ARBITRATION AWARD

Panelist: KATLHOLO WABILE
Case No.: GPBC356/2020
Date of Award: 13 OCTOBER 2020

In the ARBITRATION between:

PSA obo BONTLE P. MANAMELA

(Union / Applicant)

and

DEPARTMENT OF HOME AFFAIRS

Union/Applicant's representative: MR KAGISHO KAGISHO
Union/Applicant's address: _____

Telephone:
Telefax: _____

Respondent's representative: MR J. KYWE
Respondent's address: _____

Telephone: _____
Telefax: _____

ARBITRATION AWARD

1. DETAILS OF HEARING AND REPRESENTATION

1.1 This matter was heard at the Offices of the GPSSBC on 31 August 2020 and finalized at the premises of the employer on 28 September 2020. The matter was set down as an arbitration concerning an alleged unfair labour practice related to disciplinary action short of dismissal. On 31 August 2020, the employee party led and closed its case and the employer opened its case and called only one witness. The employer's representative indicated that its second witness was still recovering from a positive Covid 19 test and was, as such, unavailable. The proceedings were then adjourned on that basis. On 28 September 2020, the employer presented a different representative to the one who had represented it on 31 August 2020 and moved an application for postponement on the basis that the original representative was indisposed through illness. The application and ruling form part of this award. The employee's representative requested to submit written argument. I indicated that I would allow seven (7) days for that purpose, meaning that the argument was due by 05 October 2020. I informed the employer's representative that the deadline applied to the employer as well even though he had declined to proceed with the hearing after the postponement ruling was handed down. I duly received the argument on behalf of the employee but none on behalf of the employer. The non-receipt of the employer's closing argument was not an impediment to the writing of this award. I made an audio recording of the proceedings on my digital voice recorder on both dates and also took notes in shorthand.

1.2 The employee, Ms Bontle Manamela, was present throughout the proceedings and was represented on both dates by Mr Kagisho Kagisho, an Official of the PSA, a registered Union. On 31 August 2020, the employer was represented by Mr Johnny Kywe, an Assistant Director in the employer's Labour Relations Department. On 28 September 2020, the employer was represented by Mr S. Tsie, also of the Employer's Labour Relations Department.

2. ISSUE TO BE DECIDED

2.1 Whether or not the employer committed an unfair labour practice against the employee.

3. BACKGROUND TO THE ISSUE

3.1.1 The employee works at the Themba, Hamanskraal Office of the employer. It is alleged that on or about 11 May 2015, the employee issued five (5) cash receipts for applications but failed to register the cash receipts and the money collected on the cash register. The employee denies the allegation. Notwithstanding the denial, the employer preferred charges against her and called a disciplinary hearing. She was found guilty of the financial misconduct and the sanction meted out was three months' salary suspension and a final written warning. This sanction was upheld on appeal. The employee then exercised her right to refer an unfair labour practice dispute to Council. The dispute remained unresolved after conciliation, hence these arbitration proceedings and award.

4. INTERLOCUTORY APPLICATION

4.1.1 As indicated at the outset of this award, Mr Tsie moved an application for postponement on the return date (28/09/2020). In summary, he submitted that Mr Kywe, who had represented the employer on the initial date, was hospitalized on 20 September 2020 and was still in Intensive Care Unit (**"ICU"**) at the Alberton Hospital. Mr Kywe could not be reached on both of his cellular numbers on record. An administrator at the employer engaged with Mr Kagisho Kagisho, the employee's representative, to discuss postponement ahead of these proceedings but the latter had requested to be provided with something in writing to the effect that Mr Kywe was hospitalized. He submitted further that the Rules of the GPSSBC (**"Council"**) provided for a reservation of costs if an application for postponement did not make sense. The employer would be prejudiced if postponement was not granted as other employees in the shoes of the employee would bring referrals entailing applications for condonation to which the employer would have to respond.

