



# Arbitration Award Rendered

Case Number: LP1065-22  
Commissioner: Simon Mohubedu Rantho  
Date of Award: 15-Dec-2022

In the **ARBITRATION** between

Matlaweng Grace Riba

(Union/Applicant)

and

SASSA

(Respondent)

**APPROVED**

## DETAILS OF THE HEARING AND REPRESENTATION

1. The arbitration was conducted on the following dates and times: - 1<sup>st</sup> July 2022; 3<sup>rd</sup> and 4<sup>th</sup> October 2022 and 6<sup>th</sup> December 2022. At all material times the proceedings took place at 08h30 at the CCMA HOUSE in Polokwane, Limpopo Province. Both parties attended the proceedings herein.
2. Mr. Phillip Maponya appeared for the employee in his capacity as the official of the trade union by the name of Public Servants Association [hereinafter referred to as PSA]. On the other hand, Ms. Tebogo Elsie Kgawane appeared for the employer in her capacity as the labour relations manager.
3. The employee referred an unfair labour practice dispute pertaining to suspension without pay for two months in terms of Section 186(2) (b) of the **Labour Relations Act** of 1995. The proceedings herein were both digitally and manually recorded.
4. The proceedings were interpreted from English to Sepedi back and forth by Messrs. Mathews Lephondo, Vusi Mathe and Ms. Mmatshupo Mabelane.

## ISSUES TO BE DETERMINED

5. I am required to determine whether or not the respondent has subjected the employee to an unfair labour practice. If I find that the employer has subjected the employee to an unfair labour practice I have to determine an appropriate relief.

## BACKGROUND TO THE DISPUTE

6. The employee is employed as supervisor - grant administration. She is working at Zebediala SASSA office. She is earning R25000.00 per month. She was employed on the 1<sup>st</sup> April 2006. She was found guilty of bringing the name of the employer into disrepute. Eventually, the employer imposed on the employee the sanction of suspension without salary for a period of two months and counselling.

7. According to the employee the employer subjected her to an unfair labour practice. She disputes the substantive fairness thereof. Wherefore, the employee is asking for the sanction as a whole to be set aside and to be refunded an amount of R42000.00 [R21000.00 x 2 = R2000.00]. At that time the employee was earning R21000.00 per month.
8. Furthermore, the employee is asking for twelve months compensation against the employer calculated at her current salary of R25000.00. Furthermore, the employee is asking to be retained at Lebowakgomo office permanently.
9. On the other hand, the employer contended that she never subjected the employee to an unfair labour practice. According to the employer the employee was guilty of misconduct and that the sanction that was imposed on the employee was appropriate under the circumstances.
10. Both parties submitted bundles of documents. Parties disputed neither the forms nor contents of the same. I ruled that the employee bears the onus of proof herein. Besides, I ruled that the employee must begin with the presentation.
11. The employer is an agency within the Department of Social Development that is responsible, amongst others, for the distribution of social grants.

## **SURVEY OF EVIDENCE AND ARGUMENTS**

### **EMPLOYEE'S CASE**

**Ms. Matlaweng Grace Riba** testified under oath as follows:-

12. On the 13<sup>th</sup> November 2019 she was on duty. In the course of her duty she came across a client by the name of Mr. Makgolwane. The latter had a hearing problem. She discovered that there was a discrepancy in his file. He was assisted by Mrs. Aphane-Kekana at customer care. They were trying to resolve his problem and to update his file.

13. Suddenly, while she was trying to resolve the matter with Mrs. Aphane-Kekana she heard Mr. Seleka clapping hands from behind. Meanwhile instructing her to pay the grants. She was shocked and felt belittled as she was busy assisting a client. She told Mr. Seleka that she was busy helping a client. Mr. Seleka did not respond rather he returned to his office. Then Ms. Ledwaba was not present in the office. She went to Lebowakgomo.
14. On that date she paid all the clients to the exception of Mr. Makgolwane since there was a problem with his file. Mr. Seleka is not her direct supervisor. Her direct supervisor is Mr. Kekana. The following day she reported the incident to Mr. Kekana. At that time Mr. Seleka was not in the office he returned to the office after 14h00.
15. On his arrival she approached him and tried to speak to him about the incident and to indicate to him that she was not content with the ways he treated her before the clients. Instead Mr. Seleka became furious and accused her of not willing to work. Thereupon, she told him that his sexual advances are now affecting their working relationship and that she intends to report it to the management.
16. The situation became tense in the office. Besides, Mr. Seleka even threatened her with assault. Then they were only two in the office and the office door was closed. Upon entering the office she found Mr. Seleka with Mr. Kekana in the office and she asked Mr. Kekana to excuse them.
17. Their office is an open plan office with three entrances and garage door. There is also the main office, kitchen and the toilet. The garage is used as the waiting area.
18. On the 14<sup>th</sup> November 2019 she was neither with Mr. Seleka in the open plan office nor in the waiting area. She never insulted Mr. Seleka. In the course of the conversation Mr. Seleka went out of the office and she went to the kitchen. She never followed him afterwards. Her work station is next to cubicle number 1 and from there to the manager's office it could be about five steps.
19. She never acceded to Mr. Seleka's sexual advances. She was transferred to Lebowakgomo office during the investigation. She wants to be retained at

