



ARBITRATION AWARD

Case No: **WECT9476-25**

Commissioner: **Teresa Erasmus**

Date of award: **7 August 2025**

In the matter between:

PSA OBO JOHANNA JACOBA DE NOBREGA

Applicant

and

DEPARTMENT OF HEALTH- WESTERN CAPE

Respondent

DETAILS OF HEARING AND REPRESENTATION

1. This matter was set down at the Boardroom Swartland District Offices in Malmesbury at the premises for Arbitration at the Public Health and Social Development Sectoral Bargaining Council for Arbitration in terms of section 186(1) (e) of the Labour Relations Act 66 of 1995 ("the LRA") on the 22nd day of July 2025. The Applicant was represented by Mr. Jacques Botha from PSA, and the Respondent was represented by Mr. Shaun Cleophas Labour Relations Officer at the Respondent. The proceedings were mechanically recorded. Both parties handed in bundles.

ISSUES IN DISPUTE

2. I must decide whether the Applicant was subjected to a Constructive Dismissal.

BACKGROUND TO THE DISPUTE

3. The Applicant has been employed by the Respondent since 1st of March 2015 in the capacity of an Assistant- Manager Nursing. The Applicant earned R713 253.00 per annum at the time of termination of her services.
4. The Applicant avers that she was subjected to a Constructive Dismissal, as the Respondent made it impossible for the Applicant to continue working in the environment and the Respondent ignored any requests from the Applicant to improve her working conditions, although she was in charge of nursing. The Applicant seeks retrospective reinstatement in an area other than the West Coast Area.
5. Respondent confirmed that the Applicant was employed as the Head of Nursing Services at Vredenburg Hospital until her resignation on the 25th of April 2025, whereafter she handed a letter to her manager to consider the withdrawal of her resignation on the 22nd of April 2025, who in turn referred her request to Director At The District Office, but her request was declined, the Applicant was informed of this decision on the 29th of April 2025.
6. According to the Respondent the Applicant's working conditions were not that intolerable that the Applicant was compelled to resign. The Applicant did not submit a grievance or complaint prior to her resignation; resignation was considered a measure of last resort. This dispute is not about the withdrawal of the resignation. The Respondent disputes that constructive dismissal took place and the onus is on the Applicant to prove that constructive dismissal took place.

SUMMARY OF EVIDENCE AND ARGUMENT

Applicant's case

7. **Johanna Jacoba De Nobrega** testified that she started working at Vredenburg Hospital on the 1st of January 2022. She was previously employed by the Respondent as an Operational Manager at Tygerberg Hospital in 2015. She is aligned with the values of the Respondent and found the department extremely well run, during her tenure at both Tygerberg Hospital and Paarl Hospital, where the Applicant always felt 'heard', which was not the case during her employment in the Saldanha district. On her transfer to Vredenburg Hospital, she found that many people were off with serious illnesses. She experienced a delay in response in particular with Labour Relation matters, she often felt ignored. Dr Madelein van Schalkwyk was appointed as the new medical manager for Saldanha Bay sub-district during May/June 2023. Although there was no conflict between the two of them, Van Schalkwyk did not always listen to the complaints of her nursing staff, which comprised 65 % of the staff. This affects the Applicant both personally and professionally, since Van Schalkwyk told the Applicant to keep quiet on three different occasions, during meetings, it even triggered an eye roll by Van Schalkwyk on occasion. Van Schalkwyk came to see the Applicant on the day of her resignation, she told the Applicant that she is not trustworthy, without providing any basis for this allegation.
8. The Applicant admitted that she has a tendency towards exaggeration, which is a personality trait, she has however never neglected her work. The Applicant had to seek assistance from the district office, but it was virtually impossible to get a timeous response. On the 11th of August 2023 three of the staff reporting to the Applicant entered a collective grievance against another staff member, they were told that collective grievances are no longer allowed. At the time of the Applicant's resignation, this grievance has still not been dealt with.
9. The Applicant also referred disciplinary matters to the district office to deal with in respect of four staff members, dealing with issues of absenteeism, refusal to carry out a lawful instruction, from as far back as January 2024. The Applicant requested the district office to deal with these matters as a formal disciplinary hearing, based on the seriousness of the allegations against the employees. In one particular matter the Applicant sought a formal disciplinary hearing against an employee, but the employee retaliated by lodging a formal grievance against the Applicant. The Labour Relations Office dealt with the employee's grievance against the Applicant, instead of attending to the disciplinary

hearing against the employee. The Applicant's supervisor undermined her authority by telling her to find another way in dealing with the locking away of medication for which the staff member against whom charges were supposed to be levelled, was responsible. The Applicant admitted that her subordinates got upset with the changes she brought about, whereafter the Applicant's supervisor decided that things would continue the way they are, therefore undermining her authority.

