



Physical Address:
260 Basden Avenue,
Lyttelton, Centurion,
Pretoria

Postal Address:
PO Box 16663,
Lyttelton, 1040

Tel: 012 644 8132

Web: <http://www.gpssbc.org.za>

ARBITRATION AWARD

Panellist/s: Joyleaf Boase
Case No: GPBC1944/2024
Date of Award: 27 March 2026

In the ARBITRATION between:

PSA obo Mocumi, K
(Union / Applicant)

And

The Department of Justice and Constitutional Development
(Respondent)

Union/Applicant's representative: Mr Kabelo Moalosi
Union/Applicant's address: PSA

Respondent's representative: Mr Boitumelo Tshipelo
Respondent address: Labour Relations

ARBITRATION AWARD

DETAILS OF HEARING AND REPRESENTATION

- 1) The arbitration hearing took place on 27 and 28 November 2025 at the Respondent's premises, the Department of Justice and Constitutional Development in Mahikeng. The proceedings were electronically recorded. The Applicant, Mr Kagiso Mocumi was represented by Mr Kabelo Moalosi, an official from PSA union. The Respondent was represented by Mr Boitumelo Tshipelo from Labour Relations.
- 2) Both parties agreed to file their closing arguments by close of business on 02 January 2026.

ISSUE TO BE DECIDED

- 3) I am required to determine whether the dismissal of the Applicant was substantively fair. If I find the dismissal to have been unfair, I must determine the appropriate relief.

NARROWING OF ISSUES

- 4) It was common cause that the Applicant was employed as Provisioning Admin Officer with 11 years of service prior to his dismissal.
- 5) The issue in dispute was whether he committed the alleged misconduct.
- 6) The parties submitted a joint bundle labelled K, M, and annexure KM 1.
- 7) The Applicant testified as a witness in chief while the Respondent's called in 3 witnesses, Mr Collin Thabiso Marageloe, Ms Bontle Bogatsu and Ms Lesego Molope.

BACKGROUND TO THE MATTER

- 8) The Applicant was employed as Provisioning Admin Officer in the Supply Chain Management unit (SCM) and he was earning a monthly salary of R22000.00. He was dismissed on 11 September 2024, after the disciplinary hearing that was held around July and August 2024.
- 9) On 19 October 2023, the Applicant and his supervisor, Mr Marageloe, had an altercation about processing the payment of the purchase order on the Sexual Offences System (SOS) made for various courts in the region. As a supervisor in SCM, the Applicant was not responsible for purchase orders and forwarded it to a subordinate handling lower courts for payment processing.
- 10) The Applicant's supervisor noticed the document on the subordinate's desk and instructed the subordinate to return it to the Applicant. The Applicant then went

to his supervisor and placed the document on the supervisor's desk along with a note stating that he was not responsible for it. Both were subsequently summoned to the manager's office, where the manager clarified the situation and persuaded the Applicant to continue working on the document, which he agreed to do. Later, the Applicant was moved to another office away from the supervisor, who eventually obtained a protection order because of WhatsApp status messages directed at him.

- 11) Following his unsuccessful appeal on 24 October 2024, the Applicant referred the dispute to the GPSSBC (the Council) under sections 191(1) and 191(5)(a) of the Labour Relations Act, 1995 (as amended), alleging unfair dismissal on 11 December 2024. The matter went through conciliation but remained unresolved. It was then referred for arbitration on 20 June 2025 and concluded on 28 November 2025. Both parties submitted their closing arguments on 2 January 2026.

SURVEY OF EVIDENCE AND ARGUMENT

- 12) 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 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: Mr Collin Thabiso Marageloe testified as follows under oath: -

- 13) that he is currently employed as an Assistant Director in the Supply Chain Management Unit, responsible for procuring goods and services in the region. He stated that he knows the Applicant, as he previously supervised him before the Applicant's dismissal on the four charges issued against him. He explained that he went to the Applicant's office with a document requiring processing for the payment of SOS, relating to the supply of data-centric services. He informed the Applicant and his team that the document needed to be captured, as it had been misplaced by Legal Services and the payments were already overdue. According to him, while he was explaining this, the Applicant simply responded by telling him never to speak to him. He then left the Applicant's office and returned to his own. Shortly after he sat down, the Applicant followed him and said: "O seke wa nkeletsa makgakga, o ntlwaela masepa" ("Don't disrespect me; you are full of shit"). He regarded this as a refusal to comply with a simple instruction.
- 14) He explained the clustering structure within the SCM Unit, which confirmed that the document fell under the Applicant's responsibility. The work is divided according to sections—Finance, Legal Services, and Court Operations—meaning that Legal Services was required to process the document. However, the Applicant refused to do so, and the document was ultimately completed by Ms Matlakela. In his view, this conduct substantiated Charge 1: failure to carry out a lawful instruction. Regarding Charge 2, he stated that immediately after he left the Applicant's office, the Applicant followed him while uttering insults. He remained quiet throughout and merely picked up the document that had been thrown on the floor. He then went to