Lebowakgomo permanently because trust relations between her and Mr. Seleka are broken down irretrievably.

20. On the 14<sup>th</sup> November 2019 Ms. Ledwaba and Mr. Seleka were working outside. On that date no one heard the conversation between him and Mr. Seleka.

**Ms. Thede Dorcas Aphane** testified under oath as follows:-

21. She is working at Zebediala SASSA office. On the 13<sup>th</sup> November 2019 she was on duty. On that date she saw both the employee and Mr. Seleka. When a client enters the office she is the first person to interview the client. She was with the employee when she was enquiring about the file. Suddenly, Mr. Seleka emerged meanwhile clapping his hands and telling the employee to pay the clients. Mr. Seleka was shouting when he was uttering these words.

22. The employee told him that she was enquiring about a file. Mr. Seleka seemed not to care about the response and he just walked away.

**Ms. Ngwakgatse Helen Ledwaba** testified under oath as follows:-

23. She is working at Zebediala SASSA office. She reports to both the employee and Ms. Mahlatse Kekana. On the 13<sup>th</sup> and 14<sup>th</sup> November 2019 she was on duty. Both the employee and Mr. Seleka were on duty. She did not hear the employee insulting Mr. Seleka on any of these dates.

24. Her workstation is at cubicle number 2. It could be a distance of about 12 feet from the manager's office. On the 14<sup>th</sup> November 2019 she saw the employee going to the manager's office she did not know what happened there in the office. Upon the entering the office Mr. Kekana went out of the office. As he was going out he closed the door. She did not hear anything from that office.

25. Later Mr. Seleka exited the office and went to the kitchen. He was not talking. There were clients in the cubicles. The waiting area is behind the wall. There are four chairs in the open plan office. There were no clients sitting on the chairs. The clients were in



the cubicles. There was no one in cubicle number 1. Both Mmes. Mafakane and Makgalemele were present. She is not aware if there were people in the waiting area.

## **EMPLOYER'S CASE**

**Ms. Julie Mathabatha** testified under oath as follows:-

26. On or about the 13<sup>th</sup> November 2019 she went to SASSA Moletlane Local Office to change her son's account. While they were waiting in the waiting area they heard noises from the office. A female employee was uttering vulgar words directed at the male employee. She said he is a dog and he has nothing meanwhile pointing fingers at the male employee. She mentioned the name Seleka. They were from the office. Eventually, they were told to go home and return the following day.

27. They were sitting in front of the wall. They could hear what they were saying since the wall did not reach the ceiling. The distance between where she was sitting and the office was about three to four feet. There were other people in the waiting area. She believes they were clients. At the time of the altercation the door was not tightly closed.

**Mr. Portia Bowale** testified under oath as follows:-

28. She went to SASSA Moletlane office to change her SASSA card to Nedbank account. She arrived there at about 14h00 to 15h00. On arrival she reported at the security check point. Thereafter, she proceeded to the engagement area. From there she went to the clients' area. Upon entry there were people in the waiting area although they were few in number.

29. She was sitting on the first chair in clients' area. Meanwhile they heard noises coming from the ladies sitting in the cubicle next to the exit point. One of the ladies said she wants to approach him and tell him his stories. Thereupon, she left her desk and went to the man's office. She found the door open. Upon entry a noise emerged from the office. She uttered vulgar words. On exiting the door that lady was pointing a finger at Mr. Seleka. She was saying he cannot control her. He cannot teach her how to do her work.

30. They were not helped on that day. They were told to write their names on the list and come back the following day. She was disappointed after the incident. She pointed out at the employee as the culprit. She did not know Mr. Seleka at that time.

