



ARBITRATION AWARD

Panelist: PHEEHA DANIEL SEOPELA
Case No.: GPBC905-2021
Date of Award: 15 May 2021

In the ARBITRATION between:

PSA OBO DR JACOBUS WILLEM MOSTERT ----- APPLICANT
(Union / Applicant)

and

DEPARTMENT OF PROVINCIAL TREASURY – LIMPOPO PROVINCE- RESPONDENT

DETAILS OF HEARING AND REPRESENTATION:

[1] This matter was heard as arbitration on the 29th and 30th of September 2021, 02nd & 03rd of November 2021 and was finalized on the 10th of March 2022. The case was heard as a virtual hearing on the 29th of September 2021 and on the 02nd and 03rd of November 2021. The arbitration was heard as a physical hearing on the 10th of March 2022. Both parties were in attendance. The applicant, Dr Jacobus Willem Mostert was represented by Mr Mike Mkhize of the PSA (trade union) on the 29th & 30th of September 2021 and on the 02nd and 03rd of November 2021. The applicant was represented by Mr Phillip Maponya of PSA (trade union) on the 10th of March 2022. The respondent, Department of Provincial Treasury- Limpopo Province was represented by Mr T.R Rambau, the Assistant Director: Labour Relations Unit employed by the Department of Education. The proceedings were digitally recorded. Pre-arbitration meeting was conducted on the 29th of September 2021. The parties submitted written heads of arguments and such were considered in this award.

ISSUE TO BE DECIDED:

[2] I must determine whether the dismissal of the applicant was fair in terms of both procedure and substance, and if so, I must determine the appropriate relief in terms of section 193 of the Act.

BACKGROUND TO THE MATTER:

[3] The applicant, Dr. Jacobus Willem Mostert is the former employee of the respondent, Department of Provincial Treasury in Limpopo Province. He was appointed on the 01st of April 2017 subject to completion of 12 months' probation as Director: Macro Economic Analysis. The 12 months' probation came to an end on the 31st of March 2018. The probation was extended with another 12 months after it had ended. The request to extend the probation is dated the 27th of September 2018 and such was approved on the 08th of October 2018. The extended probation started on the 01st of October 2018 and was meant to come to an end on the 30th of September 2019. The applicant worked without contract for the period, 01st of April 2018 to 30th of September 2018. The applicant was not given a contract of employment after the 30th of September 2019. The applicant worked without contract after the 30th of September 2019. The applicant was issued with a letter dated 18th of November 2020 to appear before probationary disciplinary hearing. The applicant was subjected to probationary disciplinary hearing. The applicant was dismissed on the 30th of June 2021. The applicant was earning R61 677-35 (sixty one thousand six hundred and seventy seven rand thirty five cents) per month at the time of the dismissal. It is the case of the respondent that the dismissal of the applicant was both procedurally and substantively fair. It is the case of the applicant that his dismissal was both procedurally and substantively unfair. The applicant prayed for retrospective reinstatement. The respondent submitted bundle A which is comprises of 174 pages. The applicant submitted bundle B which is comprises of 31 pages. The parties have agreed that the evidence of the late Mr Stanley Mampane during the disciplinary hearing will be accepted as evidence for the purposes of this arbitration as a witness of the respondent.

SURVEY OF EVIDENCE AND ARGUMENTS:

The case of the respondent

The first witness of the respondent, Ms Portia Annah Semanya, the Deputy Director under Financial Governance testified under oath as follows:

[4] She was employed as Chief Director: Budget and Public Finance at the time of the incident. She was appointed as Chief Director in 2013. Dr Mostert was appointed as Director: Micro Economic Analysis on probation on the 01st of April 2017. Pages 1-12 of bundle A contain Performance Agreement for the applicant for 2017/2018 financial year. Pages 13-32 of bundle A is performance assessment for mid-term review for April to September 2017 for the applicant. Hand written notes appearing on page 14 & 19 of bundle A were written by her. They were happy to have Dr Mostert as the Director. The applicant was not achieving his targets as per page 19 of bundle A. The applicant was called to a meeting and he was shown his shortfalls in dealing with PMDS. They highlighted areas of dissatisfaction. They were not happy about his work. The applicant would become impatient and started to shout and interrupting during the meeting. The overall performance of the applicant was unsatisfactory. She completed page 20 of bundle A. clause 8.3 at page 20 shows that the performance of the applicant was unsatisfactory. She wrote that Mr Mostert was having Doctorate in Economics but his work was unsatisfactory. She stated as per her hand written notes under paragraph 8.5 answering the question which says "upon expiry of his probationary period do you anticipate that he will be suitable

for permanent appointment" that it will depend if he changes his work ethics. The applicant was not delivering. The applicant was not planning his work. The work of the applicant was done by his juniors. The applicant was always in an out of the office. The applicant was reporting to her as the Chief Director. They signed page 17 of bundle A together. The applicant did not sign page 20 of bundle A. They are required in terms of PMDS to complete Quarterly review a month after the end of the quarter. She engaged the applicant and the applicant was not cooperating. She signed off the documents and submitted without his signature as it was going to be late. It was signed on the 30th of October 2017 which was the last date because the applicant was not cooperating.

[5] Pages 33-40 are a Quarterly probation report. She commented as per page 33 of bundle A. The applicant failed to produce meaningful reports after he had attended Workshops, Forums, provincial growth strategic engagements meetings, infrastructure meeting and GTAC winter school. The applicant was even attending meeting which were outside the scope of his work. The report is for the period 01st of April 2017 to 31st of March 2018 and his overall performance was unsatisfactory. Pages 41-44 are the memorandum to the HOD from Human Resource Management which was a consolidated report requesting for the extension of probation. The applicant was engaged before memorandum was drafted to the request if the extension of his probationary period. Human resource Management engaged him. They wanted to give the applicant a second chance. They motivated and have agreed to give him second chance. She personally engaged the applicant and wanted to assist him. The applicant agreed to the extended probation. Pages 45-49 are PMDS for the applicant for 31st of October 2018 to 30 April 2019 for 2018/2019 financial year. The extended probation did not start on the 01st of April 2018 but it started on the 01st of October 2018. They assessed the applicant after the closure of PMDS period together with Human Resource unit and the applicant was consulted hence the extended probation started on the 01st of October 2018. She was preparing quarterly review of the applicant after the extension of his probation. The first Quarterly review is appearing at pages 79-90 of bundle A. page 79 of bundle A is a Probation Report for the applicant for October to December 2018. The report was compiled by her. The performance of the applicant for the first Quarter was unsatisfactory. The second Quarter was as per pages 152-156 of bundle A. The performance of the applicant was generally unsatisfactory. The report was until 28th of October 2019. It was submitted unsigned. It was amended as per page 157 of bundle A. The applicant completed page 157 but he did not sign it. He did not do the ratings as required in terms of page 158 of bundle A. The applicant told her that he was not going to sign and such was noted in the report. She is the author of page 155 of bundle A. She informed the applicant about the issues raised at page 155 of bundle A. The applicant was always not cooperative. The CFO indicated that the applicant was having alcohol problem. She did not confirm the appointment of Dr Mostert as the Director as per page 156 of bundle A.

[6] She submitted the report after the expiry of the extended probation. The Human Resource management consolidated the reports. September 2019 was the end of Mid-term review. They still had the month of October to complete the report. She discussed the report with Deputy Director General and Human Resource Management unit. She also engaged the applicant about the report. The probation score remained the same. The applicant was given two years life line. The working relationship with the applicant was strenuous. The applicant was blaming them for his failures. She told DDG, Phukuntsi that if they decide to extend his probation, the applicant must report to DDG. Pages 103-119 are PMDS for the applicant for 2019/2020 financial year which was from the 31st of October 2019 to the 30th of April 2020. The performance of the applicant was still unsatisfactory after his probationary contract was extended. Page 143 of A is the applicant's Performance