the manager to report the incident, as he regarded the Applicant's behaviour as unbecoming and consistent with the misconduct described in Charge 2.

- 15) In the main, regarding Charge 3, he stated that a co-worker who had been sitting with the Applicant in the foyer approached him and asked when he and the Applicant would make peace. He responded that he did not have any grudges against the Applicant, who had further told this co-worker that he had heard there was an "inkabi/hitman" in the Magogoe area who could be hired for R3 000.00 to kill him. He also referred to related WhatsApp status messages posted by the Applicant, which included a letter of intent from Labour Relations to charge him, posted with the caption "Dithomile/the beginning", as well as an intimidating picture of a hitman holding a gun and a briefcase. Because of these threatening messages, he went to the police to open a protection order, as he feared for his life. An interim order was issued, followed by a final order, which was received and served on the Applicant. The Applicant was then taken to a disciplinary hearing, which resulted in his dismissal, and in his view as the Applicant's supervisor, the dismissal was an appropriate decision.
- 16) During **cross examination**, he stated that when he went to the Applicant's office immediately after the altercation, the document he had taken with him to explain the processing requirements was left with the Applicant, but he later got it back during the meeting they held with Ms Bogatsu on the first occasion, being the 18th of October, followed by the initial day of the 19th. He agreed that the document dated 21 November 2023 was not the one he had taken to the meeting with the Applicant, but explained that he understood his role in the proceedings to be limited to proving who had processed the order during the period of refusal, namely Ms Matlakale. He further stated that it was not correct to say that the Regional Court "belongs" to Ms Molohe for the Applicant to process the payment, but that Ms Molohe had made the purchase order, which also fell under his responsibility.
- 17) He indicated that he is responsible only at the level of payment and not at the level of the purchase order, which was the responsibility of the Applicant, meaning that the person who captures the order cannot process the payment. That is why the order was captured by Ms Matlakela and then approved by him for payment, which, in his view, clarified that the Applicant was still refusing to carry out the instruction. He stated that the document had been captured incorrectly, which is why Ms Matlakela had to re-capture what Ms Molohe and the Applicant had done. He further explained that although Regional Courts appear under Ms Molohe, this is not sufficient to suggest that the work must be done by her or to confirm what the Applicant stated, as the Mmabatho Regional Courts are a stand-alone unit, and taking into account that both Ms Molohe and Ms Matlakela are on level 5, while the Applicant was on level 9 as their supervisor.
- 18) In the main, he stated that he intervened deliberately regarding the document that had been given to Ms Molohe, because on this occasion the document was supposed to be processed for payment by the Applicant from beginning to end, taking into account both his experience and his responsibility in relation to the document, which was already overdue. He emphasised this point as one that supported the appropriateness of the dismissal, as the instruction had not been

followed. He indicated that his office and the Applicant's office are not far from each other, being only the second office apart, and he was now clear in stating that the Applicant told him to take his document and deal with it. Taking all other aspects into consideration, he personally went to open a protection order for the safety of his life. He stated that he could not agree that the term "masepa/pooh or shit" is not a threat, and when this was considered together with the WhatsApp message, the threat became clear. However, he added that it would not be correct for him to answer on behalf of the co-worker who had told him to be aware, and he could not speak for what the co-worker had said.