10. The Applicant lodged a complaint in February 2025, she did not lodge a grievance, as she lost all faith in the grievance process. This resulted in a meeting with the Acting District Director (who was also Dr van Schalkwyk at the time). A mediation was dealt with by Mr van Staden and attended by Mrs Rene White. Van Staden said he was appointed to address what nursing services should be doing, the Applicant did not appreciate this comment, as she was the only nurse in the room. The Applicant was unhappy because it was clear that the purpose of the meeting was not to find a way forward, but rather to tell the Applicant that she did not manage her nursing core properly, at which point the Applicant became frustrated and decided to leave the meeting. Van Schalkwyk send an email to Van Staden after this meeting, she said that the Applicant would consult with her therapist because she is emotionally unstable. The Applicant responded to van Schalkwyk's email, she informed Van Schalkwyk, that although she appreciates her concern, sharing her knowledge of the Applicant's underlying health issue was part of a private discussion between them which should not be shared.
11. The Applicant sent a detailed email about the management of complaints to Van Schalkwyk, Van Staden and René White on the 21st of February 2025. She dealt with the NDOH Guidelines in managing complaints and stated that she believes that the guidelines were not followed by the Respondent in the manner in which her complaint was handled, she also gave her thoughts and understanding of the meaning of 'Constructive Dismissal'.
12. The Applicant pointed out that her working conditions were made unbearable and she could not continue with her work. Van Schalkwyk responded to this email and confirmed that a face-to-face meeting will be arranged to discuss the matter in more detail, she requested Mr Van Staden in the same email, to arrange the face-to-face meeting, as he was copied in the email. Van Staden responded on the same date and suggested four possible dates for this meeting. This was followed by further email correspondence between Van Staden and Van Schalkwyk on the same day and on the 7th of March 2025, Van Staden informed both Van Schalkwyk and the Applicant by email that the report discussed at the previous meeting was still outstanding, he requested a postponement of the meeting

in order to allow the parties to hold a more meaningful meeting once the report has been made available. The Applicant responded on the 7th of March 2025: *“Dear Riaan, I am available whenever the report is ready”*. Van Staden acknowledged receipt of her email on even date.

13. The Applicant testified that by the 15th of April 2025 when resigned, the meeting had still not been scheduled. The Applicant testified that the fact that she was told to keep quiet by Van Schalkwyk, during meetings on more than one occasion made her realize that her vision and that of her manager was not aligned. Van Schalkwyk told the Applicant to consult with her therapist whenever she raised something that upset her at work. The Applicant suggested to Van Schalkwyk, during an Occupational Health and Safety meeting, that they should also launch the Prevention of Infection Program and Van Schalkwyk responded that: *“ it is a nice to have, as we don’t have time for this now”*. This made the Applicant feel that her input is not taken seriously, if she could not produce evidence of legislation to support her point of view. The Applicant also experienced discrimination towards nursing in general, Van Schalkwyk said she would always take the side of the doctor, whilst the Applicant always tried to bridge the gap between doctors and nurses. Nursing is viewed as subservient to medical doctors and not as a separate profession. The position of Head of Nursing at Vredenburg Hospital, is currently that of an Assistant-Manager position and not that of Deputy Manager Nursing, as is the case in other areas, such as Vredendal Hospital, as well as other hospitals with more than 50 beds. The Applicant raised this issue, although she understands that it would be a structural change for the West Coast, which will take some time, but there had to be some indication that the matter is being dealt with, and this was not the case. The Applicant raised this issue with Rural Health Services, who asked Mr Wessels to look into the APL of the Rural Health System. The Applicant conceded that the Medical Manager took note of her concern and escalated the matter by appointing Mr Riaan van Staden to deal with it. According to the Applicant, Van Schalkwyk did not appoint the relevant person to deal with the issue.
14. The Applicant seeks reinstatement to another district other than the West Coast District Office, although she is not aware of any available positions on her level. The Applicant believes that there is a problem in the West Coast District that must be addressed. The Labour relations matters which she referred to the district office were delayed by the Respondent.
15. It was put to the Applicant that Van Schalkwyk will testify that she did not say to the Applicant on the day of her resignation that she cannot trust her, this was denied by the Applicant, as Van Schalkwyk told her that she could not trust the Applicant because she exaggerates.