4.1.2 Mr Kagisho Kagisho opposed the application. In summary, he confirmed that an administrator at the employer tried to engage with him on postponement. Since the employer was outside the timeframe permitted in the rules for an application for postponement, he requested that the employer only provide something in writing to show that Mr Kywe was hospitalized. If the employer had been serious about this matter, it would have acceded to this request. The employee only had word of mouth that Mr Kywe was hospitalized. The prejudice was that expeditious resolution of disputes was not complied with. The matter had already been postponed due to the unavailability of the employer's witness at the last sitting. An order of costs would not remedy the situation but if postponement is granted, the employee would ask for costs.

5. CONSIDERATION OF SUBMISSIONS ON INTERLOCUTORY APPLICATION

5.1.1 The striking feature of the employer's application is that, judging from its conduct from the time it learned of the hospitalization of Mr Kywe, and the demeanor of Mr Tsie during the application for postponement, it fully expected to be granted a postponement as a matter of course. Even after I had stood the matter down for thirty (30) minutes and directed that Mr Tsie call the hospital and request only proof of admission and not a medical certificate as seemed to be agitated by Mr Kagisho Kagisho, he returned to inform me that he had discussed the matter with the employer's Director of Labour Relations and they had come to the conclusion that they could not access Mr Kywe's confidential health information. Startlingly, he also informed me that he had dispatched an administrative assistant to me during the adjournment with a message reflecting an alternate cellular number at which Mr Kywe, now miraculously out of ICU and recuperating at home, could be reached.

5.1.2 When I informed Mr Tsie that I had not seen any administrative assistant during the adjournment and, as such, had not received the message alluded to, he made no effort to remedy the situation. I concluded that Mr Tsie behaved as if the postponement was a right to which he was entitled and cited the decision of the Court in ***Carephone (Pty) Ltd v Marcus NO and Others***[1] at para 54 where the learned judge set out the approach to postponements in forums such as Council and why it differed from that applied in the courts. Suffice to state that the learned judge, among other reasons, stated that the possibility of making costs orders to counter prejudice in good faith postponement applications is severely restricted. The employer's application *in casu* was, in my view, not even a good faith application. It was an application premised upon the lie that Mr Kywe was in ICU in Alberton Hospital only to later emerge as purportedly recuperating at home all in the same breath. The most disturbing aspect of the employer's application for postponement was the nonchalant attitude of Mr Tsie and his superior, the Director of Labour Relations. I had not even asked for a copy of the medical certificate. All I asked for was proof of admission to hospital in circumstances where even a medical certificate would not have sufficed having regard to the decision of the Court in ***Mghobozi v Naidoo NO & Others***[2]. There the Court held that medical certificates without supporting evidence from doctors may amount to hearsay and the Courts should be especially vigilant to prevent abuse. Mr Tsie did not even hint that a call was attempted to the

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[1] 1999 (3) SA 304 (LAC)
[2] [2006] 3 BLLR 242 (LAC

hospital to inquire after proof of admission of Mr Kywe to the facility. Instead, he and his superior took it upon themselves to decide that they could not access Mr Kywe"s medical information without his consent when it was clear that all I had required was proof of admission and not any details concerning the medical condition of Mr Kywe. I declined the application because the employer behaved as if postponement was a matter of right and not an indulgence which the court, in its discretion grants, having regard to a good faith application. Mr Tsie decided not to continue with the proceedings after the postponement ruling was handed down as stated earlier in this award. I specifically asked him whether he understood the implications of his decision and he stated that he did.

6. INTERLOCUTORY RULING

6.1 I declined the application for postponement.

7. SURVEY OF EVIDENCE AND ARGUMENTS.

7.1 The Employee's Evidence and Argument

7.1.1 The employee, Bontle Manamela **("Manamela")**, testified under oath. In summary, her evidence is that she is employed as a Front Office Clerk and her duties included registering identity document, birth and death certificate applications. She was served with allegations and summoned before a disciplinary hearing in August 2019 for an incident that allegedly took place on 11 May 2015.

