



ARBITRATION

AWARD

Panellist/s: Orlando Moses

Case No.: GPBC 38/2021

Date of Award: 25 August 2021

In the ARBITRATION between:

PSA obo PJ Bakkes

(Union / Applicant)

And

Department of Defence

(Respondent)

Union/Applicant's representative: Natalie Adams (PSA)

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Respondent's representative: K Ramakgopa

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AWARD

DETAILS OF HEARING AND REPRESENTATION:

1. The arbitration hearing was initially scheduled for 07 July 2021 for a Microsoft Teams hearing for 09h00 and concluded on 05 August 2021. The Applicant, Mr. PJ Bakkes, was represented by PSA Representative, Mrs. N Adams the Respondent was represented by the one of its Officials, Mrs. K Ramakgopa. The Parties submitted their closing Arguments which were received on 16 August 2021.
2. The proceedings were digitally recorded.

ISSUE TO BE DECIDED

3. I have to determine whether the Applicant was subjected to an unfair Labour Practice relating to benefits when the Respondent stopped paying his Housing Allowance during June 2020.

BACKGROUND TO THE ISSUE IN DISPUTE

4. The Applicant is employed at the Department of Defence. He received a Housing allowance of R 1456.94(one thousand four hundred and fifty-six rand and ninety four cent) per month, which was stopped during June 2020. He submits that he was subjected to an unfair Labour Practice when his allowance was stopped and requests that it be reinstated from June 2020.

Point in Limine

5. The respondent raised a point in limine on the second day of the hearing requesting that I recuse myself as Commissioner.
6. When dealing with an Application for recusal the question is whether a reasonable, objective and informed person would on the correct facts reasonably apprehend that the commissioner has not or will not bring an impartial mind to bear on the adjudication of the case that is a mind open to persuasion by the evidence and the submissions of parties. The Constitutional Court pointed out in *South African Commercial Catering and Allied Workers Union and Others v Irvin & Johnson Limited Seafoods Division Fish Processing* that in recusal applications there is a rebuttable presumption that judicial officers are impartial. It is the applicant for recusal "who bears the onus of rebutting the presumption of judicial impartiality", and the presumption "is not easily dislodged. It requires 'cogent' or 'convincing' evidence to be rebutted".



What is required from a presiding officer is not "absolute neutrality", but impartiality, the quality of open-minded and readiness to persuasion by the evidence and the submissions of representatives.

7. The Respondent representative submitted that I did not allow her to ask questions relating to paragraph 5.2 on the dispute referral form G2 which states summarizing the facts of the dispute stating that the Housing Allowance was stopped. The submission in this regard is incorrect as the Respondent started in dealing with the submissions made by the Applicant in this paragraph 5.2, not receiving the housing allowance, when representative started the cross-examination evidence and proceeded to ask questions in this regard for approximately 30 minutes, where after she moved to different questioning but later she wanted to return to this issue. I confirm that I informed her that is not in dispute the applicant did not receive the housing allowance and that she should deal with the evidence to prove that the reason for stopping the housing allowance was fair.
8. She further refers to an incident where she stopped asking questions based on my interference, which version was also incorrect, as this related to an issue of guidance where in I asked her whether she would call Capt. Nkondo and Warrant Officer West to come and testify as it was the Applicant's version that he submitted the application forms to them. I cautioned her that if she failed to call them that the Applicant's version would remain undisputed that he handed completed application forms to them. She further alleges that I discussed another case with the Applicant's representative, which version is also not completely correct, as I informed both of them that in a different matter on review the court indicated that if you allege a fact, the evidence to that fact should be presented. The allegation that I interrupted the respondent representative causing her not to asked further questions is incorrect as I adjourned the meeting for five minutes to give her an opportunity to reconstitute itself and get her questions in order,; whereafter the adjournment, she continued to ask questions for an additional 10 to 15 minutes.
9. A further allegation was that I did not allow her to call her witness, as it relates to a question on 7 July 2021 at approximately 15h00 when she concluded with the first witness. The Respondent asked to adjourn the Arbitration hearing as her second witness was using a bus. When I asked her whether the witness would be testifying for more than 45 minutes and whether we would be able to conclude the arbitration on 7 July 2021. Both the Applicant's representative and Respondent representative indicated that more time would be needed with the witness, whereupon it was agreed to postpone and resume the arbitration hearing to 5 August 2021.



10. Presiding officers must take care not to act in a manner that would give an undue advantage to one or the other side, as this may lead to a reasonable apprehension of bias on their part. Where a Commissioner, following an inquisitorial process, this concern does not arise. I informed parties and Witnesses prior to starting the arbitration proceedings that I would ask question whereafter I gave parties a fair opportunity to make follow-up question. I play and active role in line with section 138(1) of the LRA which states that a Commissioner may conduct the arbitration in a manner that the commissioner considers appropriate in order to determine the dispute fairly and quickly, but must deal with the substantial merits of the dispute with the minimum of legal formalities. During the arbitration I play an active role in this process and have a duty to assess evidence, question witnesses, while keeping an open mind, always with a view to establish the truth. Taking into consideration the guidance and issues of clarity raised I do not find that my actions created a reasonable apprehension of bias when I inform parties of the evidentiary burden parties have regarding evidence that was presented.
11. I listened to the submissions of the parties relating to the recusal and exercised my discretion not to recuse myself.

SURVEY OF SUBMISSIONS AND ARGUMENT

12. I have considered all the evidence and argument, but because the LRA (section 138(7)) requires an award to be issued with brief reasons for the findings, I have only referred to the evidence and argument that I regard as necessary to substantiate my findings and determinations.