- 19) He stated that the WhatsApp messages came to his attention because they were sent to him by someone else, and these messages corroborated the threats he had mentioned. He commented that if necessary, those co-workers could be called to testify, although the one source he was certain would testify was Ms Molohe. He explained that most WhatsApp messages do not have dates and names that can be compared, but he maintained that the messages referred to him, pointing out that page 13 contained his name, although he could not prove that it was the Applicant who had written the messages. Lastly, he confirmed that on the 19th the Applicant knocked off early, and he was not sure whether Ms Bongi would also be called to testify about the WhatsApp message she had given him. He stated that it was not as though he was moving around looking for something against the Applicant, as he did not agree that he hated him, but rather that the Applicant was the one who hated him. He also did not agree that most of his testimony amounted to hearsay, and he denied that he was always following the Applicant's whereabouts.
- 20) In **re-examination**, he mentioned that the Applicant is allocated to the Provincial Office, which makes it his responsibility to have processed the payment of the SOS system, which includes HR, Court Operations, Legal Services, and Finance. He maintained that the instruction he had given was not carried out, and that the work was instead done by Ms Matlakela after it had been captured incorrectly. He stated that the Applicant, instead of doing what he had been instructed to do, chose to knock off and leave the office. He added that the Applicant should not be allowed to confuse the proceedings, as Court Operations is his responsibility and not that of his subordinates, as the Applicant was attempting to suggest. Everything from Legal Services and Finance must be done through him as the coordinator. He further stated that the Applicant had not been working well with his subordinates, which is why a decision was taken for him to supervise the entire unit, and to the point where he now believes that all the charges were correct, including those relating to the WhatsApp messages.

2nd Witness: Ms Bontle Bogatsu testified under oath as follows: -

- 21) that she is the Deputy Director in the Supply Chain Unit, and that she knows the Applicant as a former colleague who reported under Mr Marageloe. Her duties relate to fleet and asset management, and she began by referring to Charge 1, explaining that her understanding was that on the 19th the Applicant came to her office and mentioned that Mr Marageloe had given him a Regional Court document to process, although he spoke only in words and did not have the actual document with him before Mr Marageloe entered her office. Upon checking the document

signed by Ms Madiega, she established that it related to the procurement of SOS under Legal Services, which was allocated to the Applicant, and she attempted to persuade him, based on the misunderstanding, to work on the document. While they were in her office, Mr Marageloe stated that the Applicant had made it clear that he would not work on the document because it did not fall under his responsibilities, and that anything difficult was always transferred to him to complete. In her advice, she told the Applicant to work on the document together with Ms Molohe so that Ms Molohe would know how to process it in future.

- 22) She mentioned that the Applicant left her office with the understanding that he would work on the document, but a few minutes later Mr Marageloe came to her office with a note attached to the document, stating that the documents had been thrown at his feet and that he had been sworn at. He further informed her that the Applicant had left the office, and on the 20th, the following day, the Applicant sent a WhatsApp message talking about his child who was sick, but she did not respond to the message as she waited for him to report for duty on Monday the 23rd. On that day, Mr Marageloe came to her and informed her about the WhatsApp status showing the hitman costing R3 000.00, narrating that the way the Applicant hated him, he was willing to pay that amount for him to be killed. She stated that she never had a chance to speak to the Applicant about all of this, but on the 24th, the day after, there was an email with the subject "intent to charge" from Labour Relations, sent by Mr Xulu.
- 23) She later called the Applicant to her office to talk about him leaving the office for the whole day, the hitman messages, whether he needed any professional help for his hurt or anger, and the intent-to-charge letter he had posted. He stated that he would complete a leave form and that the reason he had left was because he could not talk to Mr Marageloe. On the 25th, while she was preparing to knock off, she met with Mr Marageloe, who told her that he had opened a protection order against the Applicant as his life was being threatened, and indeed on the 26th the police arrived at the workplace to serve the Applicant. She then went on leave from the 27th until the 30th, but upon returning she called both of them to check how they had been working. Mr Marageloe told her that they were fine, but the Applicant stated that he could not talk to Mr Marageloe as he wanted to avoid violating the protection order. At his request for space, he was moved from working next to Mr Marageloe, and they were waiting for authorisation for the movement from Mr Maputle, who was on leave.
- 24) During **cross examination**, she confirmed that she had known about the conflict between Mr Marageloe and the Applicant for some time, and therefore it would not be correct to say she was unaware of it. She stated that before Mr Marageloe came to her office, the Applicant was the first to arrive, and although they were having an argument, when they left her office there was an understanding that the Applicant would work on the document. She indicated that she did not personally see it but was told that the Applicant had been moved to another office, although she could not remember all the reasons for his dismissal or the details of their arguments or misunderstandings. She stated that in all her working interactions with the Applicant, their relationship had been good, they had not experienced problems working together, and their relationship had not broken down, but she was not in a position to comment on the reasons for his dismissal.

