

**IN THE GENERAL PUBLIC SERVICE SECTORAL BARGAINING COUNCIL HELD AT THE REGIONAL OFFICE OF
THE NATIONAL DEPARTMENT OF PUBLIC WORKS IN POLOKWANE**

CASE NUMBER: GPBC337/2018

PSA obo. M. MATLOGA

APPLICANT

and

NATIONAL DEPARTMENT OF PUBLIC WORKS

RESPONDENT

ARBITRATION AWARD

DETAILS OF HEARING AND REPRESENTATION:

1. This unfair dismissal dispute relating to misconduct was enrolled for arbitration in terms of section 191(1)(5)(a) of the Labour Relations Act 66 of 1995 (the Act) and arbitrated on respectively 28 February 2019 and 11 & 12 March 2019, at the respondent's regional offices situated in Hans Van Rensburg street, Polokwane.
2. The Applicant was present and represented by Mr. P.P. Maponya, a Labour Relations Officer from the union PSA. The respondent was represented by Mr. S. Thipa in his capacity as the employer's Human Resources Manager.
3. The parties were allowed to present opening- and closing statements, *viva voce* evidence under oath and to cross- and re-examine on the respective testimonies presented. Both parties submitted written closing arguments which I have read and considered.
4. The proceedings were conducted in English and interpreted into Sepedi by Mr. A. Modiba. Manual- and digital recordings were made of the process and the *viva voce* evidence presented.
5. In terms of documentary evidence accepted, the applicant's bundle was marked as bundle A, consisting of 49 pages. The respondent presented 5 bundles. Bundle B1 consists of 45 pages, bundle B2 of 139 pages, bundle B3 of 5 pages, bundle B4 of 4 pages and bundle B5 of 8 pages. All documentary evidence were accepted as documents which are what they purport to be. The parties however reserved their respective

rights to challenge the content of any document during the arbitration of this dispute.

6. Section 138(7)(a) of the Act requires a commissioner to issue a signed arbitration award with brief reasons. For this reason, only the salient points will be referred to in this award, although all *viva voce*-, documentary evidence and submissions were carefully considered.

ISSUES TO BE DECIDED:

7. I am required to determine whether the applicant's dismissal was procedurally and substantively fair.

BACKGROUND TO THE DISPUTE:

Common cause issues:

8. The employment relationship commenced on 29 September 2009. At the time of the dismissal the applicant rendered services as the respondent's Administration Officer: Security Services and earned a monthly salary of R13 476-44.
9. The applicant was accused of committing misconduct during November 2016. The misconduct related to the applicant's involvement in the security screening and vetting of Moshabi Security (Moshabi), appointed to render security services at 2 of the respondent's buildings situated in Polokwane.
10. A disciplinary hearing was convened and concluded on 14 September 2017. The applicant pleaded guilty to all 4 misconduct charges recorded on the notice to attend the hearing (pages 1 to 4 of bundle B2). The applicant had a clean disciplinary record at the time when he faced these charges.
11. The applicant received the written sanction of dismissal on 28 November 2017. An appeal was lodged against the finding. The appeal outcome upholding the dismissal was issued on 19 December 2017.
12. In terms of substantive fairness, the applicant conceded that he committed the misconduct and pleaded guilty to all charges at his disciplinary hearing. The applicant conceded to having full knowledge of all applicable policies and / or rules prohibiting employee's to commit fraud and / or to act dishonestly.
13. As dismissal is not in dispute, the respondent bears the *onus* to prove the procedural and substantive fairness of the dismissal in accordance with the provisions of section 192(2) of the Act and commenced with the presentation of evidence.

Issues in dispute:

14. The applicant raised a single procedural challenge to his dismissal and alleges that the respondent acted

unfairly by implementing the sanction whilst the outcome of the appeal was still pending.

