



GENERAL PUBLIC SERVICE  
SECTOR BARGAINING COUNCIL



**Physical Address:**  
260 Basden Avenue,  
Lyttelton, Centurion,  
Pretoria

**Postal Address:**  
PO Box 16663,  
Lyttelton, 1040

**Tel:** 012 664 8132  
**Web:** <http://www.gpssbc.org.za>

# ARBITRATION AWARD

Panellist/s: Selolong Mosoma  
Case No.: GPBC1733/2021  
Date of Award: 22 November 2022

**In the ARBITRATION between:**

PSA obo Ngcobo S.I  
(Union / Applicant)

and

Department of Correctional Services  
(Respondent)

**Union/Applicant's representative:** Harry Thomas  
**Union/Applicant's address:** PSA  
**Telephone:**  
**Telefax:**

**Respondent's representative:** Aaron Mofokeng  
**Respondent's address:** Department of Correctional Services  
**Telephone:**  
**Telefax:**

---

## ARBITRATION AWARD

### DETAILS OF HEARING AND REPRESENTATION:

1. The arbitration into the abovementioned alleged unfair dismissal dispute referred to the Council in terms of section 191 of Labour Relations Act 66 of 1995 (the Act) was conducted on 24 and 25 October 2022. The proceedings were conducted at the Respondent's premises (Tswelopele Correctional Centre) in Kimberley.
2. The employee party, Mr. Ngcobo (hereinafter referred to as Applicant), was represented by his union official Mr. Harry Thomas. The employer party, Department of Correctional Services (hereinafter referred as the Respondent), was represented by its Deputy Director Employee Relations M. Aaron Mofokeng
3. The Applicant submitted a bundle of documents annexed bundle "A" for the Applicant, and it was used as a common bundle. Both Applicant and Respondent accepted the bundle of documents to what it purported to be.
4. An inspection in loco was conducted in presence all the parties.
5. The proceedings were digitally recorded.

### ISSUE TO BE DECIDED:

8. It must be decided whether the Respondent has committed any unfair labour practice in relations to disciplinary action short of dismissal by issuing the Applicant with a sanction of three months suspension without salary as contemplated in section 186 (2) (b) of Labour Relations Act, Act 66 of 1995 as amended.
9. Should I find in favour of the Applicants, I am to determine what relief should be granted to the Applicant.

### BACKGROUND TO THE MATTER:

6. Mr. Ngcobo was employed as Correctional Officer (Educator) based at Tswelopele Management Area in the Free State and Northern Cape Region.
7. It was common cause that on the Applicant was placed on a precautionary suspension and subsequently served with a notice to attend disciplinary hearing on the 18 September 2020.
8. Mr. Ngcobo was charged with six (06) counts of misconducts namely.
  - a. **(w) being in possession of illegal, unauthorized, habit forming or stupefying drug. By transporting dagga in your private vehicle onto DCS premises and hiding the dagga in the female toilets at visit area.**
  - b. **(x) permitting an offender to take any prohibited drug or to have these substances in his possession. By delivery dagga to the Centre for offenders to take into the Centre.**

- c. (ii) breaching security measures, by not adhering to security stipulations and protocols and for bringing dagga to the Centre.
  - d. (mm) commitment of common law or statutory offence whilst on duty or state premises. By being in possession of dagga and bringing dagga onto DCS premises.
  - e. (y) whilst on duty conducts himself in an improper disgraceful unacceptable manner. By involving yourself in the illegal activities.
  - f. (z) contravention of DCS Code of Conduct, by disregarding the stated stipulations. By involving yourself in despicable activities which is in contravention to which you are employed to do.
9. Subsequently, the Applicant was found guilty of the allegations, he was issued with a sanction of dismissal.
  10. The Applicant was aggrieved about the sanction and lodged an appeal. The delegated authority overturned the sanction of dismissal and gave him three (03) months suspension without salary as an alternative to dismissal.
  11. The Applicant then referred the dispute to the Council in terms of section 186 (2) (b) of Labour Relations Act.

#### **SURVEY OF EVIDENCE AND ARGUMENT:**

12. The provisions of section 138 of Labour Relations Act 66 of 1995 as amended, enjoins me to issue the arbitration award with brief reasons. I intend in this award to focus only on the issues that I perceive to be pertinent to the issues that were disputed by the parties.

#### **APPLICANT'S SUBMISSION**

##### **13. MR. Ngcobo testified under oath as follows.**

14. He was currently employed by the Respondent as Correctional Officer (Educator) on salary level seven (07) based in Tswelopele Correctional Centre. He stated that on the 19 February 2022, his supervisor requested him to go to the Department of Education District office to fetch educators' files. He immediately rushed to the District office to fetch the files and upon his return he parked his private vehicle in front of the flagpole to offload the two boxes of files.
15. He then left the boxes of files at the entrance area to take his vehicle back to the parking area. He stated that the two boxes of files were scanned by the security officials assigned to work at the scan area on that day. After the boxes were scanned, one of the officials assigned at the scan area called two offenders to come and assist with the carrying of the boxes onto the Centre. He walked behind the two offenders at all material times until they reached his immediate supervisor's office.
16. Upon arrival at his immediate supervisor's office, the boxes were put on a table, and he requested to be released because he had to go to the doctor. He went to the doctor, and he was booked off for three (03) days and returned to work on the 23 February 2020.