Applicant's Witnesses Testimony

Mr. Pieter Bakkes

13. He is employed at the Department of Defense at Two Military Hospital, and he is married to a public servant.
14. He received a housing allowance which was stopped in June 2020. The housing allowance was also previously stopped during July 2017 and he was informed that the reason for doing so was because his wife was also a public servant. The allowance was reinstated three months afterwards. In 2018 the same process was repeated the process of submitting his wife's pay slip in order to get the allowance reinstated. During 2019 the housing allowance was not stopped until June 2020. During June 2020 he repeated the same process that he did for 2017/2018 and expected the same outcome after submitting his documents. He reapplied and the HR said that there was a problem faxing the documents and he resubmitted his documents. He referred to a document that was faxed and referred to the facts, seat and testified that all the documents were sent to the housing department and indicated that this was the fourth four copy sent since June 2020. He referred to the fax confirmation sheet on page 14 of annexure A2 which shows that the fax was sent on 25 July 2020. The fax cover however indicates 10 October 2020. Between February 2021 and April 2021, he submitted



- another application form and HR informed them that they did not take any action regarding the housing allowance, and he was asked to submit it again. To date he has not received a housing allowance and testified that he followed HR's request to complete the forms into resubmitted. He submitted the forms, by hand; with Warrant Officer Ricardo West he placed the application on the desk of the HR manager, Capt. Nkonzo. His union representative, Mrs. Debbie Barrett also submitted his documents. He visited HR frequently, sent emails, but received no response. He does not receive a housing allowance because she never applied.
15. He referred to the PSCBC agreement of 2018 which delinks the housing allowance of and testified that no criteria exist to exclude them from receiving a housing allowance. He reconfirmed that he submitted his documents in 2017, 2018 and 2020 and that his housing status had not changed.
16. Under cross-examination he testified that he asked Warrant Officer West why the housing allowance was stopped and he was informed it was because of his spouse who also works in the public service. West informed him that he was aware of the delinking situation of the housing allowance from spouses. He completed all the documents requested by HR, the same documents which were similarly used to reinstate the housing allowance in 2017 and 2018. He confirmed that he completed the housing allowance form for new owners, and he was referred to a document signed 14 April 2021, to which he testified that he completed a similar form in June 2020 and where he submitted all the documents, which documents should be in the HR file at Two Military Hospital. Between June 2020 and the date of the arbitration he had completed and submitted the form four times. He had even submitted the form to Capt. Nkonzo. He was referred to the affidavit wherein he indicated in part to be that he had an objection to taking the prescribed oath and stated yes, indicating that he had a problem with taking the oath. It was put to him that HR had to complete the oath or affirmation to which he testified that when he took the documents to HR he was informed to leave it with Warrant Officer West and he was not assisted to complete the document. HR just requested him to complete the form. He confirms that the commission of oath did not sign the affidavit when it was put to him that the document was incomplete, however testified that he requested HR to assist him many times and that he submitted the document to Warrant Officer West and Capt. Nkonzo. It was put to him that the housing allowance would be captured for one year at the time and that an officer must reapply annually by submitting the spouse's salary advice as a control measure, however it is pointed out that the document is dated 28 February 2017, a date prior to delinking of the housing allowance from spouses. He reconfirmed under cross-examination that he lodged a grievance and confirmed that he submitted his application numerous times. He testified that Capt. Nkonzo is the HR manager, and that Warrant Officer West is her clerk. He testified that the HR manager never gave any feedback and that his union representative, Ms. Barrett will come and testify to this. He spoke to Capt. Nkonzo, Warrant Officer West and his PSA representative Ms. Debbie Barrett, to assist. He spoke to many people in the HR section however due to Covid they were not all at the office at the same time. He reconfirmed that his



union representative submitted the forms requested by Warrant Officer West and at the very least he approached HR twice a month and spoken to whomever was available concerning the housing allowance progress.

17. Under re-examination he confirmed that the submitted proof of his application and submitted to the delinking of spouses happened during September 2018, which didn't make it necessary for him to resubmit in June 2020. He also referred to annexure A2 page 18 to a letter dated 13 July 2020 drafted by RJ West with a cover letter 2000 department requesting to reinstate the housing allowance, which was referred for action; however, there was no feedback or response.

Mrs. Debbie Barrett

18. She is employed at Two Military Hospital and is a trade union representative and assisted the applicant with his application. She referred to annexure A2 page 13 which is the fax cover sheet dated 15 October 2020, which she testifies is a fax sent to Major Songca, about the housing allowance of the applicant. She read into the record the fax cover sheet which indicates that it was sent to major Songca that the information is sent as per the telephonic conversation regarding the housing allowance of Mr. Piet Bakkes as discussed. She testified that she had quite a couple of conversations with Major Songca about the applicant's housing allowance and the issue that he would resubmit his application for the allowance every year despite de-linking it from the spouses. She cannot remember how many times the document was submitted but every time the document seemed to be lost. The applicant was requested several times to resubmit the documents, which he did. She testified that he submitted the documents with Warrant Officer West who faxed the documents and to her knowledge this was done. It was Warrant Officer West who sent it to Pretoria. There was always an issue regarding the follow-ups, and she decided to speak to Major Songca directly. She dealt directly with Warrant Officer West when it came to housing matters.
19. Under cross-examination she denies the version put to her that the applicant didn't want to resubmit the documents. The last time she spoke with a major was in October and she was informed that the respondent could not find the documents and she personally resubmitted the documents. She drafted the cover sheet the self and agrees that she did not sign the document as the standard document which she uses, which is on her hard drive the document was faxed to the major after speaking to her about the applicants housing allowance. She gave the document to Warrant Officer West to fax. She made follow-ups however received no response from the major. She does not have a fax confirmation sheet and states that Warrant Officer West should have the document as the document was submitted to him to fax. She testified that no other homeowners the same issues as the applicant and find it ridiculous that documents just to missing in Pretoria. She cannot recall that she called Major Songca after the document was faxed as it was this was HR's responsibility. The Major told her that the end date captured on the system was a mistake and it was indicated to her that no end date should have been captured on the system. The problem therefore does not lie with the Applicant but with the employer that incorrectly captured his information. She disagrees that the failure to indicate the number of



pages on the fax cover sheet means that the fax cover sheet has no meaning. She reconfirmed that she informed HR of the de-linking of spouses from the house allowance and also pointed out that after Major Songca revealed to her that the information on the system was incorrectly captured with an end date, when no information should have been captured. She was informed that the document should be submitted one more time and she would ensure that the information was captured correctly.

