dogfood first, then play lotto afterwards, but he thought differently on the day. He mentioned that it is not true that Ms Hilda asked for the slip outside the store, but she asked for the slip

immediately when he was standing at the lotto till point, and he tried to explain to her that from that till point he would be going back to the kiosk till to pay for the bag. He cannot remember the customer he was talking to, booking a space for the dogfood bag, as everything was happening fast while he was trying to explain and was frustrated. It was not going to be possible for him to go to Spar and make follow-ups on this incident, as he was also advised by his lawyer that it would be seen as intimidating witnesses, but he waits until his arbitration is concluded and then they take it from there. He agreed that it is not possible to pay for grocery items at a lotto till point. This incident happened, but not how it is interpreted or made out. It was his intention that from the lotto till point, after playing lotto, he would be going back to the queue at the kiosk to pay for the dogfood. He does not blame Ms Hilda for what she did to him on that day, and the honesty is that she approached him while he was still inside the store.

55) On **re-examination** he stated that, on the camera footage showing his movements, the fact is that he went to the kiosk till point, then to the lotto till point, and when Ms Hilda approached him asking for the slip for the dogfood bag, he was still inside the store. Nowhere at any stage in the footage was he outside the store. Due to the store being busy, while the kiosk area had no queues, he went there, but as the cashier's movement was between the 2 till points, he thought of going to the lotto till point, as it also had no queue, by booking a space, leaving the dogfood bag and coming back to pay for it.

56) He mentioned that when the security approached, she did not want to listen or give him an opportunity to pay, as there were arguments immediately, and then they went to the camera room. The footage showed every movement that day until they were about to enter the camera room, and nowhere was he outside, except when they escorted him to collect cash from his vehicle after management said they did not have speed points for bank card payment. The footage used in these proceedings is not complete, as it ends only showing him passing at kiosk till point 1, not to the point where everything happened at kiosk till point 2, next to the lotto till point. He tried to explain his intention of moving from the kiosk to the lotto till on the spot, and the video had that. It is not true that he is aggressive to Spar staff, including security, when shopping there, as he always cooperates with them. He is not aware if there is any public member who brought in a complaint against him about this incident, or any media reports about it. No witness was called to prove the reputational damage alleged by the Respondent; that is why, to him, this is permutation, not reputational damage, and the store was busy and he had a thought of paying at the kiosk till point, period.

CLOSING ARGUMENTS

57) Both parties submitted their closing arguments on 27 April 2026. I have read and taken them into consideration in coming to a decision, taking a brief version which each party believes to be its strong contention and argument in the decision.

ANALYSIS OF EVIDENCE AND ARGUMENT

58) In terms of Section 192(2) of the Labour Relations Act 66 of 1995 (“the LRA”), as amended, the duty is placed on the employer to prove, on a balance of probabilities, that an employee’s dismissal was substantively fair. It goes without saying that it is unfair to dismiss an employee for misconduct in the absence of proof that the employee committed the misconduct with which he/she was charged.

59) In Sidumo & Others v Rustenburg Platinum Mines Limited & Others [2007] 12 BLLR 1097 (CC), the Constitutional Court held that when considering the appropriateness of the sanction of dismissal, the commissioner must consider the following: “totality of circumstances; the importance of the rule that had been breached, the reason the employer imposed the sanction of dismissal; the basis of the employee’s challenge to the dismissal; the harm caused by the employee’s conduct; whether additional training and instruction may result in the employee not repeating the misconduct; the effect of dismissal on the employee; the employee’s service record”.

60) In Stellenbosch Farmers Winery Group Ltd & another v Martell et Cie & others 2003 (1) SA 11 (SCA), guidance is given to commissioners that, when seeking to resolve a factual dispute, one needs to make findings on the credibility of the various factual witnesses, their reliability, and the probabilities. Credibility-related factors include candour and demeanour, any bias, internal and external contradictions in the evidence, the probability or improbability of a particular aspect of the witness’s version, and the calibre and cogency of the witness’s performance compared to that of other witnesses testifying about the same incident or event. With regard to reliability, the factors will extend to the opportunities that the witnesses had to experience or observe the event in question, and the quality, integrity, and independence of the witness’s recall. With regard to probabilities, an analysis of the probability and improbability of each party’s version is required. Finally, it must be determined whether the party burdened with the onus of proof has succeeded in discharging it.

61) In AngloGold Ashanti Limited v AMCU obo Dlungane and others (JR 2099/16) [2020] ZALCJHB 46 (handed down on 20 February 2020), the Labour Court held that the Commissioner failed to comprehend that AngloGold had established a prima facie case of theft through circumstantial evidence. The Employee was the Loco Operator at the mine, and the gold-bearing material belonging to AngloGold was found in his hostel room. The evidentiary burden shifted to the Employee to provide a credible explanation as to how the gold-bearing material ended up in his hostel room, but to no avail. Even if AngloGold failed to prove a charge of theft, unauthorised possession is a competent verdict in the circumstances. The Commissioner confused possession as only referring to having an object in your hand or physically. The test was, however, whether a person has control intentionally exercised toward a thing. In this instance, the gold-bearing material was found in the Employee’s hostel room, which meant that he had exclusive and intentional control over same.

