



ARBITRATION AWARD

Case Number: **PSHS1052-25/26**

Commissioner: **Allan Kayne**

Date of award: **15 October 2026**

In the matter between:

PSA OBO THABO MOFOKENG

Applicant

and

DEPARTMENT OF HEALTH- GAUTENG

Respondent

DETAILS OF THE HEARING AND REPRESENTATION

1. The Public Servants Association of South Africa ("the PSA") referred an unfair dismissal dispute on behalf of the applicant to the Public Health and Social Development Sectoral Bargaining Council ("the Council" or "the PHSDSBC") in terms of section 191 of the Labour Relations Act 66 of 1995 ("the LRA"). The arbitration proceedings were held on 07 August 2026, 29 September 2026 and 30 September 2026 at Dr George Mukhari Academic Hospital ("DGMAH") in Ga-Rankuwa. The parties elected to file written closing arguments simultaneously by 09 October 2026. Both parties did so, and I have considered their submissions in making this determination.
2. During the arbitration proceedings, Simon Sono, an official of the PSA, represented the applicant, while Bongani Manganyi, an official of the Labour Relations Department, represented the respondent.

3. The parties submitted bundles of documents on which they intended to rely during the arbitration. The proceedings were recorded both digitally and as contemporaneous electronic notes, and the record was filed with the Council's administration.
4. This award is issued in terms of section 138(7) of the LRA, which requires a commissioner to provide brief reasons for the outcome.

BACKGROUND

5. The applicant commenced employment with the respondent on 01 September 2009. At the time of his dismissal on 11 February 2026, he was employed as Chief Radiographer (Grade 2) at DGMAH and earned R55,613.75 per month.
6. The respondent charged the applicant with, and found him guilty of, the misconduct recorded in the charge sheet as follows:

6.1. *Displays disrespect towards others in the workplace.*

In that you are charged with contravening the provisions of Disciplinary Code and Procedure for the Public service which provides that the employee will be guilty of misconduct if he/she displays disrespect towards others In the workplace or demonstrate abusive or insolent behaviour.

*In that on **21 August 2024** during X-Ray management meeting that includes Chief Radiographers and Assistant Directors, you acted in an unethical and unprofessional manner during discussions by addressing your fellow colleagues and managers as Donkeys. By so doing you committed an act of misconduct which you know or ought to have known that it was wrongful.*

6.2. *Assaults*

In that you are charged with contravening the provisions of the Disciplinary Code and Procedure for the Public service which provides that the employee will be guilty of misconduct if he/she assaults, or attempts or threatens to assault, another employee or person while on duty.

*In that on **05 September 2024** you physically assaulted a fellow colleague by forcefully and aggressively grabbing her with a jacket and dragging her out of allocation office in front of the patients and your fellow colleagues. By so doing you committed an act of misconduct which you know or ought to have known that it was wrongful.*

(sic)

ISSUE/S TO BE DECIDED

7. It was common cause that the applicant was dismissed for alleged misconduct. I must determine whether the dismissal was procedurally and substantively fair and, if not, the appropriate relief. The applicant seeks retrospective reinstatement to his former position.
8. The applicant challenges the procedural fairness of his dismissal on the basis that the respondent failed to investigate the alleged misconduct.
9. On substantive fairness, the applicant denies committing the alleged misconduct. In the alternative, should the misconduct be established, he challenges the appropriateness of dismissal as a sanction.

SURVEY OF EVIDENCE AND ARGUMENT

10. The testimony led by the parties is fully captured on the record of proceedings. What appears in this award is a concise summary of the evidence relevant and material to the issues in dispute that require determination. The fact that I have not captured all of it herein should not be misconstrued as meaning I have not taken into account all the evidence presented. My findings are, accordingly, within the context of all the evidence tendered during the arbitration proceedings.

INSPECTION *IN LOCO*

At the commencement of the proceedings, the respondent requested that an *in loco* inspection be conducted to orientate the arbitrator to the location of the allocation office, the corridor/passage, and the duty station in the DGMAH Radiology Department. Given that there was no objection, the inspection was undertaken by the parties on the understanding that the witnesses would, during the course of their oral evidence, refer to the different vantage points identified.

RESPONDENT'S EVIDENCE

Lebogang Johanna Moatshe ("Ms Moatshe")

11. Ms Moatshe testified under oath that she was also a Chief Radiographer at DGMAH. On 05 September 2024, Ms Sebate telephoned her, on the applicant's behalf, to enquire about the Cath Lab. Displeased that he had not approached her directly, she set off for Ms Sebate's office. She bumped into the applicant in the passage, turned back and asked what the matter was. When he did not respond, she followed him into the

allocation office and repeated the question. He stood, pushed her angrily and forcefully, and pulled her by her black jacket while she held onto a shelf beside the door. Seeing Mr Mohlanga in the corridor, she screamed as the applicant pushed her from the office. She reported the incident to Ms Ramaboa and Ms Sebate and went home. Unable to sleep and fearful of the applicant, she attended the police station on Friday, 06 September 2024, where she was advised to obtain a protection order. A police officer accompanied her to serve the interim order.

