



ARBITRATION AWARD

Panellist/s: PJ GREYLING

Case No.: GPBC1964-2024

Date of Award: 23 APRIL 2026

In the ARBITRATION between:

PSA obo TB THEBE
(Applicant)

and

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT
(Respondent)

ARBITRATION AWARD

DETAILS OF HEARING AND REPRESENTATION

1. The arbitration was conducted on 26 May 2025, 02 September 2025, 05 December 2025 and 13 April 2026. The Applicant was at all times represented by Mr K Moalosi, a representative of the referring a trade union. The Respondent was represented by Mr B Tshipelo, an industrial relations official.

ISSUE TO BE DECIDED

2. It is to be decided whether the sanction of two months suspension without pay for allegedly threatening his superior constitutes an unfair labour practice as envisaged in terms of section 186(2)(b) of the Labour Relations Act (LRA).
3. The Applicant presented a bundle of documents (Bundle A), consisting of 25 pages to be used



during the proceedings. The Respondent presented a bundle of documents (Bundle R), consisting of 11 pages. Reference to document will be made as follows; Bundle _ p_.

BACKGROUND TO THE DISPUTE

4. The Applicant is employed as a deputy director responsible for performance management and development, systems and human resources development as well as a change management. The Applicant was subjected to a disciplinary enquiry during 2021 on an allegation that he made threatening statements towards his supervisor. He was found guilty of the alleged transgression and after the conclusion of his appeal, was informed on 23 October 2024 of the sanction of two months suspension without salary, which suspension was to be implemented for the months of November and December 2024.

The Process Followed

5. This matter was initially set down for 26 May 2025. At that point in time, the representative for the Respondent indicated that he was not ready to proceed in this matter as it was previously dealt with by the National Office and it is believed that the matter falls within the competency of National Office and that the National Office should deal with the matter. To allow the Respondent's representative the opportunity to obtain proper instructions, the parties agreed to 02 September 2025 as the next arbitration date.
6. On 02 September 2025, the representative for the Respondent indicated that he wishes to raise an argument that the Council does not have jurisdiction to arbitrate the dispute due to an alleged defective referral of the dispute. The Respondent did not comply with the provisions of Rule 32 of the Council Rules in that he did not give notice and did not substantiate his application with an affidavit. After hearing the Applicant's application for condonation for the non-compliance, the Respondent was allowed the opportunity to make submissions as to why it believes the Council does not have jurisdiction. The Applicant was given the opportunity to respond.
7. It became evident from the submissions that a dispute of facts exists, which can only be properly resolved through the presentation of evidence. It was therefore ruled that the issue of jurisdiction



is to be dealt with as part of the merits of the matter so that a factual finding could be made as to the sequence of events.

8. The Applicant was then called to testify on the merits and the jurisdictional issue where after the Respondent's representative was given an opportunity to cross-examine the Applicant. At this point in time, the representative asked for a postponement, indicating that he relied on the Commissioner making a jurisdictional ruling in his favour and that he did not prepare to deal with the merits of the matter and is therefore not in a position to cross-examine the Applicant. After hearing the submissions of both parties, the Respondent was allowed a postponement of the proceedings until 05 December 2025.
9. On 05 December 2025, a representative of the Respondent, Ms L Barth submitted a medical certificate indicating that Mr Tshipelo was ill and has been booked off sick for the period 03 to 05 December 2025. A Ruling was issued postponing the matter and given the number of delays, specific instructions and guidelines were set out in the Ruling as to how the proceedings were to be conducted in future. The parties were again advised that the issue of jurisdiction is to be dealt with during the arbitration proceedings and if evidence is required to substantiate or repudiate issues/facts surrounding jurisdiction, that party is to ensure the attendance of those witnesses.
10. On 13 April 2026, the Respondent was now represented by Ms L Barth, who indicated that she received instructions to argue the issue of jurisdiction. She was accordingly advised that directives in this regard have already been given on two occasions, advising that the jurisdictional argument will be dealt with as part of the arbitration proceedings and that the proceedings of 05 September 2025 was postponed since Mr Tshipelo was not properly prepared to conduct the cross-examination of the Applicant. The representative asked for a short adjournment. When the proceedings continued, Mr Tshipelo was in attendance and indicated that he will represent the Respondent.
11. Mr Tshipelo informed the proceedings that he is in attendance to argue about the jurisdictional issue. It was pointed out to him that the proceedings were previously postponed to allow him the opportunity to properly prepared to cross-examine the Applicant and that the presiding Commissioner is not going to listen to any arguments or submissions about jurisdiction at that



point in time.

