ARBITRATION AWARD

Case Number:	**GPBC 2481-14**
Arbitrator:	**Nozibusiso Faith Gumede**
Date of Award:	**26 August 2020**

In the **matter** between

MOSA IRRIS SEPHEKA

(Union/Applicant)

And

DEPARTMENT OF HOME AFFAIRS – FREE STATES PROVINCE

(Respondent)

Union/Employee's representative:	**Nkopane Thaanyane & Thembinkosi Nkosi - Attorneys**
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Employer's representative:	**Solly Ramokopelwa – Deputy Director: Labour Relations**
Respondent's address:	**46 Fichardt Street**
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DETAILS OF THE HEARING AND REPRESENTATION

1. This matter was held under the auspices of the General Public Service Sectorial Bargaining Council ("GPSSBC"). The hearing took place at Department of Home Affairs offices in Sasolburg on 20 August 2019, 15 January 2020, 3 March 2020, 4 March 2020, 12 and 13 August 2020.

2. The applicant, Mosa Irris Sepheka was represented by Nkopane Thaanyane and Thembinkosi Nkosi, the Attorneys from Thaanyane Incorporated whilst the respondent, Department of Home Affairs – Free States Province was represented by Solly Ramokopelwa, the Deputy Director: Labour Relations. The service of the interpreter was not required. The hearing was digitally and manually recorded.

ISSUE (-S) TO BE DECIDED

3. I am required to determine whether the applicant's dismissal was substantively fair or not.

    - whether the applicant breached the respondent's rules and procedures or not,
    - whether the rule was consistently applied or not,
    - whether the sanction of dismissal was fair or not.
    - whether to award a remedy or not, and if so, to determine the appropriate remedy?

BACKGROUND TO THE DISPUTE

4. The applicant was employed, as a Chief Administrative Clerk and she was earning R16 416.00 (sixteen thousand, four hundred and sixteen rands) per month, before her contract was terminated by the respondent on 26 September 2014.

5. The applicant's disciplinary enquiry was held on 30 August 2014 and the charges were drafted as follows:

    a. ***Allegation 1***

It is alleged that you committed an act of gross dishonesty in that on or about 19 May 2012 near or at Department of Home Affairs Sasolburg Local Office, whilst on duty you processed the applications of passport for Mr. TP Sepheka and Ms. MI Sepheka without following correct procedures.

b. ***Allegation 2.***

It is alleged that you committed an act of dishonesty in that on or about 19 May 2012 or near the Sasolburg Department of Home Affairs, whilst on duty you failed to collect the amount of approximately R800.00 for applications of passports belonging to Mr. TP Sepheka and Ms. MI Sepheka.

c. ***Allegation 3***

It is alleged that you committed an act of gross dishonesty in that on or about the 9th December 2011 at or near Department of Home Affairs Sasolburg Local Office, you enclosed the cash register and did not hand over the collected revenue to Finance Section for banking, as a result the Department suffered a loss to amount of approximately R4800.00 for passport applications of the following people or clients:

APPLICANTS NAMES	ID NUMBERS	DATES OF APPLICATIONS	AMOUNT PAID	RECEIPT NUMBERS
PT Mabula	760801 0702 085	2011.12.09	R400.00	B6031
MJ Monyela	790808 5308 086	2011.12.09	R400.00	B6019
CJ Rautenbach	650816 5085 081	2011.12.09	R400.00	B6017
SC Mzobe	800815 5451 086	2011.12.09	R400.00	B6021
Z Erasmus	091231 5087 086	2011.12.09	R400.00	B6025
ST Webb	900213 0083 089	2011.12.09	R400.00	B6026
M Radijeje	840803 0705 084	2011.12.09	R400.00	B6030
VM Qokweni	840928 6113 084	2011.12.09	R400.00	B6033
KI Maboane	910623 5718 083	2011.12.09	R400.00	B6034
P Mecwi	880326 6012 086	2011.12.09	R400.00	B6035

d. ***Allegation 4***

It is alleged that you committed an act of gross dishonesty in that on or about the 28th and 29th February 2012 at or near Department of Home Affairs Sasolburg Local Office, you *closed the cash register and did not hand over the collected revenue to Finance Section for banking, as a result the Department suffered a loss to the amount of approximately R4400.00 for passport applications of the following people or clients:*

APPLICANTS NAMES	***ID NUMBERS***	***DATES OF APPLICATIONS***	***AMOUNTS PAID***	***RECEIPT NUMBERS***
M Ebrahim	*780922 5224 085*	*2012.02.28*	*R400.00*	*B7973*
SF Ngcobo	*821228 5439 082*	*2012.02.28*	*R400.00*	*B7994*
SE Mbatha	*801123 5219 085*	*2012.02.29*	*R400.00*	*B7998*
CP Henery	*780329 5207 088*	*2012.02.29*	*R400.00*	*B7992*
FW Tshobore	*671022 5667 089*	*2012.02.29*	*R400.00*	*B7987*
C Mchavi	*800103 5831 080*	*2012.02.29*	*R400.00*	*B7978*
M Bhozo	*840109 5669 083*	*2012.02.29*	*R400.00*	*B7982*
SJ Ngwenya	*510819 5492 083*	*2012.02.29*	*R400.00*	*B7985*
J Machakata	*770506 6222 081*	*2012.02.29*	*R400.00*	*B7980*
TJ Lephaphang	*661019 5707 088*	*2012.02.29*	*R400.00*	*B7977*
LL Mashishi	*720507 5485 084*	*2012.02.29*	*R400.00*	*B7990*

6. She was acquitted for allegation 3, and subsequently referred the dispute at the GPSSBC seeking retrospective reinstatement. It was unresolved at the conciliation process and requested the matter to be resolved through arbitration process. The *ex-tempore* ruling was issued on 20 August 2019 to grant the legal representation. In cognizance of the nature of question of law raised by the dispute, complexity of the matter, public interest and comparative abilities of the parties.

<u>SURVEY OF EVIDENCE AND ARGUMENT</u>

7. I do not intend to deal with every aspect of the evidence as it is recorded and will only record the part of the evidence that I deem necessary for the purpose of this determination. I will deal with the evidence of all the witnesses in the same manner. The parties submitted bundle of documents to support their evidence.

<u>RESPONDENT'S CASE</u>

8. **Tshweu Isaac Majoro** (Majoro), the Office Manager – Phuthaditjhaba testified as follows:

9. He worked as an Office Manager at the respondent's Sasolburg office whilst the applicant was the supervisors for this office from 2011 to 2014.

10. On 19 May 2012, the applicant did not follow a correct procedure when processing the passport applications. The law permits citizens to have two passports on exceptional circumstances. That the reason, it is crucial to verify if clients have a valid passport or not, at the time of such applications. The penalty fee will be required if it has been lost. It also crucial to check if clients are allow to travel outside the country.

11. The application form also requires the Identity Document (ID) to be attached to it before proceeding to the cashier's counter to make payment. The triplicated carbon copy must be issued to the client, the Head Office and Finance Section as a proof of payment. The Head Office will then issue the passport, and the Passport Application System will reflect that it has been received by the office and ready for collection. The Short Message Service (sms) will be automatically generated for the client to collect it. This system should also reflect that it has been collected by the client on the specified date.

12. The applicant and her spouse applied for their passports whilst in possession of the valid ones. The clause 2.13 of the Passport Manual Guide, states that "*Regulation 3(3) (g) provides for the issuing of a second passport to a passport holder in the circumstances as stipulated. Applications to hold a second passport must be considered at the level of at least Senior Administrative Officer*". There was no physical application forms completed by the applicant and her spouse. The triplicate application forms should have been completed and further kept the first copies, the other two copies should have been handed over to Finance and Archives Section.

13. The Senior Administrative Officer, Maria Elizabeth Du Plessis (Du Plessis) does not work on Saturday's therefore she could not have granted a permission for these applications in absentia. The Passport Application System shows that the applicant received these passports on 30 May 2012 from the Head Office but it does not have a collection date. This function is required to ensure that passports do not fall in the wrong hands.

14. The applicant has trained her subordinates on these procedures, and has 10 years' long service in the department. The respondent has been offering workshops to align employees with its functions. The

supervisors also have the supervisory manual guide to assist to run their sections which can also be found on the intranet.

15. The records does not show any proof of payment for these passport applications. The copies should have been triplicated also to be kept by the applicant and her husband, the other two copies to be handed over to Finance and Archives Sections. Serame Mbola (Mbola) did not receive these payments because the attendance register shows that he was not at Sasolburg Office on 19 May 2012. He also did not request his services to be rendered on this office on this particular day.

16. The cash register have to be closed in the presence of the supervisor, and the number of completed transactions should be reflected on it. The cashiers are required to hand over money to their supervisor during the cash-up period. The Finance Section are also required to check if the money balances with the transactions against the triplicates.

17. The cashiers and the applicant were expected co-signed the cash register book which could not be found for verification. However, the cashiers confirmed that they have enclosed their cash registers in the presence of their supervisor during the investigation.

18. The applicant undertaken that she will keep the cash register key and assist in cashing in her letter of appointment. The cashiers were exonerated of any wrongdoing, as they confirmed that they handed the money to the applicant. It was also discovered that the system was closing more than once, as they had two shifts. The midday transactions were not be processed as per the prescribed procedure. On 14 February 2012, the applicant resumed her duties at 07h30 and knocked off at 17h00. On 15 February 2012, the shift was from 07h00-15h30 but she knocked off at 16h00. However, she knocked off at 15h00 when money was taken on 7, 9 and 10 February 2012.

19. The records shows that LL Mashishi, C Mchavi, CP Henery and J Machakata were assisted by the applicant on 29 February 2012 but Finance Section did not receive payments for these applications.

20. Under cross examination, he conceded that the Invoice Receipt Engine (IRE) was used to search for the proof of payments for these applications. The money was taken during the 07h00 to 09h30 shifts when applicant was assisting the clients to complete their applications. The cashiers did not have the

key to close or end transactions for the day. The applicant was working alone until the cashiers arrives at 09h00, and Mbola was working in Parys office during this period.

2ND WITNESS

21. **Maria Elizabeth Du Plessis** (Du Plessis), the Senior Administrative Officer testified as follows:

22. She did not locate the passport application forms which were captured by the applicant on Saturday (19 May 2012). She could not have written the approval letter because she was not duty on this day. She took a day off on 18 May 2012 and was also not at work on 19 May 2012.

23. The skeleton staff that work on Saturdays does not capture applications forms on the system until Monday. The records does not show that Mbola worked at Sasolburg office on 19 May 2012. It was also the applicant's user name which was used to process these application forms on this date.

24. The records shows that these applications were received and captured by the applicant on 19 May 2012. The system further shows that they were received by the applicant on 30 May 2012 but there is no collection date.

25. There was no proof of payment to show that the applicant and her spouse paid the prescribed amount for these applications. The passport application forms are triplicated, and the one copy is given to the client, Finance and Archives Sections. The revenue collected on 19 May 2012 (Saturday) was supposed to be handed over to Finance Section on Monday. The proof of payments could not be located even on the IRE system.

26. It is the cashier and the supervisor who cash-up lose at the end of the shift. The money have to balance on the summary slip, the supervisor is required to use her/her user ID to close the transactions and this function requires the supervisor's key.

27. There must be a valid reason for applying for the second passport, and it usually requested by people who travel for work related reasons. The supporting documents must be attached to this application.

28. Under cross examination, she stated that on 28 & 29 February 2012, there were 24 receipt however applications with reference number 7973, 7977, 7978, 7980, 7982, 7985, 7987, 7989, 7990, 7992,

7994 were found in archives. The applicant did not complete the passport application forms, and she did not grant approval for them. The book which was supposed to show that the money was handed over to Finance Section got missing.

APPLICANT'S CASE

29. **Mosa Irris Sepheka,** the applicant testified as follows:

30. On 15 May 2012, she applied for her second passport. The allegation were only levelled against her two years later. The respondent waived their right to institute a disciplinary action by delaying to charge her for the alleged offenses.

31. The procedures requires the application form to be completed for the passport applications, the finger prints to be taken and the stipulated amount to be paid to cashiers. The verification process will start by checking if the clients has been blocked or not, using their ID number on the system before completing the application form. Subsequently, the fingerprints, photos and the copy of the ID will be attached to this form. The approval of the Senior Administrative Officer will be required when applying whilst in possession of the valid passport. If the permission is granted, the details on the application form will be captured and scanned to the system. The Head Office will then verify the finger prints before dispatching the passport to the local office, and the system must show that it has been received and handed over to the client.

32. On 15 May 2012, her husband completed his passport application form at Sasolburg office. They wanted to go to Egypt, and it would not have been possible after travelling to Israel. Du Plessis granted a permission in a written letter for their second passport, after discussing this matter with her husband on this day. Mbola signed these duplicated applications forms.

33. The prescribed amount of R800.00 was paid by her husband for these applications. She did not collect the money because she was not working as a cashier on this day.

34. The cashiers are expected to sign the till roll at the beginning of the shift, and the Cash Control Sheet must be co-signed by the cashier and supervisor at the end of the shift. Du Plessis would then check

the money against the till roll. She did not receive R4400.00, and she would have known who the cashier was if the respondent had supplied receipts as evidence in these proceedings.

35. The respondent was inconsistent in application of their rules because other employees were not charged for similar offenses. Du Plessis for instance was responsible for the office on 6 February 2012, Du Plessis but she was not charged for receipt number 7421 which was found in Archives.

36. She conceded that the receipts and Cash Control Sheet are requisite for cash-up. The respondent did not produce any receipts, as evidence to validate her case in these proceedings. The Finance Section would have enquired the very next day if money was handed over to them.

37. Under cross examination, she stated that the application forms would have proven that Du Plessis granted permission for the second passports if they were presented as evidence in these proceedings. She conceded that the respondent used the IRE and Cash register during the period in question. The Cash Register does not capture the applicants' information and the IRE only captures the total number of ID, births and passports applications. Mbola assisted with both applications forms inspite of being assigned for the outside project on the 15 May 2012. However, he did not sign the Sasolburg office attendance register, as he was expected to sign it at Parys office. J. Khaile (Khaile) was charged with a difference offense and later reinstated back to work. On 29 February 2012, she assisted CP Henery, C Mchavi, M Bhozo, J Machakata in applying for their passport applications forms and finger prints. They proceeded to make payment with the cashiers. The register and control book was also not produced as evidence because the respondent's hidden agenda. The cashiers brought the money to her, and they did not have two keys on this office. She took her and husband's passport whilst the system was offline however the list was compiled and sent to the Head Office.

2ND WITNESS

38. **Serame Mbola** (Mbola), former Administrative Clerk testified as follows:

39. On 15 May 2012, he was assigned to work on outside project, and he assisted the applicant and her spouse to complete their passport applications Sasolburg office before the project was undertaken. The clients must have brought the ID, photos and the money in order for to be assisted with passport

applications. The second passport application is subject to the senior official approval if the client is in possession of the valid one.

40. He would not have assisted the applicant and her husband without IDs, photos, and the senior official motivational letter.

41. Under cross examination, he stated that he resigned on 31 October 2019 in the respondent's institution. He does not have proof that he was working at Sasolburg office on 15 May 2012 because he did not complete the attendance register. The Head Office would not have issued these passports without the Du Plessis motivational letter.

3RD WITNESS

42. **Molefe Zacharia Molibola** (Molibola), Senior Administrative Officer - Bloemfontein testified at follows:

43. The second passports are subject to senior official's approval when applicants are in possession of the valid ones. The application form have to be completed, the photos and finger prints must be attached to it. It is a duty of the supervisor to verify if the prescribed amounts have been paid for these applications. The client should be given one copy on the triplicate application forms.