7.1.2 Manamela then testified that it was unfair that she should be disciplined four (4) years after the incident allegedly took place as she had forgotten everything that happened in 2015. She knew that she did everything "fine" at the time.

7.1.3 She was served with a notice of intention to proceed in a disciplinary hearing against her on 29 August 2016 and afforded an opportunity to present reasons why that ought not to happen. She complied on 31 August 2016. Between 31 August 2016 and August 2019 when she was called to a disciplinary hearing, nothing happened.

7.1.4 Manamela then testified that she had been requested by her supervisor to work as a cashier as the person who worked there was not on duty. She was normally a Front Office Clerk. She worked as a cashier on 09 and 11 May 2015 and worked from 08h00 to 12h29 on the former date. The employer's Office closed at 13h00 on Saturday, 09 May 2015 and was not open on Sunday. On Monday, 11 May 2020, she was doing "trip authentication" before going to her normal functions at the hospitals when the supervisor, at 08h15, requested her to continue with cashiering duties. She finished at 08h45.

7.1.5 Her last receipt on 09 May 2015 was #001A3431. The next on 11 May 2015 was #001A3437. She did not know who worked on the machine between these two receipts. The supervisor was the one with keys to the office. Between 12h29 on 09 May 2015 and 08h15 on 11 May 2015, the supervisor and the manager had the keys to the office. When a handover is done, the supervisor checks whether the money on hand matches the receipts.

7.1.6 Manamela then testified that the training she received on the machine was when the supervisor showed her where to press when receiving money and that the machine would tell her when there was any change due. However, she did not have any training for the handling of receipts.

7.1.7 She testified further that the supervisor, Ms Motsepe, resigned after she (Manamela) was served with the letter of allegations (audi letter). She believed Ms Motsepe is the one who knows about the receipts and she and the manager could provide answers.

7.1.8 Finally, Manamela testified that the relief she sought was payment of her suspended salary and erasure of the written warning.

7.1.9 Manamela was cross-examined and re-examined on this version. I shall refer to such evidence to the extent necessary in the analysis section of this award.

7.1.10 Mr Kagisho Kagisho submitted a closing argument in writing on behalf of the employee. In summary, he argues substantively that the employer has relied on circumstantial evidence to draw the conclusion that the employee was guilty of the alleged misconduct. He then draws on the authorities to point out why the employer is presumptuous. He further argues that in civil proceedings, the inference sought to be drawn must be consistent with the proven facts. Mr Kagisho Kagisho also argues that the employer's witness conceded that the employee's supervisor could have performed the transactions in question as she had access to both the office and the cashier machine. The inference sought to be drawn by the employer is based on speculation and conjecture and Mr Kagisho Kagisho cites authority for this contention. Procedurally, Mr Kagisho Kagisho contends that the employer waived its right to take disciplinary action against the employee due to the excessive delay between the commission of the allegation and the institution of disciplinary action. Mr Kagisho Kagisho also cites a number of authorities in this regard. He also refers to the principle of speedy resolution of disputes enshrined in the LRA. The delay has occasioned unfairness.

7.2 <u>The Employer's Evidence and Argument</u>

7.2.1 Ms Beauty Makhananisa (**"Makhananisa"**) testified under oath. She is the Manager of the respondent's Local Office in Themba, Hammanskraal where Manamela is her colleague. She issued the "audi letter" to Manamela and received a response from her.

7.2.2 Makhananisa then testified that the receipt following receipt #001A3431 on 09 May 2015 was supposed to be receipt number #001A3432. However, the next receipt was #001A3437. Five receipts were missing between these two receipts.

7.2.3 The Departmental Performance Agreement contained a section on Personal Development Plan where an employee would indicate his or her training needs to his or her supervisor. Manamela was used as a cashier from time to time as she had experience of the function before she went on to perform her current duties.