12. The Respondent then proceeded with cross-examination of the Applicant. His cross-examination had to be interrupted as Mr Tshipelo made no attempt to examine and test the evidence of the Applicant. He merely rehashed evidence that has already been presented. His conduct was nothing more but an attempt to frustrate the proceedings.
13. After the conclusion of the cross-examination, the Applicant closed his case. The Respondent then applied for a postponement as its witness, the superior of the Applicant, Mr Chabeli, who was allegedly threatened by the Applicant, was ill.
14. From the submissions made in respect of the application for postponement, the following became apparent:
 - 14.1 The representative for the Respondent could not indicate when he consulted with this particular individual in preparation for these proceedings;
 - 14.2 It also became apparent that Ms Barth only became aware of this witness's alleged incapacity when she phoned him to report at the conference room to testify.
 - 14.3 She reported that this individual was apparently on his way to see a medical practitioner;
 - 14.4 The representative for the Respondent insisted that this witness was warned to be ready to testify a few days prior to these proceedings;
 - 14.5 What is to be noted is that this witness made no attempt to inform the representative of his incapacity early that morning. His incapacity became an issue once he was called to testify;
 - 14.6 What is further to be noted is that all previous postponements were as consequences of the Respondent not being ready to proceed with the arbitration. The Respondent knew that his witnesses would have to testify on this day, yet the Respondent was uncertain of the whereabouts of his own witnesses. The application for postponement was therefore



dismissed.

15. Subsequently, an application was made for the recusal of the presiding Commissioner as it is believed that he is biased due to the fact that he refused to allow the Respondent to deal with the jurisdictional argument that morning and that his refusal to grant a postponement due to the apparent illness of the witness for the Respondent. The Applicant's representative indicated that he will not involve himself in the application for recusal.
16. After considering the above argument, the Commissioner concluded that the argument does not have any merit and was in fact frivolous and vexatious.
17. The Respondent then informed the proceedings that it will not call any witnesses and closed its case.

EVIDENCE AND ARGUMENTS BY THE PARTIES

Evidence on behalf of the Applicant

18. The Applicant, **Mr TP Thebe** testified on his own behalf. The following can be highlighted from his testimony:
 - 18.1 The Applicant is occupying the position of a deputy director, and he reports to Mr TT Chabeli. The Applicant was accused of threatening his superior, Mr Chabeli in his office on 23 March 2021, by allegedly uttering the following words "*these are things that lead to other incidents*" and further "*people shooting supervisors*". The Applicant explained that the dispute arose in respect of his performance assessment for the year 2017 to 2018 and 2020. As he and his superior could not agree, he requested that a mediator be appointed to mediate the dispute.
 - 18.2 After the mediator had listened to the essence of the dispute, he stated that the Applicant and his manager are both managers and that they should be able to resolve the dispute amongst themselves. Sometime later Mr Chabeli e-mailed him and instructed him to come to his office to do the assessment. Chabeli presented a report which was not made



available to the Applicant. The Applicant then enquired as to why this report was not presented to the mediator and why the report was not made available to him previously. The Applicant then suggested that the mediator be called in again so that the matter could be finalised and that the assessment can be forwarded to the moderator.

18.3 After some three to four days, officers of the South African police service made contact with the Applicant and informed him that a complaint has been received from his superior and that he should report at the police station. He was to make a statement in response to a criminal charge being laid against him by Chabeli. The Applicant further indicated that the case docket number is 27/3/2021 and that the alleged criminal act was that he threatened his supervisor. The prosecuting authority, however, refused to prosecute.