16. The Applicant admitted to strained relationships with the nursing staff that reported her because many of the nursing staff spend their entire nursing careers at Vredenburg Hospital, and their conduct was not always in accordance with the department's procedures. Two staff members were not happy with her management style, she realised that these employees were appointed as a result of the OSD programme, without any training. The Applicant had to re-train these staff members, which was not well received from a professional pride point of view and was met with comments such as: *"I have been doing this for the past 30 years, why must I do it differently now."*
17. The Applicant maintains that she had a good relationship with the staff reporting to her, in spite of issues she had with two staff members out of 150 staff members, who reported to her. She had to discipline staff from time to time in her role as supervisor. She also had a good relationship with her direct manager, Dr van Schalkwyk, although Van Schalkwyk made the workplace unbearable for her when she told her to keep quiet the first time, she asked her not to do it, but it happened again. The Applicant was also unhappy when Van Schalkwyk told Van Staden in an email that the Applicant is emotionally unstable, she found this unacceptable and a threat to her career.
18. The Applicant confirmed that she is familiar with the elements of Constructive Dismissal, she resigned voluntary, although she is aware of the Respondent's grievance procedure, she did not lodge a formal grievance because she lost faith in the grievance process through the district office, as grievances have not been attended to, which was lodged during August 2023 until the date of her resignation. The Applicant confirmed that she is aware that grievances can be escalated to Head Office, but the very people that she was complaining about are the people who would have to deal with the grievance. Therefore, she did not feel safe to refer her dispute to Head Office, nor did she lodge an Unfair Labour Practice Dispute with the Council.

Respondent's case

19. **Dr Johanna Madelein Van Schalkwyk** testified that she is the Manager for Medical Services for the Saldanha Sub-District, at the Vredenburg Hospital, since the 1st of May 2023. As from the 1st of June 2022 she worked in a sessional position for Cederberg and previously in private practice. Her duties as Ceo of Vredenburg Hospital, included management, financial management, HR management, strategies policies, community engagement, supervision of the head of nursing, clinical management, supply chain management and HR and Facility Management, collaboration with district office.

20. The Applicant reported directly to her; they met for the first time just before Van Schalkwyk's appointment on the 1st of May 2023. Van Schalkwyk received the Applicant's resignation on the 15th of April 2025, during a management meeting. Management attempted to schedule a visit to the primary health care clinics; however, they encountered difficulty in obtaining a confirmed date from the Applicant. Subsequently, she informed management of her intention to resign. Van Schalkwyk spoke to her after the meeting because she was concerned about her. The Applicant responded that she had enough and that she had already typed her resignation letter, which she handed to Van Schalkwyk on the 15th of April 2025, which read as follows: *"Herewith my resignation from my position as HONS in Vredenburg Hospital. Please consider this 6 weeks' notice."*
21. After the Applicant handed her resignation letter to Van Schalkwyk, she tried to explain to the Applicant why trust is sometimes broken, e.g. she would tell Van Schalwyk that supply chain did not deliver anything to the wards, and upon investigation she would then establish that supply chain delivered everything except for one or two things. It is not that Van Schalwyk did not trust the Applicant, but the information that she received from the Applicant did not always meet Van Schalwyk's expectations. These repeated small matters make it difficult to accept the information that Applicant gave her, whilst there are many things with which she could trust the Applicant.
22. Van Schalkwyk inform informed Head Office of the Applicant's resignation on the same day when she resigned, after she had a discussion with the Applicant as she was concerned that it was perhaps an emotional decision, Van Schalkwyk asked her to reconsider her decision.
23. During the Easter period, which included several public holidays, Van Schalkwyk received a letter from the Applicant on April 22, 2025, in which she expressed her desire to withdraw her resignation. Van Schalkwyk subsequently recommended the withdrawal of her resignation to the district office, as she believes that any relationship can be worked on.
24. The district office informed Van Schalkwyk that the final decision rested with the Director. The Director then sent Van Schalkwyk an email with a letter attached thereto, detailing the director's decision that the Applicant's request for the withdrawal of her resignation could not be accepted and that her resignation stands and will be processed as such. Van Schalkwyk communicated the outcome of this decision to the Applicant and requested her to sign the outcome. When the Applicant wanted to

