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# ARBITRATION AWARD

Panellist/s: Michael Marawu  
Case No.: GPBC 1115/2025 & 83/2026  
Date of Award: 04-May-2026

In the MATTER between:

PSA obo Hugo, AM and 07 Others  
(Employee Party)  
Union/Applicant's representative: Ms A Mosaic (PSA Official)

and

Department of Cultural Affairs and Sport (DCAS)  
(Respondent)  
1<sup>st</sup> Respondent's representative: Mr PM Bogenhagen (Employee Relations Official)

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## ARBITRATION AWARD

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### DETAILS OF HEARING AND REPRESENTATION

1. The arbitration hearing was held at the premises of the Western Cape Department of Cultural Affairs and Sport (DCAS) on 01 December 2025 and concluded on 14 April 2026. The parties were further directed to submit written closing arguments, by no later than 21 April 2026.
2. The Applicants were represented by their trade union (PSA) official, Ms Aileen Mosectic and the Department was represented by Mr Paul Bogenhagen (Employee Relations Representative). The parties submitted separate bundles of documents and the arbitration proceedings were digitally recorded.

### POINTS *IN LIMINE*

3. The parties presented a pre-arbitration minute prior to the commencement of the arbitration proceedings, wherein it was confirmed that three unfair dismissal applications submitted under three different case numbers (GPBC 1115/2025, GPBC 1292/2025 & GPBC 1717/2025) were consolidated by agreement between the parties. I have also accepted that it would be in the interest of justice and prudent for these three cases to be heard together, including the subsequent referral recorded as case reference: GPBC 83/2026 filed on behalf of Mr Joseph Booyesen by his trade union the Public Servants Association (PSA).
4. Mr Xolani Lolwana's application was challenged by the Respondent, as Mr Lolwana could not appear on the first two days of the arbitration proceedings. It was argued on record that his application is not that which could be heard in his absence, as the trade union representative could also not confirm (guarantee) whether he would be able to be avail himself for any necessary engagements throughout the proceedings.
5. A preliminary ruling was presented on record on 13 April 2026, in that Mr Lolwana's application is dismissed, due to his failure to avail himself for the arbitration proceedings on two occasions without a valid reason, and when he was contacted on 13 April 2026 he was not reachable.

## ISSUE TO BE DECIDED

6. I must determine whether the eight (08) Applicants were dismissed by the Respondent as alleged, if so whether their dismissal was procedurally and/or substantively fair.

## BACKGROUND

7. The eight Applicants (CE Valentyn, AM Hugo, M Msizi, CA Niewoudt, H Manuel, S Molwana, ML Groenewald & J Booyesen) were employed on renewable fixed term contracts with the Western Cape Department of Cultural Sport (DCAS), on various occasions. Their fixed term contracts were based on conditional grants allocated by the National Department of Sports, Arts and Culture throughout their employment over a number of years.
8. It is alleged that the conditional grants were still accessible and provided by the National Department and the Applicants were led to believe that they were employed permanently, whereas the Provincial Department's Management decided to terminate their employment in a manner that is alleged to be procedurally and substantively unfair.

## SURVEY OF SUBMISSIONS AND ARGUMENTS

### THE APPLICANTS' CASE

9. **Mr Joseph Booyesen** is one of the eight Applicants in this matter and made submissions that the employer (DCAS) employed him on various fixed-term contracts as the School Sport Coordinator since 01 August 2005. He was also contracted to the Western Cape Sports Confederation but paid through DCAS, as part of the Department's facilitated contractual arrangement with the Confederation.
10. Their fixed-term employment contracts as the School Sport Coordinators were dependent on the availability (accessibility) of the conditional grants provided continuously by the National Department of Sports, Arts and Culture each year. He has been informed that other Province's School Sport Coordinators were made permanent throughout the years.