18.4 The Applicant then further explained that he received a notice to attend a disciplinary enquiry on 04 June 2021. The notice was received on 28 May 2021. He was informed on 18 October 2022 by the Provincial Head that he was found guilty of the charge and that as a sanction, he was to be suspended for two months without pay and is to receive a final written warning (Bundle A, p 19 and p12).

18.5 The Applicant filed an appeal, and the outcome of the appeal was received on 23 October 2024, in which he was informed by his supervisor that the appeal was unsuccessful and that the sanction will be imposed for the months of November and December 2024. The Applicant further explained that the suspension had a severe financial impact on him and he also did not receive a pay progression as a result of the valuation, which is to affect his pension.

18.6 The Applicant denied that he ever threatened his superior.

19. Under cross examination, it was put to the Applicant that the referral that was sent to the Respondent on 05 November 2024 was sent to the email address, btshipelo@nwpg.gov.za, which is the wrong address as at that point in time, the Respondent's representative was not working at the Provincial office but at the National office.



Evidence on behalf of the Respondent.

20. The representative indicated that he would not call any witnesses and that he will deal with the matter on the basis of argument. The Respondent also did not present any evidence in respect of the jurisdictional issue.

Submissions by the Parties

21. The parties were given the opportunity to submit written heads of argument by no later than 20 April 2026. Only the Applicant presented heads of argument in time, which have been considered in the final analysis. The Respondent submitted arguments on the evening of 21 April 2026.

ANALYSIS OF EVIDENCE AND ARGUMENTS

Jurisdiction

22. The Respondent, when cross-examining the Applicant submitted that the referral that initiated this process on 05 November 2024, was sent to the wrong address. The Respondent was therefore not notified of the referral. It was submitted that the referral was served via e-mail. It was pointed out that the referral was forwarded to the address btshipelo@nwpg.gov.za, which was the address of the representative, Mr Tshipelo. The request for arbitration was also forwarded to the same address on 16 January 2025. Mr Tshipelo then submitted that at that point in time he was not an employee of the North West Provincial Government and was an employee of the National Department. He did not receive the referral and therefore the service was defective.
23. Mr Tshipelo did not introduce any evidence as from when he did not use the mentioned email address. He did not provide any evidence of what happened to the emails sent to that address.
24. The Applicant on the other hand, submitted that the address was used by the representative of the Respondent. The notice was received and read by somebody. It was further pointed out that the representative for the Respondent on 26 May 2025, in his application for a postponement, presented a letter addressed to the National Office trying to convince the office to take over the case. It is therefore evident that the representative was always aware of the referral.



Analysis of submissions and arguments

25. Section 191(3) of the LRA provides that the employee must satisfy the Council or the CCMA that a copy of the referral has been served on the employer. These provisions are to be read together with Rule 7(1)(c) of the Council Rules, which allows a party to serve a document by e-mail. In addition, Rule 6(1)(c) provides inter-alia that proof of service must be provided by means of a copy of the transmission slip indicating the successful transmission to the other party of the whole document. The transmission report is available (Bundle R, p1). This proof of service was served on the Council with the referral. The Applicant therefore has complied with the provisions as set out in Rule 6(1)(e).
26. It is evident that the document was e-mailed to an official of the Respondent at his official e-mail address. The representative for the Respondent argued that at that point in time he was not employed by the Provincial Department but by the National Department. He did not provide evidence as to when he started his employment with the National Department nor did he provide any substantiation that he was not using that particular address. He also did not provide evidence as to how the Respondent became aware of the dispute. In the last instance, it must be pointed out that the fact that the Respondent allegedly did not receive the referral form, does not imply that it was not served by the Applicant (see: **AMCU and Other v Tshipi E Ntle Manganese Mining (PTY) LTD (CJS 542/16) (20 September 2016)**).

Ruling

27. From the above, I must conclude that the referral was served on all parties concerned on 05 November 2025 in accordance with the provisions of section 191(3) of the LRA and Council Rule 5 and 6. The Council therefore has jurisdiction to arbitrate the dispute.