agreement for 2020/2021 financial year. It is not true that the applicant worked without contract after the expiry of his first probationary contract. The applicant signed Performance agreement and was working according to the performance agreement. She was informing the applicant about his failures during one on one meeting. The extension was approved on the 08th of October 2018 but was backdated to the 01st of October 2018. The applicant was sleeping during the meetings. The applicant failed to perform his duties according to the agreed standard. The applicant failed to improve in his areas of poor performance. The applicant reported to her for the last time on the 13th of October 2020

[7] Page 26 of bundle B is probation quarterly report. The applicant requested training. He received training from 01st of October 2018 to 30th of September 2019. The applicant challenged his performance assessment. The applicant was never interested in training saying that he was a Doctor. The assessment of a probationary officer should be submitted after the elapse of the term. The first report was signed on the 14th of May 2018 and was signed by the applicant on the 25th of May 2018. Reports one to report for were signed by her on the 14th of May 2018 and the applicant signed on the 25th of May 2018. It is not correct that she did not follow the correct procedure in assessing the applicant as the forms in question are the consolidated annual report. They were written by Human Resource management. They were lenient on applicant due to his qualifications. The applicant was to conduct research as it was part of his performance agreement.

The second witness of the respondent, Ms Elizba Kotze, Director: Human Resource Management:

[8] She joined the respondent on the 01st of March 2019. Probation report was submitted in relation to the applicant. Performance reports were also submitted to Human Resource Management as per the procedure. They documents should be signed by the employee and the Supervisor. They consider all the reports to determine whether a person on probation should be appointed or not. The performance review and the score are considered in determining whether a person should be appointed or not. The probation of the applicant was extended with further one year from the 01st of October 2018 to the 30th of September 2019. The forms were not completed when they were received. They have to discuss challenges. The applicant was disputing his score. There was a meeting with the DDG about the reports. Lock down also contributed to the delay in finalising the matter. Probation disciplinary hearing was conducted. There were challenged between the applicant and Ms Semenya after the 01st of October 2020. The decision was taken not to appoint the applicant after probationary disciplinary hearing. The waited for lock down regulation to be relaxed before the matter can be finalized.

[9] Page 23 of bundle B is an abstract from the Code of Good Practice. Reasonable period depends on the circumstances of each case. 40 months' probation is not reasonable unless there were compelling reasons. The employee must be given an opportunity to state his case as per the Code of good practice before the decision can be taken. She was not involved when the probation was extended. The respondent should consider under means before dismissing as per page 24 of bundle B. Reviews were not done on quarterly basis. Probation reports were not done. There must be feedback during performance review. Probation forms were completed at the end. No training interventions were requested on behalf of the applicant as per paragraph 3 page 14 of bundle A. The applicant was not in the meeting with directors. She never discussed anything with the applicant prior to the probationary hearing. She does not have the knowledge on how the performance dispute between the applicant and Ms Semenya was resolved. The applicant never lodged grievance about his probation. Ms Semenya told them that the applicant was

drinking and sleeping on duty. It was unprocedural for all the forms to be signed on the same date by Ms Semenya and the applicant. The applicant signed on the 25th of May 2018 and Ms Semenya signed on the 14th of May 2018. The reports at pages 25 to 32 of bundle A were supposed to have been completed by Ms Semenya and not the Human Resource unit. Pages 25 to 32 should have been compiled by the applicant and Ms Semenya, the Supervisor. The reports (pages 25-32 of A) are quarterly reports and they should be submitted quarterly.

