GPSSBC
GENERAL PUBLIC SERVICE SECTOR BARGAINING COUNCIL

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IN THE GENERAL PUBLIC SERVICE SECTORAL BARGAINING COUNCIL

Held in DOUGLAS

Commissioner: PHOLO, GMP (Dr)

Case No.: GPBC493/2020

Date of Award: 10th March 2021

In the Dispute between:

PSA obo TSHAKA

(Union/Applicant)

and

DEPARTMENT of CORRECTIONAL SERVICES

(Respondent)

Applicant's Representative: Mr Eugene Louw
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Respondent's Representative: Mr Ntshimane Maleka
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PARTICULARS OF PROCEEDINGS AND REPRESENTATION

1. This is an arbitration award in the matter between Mr JO Tshaka (applicant) and the Department of Correctional Services (respondent). The matter was set down for an arbitration in terms of section 191(5)(a) of the Labour Relations Act, 66 of 1995. The arbitration was held at the offices of the respondent at Douglas on 1 December 2020 and 18-19 February 2021. The arbitration proceedings were electronically recorded and the recordings are filed with the Bargaining Council (GPSSBC).

2. The Applicant was represented by Mr Eugene Louw (PSA – Labour Relations Officer) and the respondent was represented by Mr Ntshimane Maleka (DCS Official).

3. The parties handed separate set of documents. The applicant's set of bundle was termed bundle "A". The applicant further submitted annexures 1 and 2 of bundle A. The respondent's set of bundle termed bundle "B". Similarly, the respondent also submitted annexures 1 and 2 of bundle B.

4. At the end of the arbitration, both parties requested to submit their written closing arguments by the 2nd March 2021.

THE ISSUE IN DISPUTE

5. To determine whether the dismissal of the applicant was effected for fair reasons in terms of section 191(5)(a) of the Labour Relations Act, 66 of 1995.

BACKGROUND TO THE DISPUTE

6. The applicant was employed by the Department Correctional Services (Free State-Northern Cape Area) and he was based in Douglas.

7. The applicant was charged for the allegations of:

   7.1. the Director of the ZA Tshaka and Seuns Vervoer Dienste with the 10% ownership,

   7.2. trading with the State, and/or

   7.3. doing business with the State without obtaining a written approval from the Executive Authority

8. The allegations against the applicant were investigated and the investigator found that the applicant has questions to answer through the disciplinary inquiry.

9. The disciplinary inquiry against the applicant was convened. He was found guilty of the charges levelled against him and was subsequently dismissed.

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10. The applicant referred the unfair dismissal dispute to the Council. The efforts of conciliation failed, and as the result, the matter remained unresolved. Therefore, the matter was referred for arbitration.

SUMMARY OF EVIDENCE AND ARGUMENT+

11. The respondent led its case with four (4) witnesses and the applicant called only one (1), i.e. the applicant himself.

The respondent's evidence

12. Mr John Brown testified under oath that:

12.1. He is employed by Department of Correctional Services as the Manager: Production and Agriculture. He conducted an investigation on allegations of misconduct against the applicant.

12.2. The investigation was started in September and concluded in October 2019.

12.3. The investigation revealed that the applicant is the member and the owner of ZA Tshaka and Seuns Vervoer Dienste. That the applicant owns 10% of the shares in the company. There was a service level agreement (SLA) signed between ZA Tshaka and Seuns Vevoer Dienste and the Department of Education (page 15-23, bundle B).

12.4. In terms of the agreement (SLA), the ZA Tshaka and Seuns Vervoer Dienste had to transport the learners to school on return basis. By virtue of the applicant being the shareholder in the company, and same company having secure the contract with the State, then the applicant has conducted the business with the State. As the result thereof, the needed the written approval from the Executive Authority to do business with the State, and he did not receive the approval.

12.5. The business registration details are enclosed in page 12-14 (bundle B), The company as referred to in paragraph 12.3 and 12.4 above was registered as the Close Corporation (CC) with the Companies and Intellectual Property Registration Office (CIPRO) under registration number: 2007 / 133874 / 23. Mr JO Tshaka (the applicant) was the member of this business with the ownership of 10%.

12.6. He had no knowledge of the ZA Tshaka and Seuns Vervoer Dienste being deregistered in 2010. During the investigation, the applicant confirmed the knowledge of the company (page 11, bundle B) and further denied that he benefited nothing from the company.