11. It was communicated to them in writing that they have completed their probation period, and were engaged as permanent employees of the Department of Cultural Affairs and Sport. This permanent employment declaration was also contained in the Department of Sports, Arts and Culture Government Gazette issued in July 2020, whilst the conditional grants were catered for (budgeted) until 2028.
12. It was therefore disturbing to learn that their positions were ultimately advertised for them to reapply, before his employment contract was terminated in January 2026. When they engaged with Department's Management within the Province regarding the status of their employment contracts, they could not be provided with satisfactory feedback or reasonable explanation.
13. The employer's action to unilaterally alter the status of their employment contracts after they were confirmed to be permanent and with guaranteed conditional grants, cannot be viewed as fair nor lawful in the circumstances. The situation has cause enormous distress and serious hardship for his family.
14. **Mr Mthuthuzeli Msizi** is one of the Applicants in this matter; he submitted that he was employed on a fixed-term employment contract as the School Sport Coordinator with effect from 2016. His 12 months employment contracts were renewed annually until 2021. He was part of the Sport Coordinators that were paid through the Western Cape Sport Confederation and was subsequently appointed on a three years fixed-term employment contract again with the Department of Cultural Affairs and Sport, until his employment was unceremoniously terminated in September 2025.
15. Upon the completion of the probation period, he was issued with a letter confirming his permanent employment; the conditional grants from the National Department were also increased annually and catered for (budgeted) until 2028. Thus, it is quite puzzling and unconscionable that their employment contracts would abruptly come to an end, without a fair process or just cause.
16. **Mr Charlton Ash Niewoudt** also testified that he was employed with effect from 10 April 2012 as the Regional Clerk, before he was moved to be remunerated under the Sport Confederation for some few months. He then applied for the (DCAS) advertised position and was appointed again from 2018 on renewable fixed-term employment contracts.
17. He also received a formal letter confirming his probation completion and permanent employment with effect from 21 November 2019, signed by his line management on 14 February 2023. Their fixed-term employment contracts were dependent on the availability (accessibility) of the conditional grants provided continuously by the National Department of Sports, Arts and Culture each year, which have been catered for (budgeted) until 2028.

18. It was therefore devastating for him to be suddenly informed employment contract is terminated as at 31 July 2025, without due process or any valid or lawful grounds.
19. **Ms Chantal Elizabeth Valentyn (MOD Programme Officer)** testified that she was appointed by the Department of Cultural Affairs and Sport from 04 July 2007, as a School Sport Assistant (Coach) before she was promoted to be a Cluster Coordinator in 2008. He was subsequently assigned to be responsible for about 36 Schools' Sport Coaches in the West Coast and has been providing training, mentorship and guidance to up to 55 Coaches.
20. Their performance record in her district has been outstanding, receiving National recognition and various accolades. Her employment was officially confirmed to be permanent with effect from 12 September 2019, as it was confirmed that she had successfully completed her probation.
21. She could not understand exactly why her employment contract had to be terminated in July 2025, as the conditional grants received from the National Department were still made available and budgeted until 2028. The Western Cape Department of Cultural Affairs and Sport's Management decision to terminate their employment contracts was based on unavailability of funds, whereas their positions were still funded by the conditional grants and were all declared to have been permanent. There was additional funding provided by the Education Department for their resources requirements.
22. It was also argued in closing on behalf of the eight Applicants that the Department's decision to terminate the Applicants' employment contracts without just cause or valid reasons, after they were all declared to have been permanent occasions, is one that could not be justified legally and/or ethically
23. It is with great disappointment that the Applicants were all issued with official letters confirming the completion of their respective probationary requirements as well as their permanent employment, before they were unceremoniously dismissed for unexplained reasons, whilst the conditional grants were still provided until 2028 by the National Department. Various case law authorities were cited to advance the Applicants arguments, in that the employer's conduct lacks procedural and substantive fairness, in the circumstances.
24. The Applicants sought reinstatement with retrospective effect into their positions, wherein they should be permanently employed as stated in their respective probation confirmatory letters.

## THE RESPONDENT'S CASE

25. **Dr Lyndon Bouah (Chief Director: Sport and Recreation)** testified that he was working for the Department of Cultural Affairs and Sport since January 2011. All the Applicants' fixed-term employment contracts were based on the conditional grants issued annually at the exclusive discretion of the National Department.
26. The conditional grants were no guaranteed, and that is why they could not guarantee full-time (permanent) employment to the Applicants. The fact that it may be said that the annual conditional grants may have been budgeted for beyond 2026, is based on mere projections that were projections that were not wholly guaranteed.
27. There are on-going discussions at National and Provincial Management level regarding budgetary constraints and/or funding cuts that could affect certain programmes, such School camps and others. That is why they could not guarantee continuation of the fixed-term employment contracts dependent on the availability of the National Department's conditional grants.
28. Since the conditional grants were provided from 2005 or 2006 only about 70 posts were made permanent; there was also significant budget reduction over the years. The organisation redesign with the Provincial office invoked more rigid process and led to the posts reconsideration, thus they had to re-advertise the positions and everyone was free to apply.
29. **Mr Shaun R.D. Julie (Director: Strategic & Operational Management Support)** testified that he had been employed with the Department of Cultural Affairs and Sport (DCAS) since 2018. He is the primary contact person between the Premier Department's Corporate Services Centre (CSC) and the DCAS.
30. He explained that the Applicants' contracts were all fixed-term employment contracts, based on the availability and continuation of the National Department's conditional grants. Some of the contracts were renewed for a year and were later altered into three years employment contracts.
31. It should have been clear to all the Applicants that their contracts were not permanent, but based on conditional grants' availability. If there was any indication or confirmation that any of the Applicants were permanent, that must have been an erroneous (mistake) communication from the Department's side. There is no way that the DCAS could create expectations for permanent employment, because the Applicants' employment was on fixed-terms subjected to the employer's management exclusive discretion.

32. It was therefore in accordance with the relevant legislative and regulatory requirements that the Applicants' were served with notices to confirm the end of the fixed-term employment contracts, as per their contractual agreement. None of the Applicants' contracts from the equitable funding, but were all dependent on conditional grants' existence.
33. It was only during the covid-19 related restrictions season that the employment contracts were automatically extended, but the Organisational Design's operational requirements has always been that the Respondent's management avoided to create expectations for fixed-term contracts' renewal.
34. The probation confirmation correspondence (letters) were issued for purposes of internal communication, and were not meant to be share with the employees, but for internal management's attention only. The reference to permanent employees on the completion of probation confirmatory letters was a *bona fide* mistake (error), as it related to old regulatory framework and not taking into account compulsory new amendments.
35. The positions had to all be re-advertised to continue operations, and the Applicants were allowed to apply for the same positions. As the conditional grants are not a permanent feature within the Department, the Respondent's management could not therefore create unreasonable expectations of permanent employment towards the Applicants.
36. He can confirm that the MOD Centre was a very successful component of the programme. However, he cannot speculate on the impact or lack thereof, relating to the end of the employees' fixed-term employment contracts.
37. **Ms Greta Veronica Jansen (Deputy Director: Performance Consulting)** testified that she was appointed (promoted) to her current position with effect from 01 February 2026. She previously operated as the Assistant Director within the Department of the Premier's Corporate Services Centre, wherein she was providing human resources administrative support to various Departments.
38. The one year (12 months) probationary assessment was conducted throughout Public Service in terms of section 68 of the Public Service Regulations. The completion of probation confirmation letters issued by the Corporate Services Centre were not meant for the employees' eyes, but for the relevant Supervisors.
39. The reference to permanent employment on the letter was a clerical error, because the employees on fixed-term contracts should be accordingly advised that their fixed-term employment contracts would continue as they were, not to declare or suggest any permanent status.

40. The clerical error was only discovered recently; therefore necessary communication to address the erroneous correspondence may have to be issued to all concerned parties.
41. The Respondent cited case law authorities such as ***University of Pretoria v Commission for Conciliation, Mediation & Arbitration & Others [2012]***, as well as ***SA Rugby Players Association & Others v SA Rugby (Pty) Ltd & Others [2008]***, etc. in furtherance of its stated arguments against the Applicant's application.
42. It argued that the Applicants have not satisfied the objective standard necessary to prove the existence of a reasonable as claimed to have been created by the employer. The Respondent made reference to the above case law authorities in its written closing argument, and noted:
- "The court held that the distinction between the fixed-term contract and a permanent contract has a clear economic rationale. The court recognised that an employer may have discretionary funds for a limited period, during which it offers a series of fixed-term contracts to a particular employee, and that at some point these are depleted and the employer can no longer afford a further fixed-term contract."*

