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AWARD

Panellist/s:	Annelie Bevan
Case No.:	GPBC 1914/2025
Date of Award:	5 August 2026

In the ARBITRATION between:

PSA obo P BUZUZI
(Union / Applicant)

and

DEPARTMENT OF PUBLIC WORKS
(Respondent)

Details of the hearing and representation

1. The Council set down the arbitration into the alleged unfair labour practice dispute relating to benefits in terms of section 186(2)(a) of the Labour Relations Act, No 66 of 1995 ("LRA") for 9h00 on 14 July 2026 at the Respondent's premises in Mafikeng.
2. Both parties were present. Ms GM Matlhaba represented the Respondent, and Mr A Ramahoshi of the PSA represented the Applicant.
3. I recorded the proceedings electronically, and the parties agreed to submit written closing arguments by 28 July 2026.

The issue to be decided

4. I have to determine whether or not the decision of the Respondent not to award the Applicant pay progression for the 2024/2025 financial year constitutes an unfair labour practice concerning benefits as prescribed in section 186(2) of the LRA and, if so, the appropriate relief.
5. The Applicant seeks to be paid his pay progression (a notch increase) from 1 April 2025 to date.
6. The parties agreed that if the award is in favour of the Applicant, the Respondent's personnel system can calculate it, and there will be no need to produce evidence on this.

Background to the matter

7. The Applicant became aware of the unfair labour practice on 22 October 2025 and referred the dispute to the Council on 5 November 2025. The Council issued the certificate of non-resolution in terms of Section 135(5) of the LRA on 8 December 2025.
8. The Council scheduled the dispute for arbitration before me on 15 April 2026. On that day, it was postponed to allow the parties to see whether the matter could be amicably resolved.
9. The Council again scheduled the arbitration before me on 14 July 2026, when the arbitration was finalised. On this day, the parties agreed that the following issues are common cause:
    9.1 The Applicant currently occupies the position of Chief Architect at salary level 12. He has been a public servant since July 2001.
    9.2 The performance assessment of employees is governed by the Provincial PMDS Policy.
    9.3 The Applicant met all the requirements to be paid pay progression.
10. The only issue in dispute between the parties is whether or not the Applicant submitted his performance agreement and assessment timeously, as the Respondent claims he submitted it late and therefore forfeited his pay progression.
11. The parties made used of a combined bundle of documents, marked "R1" and "R2".
12. The Applicant called one witness and testified himself, and the Respondent called two witnesses.

Evidence and submissions of the parties

13. I have summarised the evidence relevant to the issues in dispute, and the aim is not to provide a verbatim account of the testimony.
14. The Applicant requested that his witness testify first because of the witness's limited availability. It was agreed that the witness would testify first, on the condition that the Applicant was not present in the hearing room during the testimony. This arrangement maintained the integrity of the Applicant's testimony.

The Applicant's case:

Mr ZG Mabeta testified under oath in evidence in chief that:

15. He is a Chief Electrical Mechanical Engineer and both he and the Applicant reported to the same manager and were both required to submit their 2024/2025 Performance Agreements (PAs).

16. He stated that, at the time, they reported directly to the Chief Director, Mr Chwene, and submitted their PAs to his office before the closing date of 31 March. According to the witness, the documents remained in the Chief Director's office for some time without approval, despite repeated reminders that the review process was overdue.

17. He testified that Mr Chwene later proposed amendments to the Performance Agreements after the closing date. The Applicant and the witness discussed and effected the requested changes, after which Mr Chwene signed the documents and submitted them to PMDS.

18. PMDS subsequently returned the documents, advising that a different template had to be used. The revised documents were then resubmitted, but only after the prescribed deadline. On 5 September, they received correspondence from Ms Eva indicating that they had not submitted their PMDS documentation and would consequently forfeit their performance rewards.

19. He maintained that the initial Performance Agreements had been submitted timeously and that the delay arose because the documents remained in the Chief Director's office and because amendments and a new PMDS template were only required after the original submission. Although he confirmed that the amended documents were submitted after the due date, he was unable to recall the exact dates of those submissions.