7.2.4 Makhananisa then testified that the cashier and her supervisor were present in the cash office when the cash machine is started. The supervisor would only return to the office when there was a need. The supervisor at the time was Ms Sylvia Motsepe (**"Motsepe"**).

7.2.5 Manamela closed the machine on Friday, 09 May 2015 and opened it again on Monday, 11 May 2015. As to who was to be blamed for the missing receipts, she testified that the cashier and supervisor were responsible for the finances. There had been no misconduct relating to missing receipts on the occasions when Manamela worked as a cashier in the past. When she (Makhananisa) commenced employment at the employer in 2007, Manamela was already an intern and was familiar with finance.

7.2.6 Finally, she testified that there is an "X" and a "Z" receipt. The "Z" receipt was used by the supervisor to close the day's revenue. When Manamela had to go to hospitals for her normal functions, she would do an "X" receipt, which is for half a day. Manamela was the opening cashier at 08h15 on 11 May 2015.

7.2.7 Makhananisa was cross-examined and re-examined on this version. I shall refer to such evidence to the extent necessary in the analysis section of this award.

7.2.8 As indicated earlier in this award, I had not received a written closing argument from either Mr Kywe or Mr Tsie on behalf of the employer at the date of writing this award.

8. ANALYSIS OF EVIDENCE AND ARGUMENT

8.1 Section 191(5)(a)(iv) of the Labour Relations Act 66 of 1995, as amended **("the Act")** provides for the arbitration of a dispute by the CCMA or a Bargaining Council with jurisdiction in circumstances where an employee alleges that an employer committed an unfair labour practice against him or her. This is precisely the dispute which served before these proceedings and, given the fact that parties fall under its registered scope, Council accordingly has the requisite jurisdiction to arbitrate the dispute.

8.2 I must point out at the outset that, whilst I considered all the evidence and arguments presented, I shall only focus on the evidence and argument necessary to resolve the issues in dispute.

8.3 Section 186(2) of the Act states that an unfair labour practice means any unfair act or omission that arises between an employer and an employee involving-

(a) unfair conduct by the employer relating to the promotion, demotion, probation (excluding disputes about dismissals for a reason relating to probation) or training of an employee or relating to the provision of benefits to an employee.

(b) the unfair suspension of an employee or any other unfair disciplinary action short of dismissal in respect of an employee.

(c) a failure or refusal by an employer to reinstate or re-employ a former employee in terms of any agreement; and

(d) an occupational detriment, other than dismissal, in contravention of the Protected Disclosures Act, 2000 (Act 26 of 2000), on account of an employee having made a protected disclosure defined in that Act.

8.4 Prior to the passing of the Act into law and the advent of the above-mentioned section, the unfair labour practice concept had been wide enough, under the preceding Labour Relations Act, 1956, to encompass unfair dismissals and dismissals arising from strikes. However, what appears in the paragraph above is what has come to be statutorily proscribed as impermissible employer actions. It is trite that Bargaining Councils and the CCMA do not have a general unfairness jurisdiction. An employee who alleges an unfair labour practice must prove that his or her claim falls within this section of the Act. The employee in these proceedings has, in my view, succeeded in doing this. I start below with the substantive leg of the inquiry.

8.5 The facts of this case are straightforward. Manamela, in the ordinary course a Front Office Clerk who performed her duties on behalf of the employer at hospitals, would, nevertheless, be instructed by her supervisor, Motsepe, from time to time, to work as a cashier at the employer's Office in Hammanskraal. This appears to be the workplace where she actually tendered services prior to undertaking her sojourns to the hospitals.