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12.7. He disputed the letter marked annexure 1 (bundle B) in that letter was not signed and thus not authentic. The letter was in the letterhead of CIPRO and directed to ZA Tshaka and Seuns Vervoer Dienste dated 19th October 2010.

12.8. The investigation revealed that the applicant knew about the company, the business with the State and that he must declare (page 24, bundle B).

12.9. The wrong doing of applicant by conducting the business with the State was detected by the Auditor-General (AG) in 2019 (page 9, bundle B).

12.10. The remunerative work referred to in page 31 (bundle B) refers to doing business with the State. The agreement (SLA) in page 15 (bundle B) is still intact.

13. Mr Sekopelo Ndou testified under oath that:

13.1. He was employed by the Department of Correctional Services as the Head of Centre (Witbank) and has 25 years of continued service.

13.2. He was the presiding officer and presided over the disciplinary inquiry of the applicant. He do not remember the dates of the disciplinary inquiries but knows that it was held over two (2) days. The service level agreement (SLA) and the company registration certificates were presented during the disciplinary hearing (page 12, 46-48 of bundle B). The name of the applicant appears in page 14 of the registration certificate.

13.3. He sees annexure 1 (bundle A) the first time because the document was not presented to the disciplinary hearing. The document is unlike page 48 is not signed nor stamped.

13.4. He was the shareholder of the company which earned the tender with Department of Education (Northern Cape) in 2010 and did not declare.

13.5. The applicant underwent the disciplinary training (page 125, bundle B), therefore, ought to know that he must declare his businesses. The applicant lied that he did not know that he has to declare. The applicant promised to submit the bank statement to the investigating officer and did not do. The matter was not about benefitting from the business but not disclosing his dealings with the State.

13.6. The applicant 13 years of service him (Ndou) that the applicant knew that he must declare. The applicant witness during the disciplinary hearing testified that they were taught in training that they must declare. The applicant underwent the same training even not the same time. The seriousness of the charge and led to his dismissal.

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13.7. As the chairperson, he was not in the position to deal with the promptness of the hearing but the employer. The issue was not raised during the hearing. As the chairperson, he was dealing with the failure to written approval and not the promptness of the matter.

13.8. Zamasonke General Trading was never presented during the disciplinary hearing. "Zamasonke General Trading" is not the same as "ZA Tshaka and Seuns Vervoer Dienste".

14. Mr Mankgabe Lisbon Monyela testified under oath that:

14.1. He is employed by the Companies and Intellectual Property Commission (CIPC) as the Divisional Assistant: Corporate Legal

14.2. The Department requested the information regarding the current status of "ZA Tshaka and Seuns Vervoer Dienste" in page 3 (annexure 2, bundle B), and as the result, he attached this page from the Department. He confirmed that this page 3 of annexure 2 (bundle B) is from CIPC formely known as Companies and Intellectual Property Registration Office (CIPRO).

14.3. Each and every year, the company has to file its annual returns with the CIPC, and if the returns are not filed with the CIPC then it will be deregistered. The letter to ZA Tshaka and Seuns Vervoer Dienst (annexure 1, bundle B) was the notice of intention to deregister the company. However, the company was finally deregistered on the 24th February 2011.

14.4. The ZA Tshaka was re-registered in 2013 and the new name is ZA Tshaka and Seuns (Pty) Ltd and the applicant is the Director into this new company (page 4 of annexure 1, bundle B).

14.5. There are two (2) processes of registering the company, i.e. the company may be registered online or manually. The power of attorney document will be required if the Director cannot sign the document. However, the content of the power of attorney is not a requirement if the Directors can sign for themselves.

14.6. Someone may register the Director unknowingly if that person can access his/her certified copy of the identity document (ID) of that person. Then under those circumstances it is possible to register the Director unknowingly. If someone happens to be registered unknowingly with the CIPC, he/she may object such registration with the CIPC as soon as he/she becomes aware because such action constitutes a fraud. The matter will need to be referred to the Police for investigation.

14.7. The company under the name Zamasonke General Dealer was registered and finally deregistered in August 2020. The Department only requested the status of Directorship of Mr

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Tshaka (applicant) and that is why I could not pick up the other company in annexure 2 (bundle A). The respondent requested an additional information on the 14th December 2020. The initial request for the information was on the 7th January 2020. He confirmed that CIPC responded to the respondent by the affidavit of Ms Lepule (page 44, bundle B). Ms Lepule signed it terms of section 212 of the Criminal Procedure Act on the 8th January 2020.