44. The cashier are expected to call his/her supervisor to count the money and the long receipt will show transactions performed at the end of the shift. The short receipt will show a summary which will reflect the number of ID, births and passports applications made in those transactions. The Cash Control Sheet must be co-signed by the cashier and supervisor during the cash-up period. The supervisor have to hand over the money for banking at the back office. The Cash Control Sheet will reflect the amount collected at the end of the shift.

45. Under cross examination, he stated that Sasolburg office is expected to operate as other respondent's offices.

4TH WITNESS

46. **Thabang Isaac Sepheka** (Sepheka) testified as follows:

47. On 15 May 2012, he brought his old passport to apply for the second one at Sasolburg office. Du Plessis wrote a letter to motivate for his second passport application, as his old passport was still valid at the time. He also paid the prescribed amount for his application to Du Plessis.

48. Under cross examination, he stated that he paid the prescribed amount of money (R800.00) to the cashier and Mbola assisted him to complete his application form. Du Plessis approved both applications for him and his spouse.

<u>ANALYSIS OF THE EVIDENCE AND ARGUMENT</u>

49. In terms of section 138(7) of the LRA, I am required to issue an award with brief reasons, and what follows is a summary of the evidence and argument that I regard as necessary to substantiate my findings and determination of the dispute. In terms of section 192(2) of the LRA, the respondent bears the onus to prove that the dismissal was fair. The credibility of witnesses and reliability of evidence will be assessed to determine which evidence is more probable than the other.

50. Section 138(6) of the LRA stipulate that "*The commissioner must take into account any code of good practice that has been issued by NEDLAC or guidelines published by the Commission in accordance with the provisions of this Act that is relevant to a matter being considered in the arbitration proceedings*". The Schedule 8, item 7 of the **Code of Good Practice: Dismissal** *(hereunder referred as Code)* stipulate that any person who is determining whether a dismissal for misconduct is unfair should consider—

    a) whether or not the *employee* contravened a rule or standard regulating conduct in, or of relevance to, the workplace; and

    b) if a rule or standard was contravened, whether or not—

        i. the rule was a valid or reasonable rule or standard;
        ii. the *employee* was aware, or could reasonably be expected to have been aware, of the rule or standard;

iii. the rule or standard has been consistently applied by the employer; and

iv. *dismissal* with an appropriate sanction for the contravention of the rule or standard.

51. There is no evidence led to suggest that the respondent's rules were unreasonable. However, it is the applicant's contention that they were not contravened. The evidence for each charge will be dealt in the following manner.

ALLEGATION 1

52. The respondent alleges that the applicant processed the passport applications on 19 May 2012 without following the correct procedure. The clause 2.13 of the Passport Manual Guide, states that "*Regulation 3(3) (g) provides for the issuing of a second passport to a passport holder in the circumstances as stipulated. Applications to hold a second passport must be considered at the level of at least Senior Administrative Officer*". It was not disputed that the Senior Administrative Officer was not on duty on this date. However, the applicant argued that they sought and granted approval from this official on 15 May 2012 to this official. There was no evidence led to show that this official was not at work on this date.

53. However, the respondent's evidence suggest that the physical application forms were not completed, as they were not found at Finance and Archives sections. Mbola and the applicant corroborated each in that they were duly completed on 15 May 2012. However, the applicant conceded that the details on the application forms are captured and scanned to the system. This implies that even if the physical application form cannot be located but the scanned copy can be retrieved from the system. However, it not clear, as to why the applicant did not produce this evidence to substantiate her version.

54. The respondent's witnesses also indicated that the applicant did not update the system to show that she collected these passports. The applicant argued that the system was offline on the day of collection, and the list was compiled and sent to the Head Office in this regards. This appears, as if it is a duty of the Head Office officials to update the system to show the collection dates. However, the applicant's evidence would have carried more weight if she had furnished such a proof or if this version was corroborated by any other evidence.