12. On Monday, 09 September 2024, she attended the staff wellness clinic, received medication for sleep and anxiety, attended several sessions with a psychologist and was booked off work. In her affidavit of 06 September 2024, she stated that the applicant had manhandled her and had insulted her in managers' meetings by calling her a donkey. She recorded that they had bumped shoulders in the corridor, neither giving way, and that he had aggressively pulled her by her jacket to remove her from the allocation office in front of patients and colleagues. She identified the final protection order and testified that, since the incident, she had avoided meetings attended by the applicant. He generally did not speak to her or to most colleagues.
13. Under cross-examination, she testified that she wanted to understand why the applicant had raised his query with Ms Sebate rather than with her directly. She confirmed that they had bumped into one another in the corridor, that he did not respond to her, and that she nevertheless followed him into the allocation office to discuss staffing for the Cath Lab.
14. Ms Moatshe could not explain why the SAPS¹ had not opened an assault case against the applicant. Although she said that she had consulted a doctor after the incident, she could not provide the practitioner's name. She identified the psychologist as Ms Thembi Khoza and stated that Human Resources held a copy of her medical certificate, although no such document was produced during the arbitration proceedings. She had also provided written statements to Ms Ramaboa and Ms Boitumelo of Labour Relations.
15. Although her affidavit stated that the applicant had manhandled her, she maintained that he had assaulted her. She identified Mr Mohlanga and one Neo from Mammography as colleagues who were present.

¹ South African Police Service

16. When it was put to her that her continued work with the applicant after service of the protection order was inconsistent with her professed fear, she testified that, upon returning from sick leave, she asked not to attend meetings at which he was present and informed managers that she was afraid to pass his work area. She denied having any ulterior motive and knew nothing of an alleged plea offer involving a one-month suspension.

Peter Mohlanga (“Mr Mohlanga”)

17. Mr Mohlanga testified under oath that he was a Diagnostic Radiographer at DGMAH and that the applicant and Ms Moatshe were senior to him. Shortly after 14h00 on 05 September 2024, he was with students at the duty area opposite the tearoom. He heard the allocation office door bang open and Ms Moatshe scream his name. He saw her holding onto the door while the applicant pushed her out forcefully. When she attempted to re-enter, he pushed her out again, causing her almost to fall. Mr Mohlanga began approaching the allocation office, but the applicant shut the door when he was about halfway down the corridor. Ms Moatshe went to the tearoom, and he returned to his station without speaking to either party.
18. His statement recorded that he heard Ms Moatshe ask the applicant why he had pushed her in the passage, after which they entered the allocation office and closed the door. He then heard the door open and Ms Moatshe scream his name, whereupon he saw the applicant push her “so hard that she almost fell but held on to the door frame”. The statement further recorded: “I did not approach the scene”. He had no personal difficulties with the applicant, whom he described as reserved. The incident occurred too quickly for intervention, and Ms Moatshe appeared terrified.
19. Under cross-examination, he explained that he had made his written statement more than a month after the incident at the request of Ms Mabathe of Labour Relations. He had heard the exchange about pushing as the parties passed him before entering the office but could not say what occurred behind the closed door until he heard it bang open. He maintained that only the applicant used force and that Ms Moatshe did not raise a hand.

Elizabeth Ramaboa (“Ms Ramaboa”)

20. Ms Ramaboa testified under oath that, at the time of the incident, she was the Assistant Director: Radiography at DGMAH and managed the applicant and Ms Moatshe.

Regarding the first charge, she chaired the X-ray management meeting on 21 August 2024. During a discussion about the roster and allocations, the applicant stated, "I am not a donkey". Another radiographer, later identified as Ms Moatshe, asked to whom he was referring, and he replied, "you". Ms Ramaboa repeatedly asked him to withdraw the statement, but he remained silent. She regarded the remark as directed at all those present and as insulting. She prevented him from speaking further and later reported the incident to Labour Relations.

21. Regarding the second charge, she did not witness the incident. While in the tearoom, she heard a scream and was told that there had been a fight. She found Ms Moatshe crying and arranged for her to be moved away from the patient waiting area. The applicant declined to explain what had occurred. Colleagues and a patient's escort told her that he had assaulted Ms Moatshe. Together with Ms Sebate, she called the applicant to a meeting, but he gave no version and insisted that they inspect the CCTV footage. Ms Moatshe reported that the applicant had aggressively pushed her by the jacket from the office. She was distressed and was sent home; the following day, she was referred to the wellness clinic. Security advised that the cameras near the allocation office were not operational, whereupon Ms Ramaboa reported the incident to Labour Relations. She regarded both charges as serious and stated that the applicant showed no remorse, including during the appeal.
22. Under cross-examination, Ms Ramaboa testified that the meetings were formal and minuted, although no minutes had been included in the respondent's bundle. She understood the statement "I am not a donkey" to imply that others were donkeys and considered that frustration about workload should have been expressed professionally. She confirmed that she did not ask the applicant to leave the meeting and reported him rather than applying progressive discipline because this was not the first incident. She described him as difficult to work with: he kept to himself, did not greet or respond to others, and preferred to work in his own way. There had, however, been no performance concerns.
23. She was informed that Ms Moatshe had fallen against a table during the incident and that she had observed a minor scratch on her hand. She did not advise Ms Moatshe to report the matter to the police. She conceded that the statements she had obtained, including Ms Moatshe's statement, and her preliminary report were absent from the respondent's bundle.