14.8. When the Department approached the CIPC they only wanted the status of Directorship of OJ Tshaka. That is reason the CIPC only retrieved the status of OJ Tshaka. There was no other information requested on the registration of another company in 2016. The "ZA Tshaka and Seuns Vervoer Dienste" is no longer in use because company was finally deregistered. Therefore, it cannot trade or do business.

14.9. The information brought to CIPC was that Mr OJ Tshaka was dismissed and the Department disputed the authenticity of "annexure 1 of bundle A".

14.10. Any person with interest may require information on the registration of companies but the exclusive rights to do so were afforded to the SAPS, NRA and employers.

15. Mr George Frederick Enslin testified under oath that:

15.1. He is in the employ of the Department of Correctional Services with the 41 years' service to his credit and he is currently employed as the Correctional Centre (CC) Staff Support.

15.2. He knew the applicant ever since he started working in 2007. The applicant was employed as the external security COC3 production worker at the time of his dismissal.

15.3. When the new directive is communicated, we do the announcement in the parade and personnel meetings, we further, place it on the notice boards

15.4. In 2016, Mr Bitterbosch established the company to supply the books for the Department of Education (DoE) and he did declare, and the approval thereof is contained in page 6 (annexure 1, bundle B)

15.5. Mr Tshaka attended the disciplinary training (page 125, bundle B) and normally during this training the personnel are taught to declare their businesses

15.6. The applicant attended the disciplinary training in 2007 whereby the Resolution 1 of 2006 clause "R" was part thereof. The clause dictated that the personnel may not do business with the State (page 73, bundle B)

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15.7. The offence is serious because it reflect negligence in the part the Department. Furthermore, it create the possibility for conflict of interest. The e-mail was received in September 2016 banning all officials to do business with the State (page 60, bundle B).

15.8. There is no trust relationship anymore between the Department and the applicant.

16. Under cross-examination, Mr Enslin declared that:

16.1. The purpose of the "staff support" is to inform the personnel about the Human Resources (HR) functions and to ensure that the personnel are well conversant with the policies of the Department of Correctional Services

16.2. The main functions of the applicant was to keep his terrain clean and tidy as well as to transport inmates to court

16.3. The new instructions are communicated to the employees through e-mails and by putting notices on the notice boards for those who do not have e-mails.

16.4. The officials were prevented from doing business with the State (page 60, bundle B), the directive was issued on the 28th September 2016 and printed for the notice boards by Mr Killian.

16.5. The officials receive the information during their training but there is no full prove of what was contained in their training manual. It is the first time that the record of training (page 125, bundle B) is disputed.

16.6. Given that the new code of conduct was issued on the 28th September 2016 and that the applicant attended his training on the 21st November 2007, it is evident that the applicant was not trained on the new code of conduct or attended the training thereto. Therefore, the applicant was not aware that he cannot do business with the State. If there is no evidence that he attended the training, then he was not aware of the new code of conduct.

16.7. He attended his training in 1980 well before establishment of the Resolution 1 of 2006 but they were referred to the new training post the Resolution 1 of 2006.

16.8. The applicant did not breach item "R" of Resolution 1 of 2006 because it is not an issue in this arbitration.

16.9. Accordingly, page 4 and 5 (annexure 2, bundle B) reflects that the final deregistration of the "ZA Tshaka and Seuns Vervoer Dienste" was completed on the 24th February 2011 (annexure 2, bundle B). Therefore, there was nothing for the applicant to declare in 2020 when he was

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charged. He did not know that the applicant was not trained on the new code of conduct because he did not have the curriculum of the applicant's training.

16.10. He do not know whether the discipline was applied promptly (item 2.2, page 65) because the applicant was charged by HQ. If it was the local decision to charge the applicant, he would be in a better position to answer. Furthermore, he did not initiate the disciplinary hearing, only the Department of Investigative Unit (DIU) were involved.

The applicants' evidence

17. Mr Jackson Ombereg Tshaka testified under oath that:

17.1. He was the CO1 Correctional Officer responsible for the escorting of inmates to hospital and courts as well as cleaning the premises

17.2. Mr Desmond Brown mentioned to him that it was found that he was involved in doing business with the State. He told Mr Brown that he do not have business but his father has the one of transporting school learners to and from school. He was aware that his father is involved in the business with the Department of Education. He promised Mr Brown to go home and fetch the school contract to show him. He went home to collect the contract and handed it to Mr Brown. Mr Brown went to Kimberley with the contract and never contacted him again.