Under cross-examination, he testified:

20. He confirmed that the Applicant ultimately entered into a Performance Agreement with Mr Sediti, the Director: Buildings, following an intervention by Human Resources after concerns were raised that officials were reporting directly to the Chief Director instead of their respective Directors. Although he could not recall the exact dates, he confirmed that the agreement covered the period from 1 April 2024 to 31 March 2025 and acknowledged that the Performance Agreement contained in the bundle was signed by both the Applicant and Mr Sediti on 13 August 2024.

21. He further confirmed that the Applicant's name appeared on a request for the late submission of Performance Agreements (Bundle R1, page 5). When it was put to him that the Chief Director would testify that an extension had been requested because the Performance Agreements were submitted after 5 August 2024, the witness disputed that the delay was attributable to the Applicant. He maintained that the initial Performance Agreement had been submitted to the Chief Director's office on 15 March 2024, as evidenced by the secretary's acknowledgement of receipt, and that the Chief Director only later requested amendments and sought an extension in an attempt to rectify the situation.

22. He questioned whether Human Resources had been informed of the extension request before officials were deprived of their pay progression, contending that any extension should have been sought before the original closing date rather than after the deadline had already passed.

23. In response to questions from the Commissioner, the witness referred to the applicable policy (Bundle R2, page 6, paragraph (a)), which he interpreted as requiring submission by 31 May, and maintained that the Applicant had complied with the prescribed timeframe and was therefore entitled to pay progression.

The Applicant testified under oath:

24. He did not agree with the finding contained in the grievance outcome that he had failed to comply with the extended deadline for the submission of her Performance Agreement. He maintained that he had submitted his Performance Agreement timeously on 15 March 2024, in accordance with the instruction that all officials in the unit were required to submit their agreements to the office of the Chief Director by that date.

25. The Applicant referred to documentary evidence, including the mail register contained in the bundle, which he stated served as proof that his Performance Agreement was submitted to the Chief Director's office on 15 March 2024. He explained that, after the submission, he received no feedback from the Chief Director despite the deadline for the completion of the Performance Management and Development System (PMDS) process approaching.

26. As the 31 May 2024 deadline drew nearer, he repeatedly enquired about the outstanding approval of his Performance Agreement. According to him, the Chief Director indicated that he would not sign the agreement. He raised the matter with Human Resource Management, who convened a meeting to address the issue. However, he testified that the Chief Director left the meeting without resolving the matter. Despite further requests after the deadline had passed, the agreement remained unsigned.

27. The Applicant further testified that, during July 2024, the Chief Director eventually considered the Performance Agreement and requested amendments. He accordingly revised and resubmitted the document to his office on 24 July 2024. After further changes were requested, he again amended and resubmitted the Performance Agreement. He maintained that, despite complying with each request for amendments, the Chief Director still failed to sign the document.

28. The Applicant testified that a meeting was subsequently held with the Head of Department on 12 August 2024, during which officials explained that their Performance Agreements remained unsigned. He stated that the Head of Department instructed that the Chief Director should sign the agreements of the Directors, while the Directors would thereafter sign the agreements of officials reporting to them. In compliance with this instruction, he amended the Performance Agreement to reflect the Director as his supervisor and resubmitted it on 13 August 2024.

29. With reference to the letter informing him that he had forfeited his performance rewards, the Applicant testified that the decision was based on incorrect information provided to the Director: Human Resource Development. He stated that she was informed that the forfeiture resulted from the alleged late submission of his Performance Agreement, which he disputed. He maintained that he had submitted his Performance Agreement on time on every occasion it was required and, because he believed the decision was unfair, he lodged a formal grievance.

Under cross-examination, he testified:

30. He submitted his Performance Agreement to the Chief Director's office on 15 March 2024, but not directly to PMDS. He explained that the document was never forwarded to PMDS because the Chief Director did not sign it and retained it in his office. According to the Applicant, he was the only signatory to the original Performance Agreement at that stage.

31. The Applicant confirmed that the Performance Agreement contained in the bundle was the revised agreement signed by himself and Mr Sediti on 13 August 2024, following Human Resources' directive that the Director, rather than the Chief Director, was responsible for signing the agreements of officials reporting to him. When asked whether he had a copy of the original Performance Agreement concluded with the Chief Director, he replied that he would have to search for it in his office but believed that it should also be available in the Chief Director's office.