**Mr. Mpatla Reginald Kekana** testified under oath as follows:-

31. On the 14<sup>th</sup> November 2019 the employee entered the office of the manager. He shared that office with Mr. Seleka. Upon entry the employee requested her to excuse them unless she wants to hear what she was going to tell Mr. Seleka. He left the office to buy food as it was already lunch time. On his return Mr. Seleka told him what happened. He said the employee told him that he was a dog; stupid and he must not give him work as he is not her supervisor.

32. Furthermore, he said the employee was also shouting and insulting him. Meanwhile he decided to go to the open office. The employee continued with the insults. Ultimately, he went out of the office. Thereupon, he advised him to report the matter to the management. When the employee asked him to excuse them it was about 13h45. He was the supervisor of the employee. She was reporting to him. When he is not at work Mr. Seleka takes over and gives the employee the instructions.

**Mr. Peter Seleka** testified under oath as follows:-

33. On the 14<sup>th</sup> November 2019 the employee entered his office. Thereupon, she requested Mr. Kekana to excuse them so that she could speak to him. Apparently, she was furious. She closed the door. She hurled insults at him meanwhile banging the tables with her hands. She said he is a fool; a dog and street boy.

34. She said he should never ever give her instructions because he is not her supervisor. Meanwhile he opened the door and went out of the office to the other employees the employee was with before she entered the office. Those were Ms. Helen Ledwaba and the late Ms. Kholofelo Makgalemele. The employee followed him meanwhile poking him with a finger on his forehead and back of the head. She was pushing him to return to his office.

35. She followed him meanwhile insulting him. This happened before the clients. Upon arriving in the office she closed the door. They were two in the office. She continued with the insults until he cried and she left the office for those employees he was with before she entered the office.
36. Subsequently, Mr. Kekana returned and he related what happened to him. Mr. Kekana advised him to report the matter to the management. Eventually, they reported the matter to their supervisor, Mrs. Olga Masemola. The latter escalated the matter. The employee also accused him of being a witch.
37. He asked the employee to help the clients because the employee was in a prolonged caucus with Mmes. Makgalemele and Helen Ledwaba. Those people were supposed to be helped by the employee as the supervisor. The employee is on level 7 whereas he is on level 8. The employee reports to him.
38. The incident happened before six clients and five employees to the exclusion of Mr. Kekana. It occurred between 13h30 and 15h00. On the 14<sup>th</sup> November 2022 Ms. Dina Thelele was not on duty she was in Polokwane. Ms. Helen Ledwaba and the employee had a close relationship. Both of them were disruptive in the office. The late Ms. Makgalemele and the employee used to go on lunch together.
39. All the level 5 employees report to the employee. She does not have a good working relationship with the employee. Consequently, the employer took him to counselling four times. Trust relationship between him and the employee is irreparably broken down because she fabricated lies against him. He never made sexual advances towards the employee.

**Ms. Ramatsemele Olga Masemola** testified under oath as follows:-

40. She is the assistant manager at the Lepelle-Nkumpi office. It has two offices. One in Zebediala and the other in Lebowa kgomo. She is the supervisor of Mr. Seleka. She received a complaint from Mr. Seleka by email. According to Mr. Seleka on the 13<sup>th</sup> November 2019 the employee refused to carry out his instruction. Moreover, she insulted him. She received the second complaint from Mr. Seleka on the 14<sup>th</sup>



November 2019. According to the complaint the employee insulted him. Besides, she had conversation with Mr. Seleka.

41. At one stage she tried to communicate with the employee by email. The employee refused. Sometimes the employee had no good communication.

## ANALYSIS OF EVIDENCE AND ARGUMENTS

42. The onus of proof is on the applicant to show, on a balance of probabilities, that the respondent subjected her to an unfair labour practice.

43. Parties requested to submit closing arguments in writing. Parties were given until the 9<sup>th</sup> December 2022 to submit same. The employer managed to submit its closing arguments on due date. On the other hand, the employee failed to submit her closing arguments. I considered them in making a determination herein.

44. In terms of case law if a party has submitted documents during a hearing and there was no objection thereto the arbitrator is entitled to rely on those documents [**University of the North v Nobrega & Another (1999) 20 ILJ 2117 (LC)**]. In this matter, parties submitted bundles of documents. Parties disputed neither the forms nor the contents of the same. Therefore, I will consider the same documents in making a determination herein.