withdraw her resignation, she did not do so on condition that she be placed elsewhere, she wanted to retain her position she filled before her dismissal.

25. The Applicant has previously expressed on several occasions that she did not feel heard. They had multiple meetings in the past. It is not that her concerns were ignored, but rather that her suggestions were not implemented due to disagreements with her proposals.
26. The Applicant did not file a formal grievance. During Van Schalkwyk's tenure as acting director, she received only one official complaint from the Applicant, which pertained to delays by the sub-district office in addressing labour matters and the subsequent impact on her department's management.
27. Van Schalkwyk confirmed that there were several disputes regarding decisions made by the Applicant. They received official complaints about some of these decisions, and upon the recommendation of the labour relations department, they decided to overrule certain decisions made by the Applicant. This caused her considerable distress. Van Schalkwyk holds the Applicant's intelligence and capabilities in high regard, despite a few blind spots. They agreed to disagree on certain matters, but Van Schalkwyk believes that they maintained a good relationship. She has not received any official complaints from the about any issues between the Applicant and other managers however, she did receive multiple informal complaints, primarily concerning the tone and wording of her emails.
28. Van Schalkwyk referred to the email correspondence between herself, Riaan Van Staden and the Applicant, following the meeting chaired by Riaan Van Staden, the Applicant became emotionally upset during the meeting. Van Schalkwyk acknowledged her unhappiness, they then scheduled a meeting for the 10th of March 2025, but on the 7th of March 2025, Van Staden proposed that the meeting should be postponed until after the report is available. The Applicant was informed of the meeting of the 10th of March 2025, she was also copied in the email from Riaan van Staden, dated the 7th of March 2025, postponing the meeting, to which the Applicant responded: "*Dear Riaan, I am available whenever the report is ready*".
29. Van Schalkwyk only mentioned the Applicant's medical condition to Van Staden, the Deputy Director for HR Relations, following her unusual emotional response. He inquired out of concern for her well-being if she had the necessary support. At that time, Van Schalkwyk was worried that she might require additional medical support. Van Schalkwyk informed Van Staden that she had spoken to the Applicant, and it was within his purview relating to employee wellness. Van Schalkwyk understands that medical conditions are confidential, and she did not breach confidentiality. If she is concerned about an

employee's wellness, Van Staden is the appropriate person to speak to. It was not her intention to create a perception for the Applicant to believe that she was breaching confidentiality; rather, it was to ensure that she was receiving the necessary support in terms of her medical wellness.

30. Van Schalkwyk confirmed that she would have no difficulty working with the Applicant again in the future. Although the working relationship requires some attention, the Applicant is by no means an incompetent manager.

ANALYSIS OF EVIDENCE AND ARGUMENT

31. The first requirement of a constructive dismissal is that an employment relationship must exist at the time the employee leaves the employer's service. In the present case before me the Respondent avers that the employment relationship came to an end due to the fact that the Applicant resigned freely and voluntarily.
32. The second requirement is that the *employee* must have brought the relationship to an end. Coerced resignations or departures are commonly known as 'constructive dismissals'. The Applicant brought the employment relationship to an end by handing in her letter of resignation on the 15th of April 2025.
33. To discharge the onus of prove that she constructively dismissed, the Applicant must prove that it would have been 'intolerable' to remain in employment. The use of this word suggests that the legislature has created a stricter test than that accepted by the labour courts under the 1956 LRA. The requirement that the prospect of continued employment be 'intolerable' suggests that this form of dismissal should be confined to situations in which the employer behaved in a deliberately oppressive manner and left the employee with no option but to resign in order to protect his or her interests.
34. There must also be some causal nexus between the employer's conduct and the circumstances that induced the employee to resign. Such circumstances may be brought about by an act or omission of the employer.
35. In making out a case of constructive dismissal, employees who have resigned must generally show that they were subject to coercion, duress or undue influence. Mere unhappiness at work is not enough. Managers, in particular, are expected to be able to put up with 'ambiguity, conflict in relationships,

power struggles, office politics and the demand for performance where if not delivered no payment is made. The Applicant was indeed employed in a managerial position.

