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**GENERAL PUBLIC SERVICE
SECTOR BARGAINING COUNCIL**

IN THE GENERAL PUBLIC SERVICE SECTORAL BARGAINING COUNCIL

HELD AT

Nr 260 BASDEN AVENUE, CENTURION

Commissioner : Adv. Itumeleng Kgatla

Case No : GPBC1139/2023

Date of Award : 13 February 2026

In the dispute between:

PSA obo OLEBOGENG SEHLAKO NO (EXECUTRIX)

(Union/Applicant)

And

DEPARTMENT OF SMALL BUSINESS DEVELOPMENT

(Respondent)

Applicant's representative : Mr. Jonson Matidza (PSA)

Respondent's representative : Mr. TD Malete (Employment Relations Office)

ARBITRATION AWARD

PARTICULARS OF THE PROCEEDINGS AND REPRESENTATION:

- [1] The above-mentioned matter was referred to **GPSSBC** for arbitration in terms of section 191(1) [191(5) (a)] of the LRA, as amended. The arbitration was set down before me on the 30th of May 2024 at Nr. 260 Basden Avenue, Centurion and further on various dates.
- [2] The Applicant appeared and was represented by **Mr. Jonson Matidza**, a union official from the Public Servants Association (PSA). The Respondent was represented by **Mr. T.D Maletse**, an employee of the Respondent attached to the Labour Relations Directorate.
- [3] The proceedings into the arbitration were concluded on the 13th of October 2025. The Respondent's closing arguments were brought to the attention of the Commissioner on the 10th of February 2026. No closing submission were received from the Applicant by the Commissioner.
- [4] The proceedings were conducted in English without the need of a language interpreter. Digital and manual recordings were made during the process. Both parties were afforded the opportunity to present *viva voce* evidence under oath, in chief and in re-examination and to cross examine opposing testimonies. Written closing arguments were presented and considered. No oral evidence was submitted from the side of the Applicant.
- [5] In terms of Section 138(7) of the LRA, the Commissioner is required to issue a signed arbitration award with brief reasons. It is for this reason that only salient points will be referred to in this award even though all evidence and submissions were considered.

POINT IN LIMINE

- [6] Following the unfortunate and *res-nova* unfolding, arising from the passing of the Applicant (**Ms. Pertunia Sehlako**), the Commissioner, on application by the *Executrix* of the Applicant, issued a substitution ruling dated the 21st of August 2025, which changed the citation of the matter.

ISSUES TO BE DECIDED:

- [7] I am firstly required to decide whether or not the Respondent's decision to terminate its employment relationship with the Applicant following a disciplinary hearing, and an internal appeal process is substantively and procedurally fair.
- [8] Should I find that the dismissal was unfair, I must determine an appropriate remedy in terms of Section 193 (1) of the LRA.

COMMON CAUSE ISSUES:

- [9] The Applicant was transferred to DSBD from DTIC in September 2015 as the Assistant Director.

- [10] The Applicant was dismissed on the 5th of July 2023, for alleged misconduct following a disciplinary hearing.
- [11] The Applicant's salary at the time of dismissal was **R50 870-12**
- [12] The Applicant was found guilty of charges One (1) and Two (2).
- [13] The existence of the rule in dispute and its reasonableness, and the knowledge of the rules are not in dispute.

ISSUES IN DISPUTE:

- [14] It is the contention of the Applicant that the dismissal was unfair both on substance and procedure, and further that dismissal was not an appropriate sanction. The Respondent on the one hand, contends that the converse is true.
- [15] The Applicant contends that she was not given an opportunity to state her case in response to the allegations.
- [16] In terms of the relief sought, the Applicant is praying for compensation, given the circumstances. The Respondent has recorded its prayer that the application should be dismissed.