17.3. He was invited to the disciplinary hearing (page 121, bundle B). The charges he knew was that he was involved in doing the business with the State. They indicated that I have 10% shares in the business. According to them, the company was started on the 16th July 2007 (annexure 1, bundle B). He became aware of his father's company and business in January 2007.

17.4. My father concluded contract with the Department of Education (DoE) as attached in page 15 (bundle B). This contract was signed on the 6th April 2010 and it was due to expire on 31st March 2011. It reads that "***the contract reads that the agreement shall commence on the 1st January 2010 and shall continue until the 31st March 2011***" (page 16, bundle B).

17.5. Never heard that the business ought to be declared at the workplace. He wrote the statement in page 28 (bundle B) to prove that he had nothing to hide. He further wrote sworn affidavit in page 24 and signed in page 25 (bundle B). However, part F of the same sworn affidavit in page 25 (bundle B) was signed by Mr Brown in my absence.

17.6. He saw the new code of conduct (page 60, bundle B) for the first time during the hearing. He even told the hearing that he sees the document for the first time. The internal communication

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was made in 2016 but before the hearing it was never mentioned anywhere that it is illegal to do business. He knew nothing about the "new code of conduct". He saw the directive from the HQ in page 9 (bundle B) the first time on the 18th February 2020 during the disciplinary hearing

17.7. He is not familiar with the "Departmental Courses and Qualifications acquired after Appointment" in page 125 (bundle B). He only disputes the item of disciplinary code in the list of courses.

17.8. At the commencement of the disciplinary hearing, the chairperson of the hearing asked him whether he understand the charges against him and he replied that he did not understand. The chairperson told him that he was doing business with the State.

17.9. After the disciplinary hearing and the dismissal, he went home and told Mr Bitterbosch that he was dismissed. He remained dismissed after the appeal.

18. Under cross-examination Tshaka testified that:

18.1. He confirmed that he was represented by Mr Bitterbosch during the internal disciplinary hearing. He further confirmed that he consulted with Mr Bitterbosch before and after the hearing. The applicant pleaded "not guilty" during the internal hearing. He confirmed that the disciplinary inquiry was conducted promptly.

18.2. He do not remember attending the training for disciplinary code. It is probable that the EST could have been the second in the list (page 125, bundle B).

18.3. He became aware of the business when he completed the company membership form of the company in page 50 (bundle B). The company was deregistered on 19th October 2010.

18.4. The company belonged to him, his father and including other members of the family.

18.5. He did not submit the bank statement to Mr Brown because he never came to collect them as promised to.

Closing arguments

The applicants presented that:

19. The applicant was not aware of his directorship in his father's business
20. There was no proper induction nor training given to the applicant when he started working for the Department of Correctional Services
21. The charge against the applicant is fundamentally flawed

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22. The investigation failed the spirit of Resolution 1 of 2006 in terms clause 7.1 (7.1.3.4), in that the alleged incident occurred in 2010-2011 but only investigated in 2019
23. The applicant was dismissed unfairly and therefore he be retrospectively reinstated

The respondent presented that:

24. The dismissal of the applicant is both procedurally and substantively fair
25. The applicant was the member of the ZA Tshaka and Seuns Vervoer Dienste without the approval of the Executive Authority
26. The applicant failed to provide Mr Brown with his banking statements
27. The sanction of the dismissal of the applicant be upheld

ANALYSIS OF EVIDENCE AND ARGUMENTS

28. The dismissal of the applicant covers the widespread of issues and including (i) failure to comply with and/or contravening an Act, (ii) conducting the business with the State, and (iii) failure to obtain the written approval from the executive authority to do private business. Although, the charge sheet does not tacitly narrate or express the allegations as such but the three (3) determinants remained the epicenter of the 3-day arbitration proceedings.