36. The mere fact that an employee has been issued an unreasonable instruction does not in itself justify resignation and a subsequent claim of constructive dismissal, especially if the employee failed to use the employer's grievance procedure or some other method by which he or she could have sought relief. However, the lodging of an internal grievance is not a requirement if it is clear that management is irredeemably prejudiced against the employee. No such evidence was placed before me that management was irredeemably prejudiced against the Applicant, on the contrary she testified that she had a good working relationship with her supervisor, Dr Van Schalkwyk.
37. If an employee does not use an available grievance procedure, the employer will obviously be deprived of the opportunity of rectifying the situation of which the employee complains. But, more importantly, the employee may be unable to prove that the situation would have remained intolerable. However, where employees could reasonably have lodged a grievance regarding the cause of their unhappiness and failed to do so before resigning. The Applicant did not lodge a grievance and the only explanation for her failure to do so was that she has lost faith in the grievance procedure, but this was a vague allegation unsupported by any factual averments.
38. It is common cause that Van Staden tried to schedule a meeting with the Applicant and Van Schalkwyk to discuss the Applicant's concerns, but that this meeting had to be postponed, due to the unavailability of the report which was relevant to the meeting. the Applicant responded to this postponement: *"Dear Riaan, I am available, whenever the report is available."* It is further common cause that this meeting has not taken place by the time when the Applicant resigned on the 15th of April 2025, but she did not raise any concerns about the delay of the meeting. The Applicant therefore deprived the Respondent from dealing with her concerns, even though she did not lodge a formal grievance.
39. The Applicant filed a complaint, which was acknowledged by Van Staden and Van Schalkwyk, but the Applicant resigned before the complaint could be dealt with. The Applicant cannot argue that she had been constructively dismissed. An employee's unsuccessful attempt to withdraw his/her resignation has also been ruled incompatible with a claim of constructive dismissal by our courts.
40. The Applicant's mere subjective feeling that she has been unfairly treated is not in itself sufficient. The test for whether the employer has rendered the prospect of continuation of the employment relationship

intolerable, is objective, the existence of a constructive dismissal cannot be determined from the state of mind of the employee alone.

41. The Applicant's case is based on constructive dismissal. In terms of the Labour Relations Act 66, 1995 a constructive dismissal is a dismissal which conforms with the definition in section 186 (e): "*An employee terminates a contract of employment with or without notice because the employer made continued employment intolerable for the employee.*"
42. The Applicant avers that although she lodged various complaints and tried to engage her superior(s) on matters that bothered her, nothing came of these complaints. She did however not lodge any grievances.
43. Respondent argued that resignation was not the last resort. It argued that resignation was no option at all.
44. *Nicholson JA in **Pretoria Society for the Care of the Retarded v Loots** p.639 A-B). held "Where an employee claims that **constructive dismissal** has occurred, she must show that her assumption that the situation in the workplace is intolerable and will not change, is objectively correct."*
45. *In the matter of **Aldendorff v Outspan International Ltd(1997) 6 BLLR 772 (CCMA)** it was said employees could reasonably have lodged a grievance regarding the course of the unhappiness, having failed to do so before resigning, they may be hard put to persuade the court or arbitrator that they had no option but to resign. Employees should not second guess the outcome of lodging a complaint in terms of the employer's grievance procedure, especially not where the employee is contemplating resignation coupled with an allegation of constructive dismissal and such employee had never raised the issue with the employer before.*
46. In the present matter before me, the Applicant alleged that Van Schalkwyk made her working conditions intolerable together with the District Office's tardiness to deal with labour relations matters, yet there is no evidence supporting the Applicant's evidence that she had no option other than to resign, as very reason for her complaint was Van Schalkwyk's management style, which was contradicted by her own evidence that she had a good working relationship with Van Schalkwyk, other than times when Van Schalkwyk allegedly told her to keep quiet during meetings. This amounts to nothing more than the Applicant's subjective observation that Van Schalkwyk was ridiculing her, instead acknowledging that Van Schalkwyk was her supervisor and the final decision on managerial matters laid with Van

Schalkwyk, besides Van Schalkwyk denied that she told the Applicant to “Shoos, as alleged by the Applicant and even if this was the case, it demonstrates that the Applicant was perhaps oversensitive at the most, but does not suffice to support her allegation of intolerable working conditions.