Interlocutory application

24. At the commencement of the proceedings on 29 September 2026, the parties agreed to admit a six-minute recording, together with its transcript, made by the applicant of his brief meeting with Ms Ramaboa and Ms Sebate following the incident on 05 September 2024.

Baitseng Christine Sebate (“Ms Sebate”)

25. Ms Sebate testified under oath that she was an Assistant Director: Radiography to whom the applicant had reported since August 2019. At the meeting on 21 August 2024, during a discussion about the duties of the allocation office, the applicant stated that he was not a donkey. Another Chief Radiographer asked who, then, the donkeys were, and he replied, “you are”. Ms Sebate understood the remark to be directed at everyone present. The chairperson asked him to withdraw it, but he refused. She regarded his conduct as unprofessional and disrespectful and described him as unapproachable and difficult to work with.
26. Regarding the second charge, she did not witness the incident. Earlier that day, the applicant had asked her about training on the new Cath Lab and angiography equipment. She telephoned Mr Kgopa and then Ms Moatshe, who asked who required the information and why the applicant had not approached her directly. The applicant overheard Ms Moatshe’s response and left her office. Shortly thereafter, Ms Moatshe came to Ms Sebate’s office and raised the same concern. When Ms Sebate and Ms Ramaboa later called the applicant to a meeting, he referred them to the CCTV² footage and stormed out of the office. She confirmed her participation in the recorded conversation in which the applicant stated that he considered Ms Ramaboa biased because she was Ms Moatshe’s friend. As he provided no version regarding the incident, they referred the matter to Labour Relations. She declined to comment on the alleged friendship between Ms Ramaboa and Ms Moatshe.
27. Under cross-examination, she agreed that the remark arose in the context of the applicant’s complaint that the allocation office duties were overwhelming and that he might have been expressing frustration rather than intending an insult. She conceded that Ms Moatshe had asked the “donkey” question and that the applicant had not directly called her (Ms Sebate) a donkey. Ms Moatshe also used the word during the meeting

² Closed-circuit television

but was not disciplined, counselled or otherwise addressed, as discipline during the meeting was the chairperson's responsibility.

28. She had never warned the applicant during the seven years they worked together. He carried out instructions, and she considered him an introvert who generally kept to himself. She was unaware of the collision in the passage and could not say who had provoked whom. Ms Moatshe was not invited to the meeting with the applicant, but Ms Sebate maintained that he had left without being excused. She had not previously seen Ms Moatshe's affidavit or protection order. Although minutes of the meeting on 21 August 2024 had been taken, they were not included in the respondent's bundle.

Boitumelo Mabathe ("Ms Mabathe")

29. Ms Mabathe testified under oath that the complaint was allocated to her in September 2024. She interviewed Ms Ramaboa and Ms Sebate, whose accounts of the first charge corroborated each other, and relied on Ms Ramaboa's preliminary report regarding the assault. When she called the applicant to interview him, he objected to her handling another X-ray matter, but her supervisor, Mr Ntshangase, confirmed her appointment. The applicant then stated that he had already provided his version, became rude and left. She interviewed Mr Mohlangu, who said that he had seen the applicant push Ms Moatshe against the wall, and an intern, Neo, who was too afraid to provide evidence. Messrs Mabaso and Mabasa confirmed the donkey remark and the applicant's refusal to withdraw it. Ms Mabathe compiled a report recommending that charges be preferred against the applicant and denied that no investigation had been conducted.
30. Regarding the first charge, she considered that a remark about workload would have been withdrawn upon request. As to the second charge, she regarded forcefully pushing another person as assault and was guided by the Domestic Violence Act. The applicant knew that he could lodge a grievance but did not raise the issue of provocation. Had he done so, Ms Moatshe's conduct could have been investigated.
31. Under cross-examination, Ms Mabathe testified that her report, the preliminary report and all statements other than Mr Mohlangu's were in her possession. However, she could not explain their omission from the respondent's bundle. She had interviewed eight people and recorded all interviews. Unfortunately, the CCTV cameras were not operational.