Respondent Witnesses

Captain Lucky Khoza

20. She is appointed and her expertise is housing, remuneration and leave. A function is to check with the documents and forms were completed correctly and she signs the document to the commission of posts if it was completed correctly. If the document is incomplete, she would check the documents with the members present.
21. She testified that she had an encounter at Two Military Hospital for a request for housing allowance with documents which was submitted with Warrant Officer West and the member refused to complete the new homeowner document as he said that he was an old homeowner, and she refused to sign the letter as no form was attached. She referred to a cover letter dated 13 July 2020 which indicates that attached was a salary advice, ID document and a quarterly bond statement. She confirmed that the application is not a new application and Warrant Officer West told her that the Applicant is refusing to complete the new homeowner housing application form. She confirms that the Applicant spoke to Warrant Officer West and testified that she spoke to the Applicant about the dispute in the passages. She personally informed the Applicant that they could not capture the form without the appendix. She confirmed that in 2017 and 2018 the Applicant submitted his spouses pay sheets; however he did not submit an addendum, but confirmed that the Applicant received his housing allowance upon submitting the pay slips in 2017 and 2018. She referred to annexure R1 page 40 and states that this was the form used for the new applications which form indicates 28 February 2017 however she states that the form was introduced in 2018. She confirms that the applicant did not complete this form in 2017. Previously the applicant only submitted his spouses pay sheet and previously no other documents was needed. The applicant was issued with a form and he said that he was not a new home owner and he said he would not complete the document as he is an old homeowner. The Applicant is ignorant about the de-linking process and a message was sent to all members that he should reapply and informed members that the failure to reapply would lead to non-payment of the housing allowance. Nobody else except the applicant complained about the form. She referred to a document dated 3 October 2018 with the heading which indicates "*delinking of the housing allowance to spouses of public servants*". She testified that this was a news bulletin informing members about the delinking of the housing allowance from spouses. She referred to annexure R1 page 11 which is a document dated 27 September 2018 with the heading "*addendum/errata: interim implementation instruction housing allowance [HA] for officers appointed in the Department of*



Defense [DOD]". The Application form dated 28 February 2017 [delinking of the housing allowance to spouses of public servants] in paragraph one indicates that it includes outstanding measures on the delinking of the payment of the housing allowance to spouses of public servants in order to assist with financing the implementation of the above-mentioned instruction. She referred to paragraph 2(b) (ii) stating that both spouses should apply separately and he states that the applicant refused to complete the new form as he had a problem with a document stating "new homeowner". The process of applying was explained to the Applicant's union representative explaining that the Applicant had to complete the documents. Warrant Officer West sent the information to the bank of Lisbon (Pretoria) for processing and if the document is incomplete the housing allowance would not be paid.

22. She referred to a document dated 28 February 2017 which is headed "*interim implementation instruction: Housing Allowance (HA) for Officials appointed in the Department Of Defence*" and referred to paragraph 53, which is found under the heading "*qualifying and termination date of housing allowance*", which indicates that the officials will receive the housing allowance with effect from the date that the fully completed and signed application is received with the correct documentary proof. She testified that unless it can be proven beyond reasonable doubt that the administrative error is on the part of the DOD, no backdating of the housing allowance is allowed. She also read into record paragraph 54 under the heading: "*Termination date of the housing allowance*". Paragraph 54 of the document states that the payment of an official's housing allowance will be terminated on the date on which the disqualifying change occurs e.g. if an official sells his/her home, vacates the property, terminates his/her rental agreement on his/her home or a spouse who is also employed in the state department receives a housing allowance from his/her department. She also referred to a document dated 11 December 2017 under the heading "*Amendment of the interim implementation instruction: Housing Allowance (HA) for officials appointed in the Department of Defence*". She referred to paragraph 6 under the heading: "*Control Measures*" which was read into record indicating that an official whose spouse/partner works for the DOD or other state department must submit the most recent salary advice (Pay Slip) as proof that he/she is also not receiving the housing allowance from his/her department. The Officials housing allowance will be captured for two years (24 Months) at a time; that he /she must re-apply at least a month before two years (24 Months) expire by submitting the spouse's salary advice as a control measure. She testified that officials had to re-apply every 24 months and based on the testimony of the Applicant 2018/2019 was when he received his allowance.
23. Under cross-examination it was put to her that it is the Applicant's version that he only had a telephonic conversation with her in the weeks before the arbitration and not before; which version she denies and it was her testimony that the Applicant refused to complete the application form and she testified that the applicant did not complete the application form correctly. She confirms that the documents, that she testified to, was all dated pre-delinking of the housing allowance from spouses but she testified the control measures is not erased and that the housing allowance was



stopped because the applicant did not reapply. She confirms that the Applicant received a housing allowance in 2018/2019 after the de-linking process of the spouses and she agrees that the documents are with the department, but the documents submitted only indicated that the spouse did not receive a housing allowance. She indicates that if the documents were incomplete, they would inform the sender that the documents were not completed correctly. She states that both she and Warrant Officer West told the applicant that the form was incomplete and denies that an application form was submitted. She confirms that the application form states "new homeowner" and that it is dated 28 February 2017. She denies that they surely would accept an incomplete document. She could not testify to the version put to her that the applicant completed the form in the presence of Capt. Nkondo and testified that the form should have been placed in the housing file. She further states that the Applicant should not have altered the Application document by writing "existing" homeowner and should not have written on the form of "re-applying". She testified that none of the Applicant's documents was in the HR file and denies that any documents were submitted. She stated that she must be copied in on his file, prior to the file being sent to Pretoria, and said there is nothing that she can do if she did not get the form. She states that the Applicant has approximately four different HR files and she even checked the grievance file but could not obtain any of the documents for the application. She stated that it was an Instruction from the department HR that all employees must apply after the de-linking, which the applicant did not do as he did not need to reapply for 2018/2019; however it is the Applicant's duty to confirm that he was a homeowner.

24. Under re- examination she states that she would not lie about the encounter with the Applicant and states that the office would not accept the document which is been altered by the Applicant and it is her view that the form would not be processed as they are not allowed to change the forms. It is her opinion that Capt. Nkondo would not accept the form but she cannot answer for Capt. Nkondo.