47. In the arbitration case of **Outspan International and Aldendorff** it was held that:

“The onus is on the employee to show, on the balance of probabilities, that the alleged conduct of the employer was intolerable and this a ground for resignation, was not discharged. The resignation was held to be freely and voluntarily tendered. What is required is an objective evaluation of the employer's conduct, rather than the employee's subjective experience thereof.”

48. The Applicant was employed by the Respondent initially since the 1st of March 2015 at Tygerberg Hospital and since the 1st of January 2022 at Vredenburg Hospital Assistant-Manager Nursing.

49. Van Schalkwyk was appointed as medical manager for the Saldanha district during May/June 2023, at which point he became the Applicant's supervisor.

50. The Applicant resigned on the 15 April 2025, due to the alleged intolerable working conditions. The Applicant earned R713 253.00 per annum per month at the time of resignation. She did not mention any reasons for her resignation in her letter of resignation at all.

51. In the arbitration award of **Loubster and PM Freight Forwarding (1998) 7 CCMA 6.13.13**, the arbitrator Loveday found that:

52. *“It is important to be cautious in adopting a wide interpretation of what conduct by an employer would constitute **constructive dismissal** because of the danger of inviting a flood of employees who resign and then repent and want to claim the protection of the Act, especially as the dispute resolution of the Act is still in its infancy in interpreting the new Act. On the other hand, it would be a corruption of the Act to adopt a very restrictive interpretation. The definition in s186(e) was clearly designed to **protect employees** who resign in desperation as a last resort because of the unlawful or unfair conduct of the employer, which makes a continued employment relationship intolerable. Employers do have a responsibility to avoid acting in a manner that would be likely to destroy or undermine the employment relationship.”*

53. “Continued “intolerable” employment relationship” was described by the Applicant as “poor working relationship with Dr Van Schalkwyk, her direct supervisor”.
54. Both case law and the Act place the onus on the employee to prove the dismissal. If it is established that there was a **constructive dismissal**, the employer must prove that the dismissal is fair. The employer may well have had reasons, possibly due to circumstances beyond his/her control, which caused him/her to act in such a way that a continued employment relationship became intolerable for the employee, but his/her actions were not unfair or unlawful. The onus thus shifts to the employer to prove that his/her conduct was, nevertheless, neither unfair nor unlawful.
55. According to the Respondent, the Applicant’s resignation was due to a voluntary decision to terminate her services.
56. The Applicant made it impossible for the Respondent to remedy the alleged problem, as she failed to lodge a grievance and she resigned before the complaints she filed, could be adequately dealt with by Van Staden.
57. **The principles** and tests that arbitrators and the Labour Court have applied are summed up by Grogan in CWIU obo Marele and Glass Centre obo Rudy (1998) 8 CCMA 6.13.15:
- “1. *Did the employee intend to bring an end to the employment relationship?* According to the Applicant, the answer to the question would be no, had it not been for the intolerable working conditions.
2. *Had the working relationship become so unbearable, objectively speaking, that the employee could not fulfil his/her obligation to work?* The Applicant lodged complaints on more than one occasion, listing matters going as far back as 2022. Van Schalkwyk dealt with the matters within her authority, the remainder of the issues were departmental issues, which she encouraged the Applicant to take up with the department, yet Applicant maintains that her complaints were not resolved. The Applicant had the opportunity to refer an unfair labour practice dispute to the bargaining council if she was dissatisfied with the outcome. She did not avail herself of the opportunity to lodge a grievance or to refer an unfair labour practice dispute to the Council.