15. In terms of the substantive fairness, the applicant claims that the respondent applied discipline in an inconsistent manner. The applicant further challenges the appropriateness of dismissal as sanction.
16. The following inconsistency challenges were raised by the applicant:
 - 16.1 Messrs. Mapotsana and Mamabolo faced similar charges relating to gross negligence in the execution of their duties after they made incorrect payments to service providers. They were each suspended for a month and received final written warnings;
 - 16.2 Ms. T.L. Ramavhale was found guilty of assaulting a colleague. She was suspended for a month and received a final written warning;
 - 16.3 Mr. Lalamani stole money from his colleagues. This money was earmarked for payment to the respondent's cellular phone service provider. He was found guilty of theft but not dismissed;
 - 16.4 Ms. N. Sephungela failed to execute her duties as member of the respondent's Bid Evaluation Committee (the BEC). She failed to verify documentation, which allowed a tenderer to submit a fraudulent BEE Certificate. She received a final written warning.
17. In terms of relief the applicant prays for retrospective re-instatement. The respondent asks for the dismissal of the applicant's unfair dismissal dispute.

SUMMARY OF EVIDENCE AND ARGUMENT:

RESPONDENT'S EVIDENCE:

Mr. C. Zaba:

18. The respondent introduced Mr. C. Zaba (Zaba) as the chairperson of the disciplinary hearing. He testified that he was satisfied that all procedural rights were fairly afforded to the applicant prior to accepting his plea of guilty.
19. He considered the aggravating- and mitigating circumstances presented. These circumstances were weighed against the seriousness of the misconduct. He issued a sanction of dismissal.

20. Amongst other factors considered, he had regard to the remorse shown by the applicant and to the respondent's zero tolerance approach towards fraud and corruption. According to him the applicant showed fraudulent intent. The applicant compiled the fraudulent letter to the BEC (page 98 of bundle B2) and requested his sub-ordinate to sign this letter under the false pretence that positive vetting results were received. All the while, the applicant had full knowledge that Moshabi was never subjected to any vetting processes. The applicant's misconduct seriously compromised the relationship between the respondent and the State Security Agency (the SSA) and exposed the respondent to numerous security risks.
21. In cross-examination the applicant stated that urgency and extreme pressure to timeously appoint a new security service provider, resulted in him having to circumvent the respondent's policy and procedures. Zaba replied and denied that these reasons advanced by the applicant, can rightfully serve as justification for the applicant's fraudulent actions. He further stated that Moshabi would not have been appointed, had it not been for the applicant's misrepresentations regarding the vetting results.
22. He considers Moshabi's appointment as unlawful. He continued and testified that all payments made to Moshabi constitutes irregular expenditure, despite being unaware of the Auditor General's actual findings in this regard. He viewed the applicant's misconduct as very serious. He found that the applicant's misconduct resulted in the breakdown of the trust relationship.
23. He referred to the respondent's uncontested policy on vetting and regarded the applicant as the custodian thereof. The applicant should have disclosed the true state of affairs to his superiors and should have considered requesting an exemption. He considered that the applicant knowingly failed to have any regard to the respondent's policies and in the process also contravened the Public Service Code of Conduct.
24. Regarding the disciplining of Messrs. Mapotsana and Mamabolo, he testified that the respective acts of misconduct in question, are incomparable. According to him, the applicant showed clear intent whilst the other 2 gentlemen acted in a negligent manner. In cross-examination it was suggested that these matters are indeed similar because the acts of misconduct are both classified as financial misconduct in contravention of the provisions of the Public Finance Management Act 1 of 1999 (the PFMA). Zaba maintained that the merits of these matters are distinguishable because Messrs. Mapotsana and Mamabolo never had any intention to commit fraud.
25. Zaba considered the evidence regarding Ms. Ramavhale's (Ramavhale) assault on her colleague. He stated that assault is simply not comparable to fraud. He had no knowledge of the circumstances resulting in the discipline meted against Mr. Lalamane, but conceded that theft is in fact a dismissible offence.
26. The evidence considered convinced Zaba that Ms. Sephungela failed to properly evaluate bid documents presented by a bidder. It came to light that the relevant BEE certificate as presented by the bidder, was in

fact a fraudulent document. She neither generated-, nor knowingly submitted a fraudulent document to the BAC.