The third witness of the respondent, Mr Lawrence Johannes Mathebula, the Deputy Director: Macro Economic Analysis testified under oath as follows:

[10] He started to work for Provincial Treasury on the 01st of January 2016. There was no Director when he was employed. They were reporting to the Chief Director until Dr Mostert was appointed as the Director in 2017. Page 168 of bundle A is titled appeal against hearing outcome and is dated 31st of May 2021. It was signed by the applicant as the Director: Macro-Economic Analysis. Page 169 of bundle A is also titled appeal against hearing outcome and it is dated the 02nd of June 2021. He is the author of page 169 of bundle A after he was used as an enquiry by the applicant as per page 168 of bundle A. He was informing the Deputy Director that he was not involved in drafting a letter appearing on page 168 of bundle A and also denying its contents. He is the author of page 173-174 of bundle A. Page 173 of bundle A is titled: difficult working condition between Mathebula and Dr Mostert dated 26 February 2019. The applicant was always summoned him to the office after he had met with his seniors and he will lambast them as he will be very angry. The applicant will just come and shout at them without reason. The applicant was not doing his work accordingly. The applicant was vetting out his frustration on them for his substandard work. The applicant was stressing him as he wanted him to do his work. The applicant was holding him accountable for his own substandard work. He did not fail to submit SERO. He was not happy about the manner in which the applicant was treating him hence he asked for intervention. He did not lodge a grievance because he did not want to sow the relationship any further. He did not receive respond on the request for intervention. He attached emails to his letter. He blocked the number of the applicant since February 2019. The applicant was always coming with unreasonable deadlines due to poor work planning.

The evidence of Mr Stanley Mampane as per audio recordings recorded during the disciplinary hearing.

[11] He was employed as Deputy Director: Macro-Economic Analysis. He joined the respondent in 2016. And he was holding the same position prior to coming to Limpopo Province in Provincial Treasury in North West Province. He started to report to Dr Mostert during mid-2017. He was developing Socio Economic Review (SERO) which has got eight chapters. He shared the chapters with his colleague. There was a meeting between Macro-Economic Analysis directorate and the DDG in order to mould ideal working environment a week ago. They were reporting to DDG at the time. The working relationship between him and the applicant was volatile which started when they were doing annual assessment. The applicant was always threatening him with attorneys, union and that he will take action against him. The applicant was victimizing him. The applicant would call him young man in the meetings. The applicant would tell him that he was just been accommodated and that it was a favour to have him. The applicant was undermining him. The problems mainly start during assessment. The applicant would tell him that he was not going to score him high as his supervisor scored him low which was no longer on merits. The applicant did not value his contributions and inputs in the establishment. He wrote a letter to the Chief Director

requesting to be moved from Macro-Economic Analysis directorate because of the treatment he was receiving from the applicant. He was persuaded not to leave by the Chief Director and he decided to withdraw his request. There was no professional relationship. He did not lodge a grievance against the applicant.

The case of the applicant

The applicant, Dr Jacobus Willem Mostert, Director: Macro-Economic Analysis testified under oath as follows:

[12] Page 17 of bundle B is an offer of permanent employment subject to probation. He was not subjected to induction after he was appointed. Probation reports were not completed on quarterly basis for the whole year. He continued to work after the 12 months' probation ended on the 31st of March 2018. Page 25 of bundle B is quarterly probationary report for 01st of April 2017 to 30th of June 2017 which were signed on the 25th of May 2018. It was completed after one year. Page 27 of bundle B is Quarterly probationary report for the second quarterly probationary report and it was also signed on the 25th of May 2018. Page 29 of bundle B is the third Quarterly probationary report signed on the 25th of May 2018. Page 31-32 of bundle B is the Quarterly probationary report for January to March 2018 which was also signed on the 25th of May 2018. The Chief Director signed them on the 14th of May 2018. Each report was having the comments of the Chief Director. There was no discussion between him and his supervisor when they were completed. He did not get any intervention with regard to the reports. The probation was extended and he was not consulted. He was not furnished with the reasons for the extension. Page 13 of bundle B is the request for probation extension dated the 27th of September 2018. He is seeing it for the first time. He did not make any representation. He was given a letter to the effect that his probation has been extended for the period 01st of October 2018 to the 30th of September 2019.

