



**PHSDSBC**

PUBLIC HEALTH AND SOCIAL DEVELOPMENT  
SECTORAL BARGAINING COUNCIL

# ARBITRATION AWARD

Commissioner: Gail McEwan

Case No.: PSHS1200 -16/17

Date of Award: 27 April 2017

In the matter between:

**SHOWUSA obo CAROLINA THORPE**

(Employee)

and

**DEPARTMENT OF HEALTH – WESTERN CAPE**

(Employer)

---

## DETAILS OF HEARING AND REPRESENTATION

- (1) Arbitration was held on 24 April 2017 at the Western Cape College of Nursing in Athlone. Present was Carolina Thorpe (employee) who was represented by Rubin Benjamin (SHOWUSA). Department of Health (DOH) (employer) was represented by Mvuzo Ngqame (labour relations officer). The certificate of outcome declaring the matter unresolved at conciliation is on file and is dated 13 February 2017. These proceedings were digitally recorded and both parties handed in a bundle of documents.

## BACKGROUND TO THE ISSUE

- (2) Thorpe started working for the employer on 1 May 1990; works as professional nurse; earns R10 000 per month (as confirmed at arbitration although on the form 7.11 it is stated that she earns R27 601.77) and was dismissed on 8 February 2017 for misconduct.

## **THE ISSUE TO BE DECIDED**

- (3) I am required to determine on a balance of probabilities whether the dismissal of Thorpe was fair. In narrowing the issues in dispute SHOWUSA confirmed that there are no procedural challenges. On the substantive side Thorpe denied that she had made the racially charged comments as alleged. Thorpe was charged with the following: - (i) On 17 March 2016 you discriminated against Plumeza Ntshela on the basis of both race and language by uttering the following remarks: (a) Black people are lazy and slow and should work at Khayelitsha hospital; (b) That you do not like to work with black people as they cannot speak Afrikaans; and (c) Ntshela reminds you of Zuma who stole your money to build Nkandla. (ii) During the period of March 2016 to June 2016 you acted in an improper manner by telling Ntshela that she is stupid when she raised questions pertaining to her work.
- (4) I have considered all the evidence and argument, but because the Labour Relations Act, 66 of 1995, as amended (LRA), requires brief reasons (section 138(7)), I have only referred to the evidence and argument that I regard as necessary to substantiate my findings and the determination of the dispute

## **SUMMARY OF EVIDENCE**

### **The employer's version and testimony was as follows:-**

- (5) Funeka Cingo (enrolled nursing assistant) testified that in March 2016 she and Ntshela were sitting at the nurses' station when Thorpe complained that Ntshela was slow. Ntshela explained that in the morning she had been washing patients. Thorpe said she did not like to work with black people who should go work in Khayelitsha. Ntshela insisted that she knew what she was doing. No-one else had been at that station at the time. Cingo did not recall anything else as it had been a very long time ago. Cingo had a good working relationship with everyone although Ntshela never just did things of her own accord. For example the nurses are aware that the trolleys need to be prepared by 22h00 and Ntshela always had to be told to go get the trolleys ready.
- (6) Under cross-examination Cingo confirmed she had been at Thorpe's disciplinary hearing and had said exactly the same thing. Cingo could not recall if she had said more when it was put to her that at the hearing she had said much more. It was pointed out that originally Cingo said there had been five at the station at the time of the incident and is now saying there had only been three of them at the station. It was further put to Cingo that Ntshela had said that there had been more than three at the station. Cingo explained

there were five people on the shift; only three were at the station and was reminded about the overtime nurse on duty. Cingo was adamant that she did not recall more than three people at the station at the time of the incident. Thorpe had reprimanded Ntshela for being slow after complaining how slow she had been. Ntshela had said that she may be a bit slow but her work was done thoroughly. Cingo was not aware when Ntshela lodged the complaint against Thorpe. Cingo agreed that it could have been in May 2016. Cingo was also not aware of what happened after the complaint had been lodged. It was put to Cingo that Ntshela had also gone to the CCMA and Cingo agreed as she had been asked to attend as a witness for Ntshela.

It was established that Ntshela lodged a discrimination claim with the CCMA which in a default award dated 23 August 2016 she had been awarded R10 000.00 under case number WECT9679-16.

- (7) Plumeze Ntshela (enrolled nursing assistant) testified that on 17 March 2016 she was sitting with Cingo at the nurses' station together with Jacob Klaase (night matron) and Thorpe. Thorpe had said that Ntshela was very slow. Ntshela responded that she may be a bit slow but was very thorough. Thorpe continued that she did not want black people on her shift as they do not speak Afrikaans. Ntshela was told to see Mrs. Lumphondo (nursing manager) as it was Lumphondo who brought black African hungry people from the Eastern Cape who cannot do the blood pressure tests. Ntshela told Thorpe that she had been to school; her certificate was not a fake and had passed her nursing examinations. Thorpe retorted that Ntshela should work in Khayelitsha as that is where black people work and not in the Eerste River hospital. Ntshela explained that she had submitted her curriculum vitae to Khayelitsha but had not been selected to work there. Thorpe asked Ntshela whether she or her family know Lumphondo and Ntshela said she underwent the interviews the same as everyone else. Ntshela had been very hurt by what Thorpe had said. Ntshela did not understand why she was being called lazy and stupid. Ntshela explained she was not the only black person in the hospital and had never done any harm to Thorpe. Referring to the charges against Thorpe, Ntshela exclaimed that she was not the family of Zuma and did not even know what was happening at Nkandla. Ntshela felt hurt and upset. Ntshela walked away to the rooms when Thorpe started with the discriminatory talk. The next morning when going home Ntshela sat at a ward and told Mkhondo Lumphondo what had happened and Lumphondo said she would speak to Thorpe but Ntshela should apologise to Thorpe to straighten out their strained relationship. Lumphondo also said not to involve any of the staff nurses. Ntshela did not initially report the incident to anyone in fear that it would cause problems with her job. Ntshela eventually reported the matter officially on 7 May 2017 when Klaase called her to say he would be terminating her contract if the matter was reported to Sister Brandt (nursing manager). Ntshela was shocked about what was threatened to happen should she report the incident to Brandt. Klaase then wanted Ntshela to sign three warnings so that he could end her probation period. Ntshela had refused to