62) In Rainbow Farms (Pty) Ltd v CCMA and others [2011] 5 BLLR 451 (LAC) (handed down on 23 September 2010) an Employee was dismissed for taking a litre of milk without authorisation. The Employee was entitled to drink the milk for free but only while at work. He was caught with the milk after he had passed through the first security gate. The Labour Appeal Court held that he had a clear intention to remove the milk, which was sufficient to constitute unauthorised removal of milk, which was deemed a dishonest act for which dismissal was an appropriate sanction.

63) As the commissioner, I am required to determine whether the dismissal of the employee by the employer was procedurally and substantively fair as requested. Furthermore, a determination must be made on the appropriateness of the relief if the dismissal was substantively unfair. In terms of section 138(7)(a) of the LRA, 66 of 1995, as amended, I am persuaded to provide brief reasons for my findings.

64) The Applicant was charged for the incident that transpired at Super Spar in Lichtenburg town after knocking off from work and going home, when he was informed that the dogs at home did not have food. Therefore, he went to the store as normal to purchase the requested 1 kg dogfood bag, including to buy a lotto/lottery ticket. Arriving at the store parking lot, he took out his bank card for purchasing the dogfood and took out a R100.00 note/cash meant for the lotto tickets, as they only use cash and not bank cards for those payments. Entering the store, he could realise that the store was busy as it was month end. He went straight to the dogfood shelves, picked up the bag and passed all till points/cashiers, from last till number 08, holding the bag in his left hand to the kiosk tills where there were no queues. The kiosk has 2 till points, 1 and 2, which sell medications and cigarettes at the front or back of all 08 lined till points. On the day, the kiosk was operating with till point number 02, which is next to the lotto till point/machine, then a Capitec machine next as the last transaction point and close to the exit/entrance door.

65) However, he went to the kiosk area, passing all 08 till points/cashiers, as the queues were long, with the intention to pay for the dogfood bag and simultaneously play the lotto. Arriving at kiosk till point number 02, he could realise that the cashier was operating the kiosk till and the lotto till point interchangeably according to the queues, i.e. serving 2 customers this side and moving to the other side for 2 customers, then coming back doing the same. The Applicant then requested a lady customer behind him to book a space with the dogfood on the floor, while he went to the lotto till and came back for the dogfood. When at that lotto till, ticking his lotto tickets, the security lady, Ms Hilda, approached him asking about the slip for the dogfood. In his response and surprise, he said that he was still inside the store doing his shopping; the quarrel started until Mr Macgill was called in and he was escorted to the in-store camera room, also located at the front line of the store.

66) This incident allegedly reached his senior, the Area Commissioner, who called for the establishment of the investigations, which found that the Applicant must answer for what he did or was involved in at Spar Lichtenburg. Around July, Mr Muller called him to inform him that he was appointed to be the investigator on this incident, and they met on 11 July 2024 for an interview to conclude his statement of what

transpired. On 05 November 2024, he was officially charged, receiving the charge sheet. On **charge 1**, it was that he contravened the Disciplinary Code and Procedure, Resolution 1 of 2006, Annexure A (z), in that between 29 to 31 May 2024, while he was in full uniform, he took dogfood from Spar Lichtenburg by passing all the till points/cashiers and went out of the entrance/exit door without paying for the dogfood. The security confronted him outside the store to produce a till slip for the dogfood, which he failed to produce, and this action brought the Respondent into disrepute.

67) On **charge 2**, it was that he contravened the Disciplinary Code and Procedure, Resolution 1 of 2006, Annexure A (jj), furnishing a false statement or evidence in the execution of his duties, in that on 16 July 2024, he paid R300.00 to Spar whilst the amount he paid was R600.00 after the security caught him with dogfood he had not paid for, and the payment was to evade a criminal case being opened against him. He raised or disputed 2 procedural defects not considered in his disciplinary hearing as follows:

68) Mr Muller communicated with Ms Mathibe, Labour Relations at Rooi-Grond Prison Centre, to issue the Applicant with charges on his behalf, due to him not being able to travel to the centre because, around 05 November 2024, the Respondent had introduced budget constraints measures. The Applicant, receiving the charge sheet and bundle to prepare, contacted these 2 union officials, Mr Moribe and another one with whom they normally work on cases, informing them about his scheduled hearing on 19 to 21 November 2024. But they also told him that they had other engagements on those scheduled 3 days, one at another arbitration and the other at another arbitration with the Department of Employment and Labour. This resulted in him, on 12 November 2024, 5 days before the hearing, calling Mr Muller, who was now again appointed to be the initiator in the hearing, to inform and suggest he gets a postponement. Mr Muller remembers that he told him that he should attend the hearing on the day of the hearing, the 19th, to inform the chairperson, and that he must know that representation is not specifically on an individual representative, meaning also a fellow employee or a shop steward can do the representation.