[13] As per page 15 of bundle B. He was not made aware of his performance targets as required in terms of Section 68 (1) of the Public Service Regulations of 2016. He signed performance agreement. He did not receive quarterly report on his performance. There were internal discussions about performance but he did not receive any formal training. He did not receive written confirmation of his appointment. He was receiving personal invitation to come and assist with projects. He was rated satisfactorily in relation to attendance but unsatisfactory in relation to other areas as per page 25 of bundle B. Page 25 of B was not completed immediately after the end of the first quarter. The probation extension was approved on the 08th of October 2018. He could not remember if he was assessed for the period October 2018 to January 2019. Paged 60-63 of bundle A is a performance appraisal for 2018/2019 financial year. The supervisor added comments after our discussion on the performance assessment.

[14] He signed some of probationary reports after the extension of probation and some he did not sign due to comments made by the supervisor. His dismissal was preceded by probationary hearing. He was not given interventions. He was having a strange relationship with his supervisor. They were having limited discussions in all quarters. He was not afforded training. Probation of four years was not reasonable. Request for extension was addressed to the HOD and not to him. He confirmed that the employer evaluated his performance from 01st of April 2017 to the 31st of March 2018 during cross examination. Pages 25-32 are quarterly reports for the officer on probation. He signed all quarterly probationary reports for the period, 01st of April 2017 to the 31st of March 2018. He did not

agree with comments because he was not drinking. He appealed to the Human Resource Management in the form of memorandum about the comments made by the supervisor. The memorandum was not included in his bundle. Page 14 of bundle B at the bottom shows that he did not agree with the score. Page 33 of bundle A is not an individual report or a quarterly report but a report of the department. He testified that Mampane was very strong than him in final editing and numbering hence he was using him when it was put to him that he did not achieve as the work was done by his subordinate according to Ms Semenya. He was not happy about the extension of probation period but he had to accept it. The employer should have given him an opportunity to state his case.

[15] His performance was assessed during 2017/2018 financial year but not as part of probation. He was only assessed for probation in May 2018. He was subjected to quarterly probationary assessments after the extension. He signed some of them and refused to sign some of the reports. The overall performance after extension was poor. He challenged 2018/2019 financial year probation report by only saying that he did not agree with the score. He did not dispute that Ms Semenya was calling him for performance discussions. Ms Semenya was not wrong to have informal meetings with him about his performance. He was attending projects which were not part of the things to be assessed for performance. He did not sign some of the reports because he was not trusting Ms Semenya. He is the one who should sign the performance assessment first. He was not assessed for 2020/2021 as he was working from home due to lockdown. He testified that he was available when it was put to him that the delay in finalizing the matter was due to hard lock down. He did not receive counselling. He received instructions and comments on how to do the work which were guidance. He requested for training but Ms Semenya stated that he was having behavioural problem. He was having good working relationship with his subordinates. He testified that he was doing 50% of Mathebula's work when he was referred to complaint letter of Mathebula at pages 173-174 of bundle A. he agreed that the version of him doing 50% of Mathebula's work was never put to Mathebula. Mathebula blocked him because he wanted job to be done after hours. It was a honest mistake that he mentioned Mathebula as an enquire at page 168 of bundle A. He prayed for reinstatement.

ANALYSIS OF EVIDENCE AND ARGUMENTS:

[16] This dispute was referred in terms of Section 191 of the Labour Relations Act 66 of 1995 as amended. Section 192 (1) of the Labour Relations Act 66 of 1995 provides that in every dismissal dispute the employee must establish the existence of a dismissal. The existence of a dismissal is not in dispute in this case. Section 192 (2) of the Act provides that the employer must prove the fairness of a dismissal. The applicant in this case was subjected to a probationary hearing which resulted in his dismissal. Put it differently, the appointment of the applicant was not approved. It is imperative that I give background to the dispute at this stage for easy reference.