32. With reference to the Chief Director's request for an extension of time for the submission of Performance Agreements, the Applicant testified that he only became aware of the document after the intervention of the Head of Department and after officials had submitted a memorandum raising concerns, including the failure to sign their Performance Agreements. When it was put to him that the Chief Director would testify that the Applicant had failed to comply with the extended deadline and had only submitted his Performance Agreement after 5 August 2024, the Applicant rejected this version. He maintained that he had submitted his Performance Agreement timeously and stated that officials had never been informed of the extension request. He testified that the Chief Director appeared to have written the extension request in an attempt to remedy the situation without informing the affected employees and that Human Resources was also unaware of the letter when he later enquired about it.

33. The Applicant further testified that he was only aware of the prescribed deadline of 31 May 2024, with which he maintained he had complied. He denied any knowledge of a deadline of 5 August 2024, stating that if the Chief Director had made special arrangements for an extension, the affected officials should have been informed. Referring to the PMDS incoming register, the Applicant confirmed that he personally submitted the revised Performance Agreement to Office 205 on 13 August 2024.

The Respondent's case:

Ms KC Siele testified under oath:

34. She is employed as the Assistant Director: Performance Management and Development System (PMDS) and has held that position for more than five years. She explained that the PMDS is a system used to manage employee performance over an annual cycle running from April to March of the following year. At the beginning of each cycle, the PMDS office issues a circular requiring employees and their supervisors to conclude, sign and submit their Performance Agreements by 31 May. Mid-year reviews are submitted in October, while annual performance assessments are submitted in April of the following year, after which the PMDS unit prepares documentation relating to performance rewards.

35. The witness confirmed the PMDS circular and the applicable Provincial PMDS Policy contained in the bundle. Referring to the policy, she testified that paragraph 13.3.1(a) (Bundle R2, page 6) requires Performance Agreements to be concluded and signed by 31 May. She further stated that managers may request an extension for the late submission of Performance Agreements, provided there are acceptable reasons for the delay.

36. Ms Siele testified that, in this matter, the Chief Director, Mr Chwene, requested an extension of the submission deadline because of challenges relating to the organisational structure and the need to align the Performance Agreements with the Annual Performance Plan (APP). She confirmed that the request for an extension was approved, extending the submission deadline to 5 August 2024.

37. According to the witness, despite the extension being granted, the Applicant did not comply with the extended deadline. She referred to the PMDS records, which reflected that the relevant Performance Agreements were signed on 13 August 2024, received by the PMDS office on 14 August 2024, and captured on the Persal system on the same date. On this basis, she concluded that the Performance Agreements were submitted after the extended deadline and were therefore submitted late.

Under cross-examination, she testified:

38. The PMDS unit's role is limited to issuing circulars and reminding departments to submit Performance Agreements on time. She stated that, where an employee submits a Performance Agreement to a supervisor before the prescribed deadline, but the supervisor fails to process or submit it, there is little that the PMDS office can do. She referred to the Performance Agreement, which provides that disputes between an employee and a supervisor should be escalated to the next level in the reporting hierarchy.

39. When asked specifically about the Applicant's circumstances, where the Performance Agreement was allegedly submitted to the supervisor on 15 March 2024, but not processed further, Ms Siele acknowledged that, from the employee's perspective, the submission had been made on time. She nevertheless maintained that the PMDS office only recognises compliance once the signed Performance Agreement has been received by the PMDS unit. Accordingly, she testified that an employee would only qualify for pay progression if the completed Performance Agreement had been submitted to the PMDS office within the prescribed timeframes.

40. When referred to the Provincial PMDS Policy, the witness accepted that, if the Applicant had submitted the Performance Agreement to his supervisor on 15 March 2024, he had complied with the applicable submission deadline from his side.

41. In response to questions from the Commissioner, Ms Siele testified that it is the supervisor's responsibility to ensure that a Performance Agreement is signed and submitted, referring to page 32 of the PMDS Policy (Bundle R2). She further stated that the policy provides that the supervisor is responsible for submitting the Performance Agreement to the PMDS office, referring to page 7, paragraph (c) of the policy. She added that she was unaware of any specific policy provision dealing with situations where a supervisor fails to perform this responsibility, although she noted that paragraph 13 of the Performance Agreement contains a dispute resolution mechanism.