69) Their conversation was not recorded, and it did not happen as Mr Muller puts it from his side of the call. He was alone, also not recording, and he does not know the Applicant's side or if he was alone. The Applicant, in his testimony, stated that Mr Muller, on that call, said to him his hearing was not a serious matter, and he could not lose his job or that it was not a matter that could get him dismissed. He must appear, both agreeing that a pre-hearing would be held hours before the disciplinary hearing commenced. Besides the issue of a representative while they were in a pre-hearing, one other issue he raised, as Mr Muller was also an investigator, was that they could not agree on the position of where the Applicant was as per charge 1, whether inside or outside the store. The investigations at the store were that the Applicant, when approached by the security, was outside, and the Applicant was adamant that when he was approached, he was inside the store, where he responded to the security that he was still shopping while standing at the lotto till point.

70) In concluding the pre-hearing, Mr Muller still denied that he spoke about the matter being simple, that he pleaded guilty, that the matter was not a dismissible offence, and to a point where Mr Muller, in enticing the deal, told him that regarding charge 2, as it had 50/50 chances for both, then the charge would be withdrawn before the chairperson in the hearing. The Applicant is only in the proceedings to misinform everyone, as now he sees he is in trouble. The story of enticing he hears for the first time, but the Applicant insisted that they sat for a long time deliberating on what was going to happen once he pleads guilty. He is not a chairperson, as he does only recommendations, which was clear from the beginning that the Applicant must be dismissed. Clearly, Muller is hiding something, and he knew this position from their pre-hearing.

71) The chairperson, Mr Mkhali, said none of the 2 issues raised was disputed in the hearing, namely the representation and the position of where the Applicant was, as they were never raised with him. He asked the Applicant if he was forced to represent himself, and confidently he said he was comfortable to proceed on his own. Had this been raised with him, he was going to afford him an opportunity to go and source a representative of any recognised union, including a fellow employee, but it is for the first time this is being raised. When they began with the disciplinary hearing, observing the procedures together with his experience since 2005 holding hearings, he asked parties if they were ready and both confirmed. He allowed the initiator to read the charges, and nowhere did the Applicant dispute the summary presented by the initiator. The Applicant, all the time, was agreeing to what was presented; he said had he objected, they would have gone to a full hearing.

72) In the hearing, the chairperson mentioned that the Applicant agreed, not disputing the summary and also pleading guilty. He told parties that the hearing would be going for a shorter session. He further stated that if it could be proven that the Applicant disputed it, it could be something else, as his experience would not let him do that or continue with the hearing. Both the chairperson and the initiator were consistent in narrating why the hearing continued, including Ms Hilda indicating that the Applicant apologised to them while they were in the camera room. This was to a point where the Applicant ended up pleading guilty in the disciplinary hearing from the pre-hearing held hours before.

73) Probative value was adduced in their corroboration. The Applicant again, in his closing argument, pointed to the unavailability of pre-hearing minutes as an evidentiary document, as he rebuts to say it cannot be possible to mention that he voluntarily opted to declare himself guilty while understanding that the sanction was going to be dismissal. Bring in that if his point is to blame everyone for what happened at Spar, the pre-hearing minutes, other male security and Mr Macgill, who in the camera room were the main witnesses to corroborate that indeed Mr Muller never misled him in taking the offer that he would never lose his job.

74) During this first part of the arbitration proceedings, which was held around December 2025, the matter was part-heard as Mr Muller was virtually connected

until he left due to bad weather affecting the connection. The chairperson came in after this bad connection, testifying, then his session got adjourned due to time constraints. Bundle A"2" was introduced, and everything just trembled down to show the double standard by the Respondent. Bringing home that the Applicant was misled in taking the enticement not to lose his job, it is a fact that he is a Deputy Director, and also that the proceedings had to take that into consideration. But rights of every individual must be taken into account, not in the negative but also in the positive. Indeed, in knowing Resolution 1 of 2006, it is important, as his job responsibility is to deal with crime, but he is a criminal or expected to rehabilitate inmates, he cannot be rehabilitated or not repent, they said.