[17] The applicant was appointed as Director: Macro-Economic Analysis on the 01st of April 2017 subject to the completion of 12 months' probation. It is common cause that the applicant's appointment was not confirmed after the probationary period had ended on the 31st of March 2018. The applicant signed performance agreement for 2017/2018 financial year. The applicant was subjected to performance review for 2017/2018 financial year and the reports are appearing on pages 13-32 of bundle A. It is common cause that all probationary quarterly reviews were signed by Ms Semenya, the Chief Director on the 14th of May 2018 and that they were signed by the applicant on the 25th of May 2018. It is common cause further that the applicant performed unsatisfactorily in all probationary quarterly reports according to the reports appearing at pages 33-40. It is common cause

that the applicant worked between the 01st of April 2018 to the 30th of September 2018 without knowing whether he was appointed or not. The applicant however signed Performance Agreement or Performance Instrument on the 27th of April 2018 for 2018/2019 financial year as per pages 45-49 of bundle A. The applicant was subjected to performance assessment for the period in question.

[18] The Acting Director HRM (Human Resource Management) made a request for the extension of probation of the applicant on the 27th of September 2018 to the HOD. The request was approved on the 08th of October 2018 and was backdated to the 01st of October 2018. The applicant accepted the extension of his probationary contract. The applicant was subjected to probationary reviews in relation to extended probation and was also subjected to performance assessment emanating from Performance Agreement.

[19] The applicant waived his rights to challenge the first probation by accepting the extended probation. It should be noted that the applicant was dismissed on the 30th of June 2021 which was two years seven months after his probation was extended. It is my view that the applicant never had a problem with the extension of his probation. The performance assessment reviews for 2017/2018 were not in his favor. The same applies to the quarterly probationary reviews which were all signed on the 14th of May 2018 by Ms Semenya and on the 25th of May 2018.

[20] The applicant is contesting his dismissal on both procedural and substantive grounds. My approach to the challenges raised by the applicant will be based on the extended probation. The probation of the applicant was extended with 12 months. It commenced on the 01st of October 2018 and was meant to end on the 30th of November 2019. The applicant accepted the extension of his probation.

Substantive fairness

[21] It is the case of the applicant his dismissal was substantively unfair. It is the case of the respondent that the dismissal of the applicant was substantively fair. The respondent called three witnesses during this arbitration namely, Ms Semenya, the Deputy Director General who was the Supervisor of the applicant, Mr Mathebula, the Deputy Director who was the subordinate of the applicant and Elizba Kotze, the Human Resource Management Director. The audio recording of Mr Stanley Mampane's evidence during the disciplinary hearing was accepted as evidence during this arbitration. An employer may require a newly-employed employee to serve a period of probation before the appointment of the employee is confirmed in terms of section 8 (1) (a) of the Code of Good Practice. The period of probation may only be extended for a reason that relates to the purpose of probation. The period of extension should not be disproportionate to the legitimate purpose that the employer seeks to achieve in terms of section 8 (1) (g) of the Code of Good Practice. The evidence of Ms Semenya is that the probation was extended in order to afford the applicant an opportunity to improve.

[22] The applicant entered into performance agreement with his supervisor, Ms Semenya for 2018/2019 financial year. It is imperative to note that the extended probation commenced on the 01st of October 2018 and that it came to an end on the 30th of September 2019. Substantive issues will be limited to the during of the extended probation and issued parting to post extended probation will be dealt with when I will be dealing with substantive fairness of the dismissal. The applicant was subjected to performance assessment reviews for the period 2018/2019 financial year. The evidence of the applicant is that he does not remember if he was subjected to quarterly probationary reviews. The

applicant later changed his evidence and testified that he signed some of Quarterly probation reviews and that he refused to some of them as he was disputing the score. There is no report wherein the applicant performed satisfactorily throughout his assessments. The assessments guided by Performance Agreement were unsatisfactory and the same applies to quarterly probationary reviews.