8.6 On 09 May 2015, a Saturday, Manamela was working as a cashier at the said Office. It appears to be common cause that her last receipt for the day was receipt number #001A3431. The Office, it is undisputed, was closed on Sunday. On Monday, 11 May 2015, Manamela was doing "trip authentication" (which seems to be some form of preparation) prior to leaving the Office to tender services at a hospital when Motsepe instructed her to perform cashiering duties. She commenced with these duties at 08h15 until 08h45 that morning. It was discovered at the end of this period of time that, when Manamela commenced with said cashiering duties at 08h15, she started at or with issuance of, receipt number #001A3437. It is the employer's contention that Manamela should have commenced at receipt number #001A3432. The upshot was that the employer determined that five (5) receipts were missing between receipts numbers #001A3431 and #001A3437. The employer held Manamela responsible for the missing receipts and to this end, preferred the following charges against her:

'It is alleged that you committed an act of misconduct in that on or about 11 May 2015 at or near Department of Home Affairs: Temba Office, you issued 5 (five) cash receipts for applications and you failed to register the cash receipts and the money collected on the cash register'.

8.7 Manamela was found guilty at the disciplinary hearing and the sanction meted out was three months' salary suspension and a final written warning. She was unsuccessful on appeal.

8.8 Mr Kagisho Kagisho argues that the employer has relied on circumstantial evidence to draw the conclusion that Manamela committed the misconduct she stands accused of. There is very little, if anything, wrong with this argument.

8.9 The circumstances of the misconduct allegedly committed by Manamela are that she was the last person to work on the cash machine on Saturday, 09 May 2015 and, the Office being closed on Sunday, 10 May 2015, she was the first person to work on the cash machine on Monday, 11 May 2015. That being so, so the employer's case goes, she is the employee who, in the midst of such circumstances, allegedly issued five (5) more receipts between the last receipt she issued said Saturday, and the first one she issued said Monday. Not only did Manamela issue the alleged receipts, so the employer contends, she also allegedly failed to register the receipts and the money collected in that regard, on the cash register. At its basest, this allegation seems to suggest that Manamela stole the money she had collected on behalf of the employer. Of course, Manamela was not charged with outright theft.

8.10 Circumstantial evidence can, in brief, be described as evidence not drawn from direct observation of a fact in issue. The present case illustrates this in that there is no one who has directly testified that they observed Manamela issue the five allegedly missing receipts but failing to register same and the money collected on the cash register.

8.11 Generally, circumstantial evidence can be admitted in court. However, the courts are careful when the only evidence in a case is circumstantial evidence. That is the case *in casu*. Mr Kagisho Kagisho draws richly from the authorities in arguing on the weight to be attached to circumstantial evidence. It is trite that such evidence is only persuasive if the inference sought to be drawn from it is consistent with all the proven facts and it is the most plausible. The Court in ***S v Reddy and Others***[3] summarised this approach as follows:

"In assessing circumstantial evidence, one needs to be careful not to approach such evidence upon a piece-meal basis and to subject each individual piece of evidence to a consideration whether it excludes the reasonable possibility that the explanation given by an accused is true. The evidence needs to be considered in totality. It is only then that one can apply the oft quoted dictum in *R v Blom* 1939 AD 188 at 202-203, where reference is made to two cardinal rules of logic which cannot be ignored. These are, firstly, that the inference sought to be drawn must be consistent with all the proved facts and, secondly, the proved facts should be such "that they exclude every reasonable inference from them save the one sought to be drawn".

8.12 The inference that was sought to be drawn by the employer in its case against Manamela was, in my view, neither consistent with the proven facts, nor the most plausible. It also does not, I surmise, exclude every other reasonable inference that can be drawn from the proved facts. A crucial fact is that, upon Manamela being served with her allegation, Motsepe, her supervisor, immediately resigned from the employer's employ.

8.13 The sudden or precipitate resignation of Motsepe when the employer commenced with institution of disciplinary action is not a fact to be lightly discarded in the light of certain concessions Makhananisa made under cross-examination by Mr Kagisho Kagisho.