Major Josephine Songca

25. She is working as a Housing Administrative Appeal Officer at the department. At some stage in 2020 she was sitting in the office and she was informed by Mrs. Barrett that the applicant did not want to complete an Application form and she stated that this was the only form that are to be completed. She never spoke to the Applicant. The following day she was again informed that the Applicant does not want to complete an application form, because he said that he was not new homeowner and is the only member who has a problem. She asked Barrett towards the end of the month what was happening and she said that he didn't want to complete the document. In terms of the procedure; the application form must be completed and documents need to be attached showing ownership. Only after the application form is received would the housing allowance repaid, which would not be back paid. She referred to the interim implementation instruction of the housing allowance dated 28 February 2017 and read into record paragraph two which states "PSCBC resolution seven of 2015 [reference G] that was signed and 27 May 2015 essence introduce the new and complete



government employees housing scheme [GEHS] dispensation and set out the rules for all officials while owners and tenants, for assessing the housing allowance and allowing for official to our role with the GEHS". She testified that every employee have the right to receive a housing allowance if they qualify for the allowance. She was told by Mrs. Barrett that the Applicant never completed the application form. She testified that he was a new homeowner under the new dispensation. She further indicated that the Applicant failed to complete the ID number of the spouse on the document and the document was incomplete. She further indicated that no commissioner of Oath signed and commissioner the document and states that HR should have completed the document as the HR is a commissioner of oaths. She further referred to the declaration of the Applicant indicating that he in paragraph 2(b) stating that he has no objection taking to the prescribed oath. If the HR manager that signed, he would've been able to understand what the proper answer was. She stated that in order to receive the allowance the application form must be fully completed and signed and the allowance would only be back paid if there is an administrative error on the part of the department. She confirms that the HR must keep all copies of the application file for audit purposes and submitted HR must approve of all documents submitted.

26. Under cross-examination she read into the record the requirements for terminating the housing allowance which shows either the sale of the home, vacating of the property, termination of the rental agreement or the spouse working for the State Department who receives a housing allowance and confirms that the documents that she referred to is dated 28 February 2017, which is prior to the delinking of the spouses in terms of the collective agreement. She confirms that the delinking of spouses is not a disqualifying criterion to receive the housing allowance since 1 September 2018 and confirms that from 2018 it doesn't matter if the spouses also receive a housing allowance. She states that based on internal control measures the housing allowance of the Applicant terminated on 30 June 2020; as captured in the system. He states that in December 2017 the control measures were amended for two years, which was captured on the system. She confirms that the housing allowance agreement came into effect from 1 September 2018. She testified that she was informed by Mrs Barrett that the Applicant did not want to complete application forms. She referred to the DOD PERSOL system print outdated 8 March 2021. She testified that this document does not show when a housing Allowance was suspended. She could not recall ever receiving a fax in terms of the fax cover sheet dated 15 October 2020 but confirm the number and states that the fax machine is not in her office. She could not confirm whether the fax arrived or not and cannot confirm whether fax was received by office. She could not recall the conversation with Mrs. Barrett. She confirms that the Applicant is not the new homeowner but is a new homeowner under the government employee housing scheme. She states that the latest GEHS agreement is 29 May. She could not confirm if Determination and Directive on Housing allowance for employees in the Public Service dated September 2018 stems from PSCBC resolution 1 of 2018 which is the agreement on the salary adjustments and improvements of conditions of service in the public service for the period 2018/2019, 2019/2020 and 2020/2021. She denies that this is the latest



directive but agrees that this is the latest PSCBC dispensation currently in effect, but she is not sure that the application form is in line with the latest directive. She can agree that the Applicant is re-applying for the allowance, but she is not part of the persons drafting the form and if the applicant was unhappy with the form should have approached the drafters. She is working according to the instructions and employees are not requested to apply annually anymore, however they had to do so prior to 2018 in terms of the control measures, which existed prior to the de-linking whereby employee had to reapply every two years. She informed Mrs. Barrett that the applicant had to recomplete the forms in order to capture the housing allowance without an end date as they could not capture the information if the documents were not on file.

27. Under re-examination she denies receiving any documents from the applicant and submitted prior to the delinking applicant only had to resubmit the salary advice to show that spouses are not receiving a housing allowance. She confirms that only the applicant had a problem with the forms.

Closing submissions

The Closing arguments of the Parties are summarized as follows

Applicant's Closing Arguments

28. The Collective Agreement Resolution 1 of 2018 and specifically Bundle A -1 Page 41 Par 6 speaks to the Housing Allowance for Public Servants. The Determination and Directive cited directly stems from this collective agreement which is binding on all parties. It can be noted that the delinking of spouses was in effect from as early as the signing of the Collective Agreement Resolution 1 of 2018, which was June 2018 (Bundle A-1 Page 44) and there was no need for Mr Bakkes to declare his spouse as not receiving a housing allowance any longer after that date. Mr Bakkes also confirmed that him and his spouse do not maintain two separate homes or are stationed in different magisterial districts. He therefore qualified in full for Housing Allowance, whether his spouse received a housing allowance as well, or not.
29. During cross examination of the employer's witness, Captain Khoza, she maintained that they had never received a housing application form from Mr Bakkes and based on the legislative requirement quoted in these paragraphs, we categorically state that the Captain was either willingly lying under oath, or has confirmed the gross negligence of their section as they "allegedly" cannot find such application forms. The Captain went as far as to state they checked all the files but found no Housing Allowance application forms. **Bundle A2 pdf page number 18** is a Letter from WO West dated 13 July 2020 refers. This letter was written by WO West explaining what documents was attached. It was addressed in the action block to housing section. Housing section and HR all claim they never received any application



from Mr Bakkes, yet strangely enough here is an internal DOD document that was meant to arrive at the housing section. At the very least one of the witnesses should have known about this letter yet both claimed complete ignorance to Mr Bakkes submissions. Furthermore if the documents submitted on 13 July 2020 obo Mr Bakkes by WO West was the incorrect documents, nothing in writing was ever received by Mr Bakkes. Now, a year later, everyone claims Mr Bakkes only submitted one incorrectly invalid application form. The date of the letter is immediately after the housing allowance was stopped and it can be seen by this letter alone, that Mr Bakkes immediately tried to sort out the problem. He did not delay the enquiry and when his housing allowance does get reinstated, it should be backdated to July 2020.