3rd Witness: Ms Lesego Molope testified under oath as follows: -

- 25) that she is employed as an Accounting Clerk in SCM and is responsible for receiving documents on purchase orders, facilitating orders, and processing payments from courts in the region before her transfer to Ventersdorp. She confirmed that she knows the Applicant, who was her former supervisor, and she began by referring to Charge 1, stating that in her knowledge she agrees with the charge, as he failed to carry out the lawful instruction given to him regarding the purchasing of the SOS for various courts, and that anything signed by the Provincial Head under Court Operations falls under his responsibility. She explained that on the 19th, when the instruction was given, she was not present, but later she found the document on her desk together with the register that traces its movement, and she signed the register.
- 26) Mr Marageloe then came to their office, where he saw the document and instructed her to return it to the Applicant, as it needed to be handled by someone with experience. However, when she arrived at the Applicant's office, he was not there, and she left the document on his desk. When she arrived for work the following day, she was told about the altercation that had taken place between Mr Marageloe and the Applicant. She explained how the cluster is divided, as reflected on page 5, but emphasised that what remained important was that the province falls under the Applicant, meaning that anything relating to Legal Services, Finance, and Court Operations is his responsibility. Furthermore, regarding Charge 2, she stated that it relies on the altercation that occurred between the two officials, which she did not witness but only heard about, and therefore she was uncertain to speak on something she did not see or to comment on hearsay.
- 27) However, regarding Charge 3, she stated that the WhatsApp messages were on the Applicant's phone, and the only message she could personally relate to was the one referring to Mr Marageloe as "the golden boy," and the rest she could not confirm or deny whether they were also directed at him. She explained that she sent these messages to Mr Marageloe because Ms Masuku had been telling him about them, and after he requested them, she simply forwarded what she had received. She was later told about the vulgar words used by the Applicant during the altercation. Later that day, while looking for the Applicant to process documents, she was informed that he had left the office, and while scrolling through WhatsApp she saw the status message referring to Mr Marageloe as the "golden boy of the department." The next day, she saw the hitman status, which insinuated that people in the office were plotting against him.
- 28) During **cross examination**, she stated that she ended up being the one processing the SOS document, with some assistance from others, but she agreed that it was ultimately done by Ms Matlakela. She explained the process followed when dealing with such documents, noting that there are several steps required when processing SOS, and that the system itself restricts processing if the document is handled entirely by one individual. The same applies to the Applicant, as he cannot complete the entire process alone. She recalled correctly that the Applicant had captured the same document incorrectly, or had made errors in the evaluations, which resulted in the document being returned. She stated that she would not disagree if the Applicant were to testify that the document had only been waiting for

confirmation of tax on the goods purchased, and that when he said that he and Ms Matlakela were finalising the payments, he was moved from the office.

- 29) She stated that she was certain she was going to work on the document before being instructed to return it to the Applicant. At that time, she had not yet begun working on the document, but she could not refuse the instruction given by Mr Marageloe, as the Applicant's instruction was unlawful. She also mentioned that she spoke about the document with some of her colleagues, expressing that the instruction was unfair because the document was supposed to be done by the Applicant. She explained that she found herself in a difficult situation, being told on the one hand to work on the document and on the other hand not to work on it, and as a junior employee this undermined the entire process, especially knowing that the working relationship between the Applicant and Mr Marageloe was not good, which made the situation quite tense for her. She stated that she had done similar documents before, and when she encountered difficulties she could ask colleagues for assistance, and she remembered the Applicant coming to her and asking why the document had been returned, although he never brought it back himself or gave any instructions. She added that she liked some of his WhatsApp statuses and did not like others; the hitman status, she said, was from a movie, and the screenshot referring to Collin as the "golden boy" was the only one she could relate to, because Collin is Mr Marageloe, which is what made her connect that particular message to him.
- 30) In **re-examination**, she explained that it was not correct to suggest that the Applicant did not capture the document, as capturing is the first stage of working on the document. However, she emphasised that the representative should focus on the second leg, which is the processing of procurement payment. She further clarified that the second leg relates to the failure to carry out the instruction, and in her view, whether the Applicant did or did not do what he had been instructed to do, she could not say, as she only saw the document on her desk.

