



ARBITRATION AWARD

Case No: **PSHS53-26/27**

Commissioner: **Siziwe Gcayi**

Date of award: **20 September 2026**

In the dispute between:

PSA OBO LOPHU SIMNIKIWE & 2 OTHERS

Applicants

and

DEPARTMENT OF SOCIAL DEVELOPMENT- EASTERN CAPE

Respondent

DETAILS OF THE HEARING AND REPRESENTATION

1. The matter was set down for arbitration in terms of section 191(5) of the Labour Relations Act 66 of 1995 (LRA) at the offices of the Department of Social Development in Qumbu on 08 September 2026 to commence at 10h00 AM.
2. The Applicants, Lophu Simnikiwe, Nosisa Ntengenyane and Sizwe Rozani were represented by Mr Welcome Ngcobo, an official from the Public Servants Association of South Africa (PSA).
3. The Respondent, Department of Social Development- Eastern Cape, was represented by Mr Mawethu Sogayise.
4. The proceedings were electronically and manually recorded. The parties were given up until 15 September 2026 to submit their closing arguments to the Council. The closing arguments were received by the Council on 14 & 15 September 2026. In penning down this award, the closing arguments were taken into consideration.

ISSUES TO BE DECIDED

5. The issue to be decided is whether the Respondent committed unfair labour practice relating to benefits, depending on my finding, decide on the appropriate relief in terms of section 193 and 194 of the LRA.

BACKGROUND OF THE DISPUTE

6. The three Applicants are: **Simnikiwe Lophu ["SL"]** he commenced employment with the Respondent on 01 January 2015. He holds a position of Child & Youth Care worker. He is stationed at Qumbu. He alleges that he qualified for grade progression on 01 April 2026. He is owed back pay by the Respondent.
7. **Nosisa Ntengenya ["NN"] and Sizwe Rozani ["SR"]** are in the employment of the Respondent. They are holding positions of Child & Youth Care Workers: Grade 2. They are stationed in Qumbu. They were upgraded in December 2025. They allege that the Respondent owes them back pay. On 15 December 2025 they did not receive the backpay. The Applicants referred the dispute to the Council for conciliation on 4 February 2026. As per the 7.11 referral.

SURVEY OF EVIDENCE

8. At the outset, I must indicate that only relevant evidence was referred to.

Applicant's case

9. The three Applicants testified under oath. Mr **Simnikiwe Lophu ["SL"]** testified as follows: He was a Child and Youth Care Worker, he qualified for grade progression in April 2026. He was owed back pay by the Respondent. The calculations for the amount owed were done by the Respondent. The amount owed is **R8512-50**.
10. Ms **Nosisa Ntengenya ["NN"]** testified as follows: She was in the employment of the Respondent. In December 2025, she was grade progressed to Grade 2. On 15 December 2025 she did not receive the back pay. The Respondent owed her a backpay of eight months. The total amount owed is **R8926-00**.

11. Mr **Sizwe Rozani** ["SR"] testified as follows: He was in the employment of the Respondent. In December 2025 he was upgraded to grade 2. On 15 December 2025 he did not receive the back pay. The Respondent owed him back pay of eight months. The total amount owed is **R7622-00**.

Respondent's case

12. The Respondent closed its case without leading any evidence.

ANALYSIS OF EVIDENCE AND ARGUMENT

13. Arbitration is a re-hearing. The arbitrator determines the dispute considering the evidence admitted at arbitration. In these proceedings the standard of proof is that of balance of probabilities.
14. All three Applicants referred a dispute in terms of section 186 2 (a) of the Labour Relations Act 66 of 1995 as amended.
15. The three Applicants relied on Resolution 1 of 2009 of the Public Health and Social development Sectoral Bargaining Council [PHSDSBC]. The clause they relied on was clause 3.3.1.
16. Resolution 1/2009 clause 3.3. provides as follows: The OSD provides for the introduction of a system of accelerated grade progression to the next higher grade attached to a post, based on shorter qualifying periods than normal for employees, who achieve a performance assessment rating of : 3.3.1 "satisfactory level of performance [fully effective and slightly above expectations performance] subject to the norms as contained in Annexure B."
17. It is trite that the employee bears an onus to prove an unfair labour practice as defined in section 186(2) of the Labour Relations Act (LRA) was committed by the Respondent. The Applicant has to convince the arbitrator that the conduct of the Respondent amounted to an unfair labour practice as defined and distilled from applicable jurisprudence and as envisaged in the law.
18. In respect of SL, with the evidence before the Council, he has failed to discharge the onus placed on him to prove that the conduct of the Respondent amounted to unfair labour practice. It was his evidence that he qualified for grade progression on 01 April 2026. He declared the dispute with the Council on 04 February 2026. At the time he declared a dispute he did not qualify for grade progression. SL has failed to demonstrate how the back pay is due to him.
19. In respect of NN & SR, with the evidence they have placed before the Council, they managed to discharge the onus placed on them. They have proved that the conduct of the Respondent amounted

to unfair labour practice relating to benefits. It is worth noting that their evidence was not challenged by the Respondent. Mr Sogayise also confirmed that they were owed by the Respondent, the amounts they have mentioned. The Respondent did not have money. They have requested funds from the Provincial Treasury.

20. Considering the unchallenged evidence produced by the NN & SR before the Council, I find that they complied with the requirements of clause 3.3.1 of Resolution 1 of 2009.
21. The Respondent has already placed them on the correct grade with effect from December 2025 but failed it to pay them what was due to them. I find that the Applicants discharged the onus placed on them.
22. In all the circumstances of this case and after due consideration of all the facts which by law I must consider, I deem the following award fair and equitable.

AWARD

23. It is my finding that the Nosisa Ntengenyana and Sizwe Rozani are entitled to the back pay after they qualified for accelerated grade progression.
24. The Respondent is ordered to pay the Applicants the following amounts: Nosisa Ntengenyana R8926-00 (Eight Thousand Nine Hundred and Twenty-Six Rands) and Sizwe Rozani R7622-00 (Seven Thousand Six Hundred and Twenty-Two Rands).
25. The above payments must be paid into the Applicants' bank accounts as reflected in their personal records on or before 31 October 2026.
26. In respect of Simnikiwe Lophu I find that there was no unfair labour practice committed by the Respondent.



Siziwe Gcayi