SUMMARY OF EVIDENCE

RESPONDENT'S EVIDENCE

- [17] **Mr.Shumani Mathobo** was sworn in and testified as the first witness in support of the Respondent's case and his evidence is summarized as follows:
- [18] He is employed by the Respondent to the position Director: Management Accounting Unit from the 1st of April 2024, was previously Director: Financial Management, Accounting and Administration and Supervisor to the Applicant even though she reported directly to the Deputy Director.
- [19] He started having challenges with the Applicant around 2020/21 financial year as she could not agree with the Deputy Director with regard to the score allocated to her during the performance management processes, and upon enquiry, he tried to intervene in terms of getting the two subordinates to do what is expected of them, and same was at the level of advice.
- [20] He recalls sending an email to the Applicant dated the 2nd of November 2021, for the submission of the performance agreement and the response was to the effect that she is not going to conclude the agreement and further on the basis that she has requested to be moved from the unit as per page 1 of the JB bundle.
- [21] The Applicant was, on the 11th of February 2022, issued with a final written warning for her refusal to complete and sign her performance agreement for the 2021/22 fiscal year as per pages 7 and 8 of the **JB** bundle.
- [22] The Applicant was, in the letter on page 7, granted an opportunity to furnish reasons why the written warning should not be effected and dated the 2nd of November 2021. The Applicant did not respond to

the request or utilize the opportunity, and was issued with a final written warning on the 11th of February 2022, as per page 9 of the **JB** bundle.

- [23] The warnings were issued against the Applicant on the basis of her refusing to conclude and sign the performance agreement and her refusal to perform her duties in terms of her employment contract, and such measures were conducted in terms of paragraph(s) 5, 6 and 7 of the **PSCBC** Resolution 1 of 2003.
- [24] The Applicant was issued with a notice of disciplinary inquiry and charge sheet dated the 28th of March 2022, as per page 27 of the **JB** bundle in which the charges are fully set out.
- [25] He sent an email to the Applicant as per page 5 of the **JB** bundle on the 14th of January 2022 wherein he was requesting her to come to his office and clear negatives on the Basic Accounting System (BAS) to be completed by the end of business on the 18th of January 2022, and she responded in an email dated the 14th of January 2022, requesting that the request should be in a formal letter as the email exchange on page 4 of the **JB** bundle.
- [26] The Applicant had been doing the nature of the tasks/activities before and was performing exceptionally well on such duties for close to six (6) years. He had no experience of giving the Applicant duties through formal letters, and there was point when she reported directly to him when the Deputy Director position, instructions to subordinates are stated in the performance agreement and reminders will be sent via email communication.
- [27] He received an email on the same day from the Applicant as per page 3 of the **JB** bundle to the effect that his comment is vague and embarrassing, which comment was that he cannot send formal letters for every activity that he is requesting of her, the comment being in the form of a question. The Applicant made it clear that she is not going to perform any duties until such is done in a formal way and in line with the policy of the Department.
- [28] Her initial request to be moved to another unit was declined by the Director General (DG) and the Applicant still insisted that she would not perform such duties until she is moved to the new unit.
- [29] The Applicant had been consistent with the activities, has been brilliant on the duties and even received an award in the year 2017. The work of the Applicant had to be performed by other people and that put a strain on the work of the Respondent.
- [30] The document on page 41 of the **JB** bundle is an electronic calendar notice for the Applicant to attend a disciplinary hearing on the 29th and 30th of November 2022, and the Applicant sent an email dated the 29th of November 2022 on page 40 of the **JB** bundle, to the effect that she will not be able to attend as her car will be taken for repairs.
- [31] The email on page 38 of the **JB** bundle is from the Applicant, and dated the 22nd of July 2022, requesting that the hearing be postponed on the basis that she had not received notice of the meeting and requested that the meeting be scheduled for the 25th of July 2022.
- [32] The document on bundle **JB2** from ICAS, responsible for the health and wellness support, was drafted in December 2020 after the Applicant was referred for counselling following the grievance lodged by the Deputy Director against the Applicant. The report recommended that the Applicant be transferred to

another unit other than the one that she had occupied prior to her dismissal. The report was brought to his attention as the superior of the Applicant.