30. The lack of any other documentary evidence to be found on the files at the HR section is considered as devious and false presentation as there is a clear trail of correspondence from Mr Bakkes to HR Section, to WO West and from WO West to the Housing section as early as July 2020 already. In order for Mr. Bakkes to have received that full housing allowance for years, the department must have received the required application form and supporting documents. This is clear evidence that 2 Military Hospital HR section has either lost or misplaced, or deliberately destroyed Mr Bakkes paperwork and he is being disadvantaged by incompetence, negligence and maladministration.
31. Respondent Bundle **R1 Page 33** Par 72 "An official whose spouse/life partner works for the DOD or other State Department must submit the most recent salary advice (pay slip) of his/her spouse as proof that he/she is not also receiving the Housing Allowance from his/her Department. The official's Housing Allowance will be captured for one year at a time and he/she must re-apply annually by submitting the spouse's salary advice as a control measure" has reference. Commissioner, the employer relied heavily on the clause to justify their case. Although it was highlighted that this DOD policy is dated 28 February 2017 (Bundle R1 Page 15), which is prior to the current Collective Agreement in place Resolution 1 of 2018 and subsequent Determination and Directive on housing Allowance.
32. The second aspect of this clause on which the employer relies so heavily is that the document that needed to be submitted annually, was only the pay sheet of the spouse, and not the entire re-application for housing allowance. Even though the employer is now alleging that they never received any application for housing forms from Mr Bakkes, (which we contest), the application for housing form was never a requirement to begin with based on Bundle R1 Page 33 Par 72 "An official whose spouse/life partner works for the DOD or other State Department must submit the most recent salary advice (pay slip) of his/her spouse as proof that he/she is not also receiving the Housing Allowance from his/her Department. The official's Housing Allowance will be captured for one year at a time and he/she must re-apply annually by submitting the spouse's salary advice as a control measure". Mr Bakkes spouse's pay sheet was the only



requirement, which was included in the attachments, amongst other documents, which WO West sent to Housing Section dated 13 July 2020. (Bundle A-2 PDG page 18)

33. The employer may argue that because there was an end date of June 2020, which was after the de-linking of spouses, this was the reason he had to re-apply from scratch for the housing allowance. We contest this argument by referencing the *Determination and Directive on Housing Allowance for Public Servants* dated September 2018 Bundle A-1 Page 28 Par 2.2.2.2 which speaks to employees in service prior to 27 May 2015 who were recipients of the Housing Allowance as homeowners. This clause goes on to highlight that if the homeowner failed to complete a new Housing application form, he/she shall continue to receive the R900 without any adjustments. It is common cause that Mr Bakkes received the increase, which is evidence that he had completed the new housing application form at that stage already (2015). At the time of the termination of his housing allowance, Mr Bakkes had been receiving just under R1500 housing allowance, again evidence that the necessary housing application form had been submitted and verified.
34. The employer chose not to call a very vital witness. As Mr Bakkes representative in this matter, we would have more than welcomed WO West testimony because we have no doubt his testimony would have corroborated Mr Bakkes and Ms Barrett's testimonies. As it stands, in the absence of WO West testimony; Mr. Bakkes and Ms Barrett's testimonies that housing application forms for Mr Bakkes was given to WO West on numerous occasions is the only version and must be considered as uncontested testimony.
35. Major Songca testified that she had spoken to Ms Barrett in 2020 about Mr Bakkes housing allowance and she stated that she explained to Ms Barrett that Mr Bakkes had to complete an application form under the new dispensation. Upon cross examination, it was determined that Major Songca was referring to the 2015 resolution on housing allowance. When it was pointed out that in 2020, the newest and latest "dispensation" is in actual fact the 2018 resolution, she agreed that the 2018 resolution takes precedence over the 2015. It must be noted that the alleged new dispensation rule that the Major claimed is the reason Mr Bakkes must apply again, was the 2015 resolution, and an amendment letter of 2017, which was not valid at the time of Mr Bakkes housing allowance coming to an end in June 2020. The employer placed great emphasis on a Housing Application form which was incorrectly completed by Mr Bakkes. Bundle A-2 PDF Page number 7. This document was not included in the employer's bundle but when they discovered it in the applicant's bundle; the employer proceeded to focus much energy on the incorrect completion of this document. It is our contention that the employer opting to place emphasis on this document with many questions to address the wrongness, they knew they did not have a very strong case to begin with.



36. Captain Khoza claimed she had seen this Housing Application document but that Mr Bakkes refused to complete it correctly. She went on to state that she had informed Mr Bakkes personally, in her office that he needs to complete the form correctly. Mr Bakkes however, categorically stated he had not had a meeting with the Captain in her office and the only contact he had with her regarding this matter was that of a telephone call a few weeks before the arbitration first sitting.
37. It is agreed that the Housing Allowance Application form was scratched on by Mr Bakkes. However, it should be noted that at this point, the document being dated 14 April 2021, this had already been the fourth application Mr Bakkes had completed. Further, the wording that was scratched out was not incorrectly omitted. It was confirmed by all witnesses that Mr Bakkes is not a New Homeowner, that he is in fact an existing home owner. It was also confirmed by all witnesses that Mr Bakkes had previously applied and qualified for homeowners allowance and this document would therefore be a re-application and not a new application. The fact that the document is dated February 2017 too raises concerns as to correctness from the Departments side, as it is an outdated form which does not align with the 2018 dispensation.
38. based on the testimonies and evidence presented, as well as the common cause factor that Mr Bakkes does qualify for the Housing Allowance, it is our submission that the HR section of 2 Military Hospital has erred in their administrative responsibilities to ensure the continuation of Mr Bakkes allowance. Further, even if any fault lay with Mr Bakkes completion of the necessary forms, which we still contest, it is the HR sections responsibility and duty to assist and guide the member to achieve his benefit contained in a collective agreement. Mr Bakkes had done everything in his power to follow whatever guidance and advice he did receive from his immediate supervisor and various other employer components, as well as his union representative, but still finds himself without a housing allowance more than a year later. It is felt that Mr Bakkes has been treated unfairly and unjustly and we pray that the Commissioner rules in favor of Mr Bakkes to rectify this wrong that has been inflicted on Mr. Bakkes.
39. As declared in the opening statement, the relief sought is that Mr Bakkes Housing Allowance be re-instated with immediate effect and backdated to July 2020. The relief sought pertaining to compensation is found in S193 (4) read with 194(4) of the LRA. Section 193(4) confers the arbitrator with the power to determine any unfair labour practice dispute referred to him or her; which the arbitrator deems reasonable, which may include ordering reinstatement, reemployment or compensation. We therefore plea that the Commissioner consider granting twelve months



compensation for the prejudice Mr Bakkes has suffered due to incompetence, negligence, maladministration and further frustrating the conclusion of this matter by deviously shifting blame from the department to Mr. Bakkes.