17. On the 24 February 2020, he reported for duty as usual, and he was called to Mr. Makaleni's office and told that there was dagga that was found, and his name came up. He then gave him a contemplation to suspend letter and told him to go and prepare reasons why he must not be suspended. He then went and prepared a response and submitted as instructed
18. Investigation ensued after his precautionary suspension, the investigation was concluded and subsequently subjected to a disciplinary hearing. After conclusion of disciplinary hearing, he was found guilty and dismissed.
19. He stated that no evidence was led in relations to all the allegations leveled him that could link him to the said dagga that was found in the Correctional Centre, so he was found guilty on unfounded allegations. He further indicated that no criminal case was opened against him for the alleged dagga that was found.
20. He stated that the chairperson of the disciplinary hearing failed to take into consideration all, the evidence that was placed before him/her when arriving at the sanction of dismissal.
21. He further stated that it took the Respondent almost two (02) years to finalize this matter which had negatively affected him, his family and integrity.
22. **Under cross-examination** he disputed all the facts put through by the Respondent's representative.

## **RESPONDENT'S SUBMISSION**

23. **Mr. Gedion Sali** testified on under oath as follows:
24. He testified that he was working for the Respondent as Correctional Officer and member of Emergency Support Team (EST) of the Respondent.
25. He stated that they received an info on the 20 February 2020, that there was dagga in the toilets. Himself, Mr. Mahloko decided to wait for the culprit to bring in the dagga into the centre. Upon realising that there was nothing coming to the fourth they then decided to go administration block and started to search the offenders (cleaners). They did not find anything from the offenders and then proceeded to the kitchen whereby they found dagga hidden in the drawers.
26. They then asked the inmates about the dagga, and they told them that they do not carry any knowledge about the dagga and owner thereof. They then proceeded to the passage where they also found another dagga hidden behind the door, thereafter, proceeded to the cleaning storage and found another dagga hidden inside a bucket.
27. They took the inmates to the CMC (Case Management Committee) office after they maintained that they do not know anything about the dagga. At the CMC office one of the offenders indicated that the dagga belongs to Mr. Ngcobo (Applicant). One offender by the name of Younger he was the one who said the dagga belongs to Mr. Ngcobo (the Applicant).

28. Under **cross-examination** he confirmed that the Applicant was working at E- block and dagga was found at the Administration block. Lastly, he denied all other facts put through by the representative of the Applicant.

**SUBMISSION OF ARGUMENTS:**

29. Both parties requested to submit written closing arguments and submission of both parties were carefully considered. I will not repeat what was said by the parties, as the contents basically mirror what was put to the parties during the leading of evidence and cross-examination.

**ANALYSIS OF EVIDENCE AND ARGUMENT:**

30. The Applicant referred a dispute in terms of section 186 (2) (b) of the Labour Relations Act, 66 of 1995 relating to unfair labour practice.
31. The issue to be determined was whether the Respondent has committed an act of unfair labour practice against the Applicants in respect of the finding and sanction meted out against the Applicant and if my finding to be in the affirmative, what would be the appropriate relief to them.
32. In this matter is upon the Applicant to prove on the balance of probabilities that the Respondent committed an act of unfair labour practice by giving the Applicant a sanction of three months suspension without salary.
33. The Applicant was charged with six (06) counts of charges and was found guilty on those charges.
34. The Applicant was found guilty at the disciplinary hearing and given a sanction of dismissal and on appeal the appeal authority overturned the sanction dismissal with one of three (03) months suspension without salary. The Applicant was aggrieved by the sanction of three months suspension without salary and referred an unfair labour practice dispute to the Council.
35. The Applicant is challenging the sanction of three months suspension without salary on the basis that he was not guilty of any misconduct or whatsoever.
36. The Applicant testified that no evidence was led in relations to all the allegations leveled against him that could link him to the said dagga that was found in the Correctional Centre, so he was found guilty on unfounded allegations. He further testified that no criminal case was opened against him for the alleged dagga that was found.
37. He testified that the chairperson of the disciplinary hearing failed to take into consideration all the evidence that was placed before him/her when arriving at the sanction of dismissal.
38. It is common cause that the dagga was found on the 20 February 2022, inside the Centre at the administration block. It is further common cause that the Applicant was not on duty on that day in question.
39. There was no evidence placed before to link the Applicant to the said dagga that was found inside the Centre. The Respondent relied on the testimony of an offender to link the Applicant to the said dagga that was found. The said offender was not called as a witness, nor his affidavit was submitted on record as part of the evidence except to say that he has been released.