32. Her description of the applicant as rude during the interview referred to the manner in which he spoke while standing.
33. The use of the plural “donkeys” originated with Ms Ramaboa and was supported by Messrs Mabaso and Mabasa. Ms Mabathe established that Ms Moatshe had asked, “who is a donkey?”, but could not recall the response. When it was put to her that Ms Moatshe had retorted that the applicant was a “big donkey”, she had no comment.
34. It was put to her that the investigation was not impartial and that she had approached it with a preconceived view, because the witnesses agreed that the applicant had said, “I am not a donkey”, in the context of workload. She had no comment, but maintained that she would have investigated Ms Moatshe had she established that Ms Moatshe had used the same expression. She was unaware of any friendship between Ms Ramaboa and Ms Moatshe.
35. She acknowledged that no witness had reported punching, slapping or kicking, and that the allegation of “grabbing” derived from the accounts of Mr Mohlanga and Neo.
36. Ms Mabathe maintained that the alleged plea offer of a one-month suspension was untrue. She had no mandate to conclude plea agreements and would not have made such an offer in relation to charges of this seriousness.

APPLICANT'S EVIDENCE

Clara Leteane (“Ms Leteane”)

37. Ms Leteane testified under oath, in the applicant’s absence, that she was a Radiographer who worked with both the applicant and Ms Moatshe but was a friend of neither. Before the incident on 05 September 2024, she was in the viewing area with the applicant, who was standing in front of a notice board. Ms Moatshe approached and, without speaking, pushed him slightly aside to reach the board, then left without apologising. He did not react. Ms Leteane regarded this conduct as provocation. She did not witness the later incident and heard only corridor discussion about the parties having bumped into each other. In 14 years, she had never seen the applicant assault or threaten anyone. She described him as dedicated, good with patients, and possessed of a strong character that some found challenging. Ms Moatshe had not previously appeared afraid of him. Ms Leteane described Ms Moatshe as cheeky and not fearful.

She further testified that Ms Ramaboa and Ms Moatshe were close friends who socialised outside work, as evidenced by their WhatsApp statuses.

38. Under cross-examination, she testified that she had not reported the notice-board incident because the applicant had not complained, and she did not consider it her place to do so. She maintained that the friendship between Mmes Ramaboa and Moatshe was well known and not concealed.

Thabo Mofokeng (“the applicant” or “Mr Mofokeng”)

39. The applicant testified under oath that he had been employed in the public service since 2000 and at DGMAH since September 2009. Regarding the first charge, he denied calling anyone a donkey. He testified that all management meetings were recorded and that he had his own recording of the 21 August 2024 meeting. The dispute concerned a shift staffed by three rather than five employees and the question of whether he should be charged for failing to arrange backup. In explaining the allocation office's workload, he used the phrase "I am not a donkey" to refer to himself. Ms Moatshe asked, "Does that mean we are donkeys?", to which he replied, "Because you're saying you are, then you are". She responded that he was "a big donkey". He recalled that the chairperson told him that he could not say that, but did not ask him to withdraw the statement. He added that Ms Moatshe, as the scribe, omitted his explanation from the minutes, and that even her later affidavit to support the protection order application reflected an exchange between only the two of them. He attributed her passive-aggressive conduct in meetings to her friendship with Ms Ramaboa, which, he alleged, resulted in complaints regarding Ms Moatshe being ignored.
40. Regarding the second charge, the applicant testified that on 05 September 2024, he went to Ms Sebate's office to discuss training rosters while preparing the October allocation. She telephoned, among others, Ms Moatshe, who asked whom Ms Sebate meant by "we". He left Ms Sebate's office and, in the passage, Ms Moatshe deliberately bumped into him as they passed one another. He paused for an apology and then proceeded to his office. She followed him inside and, while he was seated and working, poked him and asked why he was seeking attention. He recalled that she had pushed him at the notice board earlier that day. Having reached breaking point after she followed him into the allocation office, he stood, pushed her out, and closed the door. She called Mr Mohlanga's name during the incident. He requested the corridor CCTV footage so that management could determine who had initiated the altercation.

41. On 06 September 2026, he was served with a protection order and, on 09 September 2024, was moved from the department. He noted that Ms Moatshe's supporting affidavit attached to the protection order referred to neither an injury nor any blows sustained. He contended that the affidavit addressed matters he had raised during the recorded meeting, which, in his view, showed that she had discussed the incident with Ms Ramaboa because they were friends. He challenged Mr Mohlanga's vantage point, asserting that the allocation office was not visible from the workstation where Mr Mohlanga had been positioned, and pointed to inconsistencies in his accounts concerning wrestling and the banging of the door.
42. He denied leaving Ms Mabathe's recorded 24-minute interview, as she alleged, and maintained that, during the pre-hearing, she had offered him a one-month unpaid suspension in exchange for a guilty plea. He rejected the offer because he did not wish to accept the label of assault.
43. Under cross-examination, the applicant accepted that Ms Mabathe had interviewed him for approximately 24 minutes on 09 October 2024, but maintained that the facts had not been established from both sides. He reiterated that his statement, "I am not a donkey", referred to himself and the D7 shift and was not made in isolation. He contended that the three Assistant Directors present could have disciplined him immediately, but took no action until after the incident on 05 September 2026 because they had heard Ms Moatshe's similar retort during the exchange. He conceded, however, that he had not put the "big donkey" version to Ms Moatshe during cross-examination. He denied being asked to withdraw his statement, although he had not challenged Ms Ramaboa or Ms Sebate on that evidence.
44. He did not report any of Ms Moatshe's three alleged acts of provocation to management, stating that his hands were tied after the protection order was served. He conceded that he had not put to Ms Moatshe his version of events, namely that she had poked him. He admitted pushing her but denied grabbing or dragging her, stating that he intended only to be left alone and not to frighten her.
45. He submitted that, if pushing constituted assault, Ms Moatshe had likewise assaulted him. In retrospect, he accepted that he should have walked away and stated that he was not proud of his conduct. He reiterated that he had not intended to instil fear in her and that he, in fact, feared her, which was why he declined to settle the protection order out