## **ANALYSIS OF SUBMISSIONS AND ARGUMENTS**

43. Most of the pertinent issues in this dispute are largely common cause, and the parties' contentious arguments are generally based on legal principles and/or questions of law located in the Public Service Act of 1994, as amended (PSA) as well related statutory (regulatory) provisions. It is common cause that the eight Applicants and other DCAS employees were all appointed on renewable fixed-term employment contracts, based on the National Department of Sports, Arts and Culture's conditional grants issued annually.
44. The conditional grants have been made available by the National Department for a period of more than twenty (20) years, and the last declaration of three years' conditional grants (**R204 153 000.00**) covers the financial cycle of 2025 to 2028; which was allocated and recorded as follows:
- **2025 / 2026 = R63 058 000.00**
  - **2026 / 2027 = R69 020 000.00**
  - **2027 / 2028 = R72 075 000.00**

45. It is also an undisputed fact that all of the eight Applicants and others in similar circumstances were issued with the completion of probation confirmation correspondence (letters) by the Respondent's Management on different occasions, which stated among other things:

*"We hereby certify that AM Hugo, employed in the capacity of School Sport Coordinator within the Department of Cultural Affairs and Sport has, during the probationary period from **02 August 2022 to 01 August 2023**, been diligent, that his conduct had been uniformly satisfactory, that he is in all respects suitable for the post, which he holds and that his permanent appointment should be confirmed."*

46. The Verification of Probation Information (referred to as VPI) correspondence was signed by both his Line Manager/Supervisor (Mr Claude Meyer) and the HOD/Delegate (Ms Danielle Manuel) on 14 February 2026 in the case of Mr AM Hugo. The same content was confirmed to have been included in all the Applicants' VPI correspondence issued on different dates.

47. This is one of the significant bones of contention in this matter, as the Respondent is contending that the letters were only meant to confirm probation and not permanency. As such, the reference to permanent employment in the context of the Applicants was an 'administrative error' (a mistake) on the part of the Corporate Services Centre's (CSC) Official(s).

48. Furthermore, the Respondent's key witness (Mr SRD Julie, Director: Strategic and Operational Management Support) testified that although the Applicants' positions were linked to the conditional grants' availability, the Respondent's Management decided to end the fixed-term contracts to avoid raising expectations. This version was also supported by the Chief Director's testimony that there were high-level discussions that conditional grants might be stopped; thus it was then resolved through a Provincial Organisational Re-Design process to re-advertise the positions occupied by the Applicants.

49. Section 186(1)(b) of the Labour Relations Act, as amended (LRA) provides:

*"(1) 'Dismissal' means that—*

*(b) an employee employed in terms of a fixed-term contract of employment reasonably expected the employer—*

*(i) to renew a fixed-term contract of employment on the same or similar terms but the employer offered to renew it on less favourable terms, or did not renew it; or*

*(ii) to retain the employee in employment on an indefinite basis but otherwise on the same or similar terms as the fixed-term contract, but the employer offered to retain the employee on less favourable terms, or did not offer to retain the employee;"*