75) On Bundle A"2", at 7:19, page 5, "I am fine, I was eyeing", where the Applicant was answering the chairperson on an understanding he had with Mr Muller about the 2 union officials he was eyeing. I partially agree with the chairperson because from page 06, 7:55, "are you sure you going to represent yourself and not forced", the response being, "I'm fine I will represent". It shows narration that he was showing confidence that he can do it. The most question is Mr Muller, can hide further because if the Applicant ever made such a suggestion, it was here, he was needed to assist or clarify on the discussions in the pre-hearing. Partially in agreeing with the chairperson was that if Mr Muller was with the Applicant in pre-hearing and receiving a call on the 12th, his role is not to get surprised in the hearing as he said he was surprised to see him commencing, not telling the chairperson he does not have or is having challenges with his representative. Validating the statement by the Applicant, he said or stated in the hearing minutes that Mr Muller said get this matter behind your back, it is not dismissible, and pre-hearing minutes are not being availed as a main evidentiary document to justify the corroboration.

76) Mr Muller testified that, in the hearing, their position was that they aggravated for his dismissal. The chairperson stated that, even at this hearing, he was not given any documentation but relied on mitigation and aggravating circumstances, the presentation of the prehearing, and what they were telling him, missing that the Applicant disputed that he ever went outside the store, as he was always inside the store. However, he recorded that in their agreement they would go for a shorter session of the hearing, both ganging against the Applicant, on the point that they corroborated each other as per the Respondent's closing arguments.

77) The Applicant's testimony shows Mr Muller not rebutting that a lot was discussed in the prehearing. He started by informing him that he was appointed by the Region, that some of the matters he needed to put behind him, that it was fine when he said he needed a representative, but that this was not the kind of case that would end up getting him dismissed, and that he should just proceed even if he opted to represent himself. He was going to withdraw charge 2. He said to Mr Muller that he must assure him that he is not guilty of what is alleged or portrayed, and that what he is promising is really what is going to happen, namely that he is not going to be dismissed. The reason that he passed the 08 lined till points is that he pleaded guilty for passing them as per the pre-hearing agreement before Mr Muller could change his tone when in the hearing, and in all this, he trusted that.

78) Even the footage promised by Mr Muller was not shown, as they went out knowing that, to confirm what had transpired, they would proceed with the hearing, but everything changed. Bundle A"2" shows issues disputed, unlike the one of representative; there was the position of the Applicant, that he was approached by the security lady, which he maintained until proceedings were concluded, that there is nowhere he ever went outside the store except when he was escorted to go get cash from his vehicle, meaning he was approached while still inside the store, wanting to play lotto and intending that thereafter he would go back to the kiosk till to pay for the dogfood. The chairperson ignored it and recorded the hearing going for a shorter session, following the same procedures he claimed he was well conversant with.

79) The chairperson, on 41:16, said after the presentation by Mr Muller that "for now, I want us to either agree with the statement or the opening statement, or we don't agree with it", 41:24 "because in the event we don't agree with it, then we cannot proceed with the deed of duty once you are not agreeing with the information", 41:35 "I wanted to find out if you are saying", on 41:41 "at the time you were confronted you were at the lotto machine counter not outside", on 41:54 "the initiator is saying you were already outside". Mr Muller came in at 42:00 saying yes chairperson, on 42:02 "at least the footage even that will be shown in the", "42:10 – but chairperson whether it is rather here nor there, the fact is that the Applicant", on 42:18, indicated he did not pay for the dogfood", 42:20 "when he was confronted by security", 42:23 and 42:26 "that is that chairperson". The Applicant in that very sequence, on 42:30, said "yes, we shall agree with that", at 42:32, "yes, I agree with that" and 42:33 "it's even in my statement". The chairperson followed on 42:40, "now in that case then I think we could then agree that the alleged transgressor is now the transgressor". Management wants to imply that he was agreeing with Mr Muller's presentation, which is not true, but to say he is agreeing with the Respondent's explanation or version of the incident or what they have against him, because since even when interviewed, the investigator did not believe his narration of the incidents at Spar. This derailed the whole point why, from there, the chairperson rushed to recording a shorter session because he says again that everything he speaks about he even wrote in his statement, and it is clear the chairperson misled himself from here. These minutes of the hearing clarify the contradiction testified on, that the Applicant did not dispute his position when he was approached by security while still inside the store, and that he never left the store without paying for the dogfood.

80) It is the chairperson clearing the Applicant, nothing technically, that procedurally the chairperson was very economic with the truth and what was the hurry for in clearing this because the hearing was scheduled for 3 days, with no need for cut and paste. I might partially agree that on representative, he mentioned just the 2 officials he was eyeing and agreed that he would do his own representation, but I fully disagree that if he disagreed with the presentation that he was never outside, well explained by him, he should have continued with the disciplinary hearing because the dispute, as it appears on A"2", was for him to record that the Applicant is no longer pleading guilty, then record not guilty, not what he did, and was flawed. For

instance, on page 11, at 18:27, “the Applicant said the only point in dispute is where the security confronted him as the confrontation took place in the area of the lottery machine”. Included on page 23, appearing as speaker 3, on 40:02 “I am the Applicant chairperson the part I am agreeing with following my intent as I”, 40:15 “moved from side of the lotto side, there is a kiosk but I wanted to play lotto and pay at kiosk after playing lotto”, 40:27 “but what I said to the initiator, you know my dispute is on the issue of where I was by the time in which the lady confronted me”, on 40:39 “it was not outside, it was at the lotto machine”.