Mr M Chwene testified under oath:

42. He has been the Chief Director: Buildings and Infrastructure since October 2017. He confirmed that he knows the Applicant, who was employed as the Chief Architect and reported to a Director, who in turn reported to him. He testified that he was familiar with the dispute concerning the late submission of the Applicant's Performance Agreement.

43. Mr Chwene stated that he personally requested an extension from the PMDS section because the Performance Agreements, including his own, had not been submitted within the prescribed timeframes. He testified that he submitted the request during July 2024, seeking an extension until 5 August 2024. He explained that he later became aware that the Applicant had lodged a grievance alleging that the delay in the submission of the Performance Agreement was attributable to his office. He disputed this allegation and testified that the Head of Department had requested him to provide a report in response to the complaint.

44. The witness acknowledged that the Applicant had initially submitted a Performance Agreement to his office during March or early April 2024. He testified that the document was received before the unit's Annual Performance Plan (APP) had been finalised and that he therefore requested amendments after discussions with the Director to whom the Applicant reported. According to Mr Chwene, a revised Performance Agreement was subsequently resubmitted during the first quarter of the financial year. Referring to the documentary evidence, he confirmed that the first submission reflected on the mail register had been received in his office on 14 March 2024, before the APP had been completed.

45. Mr Chwene further testified that the revised Performance Agreement was submitted to his office on 24 July 2024. He stated that he requested further amendments, after which another revised version was submitted on 30 July 2024. He explained that he required all Performance Agreements to be submitted through his office to ensure compliance with the submission process. According to him, although he had

obtained an extension until 5 August 2024, the Applicant only submitted the final Performance Agreement to the office of his Director, Mr Sediti, on 13 August 2024, after the extended deadline had expired.

46. The witness confirmed that the extension request dated 30 July 2024 was the correspondence he had addressed to the PMDS office seeking additional time for the submission of the Performance Agreements. He testified that the officials, including the Applicant, did not comply with the extended deadline, as the relevant Performance Agreement was only submitted on 13 August 2024. He stated that he was unaware of the reasons for the continued non-compliance, apart from the Applicant's allegation that the delay had been caused by his office.

47. Finally, Mr Chwene identified the signatures appearing on the Performance Agreement as those of the Applicant and his supervisor, Mr Sediti, and confirmed that the document in the bundle was the Performance Agreement concluded between the Applicant and Mr Sediti following the change in reporting arrangements.

Under cross-examination, he testified:

48. He confirmed that the Applicant submitted his initial Performance Agreement to his office during March 2024 and that he had provided input on the document. Although he could not recall the exact date on which he considered it, he testified that it would reasonably have been by the end of March. He explained that the initial Performance Agreement could not be approved because the unit's Annual Performance Plan (APP) and budget had not yet been finalised. According to the witness, the Performance Agreement had to be aligned with the APP before it could be approved, and for that reason amendments were necessary.

49. Mr Chwene testified that he did not communicate the required amendments directly to the Applicant but discussed them with the Applicant's supervisor, Mr Sediti, instructing him to ensure that the Performance Agreement was aligned with the unit's outputs and achievable performance targets. He maintained that the Applicant's Performance Agreement submitted in March was not in its correct or final form and that the revised version submitted during July 2024 reflected the incorporation of the requested amendments.

50. When it was put to him that the Applicant had received correspondence from the PMDS section advising that the Performance Agreement had been submitted late despite having lodged it with his office in March, Mr Chwene maintained that the original submission was not acceptable because it preceded the finalisation of the APP and budget. He testified that he only became aware that officials had not complied with the required submission dates during July 2024, prompting him to request an extension until **5** August 2024. He explained that the extension request was informed by his realisation that officials had failed to meet what he described as the applicable deadline.

51. The witness rejected the proposition that he had failed to deal with the Applicant's Performance Agreement until the submission period had expired. He denied deliberately delaying the process, describing such an allegation as baseless and stating that he had no reason to withhold or delay

employees' Performance Agreements. He testified that the document movement register reflected that amendments had been requested and implemented, with a revised Performance Agreement submitted on 24 July 2024, another revised version on 31 July 2024, and the final signed agreement submitted on 13 August 2024. He stated that he was not present when the Applicant and Mr Sediti signed the final Performance Agreement.