40. With regards to the boxes, it was undisputed evidence of the Applicant that he was searched from the main gate when he enters the premises of the Respondent. Again, it was the Applicant's undisputed testimony that the boxes were scanned at the scan area before proceeding into the Centre.
41. The Respondent indirectly sought to link the Applicant to the said dagga that was found based on the boxes the Applicant brought into the Centre on the 19 February 2020 but failed to rebut the Applicant's evidence that he was searched at the main gate when he enters the Respondent's premises. Respondent further failed to rebut the Applicant's evidence that the boxes were scanned at the scan area before proceeding into the Centre. Again, if the Applicant was searched from the main gate until the section where the Applicant is working then it is highly unlikely that the security officials would have missed the dagga. This I say, considering the size or weight of the dagga that was found which would have been difficult for one to conceal.
42. Surprisingly, the Applicant was not on duty the dagga was found but the Respondent alleged that the Applicant was in possession of dagga by transporting it with his private vehicle. The Respondent further alleged that the Applicant contravened the workplace rule in terms of the provisions of Resolution 01 of 2006. The Respondent failed to prove on balance of probabilities that the Applicant was guilty of any allegations leveled against him.
43. In absence of any evidence placed before me to suggest that indeed the dagga belongs to the Applicant. Again, it is my considered view that there is no evidence that points to and link the Applicant to the dagga that was found inside the Centre. It is my finding that the Respondent failed to prove on balance of probabilities that indeed the dagga belongs to the Applicant.
44. The Respondent's decision to dismiss the Applicant during the disciplinary inquiry it was based on the allegations levelled against the Applicant.
45. **In Fidelity Cash Management Services v CCMA and others (DA 10/05) [2007] ZALAC 12; [2008] 3 BLLR 197 (LAC); (2008) 29 ILJ 964 (LAC)** (handed down on 5 December 2007), it was held that it is an elementary principle of our labour law that the fairness or otherwise of the decision to dismiss must be determined with reference to the reasons for dismissal, as advanced by the Employer at the time of dismissal.
46. Considering the above analysis, I am persuaded to accept the Applicant's case that indeed the Respondent has committed an unfair labour practice in relations to disciplinary action short of dismissal.
47. It is worth mentioning that there was no evidence placed before me to suggest that the Applicant agreed to the three months suspension without salary as required.
48. It follows that the Applicant discharged the onus to prove that that the Respondent has committed an unfair labour practice related to disciplinary action short of dismissal, therefore the Respondent has committed an unfair labour practice as contemplated in section 186 (2) (b) of the LRA.
49. I note that the sanction of three months suspension without salary issued to the Applicant has expired. The sanction of (03) three-month suspension without salary is hereby set aside.



50. The Applicant is therefore entitled to be paid his (03) three month's salary for suspension without pay which is equivalent to his gross monthly salaries.

## **REMEDY**

51. The applicant sought compensation. In terms of section 193 (4) of the LRA as amended, I am empowered to order the Respondent to compensate the Applicant as a relief. Notwithstanding the provisions of section 193 (4) of Labour Relations Act, I also have to consider the provisions of section 195 of LRA in relation to compensation, in addition to any other amount owing. This I say, because the Applicant was given a sanction of three (03) months without pay as an alternative to dismissal.

52. While I note the Applicant's case, it is my considered view that the compensation should be four month's (04) which is just and equitable in these circumstances. This is because I take into consideration the Applicant's three months' salary and additional one (01) month salary as a compensation.

53. It is therefore my finding that the Respondent has committed an unfair labour practice against the Applicant, and I make the following award.

54. The Applicant earned a gross monthly salary of R 25 843.50. The compensation should be calculated at his gross monthly salary during the time of dispute.

55. Compensation should be (R 25 843.50 x 4 months), R 103 374 .00 for unfairness of the sanction of three months suspension without salary and immense prejudice the Applicant suffered.

## **AWARD:**

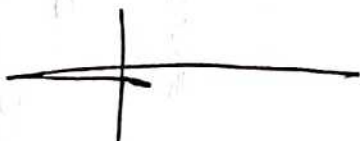
56. The Respondent, the Department of Correctional Services, has committed an unfair labour practice by suspending the Applicants, Mr. Ngcobo for three months without salary.

57. The sanction of three (03) months suspension without salary against the Applicant Mr. Ngcobo is therefore set aside.

58. The Respondent is ordered to pay the Applicant Mr. Ngcobo as a compensation for unfairness of the suspension without salary, an amount of R 103 374.00 minus statutory deductions as obliged by the law.

59. The amount in paragraph 56 supra to be paid to the Applicant by no later than the 15 December 2022.

60. Failure to comply with the award the amount will accrue interest in line with provisions of section 143 (2) of the Labour Relations Act, Act 66 of 1995 as amended.



\_\_\_\_\_  
Name: Selolong Mosoma

(Council name) Arbitrator