45. Undisputed evidence has been led for the employee that at the time when Mr. Seleka approached them the employee was enquiring about a certain file. Furthermore, undisputed evidence has been led for the employer that Ms. Ngwakgatse Hellen Ledwaba did not hear the employee insulting Mr. Seleka on both the 13<sup>th</sup> and 14<sup>th</sup> November 2019.

46. On the other hand, under cross-examination Ms. Mathabatha testified she did not see anyone leaving the office of Mr. Seleka upon the employee's entry into that office. Under cross-examination Ms. Mathabatha testified that she saw no one leaving the office upon the employee's entry. She gave the same answer in this regard not once but twice. Furthermore, she testified that when the employee was insulting Mr. Seleka, Mr. Seleka's office door was not tightly closed. Besides, Mr. Seleka maintained that

any evidence to the effect that the door was not tightly closed would be a lie. Therefore, I find that there is contradiction between the evidence of Ms. Mathabatha and that of Mr. Seleka pertaining to whether the door was closed or not.

**47.** Furthermore, I find that there is contradiction between the evidence of Ms. Mathabatha and Ms. Bowale. Notwithstanding that they were sitting at the same place their evidence is not consistent regarding the insults which the employee directed at Mr. Seleka on the date in question. Moreover, as far as the insults are concerned the statement of Ms. Bowale is inconsistent with her evidence during the arbitration. It is so amazing, Ms. Bowale cannot claim to remember the incident much better about three years later more than at the time when it happened. This evidence is improbable.

**48.** As far as the alleged insults are concerned, I find that the evidence Mr. Mpatla Reginald Kekana is hearsay. Mr. Kekana was not present in terms of his evidence he was told by Mr. Seleka of what happened regarding the alleged insults. He does not have a first-hand experience of the insults. Therefore, his evidence is not acceptable.

**49.** I find that there is contradiction between the evidence of Mr. Kekana and Mr. Seleka the way the employee told Mr. Kekana to vacate the office. According to the former on entering the office the employee asked him to excuse them whereas according to the evidence of the latter on entering the office the employee instructed Mr. Kekana to leave the office. The way Mr. Kekana put it was apparently in a polite manner whereas the way Mr. Seleka put it was in an impolite and disrespectful manner. I find that there is a possibility of an exaggeration by Mr. Seleka because he was not in good terms with the employee. His evidence has some element of bias.

**50.** Furthermore, I find that there is contradiction between the evidence of Ms. Bowale and that of Mr. Seleka. Under cross-examination Mr. Seleka testified that the people could not hear what the employee was saying because the door was closed. Whereas according to the evidence of Ms. Bowale they were able to hear what the employee told Mr. Seleka behind the closed door.

**51.** Besides, the demeanor of Mr. Seleka did not look like the demeanor of a person who was confident and telling the truth. Mr. Seleka was not relaxed in the course of his evidence and he could not even look the employee in the eyes.

52. I have considered the evidence of Ms. Ramatsemele Olga Masemola. I found that it is not relevant for the purposes of my decision herein.

53. Therefore, I find that the evidence led for the employer herein is implausible and I am rejecting it. The case against the employer is overwhelming. Against this background, I find that the employer has subjected the employee to an unfair labour practice.

54. Therefore, I am inclined to grant the employee her wish that her suspension for two months be set aside and that she should be refunded her salary for a period of two months which was withheld during the suspension. The amount which is now due and owing is R42000.00 [ $R21000.00 \times 2 = R42000.00$ ]. At the time of the suspension the employee was earning R21000.00 per month.

55. I have no competence to order that the employee should be retained at SASSA Lebowakgomo office permanently.

## **AWARD**

56. I hereby rule that the employer has subjected the employee to an unfair labour practice.

57. I hereby order that the suspension of the employee for a period of two months has been set aside and that the employer must lift the suspension with immediate effect.

58. I hereby order the employer to pay the employee the sum of R42000.00 [ $R21000.00 \times 2 = R42000.00$ ] being an equivalent of her salary for two months at that particular time.

59. The sum of money referred to in paragraph 59 above must be paid not later than the 31<sup>st</sup> December 2022.

60. The sum of money referred to in paragraph 59 above earns interests in terms of Section 143(2) of the **Labour Relations Act**.

Signature: 

Commissioner: **Simon Mohubedu Rantho**  
Sector: **Public Service (General)**