52. Mr Chwene confirmed that he was aware of the Head of Department's intervention, explaining that the matter had been escalated through a grievance in which the Applicant alleged that he had deliberately delayed the finalisation of the Performance Agreement. He testified that he responded to the Head of Department's request for an explanation and reiterated that the Applicant's reporting line was to Mr Sediti, while his own role as Chief Director was to ensure that all Performance Agreements within the unit were aligned with the Annual Performance Plan before approval. He therefore maintained that the requirement for Performance Agreements to be submitted through his office was intended to ensure alignment with the unit's strategic objectives rather than to delay the process.

53. The witness further disputed that the Performance Agreement was only signed on 13 August 2024 because of the Head of Department's intervention. He maintained that the Applicant had failed to comply with the extended deadline of 5 August 2024, relying on both his extension request and the grievance outcome issued by the Head of Department, which referred to the Applicant's non-compliance with the extended deadline.

54. In response to questions from the Commissioner, Mr Chwene testified that he had communicated the extended deadline of 5 August 2024 to employees during a unit meeting, where he made a general announcement to all staff.

55. I thank the parties for the comprehensive closing arguments submitted and considered.

Analysis

56. I intend to offer brief reasons in my analysis as per Section 138 (7) of the *LRA* as amended, which states, *"Within 14 days of the conclusion of the arbitration proceedings, the commissioner must issue an arbitration award with <u>brief reasons</u>".*

57. In terms of section 186 (2)(a) of the LRA, an unfair labour practice is defined as "any unfair act or omission that arises between an employer and an employee involving unfair conduct by the employer relating to the promotion, demotion, probation or training of an employee or relating to the provision of benefits to an employee." The Applicant referred an unfair labour practice dispute relating to benefits to the Council.

58. Whether the Respondent has committed an unfair labour practice is an objective, factual enquiry.

59. The onus to establish that the conduct complained constitutes an unfair labour practice within the meaning of section 186(2) of the LRA rests on the Applicant (***City of Cape Town v SA Municipal Workers Union obo Sylvester and Others (2013) 34 ILJ 1156 (LC)).*** Therefore, the employee must lay the evidentiary

foundation on a balance of probabilities for their claim of an unfair labour practice. Mere dissatisfaction with a process's outcome is insufficient to sustain that claim.

60. It is now established law that advantages or privileges employees have been offered or granted in terms of a policy or practice subject to the Employer's discretion constitutes a benefit as contemplated in section 186(2)(a) of the LRA ***(Apollo Tyres South Africa (Pty) Ltd v CCMA & others (2013) 34 ILJ 1120 (LAC)).*** Whether the Employer has committed an unfair labour practice is an objective, factual enquiry.

61. In ***Skhosana v CCMA and others (JR 2160/15) [2019] ZALCJHB 39,*** the Court held that in the case of an unfair labour practice dispute relating to benefits, it is often difficult to draw a clear distinction between what is the substantive justification for the conduct of an Employer, and what can be seen to be procedurally fair in the course of such conduct. Ultimately, it is a single holistic enquiry, with the view to deciding whether the decision taken by the Employer was fair. It is not appropriate to separate it into substantive and procedural components. There is no distinct and separate requirement of procedural fairness in unfair labour practice disputes relating to benefits, as would be, for example, the case where it comes to dismissals. The unfair labour practice doctrine is intended to protect against irrational, mala fide, and arbitrary decision-making by an Employer, and any decision by an Employer must be evaluated on that basis and not the basis of the dual fairness requirement of substantive fairness on the one hand, and procedural fairness on the other.