29. The witnesses to this matter were not that useful instead they were dramatic and poetic to reach a particular outcome. Their performance revealed that:

    29.1. Mr Brown (1st witness): the investigation was conducted outside the timeframe against the directive of the CFO (page 10, bundle B) because only 30 days was given for investigation. The period from period from 30th August 2019 to 4th October 2019 is more than 30 days. He received the mandate on the 11th September 2019 to investigate the matter but he already asked the applicant his statement on the 3rd April 2019 (page 28, bundle B) unless the date of the mandate in page 3 (bundle B) is corrected that he received the mandate on the 11th September 2018. He was not thorough in his investigation in that (i) he only made use of the information obtained from the applicant and failed the approach the Department of Education for verification, (ii) the contract of the applicant doing business with Department of Education expired by more than eight (8) years before his investigation, (iii) the ZA Tshaka and Seuns Vervoer Dienste was deregistered by more than seven (7) before his investigation, (iv) the Public Administration Management Act (11 of 2014) was passed on the 22nd December 2014 after the expiry of the contract and after the expiry of the company, (v) the new code of conduct was also circulated on

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28th September 2016 after the expiry of both the contract and company, and (vi) there was no valid contract between the Department of Education and the ZA Tshaka and Seuns Vervoer Dienst and therefore, the applicant breached not rule. The outcome of the investigation was erratic and the decision of those who recommended the disciplinary hearing (page 5, bundle B) was ill-informed because the breach of the Public Administration Management Act and the new code of conduct could not be implemented retrospectively.

29.2. Mr Ndou (2nd witness): every part of the evidence of this witness apart from his outcome was a mere "hearsay evidence" because he was just repeating was he was told during the hearing.

29.3. Mr Monyela (3rd witness): this witness was credible and he assisted the tribunal. He confirmed that the ZA Tshaka and Seuns Vervoer Dienste was deregistered on the 24 February 2011.

29.4. Mr Enslin (4th witness): confirmed that the applicant could not have been expected (i) to know about the non-existed rule at the time of his doing business with the Department of Education, (ii) to declare anything to the Department at the time. That the business took place before the introduction of the Public Administration Management Act (11 of 2014) and the "new code of conduct (2016). Furthermore, he conceded that because he cannot prove that the applicant was trained on the subject matter, he will take it that he was not trained.

29.5. Mr Tshaka (applicant): knew that he was shareholder to ZA Tshaka and Seuns Vervoer Dienste because he signed and completed his information on the CC documents in page 50 (bundle B). He knew about his company doing business with the State. However, I must declare that he breached no law at the time and that there was prove of any remuneration from the ZA Tshaka and Seuns Vervoer Dienste to the applicant ever provided to the tribunal.

30. Given the above, the analysis of this matter will be guided by the prescripts of Resolution 1 of 2006 and Schedule 8 (Code of Good Practice), Labour Relations Act, 66 of 1995 to determine the fair or unfair dismissal of the applicant.

31. In the broadest sense the fair reason to dismiss an employee depends on the employer's legitimate loss of trust in an employee, and this may be related to one or more incidents demonstrating a lack of trustworthiness on the part of employee. The two (2) documents referred to

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in paragraph 24 above will serve as the guide in determining whether the reason for the dismissal of the applicant was fair and whether it was effected in accordance with a fair procedure (s188(2) of the LRA).

32. The evidence presented by the parties before me will be narrowed to address three (3) questions only, and that is:

32.1. whether or not the contravened the rule or standard regulating conduct ink or of relevance to, the workplace, and if so,

32.2. whether such rule in paragraph 26.1 above was valid or reasonable, and

32.3. whether the applicant was aware, or he could have reasonably be expected to be aware of the same rule as referred to in paragraph 26.1

32.4. whether the dismissal of the applicant was an appropriate sanction

33. Given paragraph 26 above, the inconsistent application of the rule has never been in question throughout the proceedings of the arbitration, therefore, it will never form part of my award.

Contravention of the Rule

34. There is an existence of the rule that prohibited the applicant to do business with the State without the written approval from the Executive Authority. The rule is informed by section 8 of the Public Administration Management Act, 11 of 2014 and the new code of conduct distributed on the 28th September 2016. Accordingly, the rule in terms of the Act provided that the remedy to the breach thereof (section 9) which determined that should the employee be found guilty of an offence, his/her services be terminated. Be that as it may, section 9 of the same Act only became effective from the 1st April 2019.

35. I must also indicate that the Act was passed on the 22nd December 2014. Furthermore, the Act was supplemented by the policy which was introduced as the “new code of conduct” and distributed to the employees on 28th September 2016.

36. The applicant owned the 10% in the family Company called “ZA Tshaka and Seuns Vervoer Dienste”. The company was registered with then CIPRO (now CIPC) under registration no.

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2007/13397/23. This company was registered on the 16th July 2007 and was deregistered on the 24 February 2011.