Mr. T.C. Libago:

27. Mr. Libago (Libago) was introduced as the respondent's Assistant Director: Security Management to whom the applicant reported directly. His duties include managing the security screening and vetting of prospective service providers, as well as the implementation of the respondent's policies.
28. Mr. Mokwetli (Mokwetli) from the respondent's Legal Services, informed him on 11 November 2016 that Moshabi's screening results remained outstanding. This resulted in Legal Services being unable to confirm the appointment. The applicant called him telephonically at approximately 17h00 that afternoon and informed that Mokwetli has since provided verbal authorisation to appoint Moshabi, after receiving positive screening results.
29. On 15 November 2016, Libago first saw the applicant's fraudulent letter, which misrepresented the vetting results. He noticed that Ramavhale signed as "*person present*" (pp) on his behalf, despite the fact that he was present in the office on that particular day. During cross-examination he testified that he confronted Ramavhale, whom immediately spilled the proverbial beans. He conceded that Ramavhale was not supposed to have signed the letter, but argued that she received a lawful instruction from the applicant. He could not find any confirmation that screening requests were made to either the respondent's National Screening Centre, or to the SSA.
30. He regards the applicant's misconduct as a serious contravention of the respondent's internal security policies. He testified under cross-examination that there was pressure to appoint a new security service provider due to the expiry of the previous contract. The applicant however failed to communicate any of these challenges to Libago. After this incident he regarded the applicant as unreliable due to his misrepresentations to the BAC.

Ms. L. Ramavhale:

31. The applicant was her supervisor. He informed her on 09 November 2017 that he is unable to sign the vetting results letter, due to his appointment as the chairperson of the BAC. He furthermore informed her that he was unable to locate Libago and requested her to sign the letter.
32. She assumed that the applicant had seen the supporting documentation, supposedly received from the respondent's National Screening Centre and the SSA. She signed the vetting results letter on behalf of Libago without perusing any actual screening results. Under cross-examination she conceded that she did not have permission to sign the letter on behalf of Libago, but she did not consider her actions as wrong at the time when she signed.

33. Libago approached her regarding the letter. During this confrontation, she relayed the conversation which she had with the applicant prior to signing the letter on 09 November 2017. According to her the letter was not backdated as alleged.

Mr. L. Mahloko:

34. Mr. Mahloko (Mahloko) serves the respondent as Deputy Director: General Governance, Risk and Compliance and was part of the team which investigated the allegations of fraud against the applicant. Their Forensic Investigation Report (pages 5 to 21 of bundle B2) resulted in the formulation of charges against the applicant. Their findings confirmed that the applicant presented a fraudulent document and failed to follow the respondent's policy on vetting. The applicant also contravened the provisions of the Public Service Code of Conduct, the PFMA and Treasury Regulations.
35. The applicant was expected to escalate the challenges experienced in the process of vetting Moshabi to his seniors, but failed to do so. The respondent does not accept pressure as an acceptable excuse for committing serious misconduct. The applicant's misconduct caused serious reputational damage to the respondent. He failed to act in an ethical manner and showed a complete lack of integrity. The respondent is unable to further trust the applicant.
36. He confirmed the respondent's zero tolerance approach to fraud and corruption. Transgressions of this nature is seen as very serious misconduct which consistently results in dismissals. The gravity of the misconduct is apparent from the fact that the South African Police Services (SAPS) registered a criminal investigation into allegations of fraud against the applicant. The applicant committed a crime and the respondent was obliged to report the incident to the SAPS. Dismissal was therefore an appropriate sanction for the serious misconduct of misrepresenting screening results to the BAC.