62. In ***Solidarity obo Oelofse v Armscor (SOC) Ltd and Others (JR 2004/15) [2018] ZALCJHB 87 (21 February 2018)*** the Labour Court confirmed the following principles in this type of dispute:

   a. Although the Respondent has the discretion to pay a performance bonus, there is no such thing as an unfettered discretion. The exercise of the discretion must always be subject to being tested against the basic tenets of fairness (***Aucamp v SA Revenue Service (2014) 35 ILJ 1217 (LC) at para 29).***

   b. In ***National Coalition for Gay and Lesbian Equality and Others v Minister of Home Affairs and Others 2000 (2) SA 1 (CC) at para 11,*** the Constitutional Court held that the exercise of the discretion could be seen to be unfair if it was not judicially exercised and, in particular, had been influenced by wrong principles or a misdirection on the facts. The ***Apollo Tyres case*** held that unfairness implies a failure to meet an objective standard and may be taken to include arbitrary, capricious or inconsistent conduct, whether negligent or intended.

63. In ***Arries v CCMA & others (2006) 27 ILJ 2324 (LC),*** the Labour Court stated that there are limited grounds on which an arbitrator, or a court, may interfere with a discretion exercised by a party competent to exercise that discretion. The reason for this is clearly that the managerial prerogative ought not to be curtailed. It ought to be interfered with only to the extent that it can be demonstrated that the discretion was not properly exercised. Therefore, an employee can only succeed in having the exercise of an

employer's discretion interfered with if it is demonstrated that the discretion was exercised capriciously or for insubstantial reasons or based upon any wrong principle or in a biased manner.

64. In the public service, there are mechanisms in place that are intended to reward deserving public service employees for good performance, by way of a performance bonus, paid annually. The mechanism at stake in this instance, as touched on above, is the Performance Management and Development System ('PMDS'). The PMDS was executed under the Public Service Regulations.

65. In the case of the North West Provincial Government, it implemented a PMDS policy, dated 24 August 2018, which regulated this benefits dispute and is applicable to all departments of the North West Provincial Government, including the Respondent.

66. According to this policy, a duly agreed upon and signed performance agreement is the bedrock of performance management. Performance agreements are also an integral part of the planning process on an annual basis.

67. The parties agreed that the Applicant would have been entitled to pay progression if his performance agreement was submitted on time.

68. The Applicant's case in a nutshell is that he fulfilled all requirements within the designated timeframes and was unjustly denied a performance reward due to delays and errors by his supervisor, not because of any fault of his own. Essentially, he contends that he met his obligations by submitting his Performance Agreement on schedule and following all subsequent instructions. The denial of his reward, therefore, was caused by the Chief Director's failure to approve and process the PA promptly, rendering the disqualification arbitrary and unfair. This evidence is supported by his witness.

69. The Respondent argues that the Applicant forfeited his performance reward because he did not submit a valid, signed Performance Agreement by the extended deadline. This forfeiture aligns with the PMDS Policy. The Respondent claims that the final, signed, and compliant version of the Performance Agreement, not the initial March draft, is relevant. Since the final agreement was only submitted after the extended deadline of August 5, 2024, the Applicant is ineligible for the reward under the policy.

70. The evidence shows that the Applicant submitted his performance agreement to Mr Chwene's office on 15 March 2024, well over two months before the 31 May deadline.

71. Ms Siele testified on behalf of the Respondent that it is the supervisor's responsibility to ensure the employee's Performance Agreement is signed and submitted to the PMDS office. Paragraph 13.3.1 (c) states (Bundle R2, page 7): "The relevant supervisor shall ensure that the signed PAs are submitted to their internal HRM components on or before the end of the first working day following the due date for signing of PAs (i.e., the first working day of June)."

72. All witnesses agreed that the delay in the Chief Director's office, requests from the HRM office in relation to utilising the correct template and the head of department's interventions required amendments to the performance agreements. They also acknowledged that the Applicant only submitted the signed

agreement in August 2025. Mr Chwene explained that the agreement needed to match the unit's and department's PPA, which accounts for why the Applicant's initial agreement remained unsigned. However, Mr Chwene skimmed over the Applicant's reasons for involving the office of the head of the department, but did not deny that their involvement occurred. I therefore accept that the Applicant's version of why the office of the head of department became involved was indeed true.

73. Clearly, if one accepts the evidence of Ms Siele (which I do), which is supported by Paragraph 13.3.1(c) of the PMDS Policy, either Mr Chwene or Mr Sediti was responsible for submitting the signed performance agreements to the HRM office in a timely manner. Neither complied with this requirement, so the Applicant had to go to the HRM office to submit his performance agreement.