Applicant's Evidence and Arguments'

1st Witness: Mr Kagiso Mocumi testified under oath as follows: -

- 31) that he was a supervisor in the SCM unit, with responsibilities that included generating purchase orders, processing payments, and sourcing quotations. He narrated what transpired on 19 October 2023, explaining that upon arriving at around 07:45 am, he stepped out of his office to allow the cleaners to clean, but when he returned, he found a document on his desk together with the movement register, indicating that it had come from Mr Marageloe, and he signed for it. However, before he could begin working on the document, he realised—simply by looking at it—that it related to the Regional Courts. Out of courtesy, he did not return it directly to Mr Marageloe but instead placed it on Ms Molope's desk, as outlined by the cluster structure. Within 10 to 15 minutes, Ms Molope came to him saying that Mr Marageloe had instructed her to return the document because it was "difficult," and he then took the document and went straight to Ms Bogatsu's office to complain about Mr Marageloe's interference in his supervisory functions.

- 32) He stated that when he went to Ms Bogatsu, she did not say much, but only remarked that she thought the two of them were “fighting for girls.” He further told her that since she was not doing anything about the matter, he would take it up personally with Mr Marageloe. However, Mr Marageloe was not in the office at the time, so he attached a note to the document stating that “this document is not my responsibility.” Later, when Mr Marageloe returned, he approached him and said, “Tlogela maitsholo a bodileng/leave your bad behaviour.” He responded by saying that if he was not allowed to allocate the document to Ms Molohe, and if Mr Marageloe was saying the task was above her, then according to him, Mr Marageloe was more experienced than he was, and therefore he should proceed with working on the document. Shortly thereafter, he was called by Ms Bogatsu, who found him in the kitchen making coffee, and he told her that he was surprised because when he had been in her office earlier nothing had happened, yet now there was action being taken based on Mr Marageloe’s complaint.
- 33) He stated that in that meeting they both insisted that the document was his responsibility, and he told them that fine, he would work on it. He took it to his desk and then returned to Ms Bogatsu, telling her that he was not feeling well after what had just transpired. She told him to complete a leave form, which again had to be given to Mr Marageloe, whom he could not speak to, but in the end he agreed with her that he would leave the office at around 10 o’clock. The following day, as he is the one who drops his son at the early learning centre, just before entering the office the teacher called him to inform him that the child had flu, and during that period it was COVID, meaning the child needed isolation. The mother had left early to attend to other matters, so he had to go back and collect the child. He then sent a message to Ms Bogatsu informing her about his sick child, and when he returned to work on Monday, he began working on the document at the Asset Department with the Assistant Director, Ms Boitumelo Mongale, who assisted him in correcting the incorrect capturing that had been done on the document.
- 34) He explained that the process of correcting the incorrect capturing could not be completed in a single day, as they had to wait for the tax confirmation from the National Office. He again went to Ms Bogatsu for assistance because the document contained numerous amounts that needed to be linked with the relevant budgets. They prepared a spreadsheet to calculate the total that needed to be captured. He was then informed that he was being transferred to work with Ms Boitumelo in the Assets section, and that a protection order was in place, as communicated to him by Ms Bogatsu. At that stage, the document was still awaiting the correct capturing details from Head Office. While he was on lunch, Ms Bogatsu called him, and when he arrived, he found her with Mr Chabedi and Mr Xulu. They informed him that he must immediately move out of the Regional Office and report to the Regional Court. He collected the items he had at his desk and handed the SOS document to Ms Bogatsu.
- 35) During **cross examination**, he stated that regarding Mr Marageloe’s instruction, he maintains that he did not find Mr Marageloe in the office and was not given the document physically, but as part of the normal process he signed for it before realising that it was for the Regional Courts, which fall under Ms Molohe. Out of courtesy, he did not return it to Mr Marageloe but placed it on Ms Molohe’s desk. He explained that through his experience working with these documents, he knows

which documents fall under which cluster and what each document means. He further stated that an instruction is when one is told to do something, and in this case, the document required processing of payment, which he was going to process. He added that the document was given back to him by Ms Bogatsu after the meeting in which, according to him, they were forcing the document on him, and he told them that fine, he would work on it even though it was not his responsibility. He maintained that he was working on the document until management moved him out of the office, and he still believes that he had the right to process payments through his subordinates or to supervise his subordinates, in the same way that Mr Marageloe intervened in his supervisory functions.