of court. He added that the respondent had not produced any complaint lodged by Ms Moatshe regarding the incident on 05 September 2024, nor any investigation report.

ANALYSIS OF EVIDENCE AND ARGUMENT

46. It is trite that section 185(a)³ of the Labour Relations Act 66 of 1995 (“the LRA”) confers on every employee the right not to be unfairly dismissed. Section 192(2)⁴, read with section 188(1)⁵ of the LRA, places the onus on the employer to prove that a dismissal was for a fair reason and was effected in accordance with a fair procedure.
47. Given that the dismissal is common cause, the respondent accordingly bears the onus of proving, on the balance of probabilities, that the dismissal was fair. In terms of section 188(2) of the LRA, I am required to take into account any relevant code of good practice issued in terms of the LRA.

Procedural fairness

48. The applicant’s sole procedural challenge is that no investigation was conducted and that no investigation report, documentation or CCTV footage was introduced by the respondent. However, the provisions of Item 11(3) of the Code of Good Practice: Dismissal (“the Code”) merely stipulate that an investigation should be undertaken, which does not need to be formal and that it should be appropriate to the circumstances, the allegation and the nature and size of the employer.
49. The evidence establishes that an investigation took place. Ms Ramaboa and Ms Sebate immediately sought the applicant’s version on the day of the incident. This is confirmed by the applicant’s own recording of the interaction, in which he questioned why Ms Moatshe was not present, asserted that she had pushed him first, and asked that the CCTV footage be viewed, which Ms Ramaboa attempted to obtain. Ms Mabathe was later allocated the matter to investigate. She interviewed the witnesses and, on 09 October 2024, interviewed the applicant, who accepts that the engagement lasted some 24 minutes. Thereafter, a charge sheet followed, and a disciplinary hearing was

³ Every employee has the right not to be –
(a) unfairly dismissed; ...

⁴ If the existence of the dismissal is established, the employer must prove that the dismissal is fair.

⁵ 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 or capacity; or
(ii) based on the employer’s operational requirements; and
(b) that the dismissal was effected in accordance with a fair procedure.

held, at which the applicant was represented and stated his case, followed by an internal appeal.

50. The criticisms of the investigation have merit insofar as its quality is concerned. Neither the investigation reports nor all the statements collected by Ms Mabathe were produced. Ms Moatshe's conduct in following the applicant into the allocation office, as well as the two earlier interactions between her and the applicant on 05 September 2024, was not explored. The applicant's request for the CCTV footage was not followed up in a manner that was reported back to him, and the investigator had not seen Ms Moatshe's affidavit in support of the protection order application. These deficiencies, however, go to the weight of the respondent's evidence on the merits, which I address below with reference to the evidence actually led. They do not amount to a failure to afford the applicant an opportunity to have the matter investigated.
51. In his closing arguments, the applicant argued that the investigation was one-sided, that documents were withheld and that an adverse inference should be drawn from their absence. I accept that the respondent cannot rely on the contents of documents it chose not to produce, and I have not done so. The absence of those documents, however, does not show that no investigation took place, nor that the applicant was denied an opportunity to respond. The applicant also referred to the perceived bias of Ms Mabathe and to the friendship between Ms Ramaboa and Ms Moatshe. However, neither was cited as a procedural ground when the issues were narrowed. Both are relevant to the weight of the evidence of the witnesses concerned, and I have taken them into account in that way.
52. Accordingly, the applicant's dismissal was procedurally fair.

Substantive fairness

Charge 1 - disrespect

53. It is common cause that, at the formal management meeting of 21 August 2024, the applicant, in the course of explaining the workload of the allocation office and a dispute concerning the staffing of the D7 shift, stated, "I am not a donkey". Ms Sebate conceded that the remark had a context, that it related to the duties of the allocation office, and that the applicant may have been expressing frustration about his workload. Standing alone, the statement "I am not a donkey" is a literal or defensive statement by which the speaker refuses to be treated as a beast of burden, a fool, or as someone expected to

perform all the onerous and unappreciated work silently. Literally construed, it refers only to the speaker and does not imply that another person is a donkey merely because the speaker is not. It is therefore not, in itself, disrespectful of anyone.