Substantive Fairness

28. The allegation of misconduct for which the Applicant was found guilty reads as follows:
"You are charged with misconduct of threatening to assault another employee or a person whilst on duty, in that on or about 23rd March 2021, at or near the Department of Justice &



Constitutional Development, Regional office, Mafikeng you uttered statements containing threats connotation to one Mr Chabeli by stating the following "these are the things that lead to other incidents" and further said, "people shooting supervisors". (Bundle A, p12).

29. It is therefore to be decided whether the Applicant has uttered those words and whether those words constitute a threat to his supervisor in the particular circumstances. With regard to the onus of proof in the case of an unfair labour practice, the onus rests with the Applicant to prove that the action taken by the Respondent was unfair. The basis of the unfairness is that the Applicant denies that he ever threatened his supervisor. It is the Respondent, in the person of Chabeli who made the allegation, who must therefore prove the existence of such a threat. There is therefore a duty on the Respondent to satisfy these proceedings of the existence of such a threat. If this tribunal is left in doubt as to whether the threat was ever uttered, then the case for the Respondent will fail.
30. As far as evidence is concerned, the supervisor of the Applicant never testified. For all practical purposes the Respondent did not present a shred of evidence to substantiate the allegation that the Applicant made certain threats. There is therefore no basis on which it can be concluded that the Applicant made himself guilty of this transgression. I must therefore conclude that the Applicant did not threaten his superior.

Procedural fairness

31. The Applicant pointed out that in terms of the collective agreement commonly known as Resolution 1 of 2003, the chairperson of the disciplinary proceedings must communicate the final outcome of the hearing to the employee within five working days after the conclusion of the disciplinary enquiry and the outcome must be recorded on the employee's personnel file. The disciplinary proceedings started in June 2021 and was finalised on 30 August 2021, but the final verdict was only made available on 07 July 2022, some 11 months later.
32. With regard to the appeal, the collective agreement provides that the matter must be finalised within 30 days. The Applicant submitted an appeal on 19 October 2022, but the outcome was only received in October 2024. It is then submitted that if the Respondent adhered to the provisions of Resolution 1, the suspension amounts not to be paid would have been for




November and December 2022 and not for November and December 2024, when the Applicant, as a result of annual increases, earned more than in 2022.

AWARD

33. In view of the above, I must conclude that the suspension of the Applicant for the months of November and December 2024 without pay constitutes an unfair labour practice as envisaged in terms of section 186(2)(b) of the LRA. In terms of section 194(4), the compensation awarded to an employee in respect of an unfair labour practice, must be just and equitable in all circumstances, but not more than the equivalent of 12 month's remuneration. Section 195 further provides that an order or award for compensation made in terms of Chapter VIII is in addition to, and not a substitute for any other amount to which the employee is entitled in terms of any law, collective agreement or contract of employment.
34. From the substantive perspective, given the fact that the Respondent came to the wrong conclusion regarding the allegation of misconduct, it is obvious that the Applicant should be placed in a position as if the suspension never occurred. The same applies in respect of the final written warning that was issued with the order of suspension. What should further be noted is that the Applicant lived in this uncertainty regarding his appeal for almost two years, which is clearly not in line with the procedure as set out in the Resolution 1 of 2003. I have therefore concluded to award three month's compensation to remedy the two month's suspension as a solution for the failure of the Respondent to follow a fair procedure.
35. It is therefore ordered:
- 35.1 That the Respondent, Department of Justice and Constitutional Development pays the Applicant, Mr TP Thebe the amount of R237,864.06 (TWO HUNDRED, THIRTY-SEVEN THOUSAND, EIGHT HUNDRED AND SIXTY-FOUR RAND AND SIX CENTS) (R72,988.02 x 3) being the equivalent of three month's remuneration.
- 35.2 The final written warning as issued on 24 October 2024 is herewith set aside.



35.3 The amount mentioned in para 35.1 above is to be paid no later than 15 June 2026.



Name: PJ GREYLING
(GPSSBC) Arbitrator