- [33] The implementation of the recommendation was initiated, but never finalised on the basis of the Director General's reasoning that it was unusual for the process to be initiated by HRM instead of the official requesting the transfer. The Applicant was never transferred and had the obligation to continue rendering services at the unit she was still attached to until such time that she would be transferred.
- [34] The form which is used to acquire more or certain functions on the BAS from the system controller is not accessible to him. The specific employee who needs such a function should get the form, fill it in and bring it to him for signing, and the Applicant always had access to the system, and the password does not expire unless the account is not active for three (3) months.
- [35] The Applicant requested, on the page 4 email of bundle **JB**, that she be provided with the BAS activation form, whereas she knows where such a form is to be obtained as she is not a new employee and has been using the system, hence he did not respond to the request.
- [36] The employee has a right to sign the performance agreement in protest. In the case of the Applicant, she did not sign the form and/or indicate what she does not agree with on the form, but only dealt with same orally and via email communication.
- [37] The Applicant was transferred to the employment of the Respondent in 2015 from DTIC and to the position of Assistant Director: Management Accounting, which is at salary level 10.
- [38] **Dr. Shirley Mapula Maabela** was sworn in and testified as the second witness in support of the Respondent's case and her evidence can be summarized as follows:
- [39] She is employed by the Respondent to the position of Deputy Director: Employee Health and Wellness since the 1st of September 2016.
- [40] She testified that the support or therapy from her Directorate is available to all employees of the Department and their immediate family members, by self-referral or at the instance of the employer, or by peer-referral, and with the consent of the employee.
- [41] **Ms. Pertunia Sehlako** was referred to the services of ICAS by her Line Manager, **Ms. Dineo Malibe**, the Deputy Director: Finance.
- [42] She entertained the case of **Ms. Sehlako** internally, and the matter related to workplace issues. She engaged with **Ms. Dineo Malibe** and **Mr. Shumani Mathobo**, who was the Director responsible for finance in the unit where **Ms. Sehlako** was attached.
- [43] The relationship between **Ms. Sehlako** and **Ms. Malibe** was very strained and the matter was referred to ICAS on her recommendations as Employee and Wellness Manager.
- [44] She is the one who drafted the document on **JB2** (ICAS Support Intervention in respect of **Ms. Pertunia Sehlako**, recommendations) which was done based on the ICAS report which had made its own recommendations after having had counselling sessions with the referred employee. The report was drafted for the attention of **Mr. Shumani Mathobo** as the Manager of the employee.

- [45] Based on the disclosed health condition of the employee, reasonable accommodation was made in relation to the allocation of suitable office space.
- [46] The working relationship between the Manager and the employee was seriously strained even though they were communicating.
- [47] Her recommendation for alternative placement was rejected by the Director General following approval of such a submission by other Managers.
- [48] The rejection by the Director General was on the basis that a different approach must be followed, which must include input by Human Resources and the Chief Financial Officer. Simply put, the submission should not come directly from Employee Health and Wellness.
- [49] The process coming directly from Employee Health and Wellness, however, was not new in that same had happened in the past with the attachment of medical reports to the Director General for consideration.
- [50] The Director: Human Resource Management, and herself, had recommended that **Ms. Sehlako** should be booked for psychometric evaluation, but same was refused by the employee.
- [51] The rejection of the transfer by the Director General was also on the basis that there was no vacant funded post in the Internal Audit Unit, and it was not feasible for the employee to move with the post.
- [52] There was a second submission for the transfer of the employee, but she does not have the details because it was **Mr. Shumani Mathobo** who was dealing with the matter, and she was not fully involved.
- [53] She is of the view that the employee would have worked better at the Internal Audit Unit because she was well qualified in the field.
- [54] She does not know if the disclosed health condition of the employee contributed to the behaviour. She testified further that only a psychologist could make such a determination. However, it was not possible to get such an opinion on the basis that the employee refused to consent to such a referral.
- [55] The employee had an aggressive behaviour and wanted things done in her own ways, and in turn, she would want to impose such ways on her Managers.
- [56] She has a PhD in Health Studies, and she is therefore an expert on issues of Health and Wellness. She was not called as a witness during the disciplinary hearing of the employee, and she does not know who testified on behalf of the Health and Wellness during the disciplinary hearing.
- [57] She cannot comment on whether or not the employer would have arrived at a different conclusion had she testified during the disciplinary hearing.
- [58] Health and Wellness is a sub-directorate with the Human Resources Directorate.
- [59] The charges faced by the employee, related to management policy and non-compliance with the performance management policy, are fully set out on page 27 of bundle **JB**.
- [60] The ICAS report was issued in December 2020, and the disciplinary hearing took place in March 2022.
- [61] It is possible that the employee had a problem, but she could not know as she did not qualify to make such a determination hence the referral to a psychologist, which the employee refused to consent to or participate in.