54. It is further common cause, on all versions, including that of the applicant, that Ms Moatshe then asked to whom he was referring, or whether that meant that they were donkeys, and that he replied to the effect that “you are” or, on his own version, “because you’re saying you are, then you are”. That reply was directed at Ms Moatshe, who had asked the question. Ms Ramaboa described it in this manner at the applicant’s disciplinary hearing, and the record reflects her testimony that “he also said one of their colleagues is a donkey”. Ms Moatshe likewise described it in her affidavit as “calling me a donkey”. Ms Ramaboa and Ms Sebate interpreted the remark as extending to everyone present, but that was an inference rather than evidence of the words used. The charge, as framed, that the applicant addressed his colleagues and managers as donkeys, has not been proved.
55. What was proved was narrower: in a formal meeting, the applicant, in response to a colleague’s question, effectively called her a donkey and did not withdraw the remark when the chairperson requested that he do so. As to the request that he withdraw the remark, the evidence of Ms Ramaboa and Ms Sebate was consistent, while the applicant’s denial was raised for the first time in his own evidence. His further version, that Ms Moatshe retorted that he was “a big donkey”, was never put to Ms Moatshe, Ms Ramaboa or Ms Sebate, and the recording on which he relies was not admitted into evidence since he waited until the last day of the arbitration proceedings to launch such an application when he was the only witness left to testify.
56. Calling a colleague a donkey in a formal management meeting and refusing to withdraw the remark constitutes disrespectful conduct and falls within the scope of the misconduct of displaying disrespect towards others in the workplace. It is, however, at the lower end of the scale. The applicant’s remark was made in response to a question that itself invited the retort. It arose during a discussion in which the applicant was under pressure concerning his workload, and no action was taken against him immediately after the remark; action followed only after the incident of 05 September 2024. Considered in isolation, the conduct would, at most, warrant a written warning.
57. The respondent argued that the applicable test is objective and relied on authorities in which comparisons of people to animals were held to be offensive regardless of the

speaker's professed intention. I accept that the reasonable-listener test applies. A reasonable person present at the meeting would not, however, have understood the words "I am not a donkey", uttered by an employee describing his own workload, as an insult directed at anyone else present. It is a common English expression denoting being overburdened. Ms Sebate accepted as much. The authorities relied on by the respondent concern animal comparisons used to demean others, often with racial connotations, and are clearly distinguishable from the present case. It was the applicant's reply to Ms Moatshe that crossed the line, and on that basis alone I find the misconduct proved.

58. Although the applicant argued that Ms Sebate's concessions demolish the first charge, they merely establish that the charge as framed was overstated. They do not displace the evidence, which the applicant did not challenge, that he was asked to retract his statement and did not do so.
59. The applicant argued that discipline was applied inconsistently because Ms Moatshe also used the word "donkey" and was not disciplined. However, her question to him was incomparable to his reply, and his assertion that she called him a big donkey was not proved.

Charge 2 - assault

60. The applicant admitted, consistently from his disciplinary hearing to the arbitration hearing, that on 05 September 2024 he stood up in the allocation office, pushed Ms Moatshe out of the office, and closed the door. The dispute is essentially about the force and manner he used and whether the applicant was provoked.
61. Mr Mohlanga was the only independent witness to testify. He had no quarrel with the applicant and described him fairly. His evidence was criticised for discrepancies between his written statement, the chairperson's summary of his disciplinary evidence and his testimony. Some of the criticism is justified. His statement records that he did not approach the scene, while he testified that he got halfway, and his use of the word "wrestling" was unfortunate, although he immediately explained that only the applicant applied force. These are, in my view, discrepancies of detail and expression in an account given two years after the event, and not of the kind that suggests fabrication. At the core of his evidence, that after the door opened he saw the applicant push Ms Moatshe out of the office with such force that she held onto the door frame and almost fell, his statement, his disciplinary hearing evidence, and his testimony are consistent.

That core is corroborated by the applicant's own admission. The suggestion that he could not see the allocation office door from where he stood was not put to him in those terms and is not borne out by my observations during the inspection *in loco*.