81) Cherry picking what to consider and what to reject from an inference on the testimony that this matter is not dismissible, that he needs to put this matter behind him, that it is simple, that charge 2 will be withdrawn, and the proceedings not being given the prehearing minutes to rebut the version by the Applicant, just mentioning that these prehearing minutes were signed but not available in the proceedings, will cause very serious harm: where an Applicant, even when it can happen that he is lying, may believe what the initiator told him and only deny and deny ever making suggestions, only making recommendations. This was a de novo process which requires all documentation to be availed, not lacking like in this matter.

82) **In terms of South African Police Services v Mkhonto and Others ([PA8/24] [2026] ZALAC 2; [2026] 4 BLLR 361 (LAC; (2026) 47 ILJ 1089 (LAC)**, the court stated these flexible guidelines: **first**, the chairperson must inform the parties of the intention to reject the lenient sanction and give reasons.

Secondly, the chairperson must allow the parties to review their positions, which may include reopening the plea-bargaining discussions to propose another appropriate sanction, or terminating the plea-bargaining agreement.

Thirdly, if the plea-bargaining agreement is terminated, the employee must be allowed to withdraw the plea of guilty.

Fourthly, the disciplinary enquiry must commence afresh before a different chairperson, except where the employee consents to the same chairperson continuing to preside over the enquiry.

83) Substantively, regarding understanding this matter, it is important to take note of the history of this matter leading to what transpired in 2 points:

84) Ms Hilda, on point 1, testified that on the day of the incident, 29 May 2024, she followed the Applicant and made sure that he must not be aware that he was being followed when he entered the store going to the dogfood shelf. The reason for this was that her colleagues/other securities in the store had been giving her reports about the Applicant stealing items from the store, and she wanted to prove it for herself, as these reports had been going on for a very long time.

85) The Applicant, on point 2, testified that on the 29th of May, while they were in the camera room, one white manager with a beard came in very angry, saying it was not the first time he had stolen items in the store, that the police must be called to arrest him, and he asked why he did not confront him back then when he was stealing. He gave a story about the reason why “it is not the first time he steals or claims items”:

back on 26 August 2023, it was his wife's birthday, where they bought meat at Spar, went home and made a braai, but while braaiing they realised the meat was not good enough or the A grade they usually buy. He took this meat back to the store, where there was a quarrel about him proving he bought the meat from the store, which he did by producing the slip, but management ended up not assisting with another meat or a refund.

86) Mr Muller was first appointed as an investigator and later, after finalising his investigation, was appointed as an initiator in the disciplinary hearing of the Applicant, which led to a dismissal outcome. It is stated that: 1. the purpose of his investigation was to establish facts surrounding the alleged incident at Spar that put the Respondent's name into disrepute; 2. the mandate was to determine whether the Applicant stole from Spar, whether it was the first instance of stealing, whether there was video footage capturing the incident, and, if any, he must request a copy; 3. the methodology was that relevant and applicable directives were inspected, documentary evidence was collected, interviews with relevant people were conducted and statements obtained, an inspection in loco was conducted, video was obtained, information collected was analysed, corroboration through 3rd parties was evaluated to inform findings, and recommendations were made.

87) Mr Muller is one witness who was very firm and friendly, even though all his sessions were virtual. When he speaks, he is felt or commands the audience, and sometimes jokingly talks about his experience of retirement, which is a nice telling, make no mistake, going around Cape Town and overseas. In the beginning, he made no errors in what he was supposed to complete, i.e. calling and informing the Applicant about his appointment as an investigator, then an initiator, and when there were delays/challenges he would also communicate. He also informed Spar management, making an appointment to begin with the investigations.

88) He met with the Applicant to interview him and draft a statement. The point the Applicant was emphasising was that Mr Muller, from the word go, did not believe what he put in his statement, namely that he was confronted inside, as he was outside after walking out of the store without paying for the dogfood. Due to this point, he indicated to him that he would use the statements of witnesses, videos and proof that the matter went viral, embarrassing the Respondent's name. The Applicant denied this, stating that when he was confronted, he was at the lotto till point with no intention to leave the store without paying for the dogfood.

89) Ms Hilda, the star witness, actively participated on the day of the incident, or I suggest she is an eyewitness. She classified herself as a Christian, saying she does not hold grudges, does not lie, but can lose her temper sometimes when she is in a corner. She rebutted that, on the day, her reaction was based on hearsay, but accepted that for her to follow and hide from the Applicant after he entered the store was based on reports she received from other colleagues, Mr Johannes and Ms Pauline, that he was stealing, sometimes would come with slips inside to claim items in the store. She said colleagues were scared of the Applicant and did not catch him, as he is a man in uniform; sometimes he was aggressive with security because they

are not South African citizens, and the 19th of May is the day she would show him. Accordingly, she contradicted herself in saying she does not hold grudges or being a Christian.

90) In this vengeance, was she acting on behalf of management or what? She further stated that after colleagues mentioned this, they went to the camera to make sure that the Applicant's identity was the correct one and that these incidents on video were not one, as they had been monitoring his movements. During the proceedings about the footage, she confirmed that those incidents are in the possession of Mr Macgill, who is the one who, when they need assistance with the cameras, will give a hand, and also that some recordings are on his phone. She acknowledged the store was busy as it was month end, or as shown by the video, contradicting Mr Muller, who never accepted that on the day the store had long queues.

92) It is amazing that Mr Muller would formulate or agree that, because management at Spar said this incident of the Applicant stealing items in the store was not the first time it happened, he did not probe further according to the mandate of the investigations. He met with Ms Hilda and Mr Macgill, but to this far there is no corroboration. If videos indicating that it was not the first time are not there, then why was Mr Macgill not called, because he is the one in charge of operating the cameras in the store. His investigations identified Mr Macgill as one witness to corroborate what Ms Hilda was talking about. Spar says we found the thief but cannot bring anything, contradicting what the chairperson relied on to say the Applicant is a serial offender, always accepting what Mr Muller is saying even when the information is not true. This is an arbitration; the commissioner must weigh evidence presented, and the Applicant says he responded to the white manager with a beard who said it was not the first time and that he must be arrested.

93) The Applicant, in his testimony, disputed the authenticity of the video footage, which he stated, when he was in the camera room, was playing every movement, but he is surprised to see it not playing the part when he was at the lotto till when Ms Hilda approached him. Ms Hilda's version is that the footage indeed was there, and the only person who can clarify that is Mr Macgill. She further said she did not know why it is not available, agreeing it was supposed to be made available, and because it is not there the proceedings cannot talk about it. Had the video been available, it was going to help the proceedings a lot, a point I agree with the Applicant, who raised from the beginning that the video was tampered with or edited, again a point that only Mr Macgill was able to clarify. The Respondent, in the proceedings and its closing argument, rebutted that accordingly it was not necessary to call in Mr Macgill to testify.

94) Other securities, Mr Johannes and Ms Pauline, gave reports to Ms Hilda, who believed them. To show that this version "is not the first time he steals" does not exist, Ms Pauline and Mr Johannes are employed to guard items in the store, but they are scared of the Applicant because he wears full uniform. Why also were these colleagues not called to corroborate on the reports and previous incidents? This only

increases the volume of the charges formulated based on gossip or rumours. Had the investigation considered these issues, it was going to be easy for management not to conclude or start to debate trust issues about the Applicant.

95) When Ms Hilda was following the Applicant, from the time he entered the store, she followed him but stood at the chocolate shelves. After he picked up the dogfood, the Applicant's version is that the store was busy; he passed all 08 till points/cashiers, intending to pay for the bag at the kiosk located at the front line. Mr Muller testified that, when the Applicant said he was not outside, he responded by saying that he had passed the 08 till points/cashiers. Is there anything wrong in passing all 08 till points with cashiers? When passing those 08 tills in full uniform with an EST black cap, he was holding the dogfood bag in his left hand, the same position of the camera vision coming from the left side or at the back of all 08 cashiers; it is not me, but the video shows nothing suggesting intention to conceal. In other big-brand stores like Spar, the kiosk, they call it the 10 items till, meaning once a customer has fewer than 10 items, he/she can go there to make payments.

96) The Respondent, on the kiosk till payment, must blame the investigator, who confidently relied on a tampered video but did not realise that Ms Hilda says she went to the kiosk, the camera cuts before he stood at kiosk till, she says there was no cashier at lotto, but the Applicant mentions that indeed that cashier was servicing 2 till points, at the kiosk and the lotto till, which Ms Hilda later agreed to. The Applicant said he followed the cashier to the lotto till, as she would assist there and come back to serve at the kiosk till, another point the Respondent could understand because their investigations were not done as expected. Furthermore, he stated that, due to what was happening, frustrated and wanting to explain his intention to play lotto and come back to the kiosk to pay for the bag, he recalls the customer who was behind him, whom he asked to book a space in the kiosk till before moving to lotto. Ms Hilda accepted that he put the dogfood bag on the floor and contradicted herself once more by saying that he moved with the bag to the lotto till. Ms Hilda is not truthful.

97) Ms Hilda, in her testimony, agreed that the Applicant put the dogfood bag on the floor before moving to the lotto till, but later said he moved with it to the lotto till, looked to his sides and went straight to the exit door. The point the Applicant clarified was that he responded that he was still doing his shopping and intended that, from lotto, he would be going back to the kiosk to pay for the dogfood bag after requesting lady customer number 05, behind him in that queue.

98) Ms Hilda testified that when the Applicant was moving towards the kiosk till, at that time she was behind him still following; also here the camera is silent on her, but it is surprising why the camera stops here where the action is only 14 seconds. The Applicant, a point not rebutted, said this video is not 14 seconds; when they took him to the camera room, it played until they were about to enter the room, but in the proceedings it is not full. The only person who can speak to this tampering or not was Mr Macgill, who was left out: a point the Respondent could not see as necessary, but it was necessary.

99) Ms Hilda further testified that when following the Applicant when he entered the store, she was at the exit/entrance door waiting for her reliever as she was knocking off. When following, she left one male security guard who was guarding this door. The first contradiction on record is that she said the Applicant was disguising as if he was playing lotto, looked to the sides, not realising he was being monitored, and went towards the door. She instructed this male security guard to block him at the door, meaning for him not to leave. Another point testing truthfulness is that she called this male security guard guarding the entrance/exit door, not at the parking or outside. She said this male security guard did exactly that by stopping/standing in front of the Applicant at the exit door. The camera was very important for this because the Applicant said he never went or intended to go outside, as the security lady approached him while he was at the lotto till. Later, she said she asked for the slip of the dogfood outside the store. Of her 2 versions, which one is real or probable, and as to how she is moving, her credibility is questionable. The Applicant further stated that when she approached him asking for the slip, he said to her that he was still doing his shopping, still inside the store, and he would get back to the kiosk to pay for the bag after playing lotto.

100) On such contradiction, Ms Hilda mentioned that as security they are not allowed to ask customers for slips while inside the store, contradicting herself at its best. The question is why the camera ends here. It is possible that, when she was following, the kiosk spoken of is just nearer to the exit door where she was behind but not visible on camera. He says he did not move and was still at lotto, but she says he was going out and a colleague stopped him not to go out of the door, and she greeted and asked him about the slip when he was outside. She further contradicted herself more by saying the store has cameras all over, including at the parking, but that footage is with Mr Macgill. The Applicant, when outside, claimed he left the slip at the lotto till, and she asked him that they go back to show it; they looked and there was no slip. The Applicant's own version was that he never went outside the store from when he entered until he was escorted to the vehicle to get cash. Again, cameras, Mr Macgill and male security were needed; this was not a simple matter but a dismissal.

101) Once more, the point the Applicant brought and which was never rebutted was that when he went to the camera room, they were joined by a male security guard and Mr Macgill, making them 4 in the room, although Ms Hilda forgot this and said they were 3. The camera room was more focused on charge 2, which happened to be withdrawn by Mr Muller, who stated that the reason was due to the 50/50 chances. But he must be reminded that, when he was at the store or did the inspection in loco as per his appointment, there was no OB book or security capturing the incident, but he still believed what management was saying. A lot happened in this camera room in front of customers, who were paying enough attention, some taking pictures and some video of the thief caught in uniform. The Applicant, from beginning to end, disputed that he apologised to management and the 2 securities because he was afraid he would lose his job. Ms Hilda and Mr Muller maintained that he apologised, also for the police not to be called. Again, in reality, can this be true, as follows:

102) The chairperson kept on quoting that, in the disciplinary hearing, the Applicant wrote to him the mitigation he relied on. He stated that the Applicant cannot be trusted, that he is the 2nd in charge, put the name of Respondent into disrepute, is a thief, cannot repent, and that the management of Spar had been monitoring him very closely. The real question to the chairperson is: when management of Spar was monitoring the thief for some time, and Ms Hilda also said it was a long time that she received reports about him stealing, the white manager with the beard came into the camera room saying call the police, then after they caught him, they felt pity for him because he apologised; can this be possible?

103) In the room, after the white manager with the beard had left, Mr Macgill said to the Applicant, leave that one, let us focus on the current matter, changing his tone by saying he must pay for the dogfood bag. He took his bank card from his jacket, but Mr Macgill told him he must pay with cash as they did not have a speed point in the room. Remembering that he had cash in his vehicle, the security escorted him to go and collect cash. He said he paid because it was what he was supposed to do when entering the store, but it was made or misconstrued as if he was paying a fine for stealing, a statement with no proof. Nobody searched him, but Ms Hilda, always in the opposite, said he was searched and had no bank card, and that he already gave out R300 and, in the end, she made it like they were collecting another R300.00. The part she stated, that when a thief is caught he pays double the amount, later changed to no, they call the police, and Ms Hilda was so entertaining. Mr Muller said management of Spar told him that the double payment is given to a security who caught a thief, which was also going to be clear if stated by Ms Hilda, who was unable to talk about her reward on the day of the incident, even writing it in her OB book.

104) The Applicant stated that the only cash he had was the R100.00 note he played lotto with and, as they refused the bank card, he went to the vehicle to collect R300.00, not R600.00. Again, there were no slips or anything to prove this double payment, and Mr Muller withdrew it. Mr Muller's investigations were that double payment was done as a practice. If this was the case, Ms Hilda was going to explain, as stated, that the security who catches a thief is given that money, which in this case she did not tell; and if she received it, she was going to state it. Further, the item paid for twice remained, and he only learned about that when he wanted to pick it up and leave, when Mr Macgill told him he would not leave with the bag. Again, stating how worried and frustrated he was and due to being in uniform, he left, but if he was not in uniform, he would not have taken this lying down. OB book records did not provide this; even the investigation missed this, stating it as 50/50 chances, but everything in this matter had no proof, only statements.

105) Further agreeing with the Applicant was that he was advised by his lawyer not to go to the store because he might be accused of intimidating witnesses; he then waited for these proceedings. Even after this incident, he never stopped shopping at Spar because he prefers their fish, and he never asked anyone about this incident because of the advice. What is not correct, as the Respondent wanted to put it, is

that this incident went viral; nothing was produced in the proceedings, but just a statement that it was viral. The sister at Spar, of the brother working at Lichtenburg Prison Centre, who was pasting or sharing the video mentioned, were both sidelined by Mr Muller's investigations. This was core to charge 1, in that the viral video of the Applicant in full uniform at Spar tarnished the image of the Respondent or put it in a bad light. The questions are what was in the public view, again it is only a statement that the incident was viral. If it was true that the Applicant indeed tarnished the reputation of the Respondent, brought it into bad light or brought the name into disrepute, the Respondent was not going to struggle as it did in this matter because it relied on rumours or assumptions, but nothing solid to support the weight of their allegations.

"Generally, it is not appropriate to dismiss an employee for a first offence, except if the misconduct is serious and of such gravity that it makes a continued employment relationship intolerable".

106) This matter, on its own, needed tangible evidence, which was lacking; and if indeed this incident happened, it was possible to collect all relevant exhibits to support the case. Merely saying the video went viral does not qualify as a dismissal at the behest of a third party, as nothing supported it. The Applicant's evidence was the most probable in this matter, where the Respondent's evidence was full of contradictions and inconsistencies. In conclusion, the Applicant was able to discharge the onus placed on him by section 192(1) of the Labour Relations Act, 1995, as amended. On a balance of probabilities, the dismissal of the Applicant was both procedurally and substantively unfair. The Applicant wished to be retrospectively reinstated if I find in his favour, and looking at his request in the proceedings, justified by **point 59, in terms of Sidumo**, above, and acknowledged by the Respondent on the impact this dismissal has caused. Due to the suffering visible, at least as detailed, and this was very possible to have been avoided, I will therefore speak to the 12 months' backpay as follows:

'Relief'

107) In terms of section 193(1) of the Labour Relations Act 66 of 1995, as amended, where an arbitrator finds that a dismissal is unfair, the arbitrator may order reinstatement, re-employment or compensation. In this matter, having found that the dismissal of the Applicant was both procedurally and substantively unfair, the primary remedy of reinstatement is the appropriate relief, unless the circumstances in section 193(2) are present. I have not been persuaded that any of those circumstances exist in this matter. The Applicant sought retrospective reinstatement, and the evidence before me shows that he had long service of about 26 years, occupied the position before his dismissal, and the Respondent did not place sufficient evidence before these proceedings to show that the continued employment relationship is intolerable. The finding already made is that the Respondent's case was not supported by tangible evidence and was weakened by contradictions, inconsistencies and missing evidence that could have been produced. I therefore find that retrospective reinstatement is the proper and just relief. In considering the backpay to be awarded,

I have taken into account the period from dismissal. I therefore consider 12 months' backpay to be just and equitable in the circumstances.

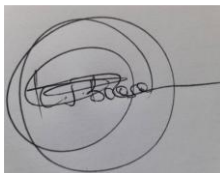
AWARD

108) The dismissal of the Applicant, Mr Othusitse Isaac Molokele, was both procedurally and substantively unfair.

109) The Respondent, the Department of Correctional Services at Rooi-Grond Prison Centre, is ordered to retrospectively reinstate the Applicant, Mr Othusitse Isaac Molokele, to the same position of Area Coordinator Corrections that applied before his dismissal on 21 November 2024, and with backpay, which I consider to be just and equitable and calculated as follows: R73 094.00 (monthly salary) x 12 months = R877 137.00 (Eight Hundred and Seventy Seven Thousands, One Hundred and Thirty Seven Rands), subject to statutory deductions.

110) The Respondent is ordered to pay the amount referred to in paragraph 109 to the Applicant not later than 31 August 2026. The Respondent is reminded that the amount, if not paid, will accrue interest.

111) The Applicant is to tender his services to the Respondent by no later than 01 September 2026.

A handwritten signature in black ink, appearing to read 'Joyleaf Boase', is written over a circular stamp or seal.

Name:

Joyleaf Boase

GPSSBC PANELLIST