37. Accordingly, by the virtue of the applicant being the shareholder of the defunct company which conducted business in 2010/2011, he was deemed to have traded with the State. The then "Tshaka and Seuns Vervoer Dienst" which the applicant was the shareholder with 10%, concluded the service level agreement (SLA) with the Department of Education for the period 1st January 2010 - 31st March 2011. The company was even deregistered before the lapse of the SLA.

38. The rule did not exist at the time "ZA Tshaka and Seuns Vervoer Dienste" was doing the business with the State in 2010/2011. The company was deregistered on the 24 February 2011 before the introduction of the rule.

39. I am in full agreement with Basson et al (2006) that ***"... the most important source of these rules is a written disciplinary rules of conduct. If such a written code or set of rules exists, it must be examined to determine whether the rule which the employee is accused of having contravened is contained in that code. If the disciplinary code does not contain the rule under consideration it may be an indicator that such a rule does not exist in the particular workplace***". In this circumstances, this rule was not included in the Resolution 1 of 2006, if it was, then there was need to develop the "new code of conduct (2016) which was distributed on the 28th September 2016.

40. Accordingly, paragraph 39 above was supported in ***Louw v Delta Motor Corporation (1996) 17 ILJ 958 (IC)*** in the court found that the dismissal was unfair as the failure to report dishonest conduct had not been made a dismissible offence in terms of the employer's disciplinary code.

Validity of the Rule

41. The rule was introduced at the time where the contract and the status of the company were no longer in force or valid.

42. The rule preventing doing business with the State should not be confused with clause "R" of "Annexure A" (Resolution 1 of 2006). The applicant did not perform work for compensation in his private capacity, if so, there was no prove nor evidence led to the arbitration. There was even no prove that the applicant performed the work for "ZA Tshaka and Seuns Vervoer Dienste". All we know is that he was a shareholder to company. If we have to employ the principle of "***he who alleges must prove***", then the respondent failed to prove (i) the existence of the rule at time of transgression, (ii) whether the applicant performed the remunerated work, and (iii) whether the

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applicant was remunerated for performing the private work. However, this does not insinuate that the applicant was charged for performing the private job.

43. It was also alleged that the applicant did not comply by obtaining written approval for doing business with the State. The big question remained what should the applicant comply with because there was no rule requiring the compliance to that effect.

44. The validity of the contract between the Department of Education and the ZA Tshaka and Seuns Vervoer Dienste was also voidable because it was not valid until its entire duration. The contract was due to expire on the 31st March 2011 but the company was deregistered on the 24th February 2011 and according to Mr Monyela the deregistered company cannot operate or conduct lawful business.

45. The rules are valid but were introduced and implemented post (i) the duration of the contract between the Department of Education and the ZA Tshaka and Seuns Vervoer Dienste, and (ii) the deregistration of the company. Therefore, the applicant did not breach any rule at the time of his company was trading with State.

Awareness of the Rule

46. The substantive fairness of the dismissal for misconduct includes that an employee must have known or could have reasonably be expected to have been aware of the rule. Given this submission, I subscribe to argument by Basson et al (2006) that ***"… the employee should only be penalised for actions or omissions which the employee knew (at the time) were unacceptable. Also implied in this requirement is that the employee must have known that a transgression of this rule may lead to dismissal***". However, certain forms of misconduct may be so well known in the workplace that the notification is unnecessary.

47. Given paragraph 46 above, the applicant was not aware or could not have reasonably be expected to be aware of the rule or standard that he could not trade with the State and/or the he needed a written prove to trade with the State.

48. There is no indication whatsoever that suggests the applicant was made aware of this Act (11 of 2014) or the new code of conduct (2016) prior to the investigation. The trainings referred to by the respondent and attended by the applicant were all undertaken prior to the enactment of the Act (11 of 2014) and the distribution of the new code of conduct on the 28th September 2016. It will be a gross irregularity to say the applicant was aware of the rule.

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Dismissal: Appropriate Sanction

49. The sanction of the dismissal for the applicant was not informed by the material facts. Therefore, the dismissal of the applicant was appropriate and warranted.

AWARD

50. The dismissal of the applicant was procedurally fair and substantively unfair,
51. The applicant be retrospectively reinstated to his position (with no loss of benefits),
52. The respondent to pay all the benefits the applicant would have earned before the dismissal, and
53. The applicant to report for duty by the 12th April 2021

PHOLO, GMP (Dr)
GPSSBC Commissioner

Signature: _____