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[3] 1996 (2) SACR 1 (A) at p.8 C-E

8.14 Early in the cross-examination, Makhananisa conceded that there was a possibility that the supervisor, Motsepe, knew of the five receipts allegedly missing on Manamela's shift. She also conceded that if there had been a discrepancy regarding the transactions performed by Manamela on 09 and 11 May 2015, Motsepe would have picked such discrepancies up. This is so because the "Z" register contained a summary of such transactions to which the supervisor has access when closing the transactions for the day. Makhananisa then testified under cross-examination that Motsepe did not bring any discrepancies in the transactions performed by Manamela to her attention.

8.15 The concessions from Makhananisa flowed thick and fast as appears hereafter. She conceded further that, between the time when the Office closed on Saturday, 09 May 2015 and its reopening on Monday, 11 May 2015, Manamela had no access to the Office as only she and Motsepe had the Office keys. She then went on to concede that the five allegedly missing receipts could have gone missing in the period between the closing of the Office on Saturday, 09 May 2015 and its reopening on Monday, 11 May 2015. Flowing from the latter possibility, came the even more far-reaching concession by Makhananisa that Motsepe, and not Manamela, could be responsible for the missing receipts.

8.16 With Makhananisa's concessions in mind, it is necessary to consider the explanation tendered by the employee, Manamela. She testified in chief that the incident occurred a long time ago and dwelt not in her recollection. However, she averred that she did everything fine at the time. In fact, this is consistent with Makhananisa's evidence in chief that, prior to the incident of the allegedly missing receipts in May 2015, there had been no incident of missing receipts when Manamela was used as a cashier. Manamela also averred that she did not know anything about the missing receipts. Under cross-examination, Manamela's evidence also did not come under any serious challenge, in my view. Having regard to these concessions by Makhananisa, it is plain to see that numerous reasonable inferences can be drawn from these proven facts. It is not necessary for purposes of this award to set out what those inferences are. They are inherent in Makhananisa's concessions.

8.17 Having regard to the totality of the evidence, and having considered every aspect of the circumstantial evidence, I am not convinced that it excludes the reasonable possibility that the explanation given by Manamela is true. In fact, I am astonished as to why, following the concessions made by Makhananisa in these arbitration proceedings, the employer did not simply withdraw its allegations against Manamela and correct what is so manifestly an unfair labour practice.

8.18 Finally, I must point out that I am not entirely blind to the fact that it seems from the evidence and from the argument of Mr Tsie during the interlocutory application that Manamela was not the only employee disciplined over the incident. However, in the absence of any evidence that this was an act of team misconduct where Manamela acted in collusion with others, I am unable to come to any conclusion other than that the sanction meted out to her was unfair. Even if I may have misunderstood said evidence or argument, it is of no consequence as the employer neither made out a detailed case in this regard, nor was consistency in the application of the rule and sanction an issue in these proceedings.

8.19 In the circumstances, I have no hesitation coming to the conclusion that the three months' salary suspension imposed on Manamela should be reversed and the final written warning should be expunged from her disciplinary record. I turn to deal, briefly, with the question of procedural fairness.

8.20 The Code of Good Practice: Dismissal, contained in Schedule 8 **("the Code")**, which is a schedule to the Act, sets out the requirements of procedural fairness in relation to dismissal related to misconduct. It is my view that these requirements apply, *mutatis mutandis*, to misconduct cases where a sanction less than dismissal is imposed, with the changes required by the context, of course. However, it is evident from the Code that it is not a substitute for a workplace disciplinary procedure and code. The arbitrator's approach to procedural fairness must be determined by the existence of a workplace procedure and the legal status of that procedure. Where a disciplinary procedure is the product of a collective agreement, procedural fairness must be tested against the agreed procedure. The Disciplinary Code of the Public Service Co-Ordinating Bargaining Council (Resolution 1 of 2003), which has been collectively agreed and

finds application in this dispute, provides in clause 2.2, which deals with principles, that "discipline must be applied in a prompt, fair, consistent and progressive manner".