- 36) He narrated that while he was working on the document, he was visited by six police officers who came to issue him with a protection order taken out against him by Mr Marageloe, a person he had not spoken to while working in the unit for over twelve months. He stated that, in total, he received two letters from management: one removing him from the offices and another informing him of the disciplinary hearing. He explained that it was not correct, nor was it what he intended to convey in his email, written when he was not in the right state on the 19th, that he had thrown documents at Mr Marageloe, who was not even in the office at the time. What he meant was that he had placed the document with a note on the table, and he believes management is using that typing error as an opportunity, or using “cut and paste,” especially since they had possession of the laptop he had been using after he was moved. He further stated that what worsened the treatment he received was the fact that he had written an email to the Director-General (DG) complaining about Mr Marageloe, and the DG had assigned a lady to assist him with lodging a grievance. According to him, Mr Xulu also told him that they would inform the DG that the grievance should be returned to the region. He confirmed that the “golden boy” message indeed referred to Mr Marageloe, meaning that he always gets away with everything, and he emphasised that there was no insult in that message; he was speaking about him to somebody. He added that the other messages were not his, as they did not contain names or dates.
- 37) He stated that his request to leave or knock off was to avoid ever confronting Mr Marageloe, not because he intended to use vulgar words as management later interpreted the message. He further explained that his posting of the letter of intent was out of frustration, as he always lodged complaints but no one ever assisted him, whereas when Mr Marageloe complained, the entire office would come to a standstill. He said it was wrong to suggest that everything provincial was his responsibility; he was always given additional work belonging to other co-workers under the guise of “going the extra mile.” He emphasised that he was the supervisor to Ms Molope and that there was nothing prohibiting him from giving her an instruction, as a supervisor has the right to allocate work to subordinates. He explained that when Ms Molope experienced challenges with work, he would assist her as he always had, but he did not know what happened in this instance except that there was interference by Mr Marageloe, who returned a task that had been allocated by a supervisor.

CLOSING ARGUMENTS

- 38) Both parties submitted their closing arguments on 30 June 2025, which I have reviewed and considered. In making my decision, I have taken into account each party's main points and contentions.

ANALYSIS OF EVIDENCE AND ARGUMENT

- 39) **Section 192(2) of the Labour Relations Act 66 of 1995 (“the LRA”)** as amended places the duty on the employer to prove, on a balance of probabilities, that a dismissal of an employee 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 of which he/she was charged for.
- 40) 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”.
- 41) **Stellenbosch Farmers Winery Group Ltd & another v Martell et Cie & others 2003 (1) SA 11 (SCA)** guides that commissioners, when seeking to resolve a factual dispute, to make finding on the credibility of the various factual witness, their reliability, and the probabilities. Credibility related factors as candour and demeanour, any bias, internal and external contradictions in the evidence, probability or improbability of particular aspects of the witness’s version and of the calibre and cogency of the witness’s performance compared to that of other witnesses testifying about the same incident or event. With regards 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 recall. With regard to probabilities, an analysis of the probability and the improbability of each party’s version. Finally, determine whether the party burdened with the onus of proof has succeeded in discharging it.
- 42) The Applicant was issued with the charge of committing a gross misconduct by failing to follow a lawful instruction when he refused to process the payment of the SOS as instructed by his supervisor, Mr Marageloe on 19 October 2023.
- 43) In terms of charge 2, he committed an act of unbecoming behaviour when he threw the SOS payment document back at Mr Marageloe and uttering swear words at him to say, “O seke wa ntirela makgakga, o ntlwaela masepa”
- 44) In terms of charge 3, he committed an act of gross misconduct by intimidating or victimizing his supervisor after posting various WhatsApp statuses of a

hitman picture with a message stating “gatwe go bolaya motho ke R3000.00/It is said to kill a person is” and “kena le yone plus go nale le senae sese ntenang/I have the amount and there is a silly person who irritates me”. Followed by another message with the caption “It is the same my friend, I cannot win this one, Collin is Justice’s Golden Boy”, directed to Mr Marageloe.