40. Mr. Bakkes earns R30185.25 gross salary per month. (Pay sheet attached to this argument)

Respondent Closing Arguments

41. It is common cause that the Applicant's housing allowance lapsed on the Department of Defence (DOD) PERSOL System with effect 15 June 2020. According to the Applicant's evidence he claims not to be aware of the reasons why is housing allowance suddenly stopped. The latter attestation of the Applicant is absurd because he testified that housing allowance would usually stop annually. Annual he had to reapply and his admission to the knowledge of required proceeding is nothing new to him. The Applicant alleges that he completed all requirement housing allowance forms on three different occasions, however she failed to produce documentary evidence by means of copies in respect of the said forms to substantiate his claim and it will be a gross irregularity for the Commissioner to accept hearsay evidence submitted by the Applicant without physical proof.
42. The application that the Applicant claims that submitted on bundle **annexure A2 page 7** have many discrepancies, it is disturbing. There is only one prescribed application form for the Housing allowance in the Department of Defense regardless of the fact that the Applicant may be a new or old homeowner. The housing allowance application form is an official auditable document; which in this case, the applicant scratched some words and replace them in writing because he had an issue with the fact that the form says "new home owner" the Applicant argued that he is not a new homeowner and, if that is the case, it cannot be that he submitted the housing allowance form more than once. The Applicant alleges that he completed the said Housing Allowance form in the presence of Capt. Nkondo but he failed to call him as a witness to corroborate his version. The form is easily accessible on the DOD Intranet. The form contains instructions as to how it must be completed and the Applicant failed to adhere to the said instructions. The spouses details i.e. identity number, force number and cell phone number columns on the form are incomplete. On bundle **A2 on page 11** the attached affidavit is not signed by a commission of Oaths and furthermore the Applicant indicated that he has an objection taking the prescribed oath, which declares the said affidavit Null and void.
43. Although the Applicant was afforded the chance after closing their case, they still failed to prove that they indeed submitted the HA application form. Mrs DJ Barrett testified referring to a document on **bundle A2 page 13**, which is a fax cover document with no signature, no fax report, no number of pages indicated and the document does not indicate that there was any housing allowance application form attached. Even though Ms. Barrett claims that this document was



drafted by her in, absence of her signature, the documents creator remains in dispute that is submitted that this document holds no value and she failed to prove that the document was sent to Pretoria.

44. The oral evidence given by the Applicant lacks the basic requirement to be valued, reliable and trusted evidence therefore it is the submission of the Respondent that the Commissioner dismisses the applicant oral evidence based on the poor quality. There is no probative material to prove any wrongdoing by the DOD to the Applicant. The hearsay evidence by Ms. Barrett by oral admission, cannot be reliable and she cannot, without a doubt say or confirm that Major Songca received the application for housing allowance for the Applicant, because she did not fax it by herself, she entrusted Warrant officer West to fax the said document. Without putting or attaching strict legal requirements of the law of evidence, the Applicant's case lacks logic and grounds to stand
45. It is submitted that the Applicant did not submit any tangible documents/evidence to prove that indeed he submitted the application for housing allowance which could have enabled the department to capture the housing allowance he is looking for and is entitled to.
46. Although the Resolution prescribed that employees in the public service are eligible for payment of the housing allowance, the Minister of Defence has discretion to set up control measures and guidelines as to how the allowance and any other allowance department should be implemented and controlled. The DOD policies are guided by the collective agreements; they are in line with the latter and will never deviate from provisions of the latter agreement. The Minister of Defence delegated the Chief of Human Resources in his capacity as head of HR in the Department of Defence to issue guidelines or control measures as to how the housing allowance must be implemented and controlled, which document is included in bundle **R1 page 15 to 34**(Interim Implementation Measures dated 28 February 2017)
47. **Bundle R1 page 30** in paragraph 53 (a –c) clearly gives guidance as to how the housing allowance is to be implemented. Although Mr. Bakkes has been a homeowner and never change the residence, he still has to provide documentation to prove the latter in order to enable payment of the housing allowance. Without doing so, the department has no way of knowing the Applicant is still the owner of property they initially submitted.
48. Through testimony given by the Respondent witnesses it is evident that Mr. Bakkes did not resubmit the housing allowance application after the housing allowance was stopped in June 2020 and in fact he refused to fill in the application form because it was written "new homeowner". It must be noted that the application form to apply for housing



- allowance is the only prescribed form used in the entire DOD by both old homeowners and new homeowners, and no one ever complained about the contents/setting of the form. It is brought to the commission's attention that what is written on the form has no effect on the amount payable to the Applicant.
49. Capt. Khoza, a senior HR Officer, who is a qualified and experienced HR practitioner appointed as an HR manager responsible for HR matters at Two Military Hospital testified on record that Mr. Bakkes was advised on numerous occasions that he must fill in the housing allowance form in order for the housing allowance to be reinstated. However Mr. Bakkes blatantly refused. Capt. Khoza testified that she did not have any malicious intent not to process the housing allowance form of the Applicant. The applicant claims that he did not have any interaction with Capt. Khoza who have been working in the housing section for six years but has had interactions with Capt. Nkonzo who has been working in the section for less than a year.
50. The second witness for the respondent was Major Songca who is also a senior officer in HR responsible for housing allowance applications at the DOD's bank of Lisbon Pretoria where all housing allowance applications for the DOD are captured. It is alleged by the Applicant that Ms. Barrett communicated with Major Songca and to this day they never received any feedback from her. She testified that she spoke to Ms. Barrett and was informed that the applicant refused to complete the application form and confirmed that the office had not received any application from the Applicant.
51. The DOD representative through witnesses have advanced a *bona fide* defense with completeness and particularity and on more than one occasion in the hearing said the DOD cannot pay an employee housing allowance without a physical application as a source document completed by an employee. This procedure also applies to Mr. Bakkes. It is the policy of the DOD that an employee must complete the housing allowance form and submit it to HR at his unit and thereafter it would be captured on the departments system and the particular employee will get the benefit of the housing allowance. All employees in the DOD are subjected to the said process and no employee has ever experienced any problems of the Housing allowance when complying with the procedure.
52. It is the Respondent submission that the reason why the Applicant did not receive the housing allowance is entitled to, is solely because he refused to complete the housing allowance form as it is written "new homeowner". It is even proven by his own evidence on bundle **A2 page 7** whereby he scratched the document to suit his own desires. The Applicant's defence on his actions and how you went about complying with the requirements to enable him to enjoy the housing allowance is equivocal, contradictory and it fails to canvass matters essential to the defence raised.