ALLEGATION 2

55. The respondent alleges that the applicant failed to collect the amount of approximately R800.00 for her and husbands' passports on 19 May 2012. The respondent's witnesses corroborated each other in that the copies should have been triplicated, also to be kept by the applicant and her husband, the other two copies to be handed over to Finance and Archives Sections. However, she argued that she did not collect the money because she was not working as a cashier on this day. It probable that she was not the cashier on this day however they should have been a proof to show that such payments particularly, as involves her and spouse applications.

56. I noted the applicant's version which was corroborated by Mbola and her spouse that the money was paid on 15 May 2012. However, the applicant's spouse contradicted himself regarding who assisted him to make the payment. Under cross examination, he stated that he pay to the cashiers as opposed to his initial statement that it was Du Plessis on 15 May 2012. It probable that he had forgotten, as these events occurred in approximately eight years ago. However, the proof of payments should have produced at the initial stages of these investigation regardless of the date it was made.

ALLEGATIONS 4

57. The respondent alleges that the applicant closed the cash register and she did not hand over the collected revenue at Finance Section for banking on 28 and 29 February 2012, as a result they suffered a loss to the amount of approximately R4400.00 for passport applications. Majoro argued that on 29 February 2012, the applicant assisted LL Mashishi, C Mchavi, CP Henery and J Machakata but Finance Section did not receive payments for these applications. The applicant conceded that she assisted above clients except LL Mashishi with the applications for the passports and finger prints.

58. Du Plessis argued that on 28 & 29 February 2012, there were 24 receipts however the applications with reference number 7973, 7977, 7978, 7980, 7982, 7985, 7987, 7989, 7990, 7992, 7994 were found in archives. The applicant argued that the respondent did not produce any receipts, as evidence to validate her case in these proceedings and Finance Section would have enquired the very next day if money was handed over to them. The applicant's version is probable that this claim was not probable supported by any other evidence.

59. Majoro argued that cashiers were exonerated of any wrongdoing, as they confirmed that they handed the money to the applicant. Further stated that it was also discovered that the system was closing more than once, as they had two shifts. This evidence also would have carried more weight if it was corroborated by any other evidence.

60. Majoro further argued that cashiers and the applicant were expected co-signed the cash register book which could not be found for verification. Further averred that the cashiers confirmed that they have enclosed their cash registers in the presence of their supervisor during the investigation. I noted that it was corroborated that the cash book could not be located at the office. However, it not clear, as why the respondent found the cashiers more credible than the applicant. Therefore, this evidence would have carried more weight if they were called as witnesses or if the investigation report was tendered as evidence in these proceedings.

61. The applicant further alleged that there was inconsistent application of the rule, as no disciplinary action was instituted against Du Plessis and Khaile for contravening the respondent's policies. In that Du Plessis was not charged for receipt number 7421 which was found in Archives. However, this evidence was substantiated. She also admitted that Khaile was charged for the difference misconduct but reinstated by the respondent. It is not clear, as to why this case relates to this matter. However, in ***ABSA Bank Ltd v Naidu and others (2015) 36 ILJ 602*** *(Labour Appeal Court) it was held that the parity principle should be applied with caution. Each case should be decided on its own facts and circumstances and the parity principle is not intended to profit or benefit employees who committed serious acts of misconduct.* The evidence suggest that the merits of these cases differs, it will be improper to suggest that the respondent inconsistently applied their rules in this regards.

62. In determining the appropriateness of the sanction. I considered that it was not disputed that she had a clean disciplinary record. However, if she was remorseful for conduct therefore the progressive discipline would have been appropriate in this matter. In that the trust relationship is crucial mostly to the senior official who is expected to lead by example to her subordinates. Therefore, the respondent has discharged a burden of proof in this matter.

63. On a balance of probabilities, the applicant's dismissal was substantively fair. Therefore, a relief sought will not be granted.

AWARD

64. I make the following order:

65. The dismissal is upheld.

66. I make no order as to costs.

Gumede

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NOZIBUSISO FAITH GUMEDE - ARBITRATOR