- 45) Lastly, charge 4 accused the applicant of committing an act of misconduct by contravening the determination and directive on leave of absence in the public service when he left the office without authorisation from his supervisor, Mr Marageloe.
- 46) In all the testimonies, what was common among the witnesses, including the Applicant, was that everyone was aware that the working relationship between the Applicant and Mr Marageloe had been sour for a long time, to the extent that the Applicant stated that for twelve months they were not on speaking terms, despite Mr Marageloe being his supervisor. One could imagine, or reasonably ask, how duties were carried out during that period, or whether this was a situation that management simply allowed to continue until it explodes. For instance, Ms Molope clarified how tense the situation was when Mr Marageloe instructed her to return the document to the Applicant, who was her supervisor. Ms Bogatsu, according to the Applicant, even remarked that the two were “fighting for girls,” while Mr Marageloe testified that he held no grudges, but that the Applicant hated him, had threatened his life, and wanted him killed.
- 47) The Applicant further stated that he was frustrated to such a level that he even wrote an email of complaint about his supervisor, Mr Marageloe, to the Director-General, which, according to him, worsened the treatment he received thereafter. He explained that his supervision within the unit began to be questioned, even though, as he put it, he is a supervisor with the right to assign duties to subordinates or to allocate tasks such as processing SOS payments—just as Mr Marageloe, in his capacity as a supervisor, would assign work to him. He maintained that this right to allocate duties formed part of his supervisory role and that the questioning of his authority only intensified after he escalated his concerns to the Director-General.
- 48) Therefore, the Applicant was charged for refusing to take an instruction to process payment of SOS, Mr Maragelo and Ms Molope testified that the document was returned as it was wrongly captured by the Applicant, now in all standing it cannot be an instruction for payment of SOS as the document needed to be re captured. Putting it in another version Ms Molope stated that she did work the document while at the same time agreeing that it was not her but Ms Matlakele. Another clarification was by Ms Molope when she stated that the is no way an individual can work on the document alone it goes on step by step, which applies to the Applicant. Again Mr Marageloe testified that the Applicant worked on the document before now if Ms Molope version is true on the 19 October 2023, it was supposed to be assigned to somebody not the Applicant and Ms Molope also stated that the Applicant has captured the document or done evaluation on it, what more was expected, fighting on duty makes fighters lose focus.

51) Ms Bogatsu had a meeting with both Mr Maragelo and the Applicant in the office, and she explained that he convinced the Applicant to see that the document is his responsibility and they had an understanding when finishing the meeting that he will process the payment. Due to the wrongly captured document having numerous amounts the Applicant stated that he went to Ms Bogatsu where she assisted with the spread sheet to get to the total while he waited with Ms Boitumelo for the Head office in sending the text. It is not true that there was failure to carry an instruction for instance Mr Marageloe in the proceeding couldn't provide the wrongly captured document but came with the one processed by Ms Matlakele, and he blame that to the representative, a question which is obvious which instruction and was confirmed by Ms Bogatsu, who shown not rebutted that she was working with the Applicant on the document. The same document never rebutted that it was handed to her on the day the Applicant was moved from the office still working on the document. Based on the above charge 1, is withdrawn as there is nothing tangible to prove that the Applicant refused to take an instruction.

52) On charge 2, the Applicant was charged for unbecoming behaviour by throwing the documents of SOS at Mr Marageloe and swearing at him. When bad things keep on happening and piling up without any fixing they will explode. Mr Marageloe stated that he doesn't have grudges or hate against the Applicant. During cross examination he denied following around everything the Applicant is doing. He stated that the first time the Applicant started swearing at him was when he brought the document to him and he followed him still swearing. The Applicant testified that his office and of Mr Marageloe are just near/neighbours and I sense nobody saw this incident except Mr Marageloe. He needed more to justify his protection order against the Applicant. Ms Bogatsu never even mentioned such and he was with both in her office. The Applicant persuaded me when he said some of the things alleged is cut and paste just to fabricate him or they took laptop the time he left the offices, something is fishy. He stated that he all the time avoided to confront Mr Marageloe to a point on the 19th, he went to Ms Bogatsu before he uses vulgar words. Here Mr Marageloe was just adding the were no vulgar words used and on one of screen shots speaking to a lady at transport he knocked off before he could swear at somebody.

53) Astonishing that when vulgar words weren't used now how will one believe that documents were thrown at him. Not that I condone the behaviour the Applicant stated that due to his state of mind was not good on the 19th, after the altercation in the morning, meeting in Ms Bogatsu's office were they were forcing the document on him, all the time complaining but no assistance but told by Ms Bogatsu they fighting for girls and this was all along waiting to happen. Management made him to believe that they always take Mr Marageloe's side, like he putted it, golden boy of the department and I believed it there is no insult in this quote. Again, charge also couldn't stand on this basis.

54) On charge 3, was that he victimised or intimidates his supervisor, Mr Marageloe, and Ms Bogatsu confirmed knowing about their bad working relationship as their manager. Imagine were this leave the other subordinates in the office, Ms Molope said it was tense. Things were bad now in the office as now other subordinates had to pick the side. The Applicant gave Ms Molope instruction to work on the document, something she said was that she spoke to other colic's about how unfair was that

because it was the Applicant responsibility, she said in the proceedings she can't talk about things she didn't see but there was a lot of site/gossip talking on the altercation but never heard the swearing. Nothing is wrong with office gossips but not ones that destroy others, they not fighting for girls but asking for help to get attention. The lady at transport after talking to the Applicant she asked Mr Marageloe when are they going to make peace, everyone was aware, and it was entertaining.