62. Ms Moatshe's evidence that the applicant also pulled her by her jacket while she held onto the shelf is consistent with her sworn statement made the following day, before any disciplinary action was contemplated. Although a prior consistent statement does not corroborate a witness, it demonstrates that her account concerning the jacket was not a later embellishment. The events inside the office were not visible to Mr Mohlanga, and the applicant's denial was unsubstantiated. I nevertheless approach aspects of Ms Moatshe's evidence with caution because she has an obvious interest in the matter; she did not disclose in her evidence-in-chief that she had consulted a doctor; no medical record was produced; and Ms Ramaboa's hearsay account that Ms Moatshe fell against a table and sustained a scratch is unsupported by either Ms Moatshe or Mr Mohlanga. I accordingly attach no weight to that account.
63. The charge alleges that the applicant grabbed Ms Moatshe by the jacket and dragged her out of the office. It is trite that a charge sheet in a disciplinary hearing is not to be scrutinised with the exactness of a criminal indictment. What matters is whether the employee knew the case he had to meet and whether the conduct proved falls within the substance of the charge (see ***EOH Abantu (Pty) Ltd v CCMA and Another (JA4/18) [2019] ZALAC 57 (15 August 2019)***). The applicant knew precisely what incident he had to answer, and the substance of the charge is the intentional use of physical force on a colleague to remove her from the office.
64. By its very definition, assault is the unlawful and intentional application of force to the person of another. It does not require a punch, slap or kick, nor injury. A deliberate and forceful push, of the kind that causes a person to hold onto a door frame to avoid falling, is an application of force within that definition. The applicant's argument that there must be an intention to injure confuses assault with assault with intent to cause grievous bodily harm. Mr Mofokeng's own evidence was that he pushed Ms Moatshe deliberately so that she would leave; that is sufficient intention. That the complainant obtained a protection order rather than laying a criminal charge, and that she sustained no injury, are relevant to the gravity of the assault, not to whether it occurred. Ms Mabathe's reliance on the Domestic Violence Act 116 of 1998 was misplaced, but nothing turns on it.

65. The applicant's closing argument that the respondent's case rests on hearsay is correct insofar as it concerns the evidence of Ms Ramaboa, Ms Sebate and Ms Mabathe regarding the incident, and I have placed no reliance on the accounts of persons who did not testify at the arbitration hearing. It is not correct insofar as Ms Moatshe and Mr Mohlanga are concerned. Their evidence was direct and is corroborated by the applicant's admission. Nor do the contradictions relied upon concerning the witnesses' choice of words or vantage points go to the core of what occurred. In every version, including the applicant's, he pushed Ms Moatshe out of his office and closed the door. The absence of CCTV footage, a J88 form and medical reports is relevant to the extent of any harm, but not to whether the push occurred.
66. I find on a balance of probabilities that the applicant assaulted Ms Moatshe by forcefully pushing her, and pulling her by her jacket, out of the allocation office, within sight of colleagues and in an area adjacent to a patient waiting area. Accordingly, the respondent proved the second charge.
67. The applicant's defence is in substance one of provocation, not self-defence. He did not say he was under attack or in danger when he pushed Ms Moatshe. Some of his version of the provocation was never put to Ms Moatshe, notably that she poked him in the office and asked why he was looking for attention, and that she pushed him earlier at the notice board, which emerged for the first time in his evidence-in-chief. Accordingly, I attach limited weight to the poking allegation for that reason. Ms Leteane's account of the earlier notice-board incident was given in a measured and credible manner and was not seriously challenged. While it was not put to Ms Moatshe, I accept that there was some unwelcome physical contact earlier that day, however minor.
68. More significantly, Ms Moatshe's own evidence and documents establish that she was the instigator of the confrontation. She took exception to the applicant asking Ms Sebate about her unit, went to complain about it, came into contact with the applicant in the corridor in circumstances where, on her own affidavit, "none of us moved out of the way", turned back to confront him, and, when he did not respond, followed him into his office to confront him again, knowing that he was not speaking to her. Accordingly, I find that the applicant was provoked. However, provocation does not justify an assault. The applicant himself acknowledged that he should have walked away and that there were channels for reporting her conduct. However, provocation is a weighty mitigating factor in assessing the appropriate sanction.

69. The respondent argued that provocation can lessen blameworthiness only if it was sufficient to cause a reasonable person to react, the reaction was immediate, and it was proportionate (relying on ***Tedco Plastics (Pty) Ltd v NUMSA and Others (C314/2000) [2000] ZALC 97 (15 September 2000)***). I accept that these are the relevant considerations. Applied here, the applicant's reaction was immediate. It occurred in his own office, at the end of a confrontation that Ms Moatshe had pursued from Ms Sebate's office, through the passage and into his workspace. The provocation was not merely verbal, as the respondent suggests. Ms Moatshe's own affidavit records physical contact in the corridor, and Ms Leteane's evidence records earlier contact that day. The response was disproportionate, as he used more force than necessary to end the encounter and could have walked away. That is why the misconduct is proven and why a serious sanction is warranted. It does not follow that the provocation should be disregarded in assessing whether dismissal was appropriate.
70. The respondent also relied on the protection order as "independent, external recognition" of the severity of the conduct. The interim order was granted on Ms Moatshe's own affidavit of 06 September 2024, and the final order was granted on 04 December 2024. The order shows that the court was satisfied that she required protection from harassment. It is not a finding that the applicant committed an assault, and it does not record the circumstances canvassed in this arbitration, including Ms Moatshe's role in the confrontation. I have treated it as evidence of her apprehension after the incident, and as a reason the applicant did not lodge a complaint about her, rather than as proof of the gravity of the assault.

Was dismissal an appropriate sanction?