50. One particular consideration (factor) that has been common throughout the parties' deliberations and presented witnesses, is that the Applicants' fixed-term contracts of employment were always linked to the National Department's conditional grants and that has been the case for more than twenty (20) years within the Respondent's workplace. It would even seem during the parties' engagements that should it have been that the conditional grants were stopped or withdrawn by the National Department, the Respondent could have had a much more legitimate reason and/or just cause to end the Applicants' employment contracts.
51. Therefore, among the reasons mentioned by the Applicants for what they allege to be the creation of legitimate expectations by the Respondent, is the fact that the conditional grants were allocated for the Western Cape's Mass Participation and Schools Sport Development Programme until at least 2028 as things stand currently, and there was no formal communication they would end even beyond 2028. Also, the completion of probation letters issued to all the eight Applicants on different occasions stating they are appointed permanently were not at any point retracted or formally withdrawn by the Respondent to this day.
52. The fact that the positions that the Applicants occupied are still available and linked to the conditional grants' latest allocation of more than R204 million (2025 – 2028) for the Western Cape's Mass Participation and Schools Sport Development, strengthens the legitimate expectation argument advanced by the Applicants in the circumstances. Even if it were true that the Respondent's Management cited permanent employment in the completion of probation confirmation letters in error as contended, the fact that the conditional grants that the Applicants' positions has always been linked to from as far back as 2005 are still accessible (allocated), is the main issue that gives life to the Applicants' proclamation of legitimate (reasonable) expectation for at least the same employment terms as before.
53. The employer's conduct in so far as the Respondent's Management's decision to end the Applicants' employment contracts, when the conditional grants have been allocated for a further three (03) years and without first rectifying what the allege to be an administrative error (mistake), lends itself to the intense scrutiny the Courts have been seeking to assert within the Constitutional realm of fair labour practices. In ***Apollo Tyres SA (Pty) Ltd v CCMA and others***, the Labour Appeal Court held:

*"[45] The Labour Court pointed out that there are many employer and employee rights and obligations that exist in many employee benefit schemes. In many instances employers enjoy a range of discretionary powers in terms of their policies and rules.*

*“The Labour Court further pointed out that section 186 (2) (a) is the legislature's way of regulating employer conduct by super imposing a duty of fairness irrespective whether that duty exists expressly or implicitly in the contractual provisions that establishes the benefit.*

*The court continued and stated that the existence of an employer's discretion does not by itself deprive the CCMA of jurisdiction to scrutinize employer conduct in terms of the provisions of the section. It concluded that the provision was introduced primarily to permit scrutiny of employer discretion in the context of employee benefits. I agree with this conclusion.*

*“[46] I also agree, with qualification, with the Labour Court's conclusion that there are at least two instances of employer conduct relating to the provision of benefits that may be subjected to scrutiny by the CCMA under its unfair labour practice jurisdiction. The first is where the employer fails to comply with a contractual obligation that it has towards an employee. The second is where the employer exercises a discretion that it enjoys under the contractual terms of the scheme conferring the benefit.*

*[53] It has been said 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.”*

54. Furthermore, it also became apparent from the parties submissions in this particular matter that the Respondent's representative displayed no sense of accountability or fairness when faced with the Applicants' predicament that they had been led to believe they were officially regarded as permanent and conditional grants their positions dependent on would still be available for the foreseeable future. This is exactly the kind of unfair conduct the Courts have been seeking to remedy.
55. To this end I could not find any relevant provision in law or any regulatory framework that empowers the Respondent's Management to simply end the Applicants' employment contracts, when they have always been renewed (extended) as long as the conditional grants were allocated and with absolutely no questions raised regarding their performance, behavioural conduct or lack thereof.
56. The Respondent's arguments presented in this matter were more about the Applicants' lack of entitlement to what they (the Applicants) could prove was offered to them in writing, and less about the fairness of the employer's management duty of good faith and constitutional requirement of fairness as it relates to the employer's conduct, in the circumstances. In **Arries v Commission for Conciliation, Mediation and Arbitration & Others**, Nel AJ held:

*“I accordingly first considered how our courts generally have approached the question of interfering with a discretion which has been exercised by another party.*

*“Then I looked at how this has been approached in the employment jurisprudence. A consideration of this question discloses that there are limited grounds on which an arbitrator, or a court, may interfere with a discretion which had been exercised by a party competent to exercise that discretion ... It ought to be interfered with only to the extent that it can be demonstrated that the discretion was not properly exercised.*

*“Taking this proposition further, and applying what our courts have said in this regard to the employment field, I am of the view that an employee can only succeed in having the exercise of a discretion of an employer 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 (see Rex v Zackey 1945 AD 505 at 513; Madnitsky v Rosenberg 1949 (2) SA 392 (A) at 398; Ex parte Neethling & others 1951 (4) SA 331 (A) at 335D; Benson v SA Mutual Life Assurance Society 1986 (1) SA 776 (A) at 781J and 783C; Shepstone H & Wylie & other v Geysers NO 1998 (3) SA 1036 (SCA) at 1045A).”*