53. It is our prayer that the Commissioner rules that the Respondent did not commit an unfair labor practice and direct the applicant to fill in the housing allowance application form and submit it, together with required supporting documents to HR at his unit for his housing allowance to be reinstated.

ANALYSIS OF EVIDENCE AND ARGUMENT

54. The Applicant bears the onus to prove that the respondent acted unfairly. But while the Applicant had the onus to discharge, the Respondent bears the evidentiary burden to show that its conduct was not unfair and thus did not constitute an unfair labour practice.
55. It is common cause that prior to June 2020 the Applicant applied for and received a housing allowance. Evidence showed that the Applicant resubmitted information in the ration to the housing allowance during 2017 and 2018. Evidence was tendered that prior to 2018 the Applicant had to resubmit information to the Department of Defence as part of the control measures to ensure that the Applicant and his spouse did not both receive a housing allowance. It is not disputed by the Respondent that the Housing allowance of spouses were delinked in terms of PSCBC resolution 1 of 2018, which states in paragraph 6.1 to the delinking of housing allowance for spouses and that clause 7.1.4(b) of resolution 2 of 2004, which states that the housing allowance would be paid to one spouse only if both spouses are employed in the public service, would no longer apply.
56. Evidence was tendered that prior to PSCBC resolution one of 2018 that the Respondent had control measures in place in terms of the "*interim implementation instruction: housing allowance(HA) for officials appointed in the Department of Defense(DOD)*" which indicates the qualifying criteria and termination date for the housing allowance. In terms of implementation instruction in order to receive the housing allowance and Applicant must complete and sign application form and submit the necessary documentation to the department. The interim instructions also indicate that the housing allowance would be terminated when a disqualifying change occurs. One of the disqualifying events is where spouse of an official, also employed in the State Department, received the housing allowance.
57. Evidence was tendered by the Applicant and his representative that he completed the necessary documents showing that his wife is not receiving a housing allowance, during 2017 and 2018 and that this document was submitted in line with the Control measures in the "*Amendments of the interim implementation measures*" and that he resubmitted the same documents during 2020 as requested. The Applicant further testifies that he completed the Application form and



submitted it to Warrant officer West, which evidence is disputed by the Respondent. The Respondent denies that the Applicant submitted any application during 2020. The Respondent witnesses disputes that the Applicant submitted any documents to re-apply, however neither of the Respondent witnesses was implicated in the version that the Applicant handed in the documents to them, his testimony was the documents were handed in with Warrant Officer West. Neither of the Respondent witnesses could testify to dispute the fact that Warrant officer West did not receive any documents as they were not present. The Respondent had an evidentiary burden to prove that Warrant Officer West never received an Application for a Housing Allowance. During the arbitration on 07 July 2021 I cautioned the Respondent Representative to the fact that the Applicant's testimony is that he handed the documents to Warrant Officer West and that he and his representative dealt with Capt Nkondo and that they should be called to refute the Applicant's version of events, which guidance was not accepted and the Applicant's version that he handed the documents to HR remains undisputed. Despite the Respondent's representative submissions that the Applicant's witnesses testimony amounts to hearsay evidence, Captain Khoza testified that she received a document on 13 July 2020 wherein the salary advice, ID document and a quarterly bond statement was attached, but refused to sign the document as no new Housing Allowance application form was attached, confirming the version of the Applicant that he submitted documents in line with the control measures in the *Amended Interim instruction*, however her testimony is that the Applicant had to attach a Housing Allowance Application form.

What documents did the Applicant have to submit?

58. Paragraph 43 of the *Interim Implementation Instructions* indicates that since the inception of PSCBC resolution 7 of 2015 dated 27 May 2015 all home owners are required to/reapply (all home owners received the housing allowance before 27 May 2015) for the housing allowance and the interim implementation instructions further indicates the documents that needed to be submitted. The interim instructions are dated 28 February 2017. Further evidence was presented on the *Amendment of the interim implementation instructions* dated 11 December 2017 which states under paragraph 6 (six) that an official whose spouse/life partner works for the DOD or other State Department's must submit the *most recent salary advice (pay slip) of his/her spouse as proof* that he/she is not also receiving the housing allowance from his/her department. The officials housing allowance will be captured for two years (24 months) at the time and he/she must re-apply at least a month before two years (24 months) by submitting the spouse a salary advice as a control measure. The Applicant and Mrs. Barrett's Testimony that he re-applied for the Housing Allowance during 2017 and 2018 was not disputed, the documentary evidence of the 2017 Application was not disputed by the Respondent witnesses, which evidence showed in correspondence dated 15 August 2017, that the Applicant attached his spouse's salary advice as proof confirming that she was not receiving the housing allowance. The Applicant attached the fax cover letter and fax confirmation sheet dated 17 August 2017 in his bundle. It is not disputed that after the



Applicant submitted these documents that the housing allowance was reinstated, and the documents do not show that the Applicant had to submit a housing application form to be reinstated. I took cognizance of the form the Respondent witnesses testified had to be submitted which form states "*housing allowance for new homeowners*". The documents further states in paragraph states that officials who wish to receive the HA must complete the application form. Taking into consideration the wording of the document is clear that the document needs to be completed by employees who have not received a housing allowance. Nowhere in the documents does it refer to Applicants renewing the housing allowance; however what is critical is the evidence that the Applicant previously submitted his re-application but he did not need to complete the Housing allowance Application form, which evidence was never disputed by either of the Respondent witnesses. The paragraph in terms of the control measures are specific regarding the information required which is only to submit a spouse's salary advice as a control measure. The control measures are specific regarding the information that had to be submitted to "re-apply" for the Housing allowance and in this regard Captain Khoza's testimony confirmed that she received proof of a pay slip, ID document and quarterly bond statement on 13 July 2020.