8.21 The incident of which Manamela stood accused occurred in May 2015. Manamela was served with a letter of intended disciplinary action against her on 29 August 2016. Astonishingly, the intended disciplinary hearing only took place on 06 August 2019. The delay between the incident and the letter of intended disciplinary action is well in excess of a year. That alone is, in my view, excessive delay. However, there is a further period of delay of almost three years' duration between the letter of intended disciplinary action and the actual disciplinary hearing. I find this to be a staggering, and even mindboggling, period of delay. Of course, a reasonable explanation can always justify even the most wayward deviations from an accepted procedure. However, there is nothing in the version of the employer to explain the colossal delay between the date on which the incident occurred and the disciplinary hearing that culminated in the sanction against Manamela. There is also no version before these proceedings to explain why discipline against Manamela could not have been progressive as envisaged in clause 2.2 of Resolution 1 of 2003 and which, importantly, is a principle which, according to the Code, is endorsed by the Courts. A final written warning and suspension of remuneration cannot, in my view, be deemed, by any stretch of the imagination, to be progressive discipline, unless a case is made out that the misconduct was so gross that a deserved sanction of dismissal was only averted by cogent extenuating circumstances. No such case was made out by the employer.

8.22 Mr Kagisho Kagisho has argued that the considerable delay in instituting disciplinary action against Manamela means that the employer waived its right to do so. I will not go to that extreme as the doctrine of waiver implicates a much more exhaustive inquiry. I can, however, without equivocation, state that the period of delay is excessively long and, in my view, unfair, ... and grossly so. Manamela testified that this incident occurred so long ago that she has, I understood, forgotten its details. I accept this evidence. On the basis alone that the employer has, without apparent cause, violated the spirit and letter of Resolution 1 of 2003 which calls for prompt, fair and progressive disciplinary action, I conclude that the employer imposed the impugned sanction in a manner that is manifestly procedurally unfair. It is also for this reason that I overturn the sanction imposed on Manamela.

8.23 I have already found that the final written warning should be expunged from Manamela's disciplinary record and that the three months' suspension of her salary should be reversed. Manamela earns a gross salary of R21 272.60. I calculate the suspended salary that should now be paid back to her as follows:

8.23.1 R21 272.60 per month x 3 months = R63 817.80

8.24 In the main, I find that the employer has committed the unfair labour practice as alleged. Finally, I find that it would not be in the interests of law and fairness to award costs in the matter and I am also mindful of the fact that the employer-employee relationship is still intact.

9. AWARD

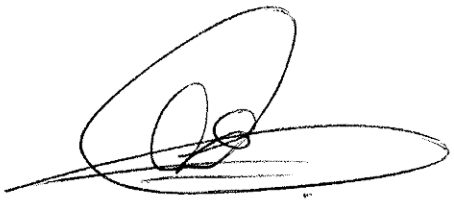
9.1 The employer, Department of Home Affairs, committed an unfair labour practice against the employee, Bontle P. Manamela.

9.2 I order the employer, Department of Home Affairs, to pay the employee, Bontle P. Manamela, the amount of R63 817.80 (sixty-three thousand eight hundred and seventeen rand and eighty cents), that being the equivalent of the three months' remuneration she was deprived of as a result of the unfair labour practice. This amount must be paid by no later than 15 November 2020 and is subject to all statutory and such other deductions as the employer is by law permitted to make.

9.3 The amount specified in paragraph 9.2 above attracts interest at the prescribed rate immediately after the date on which it is due and payable.

9.4 I also order that the sanction of a final written warning constituting the unfair labour practice be hereby set aside and also order that the employer, Department of Home Affairs, expunge the final written warning from the disciplinary record of the employee, Bontle P. Manamela.

9.5 I make no order as to costs.



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NAME: KATLHOLO WABILE

GPSSBC ARBITRATOR