57. With respect it is my conclusion that, failure by the Respondent to consider the Applicants' reasonable expectations for their employment contracts to continue, within the context of the approved conditional grants until 2028 and relevant factors contained in official correspondence presented to the employees, amounts to an unfair conduct and falls in the realm of capricious discretion exercised with insubstantial reasoning. Such lack of reasonable and fair discretionary action cannot be condoned in any stable workplace environment, filled with suitably capacitated professionals.
58. Based on the evidence presented before me, I am of the view that taking into account the totality of circumstances, including the compelling evidence presented on behalf of the Applicants as well as the approved conditional grants allocated, there were no valid grounds proffered to justify the Respondent's conduct in this regard.
59. I therefore find that the Applicants' have substantiated their claim that legitimate expectations have been created with the conditional grants' continuous approval, which always preceded their fixed-term contracts periodical extensions as well as the official undertakings of permanent (continuous) employment made to them by the Respondent's Management on official record.
60. Having discharged the onus of proving that which is found to be reasonable and legitimate expectations, the Applicants have been to show that they were indeed dismissed by the Respondent on various occasions as it relates to each of the eight Applicants' contracts termination in 2025 and in January 2026 in the case Mr J Booysen. As their dismissal was not preceded by a fair process based on valid legal grounds, I accordingly find that the Applicants' dismissal was procedurally and substantively unfair.

61. To the extent that the Applicants may seek to be reinstated with the Respondent on permanent basis, I do not necessarily believe that I have been afforded sufficient opportunity and evidence for me to be confident that the conditional grants that the Applicants' employment contracts have always been linked to might not end sooner or later.
62. I also do not seem to have been presented with relevant evidence to show that the Respondent would have other accessible funds (resources) other than the conditional grants to accommodate such employment contracts. It is still possible that the Respondent's Management may be legally within their legitimate right to properly withdraw or reverse what they contend may have been issued in error, and comply with due process to cure the consequential harm.
63. It is in my view, in the employer's organisational interest to consider its legitimate operational requirements, and put into effect an appropriate process to decide if it is at all viable or justifiable to employ more permanent personnel for its operational and public obligations or not. Although it is important to note the passage that stated '*permanent employment should be confirmed*' in all the eight Applicants' VPI correspondence, contributed compellingly to their legitimate expectation conviction, it is also possible the financial resources at the Respondent's disposal for such positions are limited to the conditional grants' availability.
64. Having said that, it would still be open to the Applicants upon reinstatement to their same employment conditions, to be able to initiate an internal process to deal with the question of their permanent employment status, which could also include the relevant National Authorities as well as necessary further particulars that may have not been presented before me.
65. I therefore order that the eight Applicants must be reinstated into the Respondent's workplace with retrospective effect, on the same employment conditions that applied to all of them prior to their dismissal. The Respondent's human resources records to be amended accordingly so as to ensure that relevant benefits that should have accrued to the Applicants are restored and paid in due course.

## AWARD

66. The Applicants' unfair dismissal application has been sustained.
67. The employer must reinstate the eight Applicants with retrospective back-pay for the whole period they have been without income (*including any other shortfall on their remuneration and/or benefits over the period of their dismissal*).
68. The Applicants' to be reinstated on fixed-term contracts linked to the National Department's conditional grants' availability; their outstanding back-pay to be paid into the applicants' respective bank accounts by no later than 25 June 2026, as follows:

<u>NAME</u>	<u>AMOUNT</u>
<i>AM Hugo</i>	<i>R286733.04</i>
<i>HA Manuel</i>	<i>R253921.91</i>
<i>AM Hugo</i>	<i>R286733.04</i>
<i>CA Nieuwoudt</i>	<i>R327086.04</i>
<i>CE Valentyn</i>	<i>R426929.25</i>
<i>M Msizi</i>	<i>R260666.40</i>
<i>J Booyesen</i>	<i>R158744.64</i>
<i>S Molwana</i>	<i>R286733.04</i>

69. The Applicants must report to the Respondent's workplace to resume their employment duties on Monday, 29 June 2026.



Michael Marawu

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**Name:**

**GPSSBC Arbitrator**