[23] The evidence of Ms Semanya is that she pointed to the applicant his shortfalls and that they discussed his performance in a detailed manner. She testified that the applicant would become impatient and started to shout in the meeting where she would be showing him areas of concern. She testified that the overall performance of the applicant was unsatisfactory. The applicant testified that he was refusing to sign quarterly probationary reviews which are the instruments to be used in confirming his appointment or not to confirm. Dr. Mostert was not an ordinary employee and it cannot be said that he was not seeing that he was not meeting the standard. The evidence of Ms Semanya that the applicant was not cooperating is more probable. Mr Mathebua testified that he was doing the work assigned for the applicant and that he was stressed because of the unplanned work and tight deadlines. The evidence of applicant that he was doing 50% of Mathebula's work is improbable as such was never put to Mathebula when Mathebula was testifying.

[24] *It was held in **Rheinmetall Debel Munition (Pty) Ltd v BNCCI and others (c528/13) [2015] ZALCJHB 49; [2015] 6 BLLR 633 (LC); ILJ 2117 (LC)** that where employee is appointed in a responsible position and that the person claimed to have necessary experience for doing the job, it is not unreasonable for the employer during the probation period to simply point out the perceived shortcomings of the probationer and to emphasize the importance of improving her performance if she wanted to be permanently appointed.* The applicant in the current case was appointed in a reasonable position and it was not that he was clueless in the field in question. Ms Semanya pointed out the applicant his shortcomings. The evidence of Ms Semanya that the applicant was having behavioral problem is evident from the evidence of the late Mampane and the evidence of Mr Mathebula. Interventions to assist the applicant were done by Ms Semanya to assist the applicant however; it is difficult to assist someone who was not cooperating. The evidence of Ms Kotze was about HRM processes and her evidence was only relevant in relation to the loopholes attached to the first probation.

[25] I make a finding that the dismissal of the applicant was substantively fair. The respondent was lenient to the applicant and the applicant was given second chance to prove himself but he consistently performed unsatisfactorily.

Procedural fairness

[26] It is the case of the applicant that his dismissal was procedurally unfair as he worked without contract after the probation contract had come to an end. The extended probation came to an end on the 30th of September 2019. The applicant has been working without from the 01st of October 2019 until he was dismissed on the 30th of June 2021. This is to say that the applicant was dismissed 18 months after the expiry of his probation. It also means that the applicant worked for 18 months after the expiry of his extended probation.

[27] Ms Semanya testified that the delay was occasioned by lockdown and further that they were busy compiling reports. The reasons advanced by Ms Semanya are not convincing. The status of the applicant in the books of the respondent remained uncertain for more than a year after his probation ended on the 30th of September 2019. Lockdown was only announced in March 2020 which was five months after the probation contract has

ended. The future of the applicant was put to a stop without justifiable reason. It is my considered view that the respondent committed a gross procedural irregularity by taking long time before deciding on the status of the applicant. The dismissal of the applicant failed test for procedural fairness.

[28] I make a finding that the dismissal of the applicant was procedurally unfair as he was allowed to work for 18 months after his extended probation had expired.

[29] The dismissal of the applicant was substantively fair but procedurally unfair. I deem two months compensation for procedural irregularity to be fair and equitable under the circumstances of this case. In award the applicant two months compensation for procedural irregularity, I have taken into account the long passage of time before the case of the applicant was decided after the expiry of his extended probation.

Award

[30] The dismissal of the applicant was substantively fair but procedurally unfair.

[31] The respondent, Department of Provincial Treasury is ordered to compensate the applicant, Dr. Jacobus Willem Mostert in the amount of R123 354-70 (one hundred and twenty three thousand three hundred and fifty four rand seventy cents) which is the equivalent of two months salaries, calculated at the applicant monthly income of R61 677-35 (sixty one thousand six hundred and seventy seven rand thirty five cents).

[32] The amount mentioned at paragraph 31 above is to be paid to the applicant, on or before the 30th of June 2022.

PHEEHA DANIEL SEOPELA



Name:

(GPSSBC) Arbitrator