



# ARBITRATION AWARD

Case Number:  
Commissioner:  
Date of Award:

NWKD 3522- 19  
Maimela Mashego  
21 OCTOBER 2019

In the **ARBITRATION** between

**PSA OBO RAPHASHA W.L**

(Union / Applicant)

And

**SASSA**

(Respondent)

**Union/Applicant's  
representative:**

Kabelo Moalosi PSA Trade Union Official

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**Respondent's  
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## DETAILS OF THE HEARING AND REPRESENTATION

1. This is an Arbitration Award between RAPHASHA W.L, the applicant and SASSA, the respondent.
2. The arbitration was held under the auspices of the CCMA in terms of the Labour Relations Act, Act NO. 66 of 1995 as amended (hereinafter referred to interchangeably as the Act or the LRA).
3. The applicant referred a dispute of unfair dismissal to the CCMA on 19 September 2019. The matter was set down for the combined processes of conciliation and arbitration (con/arb) on 21 October 2019. The matter was originally set down for conciliation and arbitration on 15 October 2019 but arbitration could not proceed on the day as the matter was stood down by mutual agreement of the parties to allow for the parties to further explore discussions around settlement.
4. When the arbitration resumed on 18 October 2019 both parties agreed to revert back to conciliation to afford it the opportunity to resolve the dispute but unfortunately at the conclusion of the process the dispute still remained unresolved and a certificate to that effect was issued and arbitration continued immediately thereafter.
5. The proceedings were digitally recorded and hand written notes were also taken.

## PRELIMINARY ISSUES

6. At the commencement of the proceedings the respondent objected to the matter being dealt with by Tshwane Region of the CCMA as the alleged act of misconduct took place in the North West and argued that the Commissioner would lack jurisdiction to hear and determine the dispute as it was supposed to be heard and determined by the CCMA North West region.
7. The Commissioner referred the respondent to Rule 24(1) of the amended CCMA Rules which provides that a dispute must be conciliated or arbitrated in the region in which the dispute arose or where the employer's principle place of business is located, unless a senior commissioner in the head office of the Commission directs otherwise.
8. The respondent principal place of business is in Pretoria or Tshwane and therefore the ruling was that the CCMA Tshwane region would assume jurisdiction to hear and determine the dispute.

9. I invited both parties to make oral submissions motivating their positions for and against the matter being heard and determined here at Tshwane CCMA region.
10. After considering those submissions, I ruled that the dispute would be heard and determined here at Tshwane region of the CCMA as per Rule 24(1) of the amended rules of the CCMA.

#### ISSUES TO BE DECIDED

11. I am required to determine whether the applicant dismissal was substantively fair.
12. Should I find that the dismissal was unfair, then I must consider an appropriate relief to redress such unfairness.

#### BACKGROUND TO THE DISPUTE

13. At the commencement of the arbitration hearing the parties agreed that the following were accepted as common cause facts, namely: (1) the chairperson of the internal disciplinary hearing furnished the outcome after 30 days when it was supposed to have been made available in less than 30 days. (2) the appeal was decided after 30 days when it was supposed to have been decided within 30 days. (3) procedure that led to the dismissal of the applicant was grossly flawed and (4) that the charges are duplicated where two charges emanate from one incident and that parties would only deal with count 1 and an alternative to count 1 which are whether the applicant took a R 4000.00 bribe or not from Maria Moyo, the complainant who had since passed on and whether or not the applicant failed to deposit an amount of R 3 200.00 that Maria Moyo paid for her debt
14. The applicant was employed as an Administration Clerk at the respondent from 01 October 2011 until the date of her dismissal on 06 November 2017. She earned a basic salary of **R 15 593, 00 (Fifteen Thousand and Five Hundred and Ninety Three rands)**.
15. As to the relief the applicant sought to be reinstated.

#### SURVEY OF EVIDENCE AND ARGUMENT



This is a brief summary of evidence considered as provided for in terms of Section 138(7)(a) of the Act relevant to the dispute at hand and does not reflect all the evidence and arguments heard and considered in deciding this matter.