74. The Respondent did not call any witness to clarify this, and Mr Chwene did not address this issue, apart from saying that Mr Sediti was responsible for signing the performance agreement of the Applicant; this happened after intervention of the office of the Head of Department, giving credence to the Applicant's version.

75. Ms Siele also testified that the HRM office only accepts duly signed Performance Agreements. This is correct, as the Policy states that a performance contract exists only when both parties have agreed to and signed it (Bundle R2, page 8, para (j)). Although the manager and the employee are jointly responsible for the development of the Performance Agreement, in terms of the Policy the manager remains accountable (Bundle R2, page 8, para (k)).

76. The Applicant submitted proof that he submitted his Performance Agreement to his seniors not once, but on four different occasions. He therefore met his substantive obligation in terms of the Policy. What remains lacking is evidence from the Respondent that the Applicant's supervisor or Mr Chwene submitted it to the office of PMDS. The fact that Mr Sediti did not testify to clarify the Applicant's allegations that he submitted it to Mr Sediti, who did not submit it to the relevant office, is worrying. I therefore draw a negative inference and accept that he would have supported the version of the Applicant.

77. I have taken note of Mr Chwene's evidence that he requested an extension for the submission of the performance agreements, including the Applicant's, and that an extension was granted until 5 August 2025. However, he was unable to provide confirmatory evidence that this due date was communicated to the employees involved. He claimed it was announced in a meeting, but the Applicant and his witness denied having any knowledge of the extension or the new due date. As Mr Chwene was also vague in explaining why the office of the Head of Department became involved in the issue of performance agreements in his Chief Directorate, I find it more probable that the Applicant was indeed unaware of this due date.

78. It remains clear, however, that neither Mr Sediti nor Mr Chwene submitted the Applicant's Performance Agreement to the PMDS office, despite the Applicant submitting it two months in advance of the regulated cut-off date, or amending it more than once and resubmitting it to his superiors. The Respondent did not

submit any evidence to show that the supervisor had delegated his responsibility of accountability in terms of the performance agreement and the submission thereof to someone else.

79. The Respondent's actions in this matter appear clearly arbitrary and unfair to the Applicant. Exceptional circumstances justified the late submission, and the Respondent should have considered that the Applicant's supervisor did not follow the Policy. A mistake by the supervisor shouldn't be used against the Applicant.

80. Mr Siele was of the opinion that the Applicant had recourse under the Policy, but I do believe that she is mistaken, as the only recourse provided for in the Policy relates to assessments. Both parties had indicated that, in terms of the Applicant's assessment, he qualifies for pay progression. He was only disqualified from receiving it due to the late submission of the performance agreement. The Applicant did follow the internal grievance procedure, which was the correct route for him to follow, and he followed it up by correctly referring the dispute to the Council.

81. In light of all of the above, I find that the Applicant discharged the onus to prove on a balance of probabilities that an unfair labour practice was committed and therefore that I can interfere with the Respondent's discretion not to grant the Applicant pay progression, as the Applicant demonstrated that the discretion was exercised for insubstantial reasons (see ***Arries case*** above).

Relief

82. Section 193(4) of the LRA states that an arbitrator may decide any unfair labour practice on terms the arbitrator deems reasonable, including ordering reinstatement, re-employment, or compensation. The Applicants seek to be awarded pay progression from 1 April 2025 to date.

83. As the parties agreed that the Respondent's persal system can determine the quantum of his claim, there will be no need to quantify it here. The Applicant should be awarded his pay progression for the 2024/2025 financial year, in accordance with the pay progression he qualified for.

Award

84. I find that the decision of the Respondent, the Department of Public Works and Roads, not to award the Applicant pay progression for the financial year 2024/2025 constitutes an unfair labour practice concerning benefits as prescribed in section 186(2) of the LRA.

85. The Respondent is ordered to award the Applicant pay progression for the 2024/25 financial year and pay him all backpay due as a result of this on/before 15 September 2026.

86. Should the Respondent fail to comply with this award, the amount shall incur interest at the rate of interest prescribed in terms of section 1 of the Prescribed Rate of Interest Act, 1975 (Act No 55 of 1975).

PANELIST: ANNELIE BEVAN