Ms. M.J. Malungane Mahasha:

37. Ms. Malungane Mahasha (Mahasha) confirmed that she is responsible for the management of misconduct and serves the respondent in its Labour Relations Unit. She regards the applicant's misconduct as very serious as he misrepresented fraudulent security vetting results in order to mislead the BAC.
38. The applicant, in his capacity as the chairperson of the BAC, furthermore signed in confirmation that the bidding process was fair and transparent. He unduly influenced the outcome of the tender process by this further misrepresentation made, which misconduct cannot be condoned by the respondent. The appointment of Moshabi was irregular and payments made to them were recorded as irregular expenditure on the respondent's financial statements.

39. During cross-examination she testified that the applicant also made a further unlawful misrepresentation to Legal Services. They trusted the applicant's report that the results were positive where in truth and in fact, Moshabi was never submitted to the vetting process.
40. She explained that the State as a whole, applies a strict zero tolerance approach towards fraud and corruption. She has been involved in numerous cases relating to fraud which if proven, always results in dismissal. According to her, any dishonest act negatively affects the heart of the employment relationship, which is built on trust. The respondent can never condone fraud and / or corruption as the department may be perceived as not being involved in efforts to uproot corruption. The applicant's misconduct resulted in the State being pictured as corrupt. The respondent is unable to trust the applicant and cannot be certain that he will not also commit fraud in the future. He occupied a senior position and was supposed to have ensured that all policies and rules were followed. She is of the view that the relationship of trust has been destroyed by the applicant's misconduct.
41. With reference to the nature of the applicant's role within the respondent's security section, she testified that he should have known better. She testified that the applicant was supposed to have called his superiors to inform them of his predicament. The applicant's regional manager had the necessary authority to make a verbal appointment on an urgent basis. Instead, the applicant attempted to cover his tracks by requesting his sub-ordinate to sign a document which he knew was fraudulent. Their investigation revealed that Ramavhale was unaware that the information captured on the fraudulent letter was misleading. She trusted that the applicant did all that was required and was subsequently found to be innocent.
42. She stated that dismissal is an appropriate sanction in light of the gravity of the misconduct and the prejudice suffered by the respondent as a result thereof. The respondent suffered severe reputational damage as the SSA perceived the respondent's employees as corrupt officials.
43. Regarding Mr Lalamane's inconsistency challenge, Mahasha testified that she was actively involved with this case during 2012. She referred to Lalamane's notice to attend a disciplinary hearing (page 1 of bundle B6) and confirmed that she was recorded as reference on the notice. Lalamane contravened the respondent's financial procedures and utilised the money for his own personal gain. He was however not charged, nor found guilty of theft as he paid all of the money back to his colleagues, prior to his disciplinary hearing. Lalamane never had the intention to permanently keep the money and therefore did not commit the crime of theft. The respondent was furthermore not prejudiced by Lalamane's misconduct, which resulted in the gravity of his misconduct, being viewed as less severe than the applicant's misconduct.
44. The respective merits of the matters of Messrs. Mapotsane and Mamabolo are distinguishable from the applicant's matter. Both of them acted negligently by failing to verify the correct particulars of service providers prior to effecting payments. They did not have any intention to defraud anyone and as such, their

matters cannot be compared to the applicant's matter as he committed fraud.

45. Ramavhale committed serious misconduct by assaulting her colleague. She however never committed fraud or made any form of misrepresentation. She was not found guilty of gross dishonesty, which renders her sanction as distinguishable from the applicant's sanction.

APPLICANT'S EVIDENCE:

Mr. M. Matloga:

46. During November 2016, the applicant compiled a request to their Procurement Section regarding the provision of security services. An initial invitation was sent to various service providers to supply quotations. All quotations received however exceeded the monetary threshold. The applicant had to invite a second group of service providers to submit quotations, which again failed to meet the respondent's requirements. Moshabi was part of the third group of invitees.
47. The applicant chaired the BEC meeting on 09 November 2016, during which the bid was awarded to Moshabi. After the meeting, the applicant compiled the fraudulent vetting results letter (page 98 bundle B2). He thereafter requested Ramavhale to sign, after explaining that he was unable to do so himself due to his appointment as BAC chairperson. He further informed Ramavhale that Libago was nowhere to be found. The applicant had to act urgently and never forced Ramavhale to sign the letter on behalf of Libago. He thereafter submitted the fraudulent letter to Legal Services, which immediately confirmed Moshabi's appointment.
48. During cross-examination, the applicant confirmed that he called Libago telephonically after 16h00 on 09 November 2016. He informed Libago that Legal Services gave a verbal go-ahead after positive vetting results were received. During cross-examination he conceded and agreed that he knew all along that no results were issued.
49. The applicant testified that there was not enough time to process the requests for Moshabi's vetting. In certain instances, the vetting results were only issued 2 to 3 months after the requests were made. He stated that he would have been in trouble if no security services were present on the respondent's sites. The newspapers would have reported negatively on the department's failure to safeguard its own assets and staff. This frustrating situation prompted the applicant to proceed without submitting Moshabi to the vetting process. He believes that the respondent placed trust in him to take certain decisions.
50. The applicant never had any discussions with his superiors regarding the urgency of the matter, as they were all aware of the problem. He however made an abrupt turn during cross-examination and conceded that there were emergency measures in place and that he should have escalated the problem to his seniors.

51. As a result of this investigation, employees were instructed not to further disclose any information regarding the results on the respondent's standard results letter. The actual results documentation received from the National Vetting Centre and the SSA, must be submitted to the BAC for their perusal and consideration.
52. In hindsight, the applicant realised that he made a big mistake. The dismissal and his status as an unemployed husband and father places serious strain on his ability to properly support his extended family. He is a first time offender and cannot merely be chased away, as he has since learned his lesson. His daughter had to change schools as a result of his dismissal. He is heavily burdened and also takes care of his brother's children and a disabled family member who is unable to walk. His wife is also unemployed. During cross-examination, the applicant conceded to committing gross dishonesty and regards his own situation as very unfortunate. He pleads for mercy to be shown and maintained that he was merely trying to protect the respondent's interests.
53. Regarding his consistency challenges, the applicant confirmed that numerous officials reported to him that Lalamane stole their money. Upon being confronted, Lalamane admitted to appropriating the money and immediately promised to repay all of his colleagues. The respondent however applied a sanction short of dismissal despite the fact that Lalamane committed theft. He testified that Messrs. Mamabolo and Mapotsane made mistakes by paying wrong suppliers. These mistakes were also committed within the financial environment but the respondent however decided not to dismiss them.
54. In support of his procedural challenge, the applicant initially testified in chief, that he appealed the dismissal on 07 February 2018. He stated that Ramavhale and Sekgobela instructed him on the very same day, to pack his things and leave the workplace. He confronted Libago and received his dismissal letter during their discussion. His appeal was lodged from his home after he was forced to leave the workplace. During cross-examination, the applicant however conceded that he may have mistaken the exact dates during his testimony in chief. He capitulated upon his procedural challenge by effortlessly conceding that he was instructed to leave the workplace, only after receiving the appeal outcome on 19 December 2017.
55. The applicant argued that the trust relationship remained in tact. He suggested that the respondent should have considered transferring him to another section. He further suggested that the respondent may even go as far as placing him on unpaid suspension for a period of 6 months.

ANALYSIS OF EVIDENCE AND ARGUMENTS:

56. Every employee has the right not to be unfairly dismissed in terms of section 185 of the Act.
57. Section 188 of the Act stipulates that a dismissal which is not automatically unfair, is unfair if the employer fails to prove that the reason for dismissal is for a fair reason related to the employee's conduct, capacity

or the employers operational requirements and that the dismissal was effected in accordance with a fair procedure.