#### RESPONDENT'S VERSION

16. The respondent called (1) witness Malesela Simon Sekhaolelo to support its case.
17. The witness was sworn in and gave a sworn testimony in the following way:
18. At the start of his sworn testimony the witness stated that he would be adducing or leading hearsay evidence, as he was not the actual complainant as the complainant is deceased.
19. He also stated that he did not see or witness the interactions between the applicant and the complainant on the day of the alleged incidents of bribery and alleged failure by the applicant to deposit an amount of R 3200.00 that Maria Moyo the complainant allegedly paid for her debt.
20. The witness also stated that he was told what to say in the arbitration hearing by the respondent as he had never interacted with the complainant on the matter. The witness also stated that he was going to read into evidence from the affidavit that was deposed by the complainant when she was still alive.
21. The witness told the hearing that the applicant failed to deposit an amount of R 3200.00 that the complainant Ms Maria Moyo gave her to pay for her debt. During cross examination he was asked if he had evidence of the applicant receiving the alleged R 3200.00 and any other evidence of applicant failure to deposit such an amount and in his reply he stated that he did not have such evidence.
22. The witness also testified that the applicant bribed the complainant by giving her an amount of R 4 200.00 as a way of returning her R 4000.00. The witness stated that the extra R 200.00 was perceived as a bribe. During cross examination he was asked if he had evidence of the applicant giving an amount of R 4 200.00 as a way of returning the complainant R 4000.00 and he stated that he did not have such an evidence to back up his claims.
23. During cross examination he was asked to explain how the applicant could have repaid an amount of R 4 200.00 when the charge sheet stated that she failed to deposit an amount of R 3 200.00 allegedly given to her by the complainant but the witness failed to explain or clarify the contradictions.
24. When asked if he knew how many R 20.00 notes made up the alleged R4000.00 that was allegedly given to the applicant he stated that he did not know since he was not there personally. When asked

how old was the complainant he stated that she was a middle aged woman in her early 35 and when further asked how certain of her age was he, he stated that he was actually uncertain of her age.

25. THE APPLICANT VERSION:

The applicant Ms Raphasha W.L. was sworn in and testified under oath as follows:

26. Applicant testified that she was employed by the respondent as an Administration Clerk on 01 October 2011 with a monthly salary of R 15593.00 until her dismissal on 10 September 2019.
27. She stated that the complainant Ms Maria Moyo was overpaid in the amount of R 3 200.00 by the respondent in November 2013.
28. She stated that on 27 March 2017 she did not meet a person by the name of Maria Moyo and she also stated that she did not receive any money from the complainant, Maria Moyo.
29. During cross examination she was asked if she did give back the R 4 200.00 to the complainant and she stated that she gave that amount to the complainant because the complainant came to her house with police who threatened her with violence and arrest if she does not comply and that out of fear of threats and violence she succumbed to the pressure and complied.
30. When asked if that did not amount to bribery she stated that it did not and further stated that it actually amounted to extortion. When asked whether she received any money from the complainant on 27 March 2017 she stated that she did not receive any money from the complainant as she did not meet with the complainant on 27 March 2017 as alleged by the respondent.

### ANALYSIS OF EVIDENCE

31. I am required to decide whether the dismissal of the applicant was in compliance with the provisions of Section 188(1) of the LRA.
32. Section 188(1) of the Labour Relations Act contemplates that *"a dismissal that is not automatically unfair, is unfair if the employer fails to prove:*
- (a) *That the reason for dismissal is a fair reason –*
- (i) *Related to the employee's conduct and capacity, or*