55) There was a small talk again in the office about WhatsApp status of the Applicant to a point Ms Molohe forwarded to Mr Marageloe and he stated his life was in danger. He went to open a protection order against the Applicant, but this was not necessary, had proper care or intervention been made. Not rebutted that 6 police came to deliver the order, not rebutted one of the police was at school with the Applicant told him when Mr Marageloe was at station, he came looking for Mr Bogatsu, who Ms Bogatsu denied knowing; things like this he said they are frustrating him. The Applicant denied knowing pictures taken as they don't have names and dates. The hitman picture with a gun and briefcase like Ms Molohe, to them it is a movie she could relate it being directed to Mr Marageloe, Inkabi she couldn't relate as it was directed to Mr Marageloe but could only relate where the Applicant wrote that this one he cannot win Collin is Justice golden boy because he all the time walk away with everything. There is no insult to call someone a golden boy when tensions are high the reading get too much with an opponent as it was created for clicks or grouping. Based on Ms Molohe version as the forwarder of pictures and messages and could only relate one message because the name of Mr Marageloe was mentioned and not putted in a way that is victimising or intimidating this charge has no basis it falls off.

56) Lastly on charge 4, was that in the disciplinary hearing the Applicant pleaded guilty to this one, but the proceedings are heard afresh. On the 20th the following day after altercation: the mother of his child left home early leaving him to transport him at the early learning centre but before going inside the office the teacher called him for the child to be collected back as he was having flu. He did send a message to Ms Bogatsu who didn't respond but arriving on Monday she called him to the office and agreed he will fill the leave form. Again, on the 19th immediately after the altercation after putting the document on table he went back to Ms Bogatsu to request he leave as he is not feeling well and Ms Bogatsu accepted that but will have to leave around 10 O'clock. I blatantly refuse to agree that there was no authorisation Ms Bogatsu gave authorisation and was it going to be possible to ask leave from Mr Marageloe after years of fighting just exploded. Again, this charge cannot stand. In considering the appropriateness of the dismissal, I first noted that *in terms of the Code of Good Practice Dismissal, item 4:*

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

57) Due to the arbitration proceedings/hearing being a de novo or hearing afresh. The Commissioner should also get an opportunity to assess the parties' witnesses during the hearing to determine whether the trust relationship is irrevocably broken down. The Applicant evidence was the most probable in this matter where the Respondent 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 balance of probabilities, the dismissal of the Applicant was substantively unfair. The Applicant wished to be retrospectively reinstated if I find in his favour and looking at his request in the proceedings was back pay.

'Relief'

58) The Respondent, the Department of Justice and Constitutional Development in Mahikeng is ordered to retrospectively reinstate the Applicant, Mr Kagiso Mocumi to his position as Provisioning Admin Officer in the Supply Chain Management unit before his dismissal on 10 October 2024, with a backpay, I considered to be just and equitable and calculated as follows: R22000.00 (Twenty Two Thousand Rand) (monthly salary) x 8 months = R176000.00 (One Hundred and Seventy Six Thousand Rand)

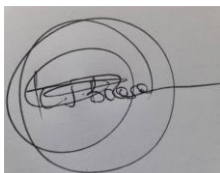
AWARD

59) The dismissal of the Applicant, Mr Kagiso Mocumi was substantively unfair.

60) The Respondent, the Department of Justice and Constitutional Development in Mahikeng is ordered to retrospectively reinstate the Applicant, Mr Kagiso Mocumi to his position as Provisioning Admin Officer in the Supply Chain Management unit before his dismissal on 10 October 2024, with a back-pay, I considered to be just and equitable and calculated as follows: R22000.00 (Twenty Two Thousand Rand) monthly salary x 8 months = R176000.00 (One Hundred and Seventy Six Thousand Rand), subject to taxation.

61) This order of retrospective reinstatement and amounts above must be implemented within 14 days of receiving this award. The Respondent is reminded that the amounts if not paid will accrue the interests.

62) The award is final, and binding and it may be enforced as if it were an order of the Labour Court.



Name:

Joyleaf Boase

GPSSBC PANELLIST