58. As dismissal is not in dispute, the burden of proof rests upon the respondent to prove that the dismissal was procedurally and substantively fair in terms of section 192 of the Act.
59. Section 138(6) of the Act obliges a commissioner to have regard to all codes of good practice issued by NEDLAC or guidelines published, relevant to a matter being considered in arbitration proceedings.
60. The applicant effectively abandoned his procedural challenge during his cross-examination. Page 15 of bundle B1 confirms beyond any doubt that the appeal outcome was issued on 19 December 2017. The applicant agreed under cross-examination that he was instructed to leave the workplace only after receiving the appeal outcome. For these reasons I find that the dismissal is procedurally fair.
61. The consistency challenges relating to respectively Messrs. Mapotsane and Mamabolo and Ms. Sephungela are easily disposed of with reference to the content of item 100 of the *CCMA Guidelines on Misconduct Arbitrations* (the Guidelines) which reads as follows:

“There are two types of consistency required of an employer in the application of a rule and a sanction – consistency over time and consistency as between employees charged with the same contravention.”
62. From the evidence considered it is clear that the aforesaid gentlemen and lady, all acted negligently in the execution of their duties. They were never accused of gross dishonesty or of any fraudulent intent. Their acts of misconduct are clearly distinguishable from the applicant’s misconduct, which view is wholly corroborated by the undisputed documentary evidence, presented in respectively bundles B3 and B4.
63. Ramavhale’s assault on her colleague is listed in Schedule 8 to the Act as a serious offence, which may result in dismissal for a first time offence. The evidence however shows that the respondent was never directly harmed by the assault, as opposed to the applicant’s misconduct which caused serious prejudice in the form of reputational harm to the respondent. Ramavhale was similarly, also not charged, nor found guilty of any misconduct involving an element of dishonesty.
64. The remaining consistency challenge regarding the discipline meted to Mr. Lalamane requires further consideration into the elements of the crime of theft. In current South African law, theft is defined as an unlawful and intentional appropriation of corporeal property. In order to establish the required *mens rea*, the aforementioned appropriation must be accompanied by an intention to permanently deprive the owner of the benefits of ownership. It is common cause that Lalamane never intended to permanently deprive his colleagues of their money, which he has refunded prior to the issuing of his sanction. Mahasha’s testimony was clearly in line with the aforementioned definition of the crime of theft and is regarded as highly reliable, due to her direct involvement in Lalamane’s disciplinary hearing. The undisputed content of bundle B6 wholly supports a finding that Lalamane was not charged with, nor found guilty of the crime of theft.

65. It is apparent from the evidence considered, that none of the respective *species* of misconduct referred to in the applicant's consistency challenges, are in fact similar, or even closely related to the misconduct for which the applicant was ultimately dismissed for. The applicant's misconduct and sanction is clearly distinguishable with reference to the fact that the applicant was found guilty on charges of gross dishonesty.
66. Turning now to the determination of whether dismissal was an appropriate sanction. I am guided by both the provisions of Schedule 8 to the Act and the Guidelines. Item 93 of the Guidelines reads as follows:
- "The test is whether the employer could fairly have imposed the sanction of dismissal in the circumstances, either because the misconduct on its own rendered the continued employment relationship intolerable, or because of the cumulative effect of the misconduct when taken together with other instances of misconduct."*
67. In the matter of *Edcon v Pillimer NO & Others* (2009) 30 ILJ 2642 (SCA) the Supreme Court of Appeal held that an employer who alleges that the employment relationship has been destroyed must lead evidence to show how the employee's misconduct impacted on the relationship. The conclusion of a broken employment relationship may however be apparent from the nature of the offence and/or the circumstances of the dismissal. This same view was held in the decision of *Miyambo v CCMA & Others* (LAC) where the Labour Appeal Court also emphasised the importance of the trust relationship between employers and employees. Commissioners are required to consider all circumstances whenever determining on the appropriateness of dismissal as sanction. The primary consideration however remains the relationship of trust between the parties.
68. Without any need to embark upon complicated credibility findings regarding the opposing testimonies considered, I have no difficulty in concluding that the applicant's misconduct was indeed very severe in nature. He fabricated a fraudulent letter and deceived Ramavhale into signing the letter on behalf of Libago. He deliberately misrepresented to the other members of the BAC and to the respondent's Legal Services, that positive vetting results were received, well knowing that these reports were nothing other than mischievous lies. He blatantly lied to Libago during their telephonic conversation. In his capacity as chairperson of the BAC, he furthermore falsely confirmed that fair and transparent procurement processes were followed in awarding the bid to Moshabi.
69. The motivation for the respondent's web of lies spun becomes rather immaterial as no proper justification can be offered for the various acts of gross dishonesty and deception which emanated from the evidence considered. The gravity of the numerous acts of misconduct is indeed severe.

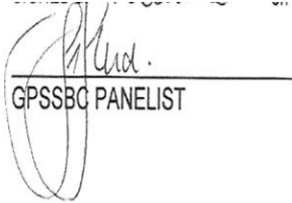
70. I regard the applicant's considerable length of service as a proverbial double edged sword. It is generally accepted that a long service record serves as a mitigating factor. On the other hand, the long service record also establishes the applicant as a senior employee, with many years of service behind him and highly experienced in the execution of his duties. It remains uncontested that the applicant was a senior employee, corroborated by the evidence confirming that he frequently acted as the chairperson of the respondent's BAC.
71. The Labour Appeal Court held in the matter of *Toyota SA Motors (Pty) Ltd v Radebe and others* (2000) 21 ILJ 340 (LAC) that long service cannot save an employee who is guilty of having committed serious misconduct. This finding was followed in the decision of *ABSA Bank Limited v CCMA ZALCJGHB 286*. In this matter, the Court held that long service is usually regarded as a mitigating factor, but that there are certain acts of misconduct which are of such a serious nature, that no length of service can save an employee from dismissal. The Court found gross dishonesty as serious misconduct which warrants dismissal as an appropriate sanction.
72. In the matter of *ABSA Bank v Naidu and Others* [2015] 1 BLLR 1 (LAC) the Labour Appeal Court held that the parity principle is not intended to profit employees who committed serious acts of misconduct. It was further reconfirmed that dismissal is warranted for cases of gross dishonesty.
73. In the matter of *Cecil Nurse (PTY) Ltd. v Busakwe NO and Others* [2015] 28 (LC) the Labour Court held that it remains a fundamental element of any employment relationship, that employer's should be able to place trust in their employees. A breach of this trust in the form of conduct involving dishonesty is a breach that goes to the heart of the employment relationship and is destructive of it, thereby warranting dismissal.
74. I had further regard to the circumstances of the contravention and find that the applicant failed to provide any acceptable justification for his acts of misconduct. I had serious regard to the rationale for the respondent's standards and rules pertaining to the appointment of security service providers. The respondent's zero tolerance approach in order to eradicate fraud and corruption was never disputed. The nature of the applicant's job and the calculated wilfulness of his actions are regarded as aggravating factors.
75. I have considered the applicant's remorse shown by pleading guilty during his hearing and also had regard to his status as a first time offender. The applicant's personal circumstances are indeed dire as a result of the loss of income occasioned by his dismissal.
76. I am satisfied from the evidence considered and especially from the testimony of Mahasha to this effect, that the respondent consistently dismissed employees whom were found guilty of gross dishonesty.
77. The totality of the evidence presented weighs in favour of a finding that the relationship of trust was indeed irreparably damaged as a result of the applicant's misconduct. I find that dismissal is an appropriate sanction.

78. For these reasons I find that the dismissal is substantively fair.

AWARD:

79. The applicant's unfair dismissal disputes is dismissed.

SIGNED AT POLOKWANE ON 26 MARCH 2019.



GPSSBC PANELIST

COMMISSIONER SJ LOMBARD