(ii) *Is based on the employer's operational requirements, and*

(b) *That the dismissal was effected in accordance with a fair procedure.*

33. Section 188(2) of the LRA provides that "any person considering whether or not the reason for dismissal is a fair reason or whether or not the dismissal was effected in accordance with a fair procedure, must take into account any relevant Code of Good Practice issued in terms of this Act".
34. There were two charges which were preferred against the applicant, the applicant was charged for alleged bribery of Maria Moyo the complainant in the amount of R 4 200.00 and the failure to deposit an amount of R 3200.00 that was allegedly given to her by the complainant to pay for Sassa overpayment.
35. Both parties agreed at the start of the hearing or arbitration that procedure in the disciplinary enquiry that led to the dismissal of the applicant was grossly flawed.
36. The parties mutually agreed that PSCBC Resolution 1 of 2003 which governs how procedure should be observed in dismissal disputes within the public service was poorly implemented when the dismissal of the applicant was carried out.
37. The chairperson disciplinary outcome or sanction was furnished after 30 days against the resolutions provisions that it should be done in less than 30 days.
38. The appeal was decided after 30 days when it was supposed to have been decided as per the provisions of the resolution within the prescribed 30 day period.
39. Therefore the applicant dismissal was procedurally unfair.
40. The testimony of Malesela Simon Sekhaolelo was largely made up of hearsay evidence. He did not witness the alleged exchange of money in the amount of R 4000.00 between the applicant and the complainant as he was not there.
41. His testimony was that he did not see anything as he was personally not there when the alleged incidents of bribery and the alleged receiving of money by the applicant from the complainant took place and his testimony was further that he personally did not meet with the complainant but that he was told about the issues of bribery of the complainant by the applicant and the alleged failure of the applicant to deposit an amount of R 3200.00 that was allegedly given to her by the complainant to pay for her overpayment debt at the respondent.



42. He admitted to have been told what to say in the arbitration and he was actually reading out of the affidavit that was deposed by the complainant when she was still alive.
43. He did not even know how the alleged bribery took place, did not show any evidence of how the bribery took place and there was essentially no evidence presented before me to suggest that the applicant actually received an amount of R 4000.00 that the respondent claimed she did.
44. In the charge sheet it was alleged that the applicant received an amount of R 3200.00 from the complainant which she allegedly failed to deposit as was requested by the complainant to settle the complainant overpayment debt with the respondent but in the same charge sheet it was also alleged that the applicant paid back to the complainant an amount of R 4 200.00 as a way of returning the complainant R 4000.00 and the respondent failed dismally to clarify such contradictions.
45. The respondent witness did not even know the complainant and that was evident when he failed to explain how he knew the complainant was a middle aged woman in her early 35.
46. The witness testimony was riddled with contradictions and inconsistencies and his version was essentially improbable and unbelievable and lacked the hallmarks of the truth.
47. The respondent did not even take trouble to bring along the chairperson of the enquiry and the initiator to come and testify in an attempt to support the contents of the now deceased complainant deposed affidavit.
48. The applicant version was that she did not receive any money from the complainant and she further did not bribe any person by the name of Maria Moyo, the complainant, the applicant version appears more probable and believable as it was the respondent's duty to establish through evidence the existence of bribery and the receipt of money from the complainant by the applicant which was not proven in the current matter.
49. Applicant admitted to have given an amount of R 4 200.00 to the complainant out of fear of violence and threats by the police who accompanied the complainant to her house, and claimed that amounted to extortion as she did not owe the complainant anything.
50. This version is also more probable and truthful because if the applicant was to pay back what was allegedly received she could have paid an amount of R 3200.00 which was alleged not to have been deposited in the charge sheet not the R 4 200.00 that was alleged in the charge sheet even though its existence still remains to be proven.

51. There could have been no reason why she would choose to pay back more when she can still pay back what would have been what she owed if that was the case which was not in the current matter.
52. In the premises, I come to the conclusion that the dismissal of the applicant by the respondent was substantively and procedurally unfair. I shall therefore order the respondent to reinstate the applicant from the date of her dismissal and also pay her back payments from the date of the dismissal to the 31 October 2019.

#### AWARD

53. The applicant, RAPHASHA W.L. has established dismissal as was required of her in terms of Section 192(1) of the Act (LRA).
54. The dismissal of the applicant, Raphasha W.L by the respondent, Sassa was procedurally and substantively unfair.
55. The respondent is ordered to reinstate the applicant from the date of her dismissal which was the 10 September 2019.
56. The applicant must report for duty on 08 November 2019 at 8am at the respondent Moretele Local Office.
57. The respondent is further ordered to pay an amount equivalent to two months' salary R 31186.00 as compensation for the loss of income during the period of unfair dismissal.
58. The compensation amount must be paid into the applicant bank account which is known to the respondent on 08 November 2019 failing which the applicant may elect to invoke the provisions of Section 143 of the Act to enforce the award.



59. Interest will accrue on the compensatory amount from the **09 November 2019** as envisaged by Section 143(2) of the Act.
60. There is no order as to costs.



SIGNATURE:

CCMA COMMISSIONER: MAIMELA MASHEGO

SECTOR: