



ARBITRATION AWARD

Case No: **PSHS494-26/27**

Commissioner: **Siziwe Gcayi**

Date of award: **27 September 2026**

In the dispute between:

PSA OBO NOKONWABA MXEGO & ANOTHER

Applicant

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 Mthatha on 15 September 2026 to commence at 10h00AM.
2. The Applicants, Nokonwaba Mxego and Nasiphi Gwama were represented by Mr Samkelo Mzuku, 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 21 September 2026 to submit their closing arguments to the Council. The closing arguments were received by the Council on 21 & 22 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 two Applicants are: **Nokonwaba Mxego ["NM"]** She commenced employment with the Respondent on 01 November 2013. She holds a position of a Social worker grade 2. She is stationed at Ngqeleni service delivery point. She was upgraded in December 2025. On 15 April 2026 she did not receive the back pay. She alleges that the Respondent owes her a back pay.
7. **Nasiphi Gwama, ["NG"]** She is in the employment of the Respondent. She commenced employment with the Respondent on 01 November 2013. She holds a position of a Social worker grade 2. She is stationed at Ngqeleni service delivery point. She was upgraded in December 2025. On 15 April 2026 she did not receive the back pay. She alleges that the Respondent owes her back pay.
8. The Applicants referred the dispute to the Council for conciliation on 17 June 2026. As per the 7.11 referral. On 04 August 2026 they filed a request for arbitration.

SURVEY OF EVIDENCE

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

Applicants' case

10. The two Applicants testified under oath. Ms **Nokonwaba Mxego ["NM"]** testified as follows: She was employed by the Respondent, holding the position of a social worker grade 2. In December 2025 she

was grade progressed to Grade 2. On 15 April 2026, she did not receive the back pay. The Respondent owed her a back pay of 1 year 8 months. The total amount owed is **R48 711-75**.

11. Ms **Nasiphi Gwama** [“**NG**”] testified as follows: She was in the employment of the Respondent. In December 2025, she was grade progressed to Grade 2. On 15 April 2026 she did not receive the back pay. The Respondent owed her a backpay of 1 year 8 months. The total amount owed is **R46 547-75**.

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 two Applicants referred a dispute in terms of section 186 2 (a) of the Labour Relations Act 66 of 1995 as amended.
15. The two 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 must 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. Both NN and NG 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. Both Applicants were on the waiting list of the employees to be paid as soon as the department receives funding from the office of the Provincial Treasury.
19. Considering the unchallenged evidence produced by the NN & NG before the Council, I find that they complied with the requirements of clause 3.3.1 of Resolution 1 of 2009.
20. 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

21. It is my finding that the Nokonwaba Mxego and Nasiphi Gwama have discharged the onus placed on them and are entitled to the back pay.
22. The Respondent is ordered to pay the Applicants the following amounts: Nokonwaba Mxego R48 711-75 (Forty Eighty Thousand Seven Hundred and Eleven Rands Seventy-Five Cents.) and Nasiphi Gwama R46 547-75 (Forty-Six Thousand Five Hundred and Forty-Seven Rands- Seventy-Five Cents).
23. The above payments must be paid into the Applicants' bank accounts as reflected in their personal records on or before 31 October 2026.



Siziwe Gcayi