59. The Respondent however testified that the Applicant had to re-apply for his Housing Allowance in order to participate in the GEHS and that he failed to submit such a re-application, which is the reason for terminating the housing allowance. In terms of paragraph 43 of the *Interim Implementation Instructions* staff members had to reapply for the housing allowance in terms of the inception of PSCBC resolution 7 of 2015. No evidence was presented about PSCBC Resolution 7 of 2015 and I took judicial notice of this PSCBC resolution, which is obtainable on the PSCBC website, as it was referred to in the Interim Implementation Instructions. In terms of the PSCBC Resolution 7 of 2015, Employees who are homeowners and have the title deeds/Permission to occupy certificate including the affidavit that the immediate family occupy the house, are eligible to receive the housing allowance of R1200. This refers to new and old employees. Under paragraph 4.4.3 of the resolution employees shall enroll with the General Employee Housing Scheme (GEHS) by 1 January 2016. The Applicant presented evidence and referred to The *Determination and Directive on Housing Allowance for Employees in the Public Service* Dated September 2018, which directives was issued by the Minister for the Public Service and Administration. The Applicant referred Chapter two under the heading Housing Allowance Rules and Regulations and read into record paragraph 2.2.2.2 which states that employees who were recipients of the Housing Allowance as Homeowners, but failed to complete the new Housing Allowance Application for Home Owners form (Annexure H) shall continue to receive the R 900 Housing Allowance without any adjustments in the allowance or saving. It was testified that the Applicant received R 1456.94 Housing allowance before it was terminated which gives an indication that he previously submitted an Housing allowance application form as he received more than R 900 per month This clause goes on to highlight that if the home owner failed to complete a new Housing application form, he/she shall continue to receive the R900 without any adjustments. If cognizance is taken that that the application of the



housing allowance, to participate in the GEHS, was to enroll by 1 January 2016, that the Applicant received a housing allowance up to June 2020, that he had to re-apply in 2017 and 2018(in line with the Control Measures), the inference drawn is that the Applicant already applied and was approved to participate in the GEHS at the time that he had to resubmit proof of his spouses payment advice (Pay Slip) that she did not receive a housing allowance. The evidence from the Respondent witnesses that the Applicant had to reapply for the housing allowance to participate in the GEHS is therefore incorrect as this re-application had to be done by 1 January 2016. The Applicant therefore only needed to comply with paragraph 6 of the Control Measures in the *Amended Interim Implementation Instructions*, which evidence shown was complied with when Captain Khoza received an Application without a Housing Allowance Application form on 13 July 2020.

60. The Respondent witnesses testified that the Applicant needed to submit a new application form for Housing Allowance, which evidence was disputed by the Applicant witnesses. The Respondent witnesses testified that the Applicant had to submit a new Application form to comply with and to participate in the GEHS scheme after the de-linking of the spouses. The Respondent witnesses referred to Implementation instructions which reflect dates prior to the implementation date of the PSCBC resolution 1 of 2018. In her closing arguments the Respondent representative correctly argued that Employer can implement policies in line with the PSCBC resolutions with evidence of such policies in the form of the *Implementation Instructions* and the *Amended Implementation instructions*. Evidence was tendered of the news bulletin (news Flash) dated 3 October 2018 wherein employees are informed of the de-linking of spouses. The Bulletin indicates that DOD officials who meet the requirements are encouraged to apply. The news bulletin does not indicate that employees who already receive a Housing Allowance had to re-apply. The news Bulletin does not amount to a policy document of the DOD in a similar vein as the *Implementation Instructions* and *Amended Implementation Instruction* of 2017. Applicant submitted evidence of the *Determination And Directive On Housing Allowance For Employees In The Public Service* Dated September 2018, which directives was issued by the Minister for the Public Service and Administration, this does not mean that the DOD cannot implement control measures to meet the directive and The Respondent had an evidentiary burden to show that post 01 September 2018 a new procedure was implemented for the department for employees to continue receiving the Housing allowance, but failed to present any documents showing such new procedures. The only policy documents of the DOD presented in the arbitration was the *Implementation Instructions* dated 28 February 2017 and *Amended Implementation Instructions* dated 11 December 2017, which I found the Applicant had complied with, was applicable. No evidence was presented by the Respondent of such amended implementation instructions post 01 September 2018 stating that the Applicant had to complete a new Housing Allowance Application form to participate in the GEHS scheme post implementation of the PSCBC Resolution 1 of 2018.



61. It is clear that paragraph 6 of the *Amended Interim Implementation Instructions* dated 11 December 2017 was aimed at ensuring that only one spouse/life partner of employees working for a state department received a housing allowance and with the implementation of Resolution 1 of 2018, de-linking the Housing allowance of spouses, the need for this control measure became obsolete and it was therefore not necessary for the Applicant re-apply by submitting evidence of his wife's pay slip, however evidence showed that he submitted documents by at least 13 July 2020 as testified by Captain Khoza. Evidence was tendered that information on PERSOL should not have reflected that the Housing allowance for the Applicant terminated during June 2020. Taking into consideration the evidence I find that the Applicant was subjected to an Unfair Labour Practice when the Respondent terminated the payments of the Housing allowance.
62. The Applicant requested that the Housing allowance be re-implemented. I found that the Applicant was subjected to an unfair Labour practice and orders that the Housing Allowance is re-implemented from date that it was cancelled during June 2020. The Applicant must be paid the arrear Housing allowance from the date of cancellation; to date of the Award amounting to R 20 397.16 (twenty thousand three hundred and ninety-seven rand sixteen) (calculated as follows R 1456.94 x 14 months)
63. The Applicant representative further request that an order for compensation is made as the Applicant had not received the housing allowance for more than a year. In determining fair compensation, I considered that the Applicant was deprived of a Housing allowance, which in terms of the Applicant's testimony placed undue pressure on his budget, which he testified he could manage for two to three months, but the lengthy delay to reinstate caused unreasonable stress. I considered that the Applicant submitted a grievance on 02 December 2020, that the grievance remained unresolved at the time that this dispute appeared before the council, that the Applicant applied for condonation, which condonation was granted on 5 April 2021 and considered the date of issue of the award and that the Applicant was subjected to an Unfair labour Practice and find it just and equitable to award one months' compensation of R30185.25(thirty thousand one hundred and eighty five rand twenty five cents).

Award

64. The applicant was subjected to an unfair labour practice related to benefits in terms section 186 (2) (a) of the LRA when the employer terminated payment of his housing allowance from June 2020.
65. The Respondent must implement the Housing Allowance from 01 September 2021.
66. The Respondent must pay the Applicant Arrear Housing allowance of R 20 397.16(twenty thousand three hundred and ninety-seven rand sixteen by no later than 15 September 2021.



67. The Respondent must pay the Applicant compensation of R30185.25 (thirty thousand one hundred and eighty-five rand twenty five cents) by no later than 01 November 2021.



Orlando Moses

GPSSBC Panellist