3. The Respondent was not given an opportunity to remedy the situation and cannot be seen to have made the Applicant's working conditions intolerable.
4. *Did the employer create the intolerable situation?* The Respondent was unaware of the alleged intolerable working conditions and therefore could not have contributed to them.
5. *Was the unbearable situation likely to endure for a period that justified termination of the relationship by the employee?* The Respondent attempted to address the Applicant's concerns; therefore, I cannot find that the Applicant's resignation was justified under the circumstances.
6. *Was the termination of the employment contract the only reasonable option open to the employee in the circumstances? No."*

58. I now wish to proceed to assess the facts against the law and the above principles.

59. Has the Applicant proved a constructive dismissal? No

60. It is common cause that the Applicant resigned on 15 April 2025, and that the resignation was not as a result of an agreement between the parties. What needs to be determined is whether the resignation was as a result of the Respondent having made the employment unbearable. In relation to this I also need to determine whether there was an intention on the part of the Applicant to resign.

Did the employee intend to bring an end to the employment relationship?

61. In determining whether, in resigning, the Applicant did not intend to terminate the employment relationship, the sequence of events and associated time frames leading up to the resignation are relevant. There must be an immediate and direct link between the conduct the employee finds intolerable and the resignation. Had the working relationship become so unbearable, objectively speaking, that the employee could not fulfil his/her obligation to work? The conduct of the employer as a whole need to be assessed, and I will now evaluate each aspect of the Respondent's conduct, as testified.

Did the employer create the intolerable situation?

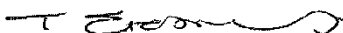
62. I have identified the above issues that weigh in favour of continued employment being intolerable for the Applicant or not.
63. Was the unbearable situation likely to endure for a period that justified termination of the relationship of the employee? I am not convinced by the evidence before me that Van Schalkwyk and/or the alleged delay in action by the District Office indeed made the Applicant's working conditions intolerable.
64. This question needs to be addressed that will be regarding whether the employee resigned in desperation as a last resort. No – there was an alternative available to the Applicant and this was confirmed by Van Schalkwyk.
65. It is likely that the issues I have identified above would have continued to prevail. In determining whether or not this justified termination of the employment relationship by the Applicant, the fact that the Applicant did not make use or to give the Respondent an opportunity to improve her working conditions before resigning, and the next question, need to be taken into account.
66. Was the termination of the employment contract the only reasonable option in the circumstances? No, it would have been more reasonable for the Applicant to follow the lodge a formal grievance to Head Office, if she did not have faith in the district office's ability to deal with her grievance, she failed to do so. She was also not prepared to wait for the meeting scheduled by Van Staden, and she did not place any pressure on him to set a date for this meeting, prior to her resignation.
67. While the Applicant did pursue the legal remedies available to her such as referring an unfair labour practice dispute to the Council, rather than to resign. It is likely that the Applicant had adequate opportunity to pursue legal remedies to the issues she raised in complaint.
68. I find that the Applicant's resignation was not the only reasonable option in the circumstances. The Applicant had an opportunity to pursue the legal remedies available to her, yet she failed to do so.
69. When the questions posed above and the associated findings are weighed up, the evidence weighs against the Applicant proving that continued employment was made intolerable.
70. There was not a sufficiently immediate link between the Respondent's conduct and the Applicant's resignation, with the evidence pointing towards the resignation being voluntary; there was no evidence that the Respondent had closed the avenue of dialogue with the Applicant; the termination of the

employment contract was not the only reasonable option in the circumstances; and the resignation was not justified.

71. The probabilities therefore are in favour of finding that conditions could not have been so intolerable that the Applicant was compelled to resign through the actions or inactions of the Respondent. The Applicant therefore has failed to discharge the onus resting on her to show, on a balance of probabilities, that she resigned due to continued employment being intolerable, and that she was constructively dismissed. It is therefore not necessary to enter the second phase of the enquiry regarding whether the Respondent discharged his onus to prove that her conduct was fair.
72. The Applicant's fears were in the circumstances blown out of proportion and that led to her demise. It has nothing to do with the Respondent. The Applicant resigned before the Respondent had an opportunity to investigate her complaint or to improve her alleged intolerable working conditions.
73. Applicant failed to discharge the onus that Respondent's conduct made continued employment intolerable. I find that the Applicant was not subjected to a Constructive Dismissal.

Award

74. The Applicant has failed to prove that she was subjected to a Constructive Dismissal by the Respondent. Therefore, the Applicant is not entitled to any relief.



Teresa Erasmus
(Panellist)