71. Assault in the workplace constitutes serious misconduct. It is particularly so in a hospital, where it occurred within view of colleagues and patients, and where the applicant held a supervisory position. Employees are entitled to a workplace free of violence, and employers are entitled to take a firm stance in this regard. The applicant's lack of insight that a forceful push constitutes an assault, and his tendency to attribute the entire process to a conspiracy, count against him. Item 9 of the Code nonetheless reserves dismissal for a first offence of misconduct of such gravity that it makes continued employment intolerable, and the gravity of an assault varies greatly with its circumstances.

72. Having weighed all the circumstances, I find that dismissal was not an appropriate sanction for the following reasons:

72.1. The assault consisted of a single push, accompanied by the applicant pulling Ms Moatshe by her jacket to remove her from his office. No blows were struck, and no physical injury was proved. The assault therefore falls at the lower end of the spectrum.

72.2. It was provoked by Ms Moatshe, who initiated the confrontation over a work matter, came into contact with the applicant in the passage, and followed him into his office to confront him knowing he did not wish to engage with her. Earlier that day there had also been unwelcome physical contact by her. The applicant did not seek her out.

72.3. The applicant has some 15 years of service at the hospital and more than 20 years in the public service, with no prior disciplinary record for violence and no valid warning on record. His work, skill and treatment of patients were not criticised by any witness, and Ms Sebate confirmed that he carries out instructions and was never warned by her.

72.4. The respondent did not suspend the applicant. He continued to work in the same department as Ms Moatshe from September 2024 until the confirmation of his dismissal on 11 February 2026, and there is no evidence of any further incident, threat or interference with witnesses. He complied with the protection order. This conduct is difficult to reconcile with the contention that his continued employment had become intolerable.

72.5. No evidence was led to establish that the trust relationship had broken down. Ms Ramaboa's view that she could not envisage the applicant changing is that of a former manager who has since left the respondent's employ. Although an employer is not invariably required to lead evidence of a breakdown in trust where the misconduct is so serious that it speaks for itself, this is not such a case. In the absence of evidence, a breakdown cannot simply be assumed (see ***Edcon Ltd v Pillemer NO and Others (191/08) [2009] ZASCA 135 (05 October 2009)***).

72.6. The applicant accepted, with some evident emotion, that he acted wrongly and should have walked away. Although his remorse is qualified by his view that he was the victim, he has never denied the push and asked management at the outset

to view the CCTV footage to fully understand what transpired. Progressive and corrective discipline, as contemplated by PSCBC Resolution 1 of 2003, the Disciplinary Code and Procedures for the Public Service, is likely to be effective.

72.7. The first charge, proven only in a narrower form, adds little weight to the sanction.

73. The respondent submitted that, by physically attacking a colleague to the extent that she required a protection order, the applicant made a harmonious working relationship impossible. That submission is not supported by the evidence. The respondent allowed the applicant to continue working in the same department as Ms Moatshe for many months after the protection order was granted, without any further incident. It led no evidence that the relationship had become intolerable.
74. A serious corrective sanction, other than dismissal, was warranted to mark the seriousness of the assault while recognising the mitigating circumstances. Accordingly, I find that the dismissal was substantively unfair in that the sanction of dismissal was inappropriate in the circumstances.

Relief

75. Section 193(2) of the LRA requires reinstatement or re-employment of an employee whose dismissal is found to be substantively unfair unless the employee does not wish to be reinstated, the circumstances are such that a continued employment relationship would be intolerable, it is not reasonably practicable for the employer to reinstate, or the dismissal is unfair only because the employer did not follow a fair procedure. None of these exceptions applies. The applicant seeks reinstatement. The respondent led no evidence that reinstatement would be impracticable. The applicant worked alongside Ms Moatshe for many months after the incident without further incident, and the existence of the protection order does not make reinstatement impracticable.
76. Reinstatement restores an employee to the position he would have occupied had he not been dismissed, and a commissioner has a discretion regarding the date from which reinstatement operates (see ***Equity Aviation Services (Pty) Ltd v CCMA and Others* (CCT 88/07) [2008] ZACC 16 (25 September 2008)**). The applicant sought reinstatement with full retrospective effect. However, having regard to his serious misconduct, full retrospectivity would not be appropriate. Accordingly, instead of ordering back pay from 11 February 2026 to the date of this award, the back pay payable to him will be limited to 5 months.

77. The applicant's remuneration at the time of his dismissal was R55,613.75 per month. Five months' backpay therefore amounts to R278,068.75.

AWARD

78. The respondent's dismissal of the applicant was procedurally fair but substantively unfair.
79. The respondent is ordered to reinstate the applicant in its employ in the position of Chief Radiographer (Grade 2), on terms and conditions of employment no less favourable than those which governed his employment immediately before his dismissal, and with his service recorded as continuous and unbroken.
80. Given the partially retrospective nature of the reinstatement, the respondent, the Department of Health – Gauteng, is ordered to pay the applicant, Thabo Mofokeng, backpay of R278,068.75 (Two Hundred and Seventy-Eight Thousand and Sixty-Eight Rand and Seventy-Five Cents) by 30 November 2026.
81. The applicant is to report for duty on 01 November 2026.



Allan Kayne