- [62] Incapacity was recommended by her on the basis of the employee's performance, but she is also of the view that there could have been other reasons, including interpersonal conflicts.
- [63] There is no population of the blocks on page 11 of bundle **JB2**, and it is her submission that such is caused by lack of cooperation from the employee. The Applicant's representative is of the view that such blanks mean meetings were never convened.
- [64] She did not receive any feedback from the Managers involved, including **Mr. Mathobo**.
- [65] The employee had submitted that she had a problem with the managerial approach of **Ms. Malibe** and that **Ms. Malibe** did not respect her. The witness testified further that **Ms. Malibe** had also complained about the same issue against the employee.
- [66] The mediation process, which was conducted by her and **Mr. Maletse**, Director: Human Resources Management, did not yield any results as there was no improvement in the employee and her Line Manager.
- [67] She has an Honours degree in Psychology and is registered with the relevant regulatory body to conduct psychometric assessments, however, same is not within her scope of work in her current employment with the Respondent.
- [68] It is highly likely that the situation would have improved if the employee was moved to another unit, but there still exists a possibility that same might not have worked.
- [69] It is possible that the insolent behaviour could be linked to the stress and the employee's susceptibility to agitation.
- [70] The employee had mood fluctuations and alleged that people are plotting against her, some of these observations being covered in the report contained in **JB4**.
- [71] The employee refused to sign a performance agreement with the Line Manager and further refused to undergo psychological or psychiatric evaluation. On that basis alone, it would not have been possible to place the employee on a wellness program.

APPLICANT'S CASE

- [72] In the peculiar circumstances of the case, the Applicant's side did not lead any oral evidence and could not submit the affidavit from the medical practitioner as undertaken.

EVALUATION OF EVIDENCE, ARGUMENT AND FINDINGS

- [73] The statutory, and other framework, for the determination of this dispute is provided for by the provisions of Section 185 (a) of the LRA, which read as follows:

"Every employee has the right not to be unfairly dismissed"

- [74] The other framework is provided for by the provisions of item 2 (1) of Schedule 8 of the Code of Good Practice of the LRA in relation to dismissal, which reads as follows:

"A dismissal is unfair if it is not effected for a fair reason and in accordance with a fair procedure"

- [75] It is true that the Applicant had problems with her supervisor around the 2020/21 financial year regarding performance agreement, and the Director, **Mr. Shumani Mathobo** tried to intervene, but only at the level of advice.
- [76] It is true that the Applicant had, as far back as November 2021, requested to be moved from her unit to another unit given the strained relations between herself and the Line Manager, but same could not be done as there was no vacant post at the prospective unit amongst others, and further that it would not be possible for her to move with a post as the initial unit would be negatively affected.
- [77] It is true that the Applicant was issued with a final written warning for her refusal to complete and sign her performance agreement for the 2021/22 financial year. I note that this happened in the midst of the Applicant's request to be moved to another unit having been unsuccessful as it was declined by the Director General. The Applicant had, at all material times, made it clear that she is not going to perform any duties associated with her substantive position for as long as she is not moved to another unit.
- [78] It is also worth noting that the Applicant was granted an opportunity to give reasons why the final written warning should not be effected, and she elected not to respond to the contemplation notice/letter.
- [79] It is correct that the final written warning against the Applicant was issued in line with the provisions of the **PSCBC** Resolution 1 of 2003.
- [80] It is clear to me from the reading of the exchanges between the Applicant and her superiors that the Applicant was refusing to take lawful and reasonable instructions, which in law would amount to insubordination under normal circumstances.
- [81] It is also true from the evidence of the Respondent's first witness that the Applicant was previously an exceptional performer and a mandate-carrying employee for a period of approximately six (6) years.
- [82] It is true that following the back and forth between the Applicant and the Line Managers, the Applicant was invited to a disciplinary hearing which she did not attend on the basis, amongst others, that her car was taken in for repairs. This reason in my view is lousy and should not be accepted. Therefore, the Respondent was, in my view, procedurally compliant.
- [83] It is true that as far as the year 2020, there was a recommendation from ICAS to the effect that the Applicant should be transferred to another unit due to the strained relations between herself and the Line Manager, but same was not implemented by the Respondent as the approach initiating the transfer was rejected by the office of Director General.
- [84] What is clear to me is that there was something fundamentally wrong with the Applicant requiring decisive intervention from the Respondent, and the Respondent in the circumstances, simply neglected such a duty, and instead, adopted a complex and legalistic approach without showing empathy.
- [85] In the case of **Smith v Kit Kat Group (Pty) Ltd (JS787/14) [2016] ZALCJHB 362**, the Court ruling in favour of the employee, as per Snyman J, opined as follows:

"[1] The matter was borne of a tragic event, which instead of being resolved on the basis of compassion and good sense, escalated into unfortunate litigation on the basis of discrimination. I am surprised how often employers can be so short-sighted when it comes to personal circumstances

of their employees. The employment relationship in the modern Constitutional era is akin to a marriage, and as an employer, one has to ask yourself how you would treat your spouse in the case of personal tragedy, and then act accordingly”

- [86] The second witness of the Respondent, **Dr. Shirley Mapula Maabela**, who is an Employee Wellness Practitioner and a qualified psychologist employed by the Respondent, submitted that she attended to the case of the Applicant internally and further referred the matter to ICAS ,wherein it was recommended that the Applicant be transferred to another unit on the basis that the relations between her and the Line Manager are severely strained.
- [87] It is true that the Director General rejected the transfer recommendation on the basis that such a process should be initiated by Human Resource and be approved by the Chief Financial Officer, and not directly from Employee Health and Wellness. It is also true that such a route was used before within the processes of the Respondent and the Director General’s office would generally approve.
- [88] I find in the circumstances that the Respondent, through the office of the Director General was unnecessarily rigid, focused more on being efficient than being effective. It is also true that the Respondent was at all material times aware that the working environment of the Applicant was analogous to a pressure cooker.
- [89] The Respondent deliberately and in the midst of conclusive evidence that something is amiss in the working environment of the Applicant, adopted a disciplinary approach instead of being of help to the employee who was clearly troubled and in dire need of assistance.
- [90] It is therefore my conclusion that the process adopted by the Respondent as a whole was unfair, as it was not supposed to be convened in the first place. I, therefore, see no reason why the application of the Applicant should not succeed.
- [91] I find that the dismissal of the Applicant was substantively, and by implication, procedurally unfair.

REMEDY

- [92] In the case of ***ARB Electrical Wholesalers (Pty) Ltd v Hibbert (DA3/13) [2015] ZALAC 34***, the LAC’s Wagly JP with Ndlovu JA and Coppin JA concurring, opined that, in terms of Section 193(1) of the LRA, the remedy that an employee whose dismissal is found to be unfair may be entitled to is reinstatement or re-employment or to be paid compensation. Section 193(2) then goes on to provide that the Labour Court or an arbitrator “*must*” order the employer to re-instate or re-employ an employee whose dismissal was found to be unfair unless certain exceptions set out in that sub-section apply or the reason for the unfair dismissal was only a failure by the employer to follow a fair procedure.
- [93] In this case, it is not possible to order any other remedy except compensation given the unfortunate circumstances as fully set out in the award *supra*.

AWARD:

- [94] The Respondent is ordered to pay the Applicant an amount of **R356 090,84** (Three-Hundred and Fifty-Six Thousand, Ninety-Rands and Eighty-Four Cents) (**R50 870-12x 7**), being sever (7) months' compensation for the unfair dismissal of the Applicant.
- [95] The order in paragraph 94 above must be implemented by the Respondent on or before the 31st of March 2026
- [96] I make no order as to costs.

Signature:

A handwritten signature in black ink, appearing to be 'I. Kgatla', written over a horizontal line.

Adv. Itumeleng Kgatla:GPSSBC Commissioner.