sign the warning placed before her that day. Klaase added that Ntshela would receive the second warning the next day and the third warning thereafter. Ntshela reported the incident officially to Lumphondo. Lumphondo advised Ntshela to report the matter to her union (DENOSA) and that the matter would be investigated. The shifts for Cingo were changed and Ntshela agreed to give both DENOSA and Lumphondo thirty days in which to carry out their investigations. Ntshela then lodged a formal grievance. On following up with DENOSA Ntshela discovered they had lost her documents and was told that her case was not important as there are lots of documents with the hospital. Ntshela was told to rather beat Thorpe but did not do this as she is not a rude person. Both Thorpe and Ntshela belonged to DENOSA and Ntshela was told DENOSA could not fight for a new nurse when the case involved a nurse with much more service. Ntshela lodged a discrimination case at the CCMA and was awarded R10 000.00 and has received the money.

- (8) Under cross-examination it was put to Ntshela that Cingo testified that only Ntshela, Thorpe and she were present at the time of the incident. Ntshela insisted that Klaase had been present. It was further put to Ntshela that the words she claimed that Thorpe used (as listed in the charges) were indeed never said. Ntshela again insisted that Thorpe had said that to her even if others denied it. Ntshela denied that the discussion had been about nurses from the agency. Ntshela was eating at the time Thorpe spoke to Klaase and Ntshela did not like what was being said. The incident happened on 17 March 2016 and Ntshela officially reported the incident on 7 May 2016. The delay was caused as Ntshela felt hurt and had wanted her probation to finish so that her services would not be terminated. Klaase had said that should Ntshela report the discussion then he would ensure her probation period was terminated. Klaase had never reprimanded Ntshela and had only given her a piece of paper regarding the complaint from Thorpe on her being slow and lazy. It was put to Ntshela that Klaase will say Ntshela shouted and then the matter was reported by Ntshela after talking about her slow performance. Ntshela denied that she had spoken to Klaase and had simply been given the paper. Klaase had said that Sisters Vos and Thorpe had complained to him regarding her attitude towards her work. Ntshela did not even read the paper she had been handed. Klaase has previously terminated the services of others in the hospital. It was put to Ntshela that Cingo had testified that Ntshela never does things of her own accord and waits to be reminded what to do. Ntshela denied that this was true. Previously Ntshela and Thorpe had had a good relationship which resulted in Ntshela being surprised and shocked by what Thorpe had said. Ntshela regards herself as a good worker and does not understand why Thorpe does not want to work with blacks. Ntshela denied being told what to say and was still waiting for an apology from Thorpe. Ntshela is unaware if Thorpe knows her case went to the CCMA. Ntshela did not have any union at the CCMA; had no reason to have a union and DENOSA said they could not be there in a case which involves racism. It was put to Ntshela that she made up the words she accused Thorpe of saying in order to keep her job at the hospital as she was not a good worker.

It was put to Ntshela that Maria Titus (enrolled staff nurse) will testify that the discussion had been about nurses from the various agencies. Under re-examination Ntshela confirmed that Thorpe, Cingo, Klaase and she were at the nurses' station when the incident happened.

**The employee's version and testimony was as follows:**

- (9) Carolina Thorpe testified that on 17 March 2016 the discussion was about the unskilled staff being sent from the agencies in that they seemed incapable of doing blood pressure tests and other simple tests. Ntshela, Cingo, West and Titus were present. Titus and West did most of the talking. Thorpe denied ever having said the words as contained in the first charge. Thorpe confirmed that Ntshela claims she said these things after Cingo had complained that Ntshela was slow. Klaase had interviewed Ntshela regarding the performance of her duties and then the complaint against Thorpe was lodged with Elizabeth Scholtz (HR). Ntshela had started shouting and had to be calmed down. Only Brandt spoke to Ntshela and it was denied that Ntshela ever asked questions. Thorpe had never called Ntshela stupid and was unsure why Ntshela was doing this to her. Lumphondo had asked about the rumours circulating about racism and Thorpe had not been aware that Ntshela went to the CCMA. Klaase informed Ntshela that Lumphondo was investigating the matter. Thorpe understood that the CCMA award was received prior to her dismissal. Thorpe was requested by HR to write a letter of apology to Ntshela and this letter was subpoenaed for arbitration. Referring the EE bundle page 11 Thorpe denied that she had ever physically assaulted Ntshela and pointed out that this was not part of the charges she faced.
- (10) Under cross-examination Thorpe was reminded that Cingo had testified that Thorpe had said black people are lazy; should work at Khayalitsha and that evidence had not been disputed by Thorpe. The fact that Cingo confirmed that only Ntshela, Thorpe and she were present at the time of the incident, was also not disputed by Thorpe who is now adding another two people to have been present at the discussion. Thorpe explained that on 17 March 2016 the discussion was about nurses from the agencies and mostly Thorpe, West and Titus had done the talking. It was put to Thorpe that Cingo had testified that agency nurses can carry out blood pressure tests. Thorpe denied that nurses from agencies and other provinces were only black. Thorpe also denied that she had been speaking to Ntshela regarding the slow pace at which she worked. Thorpe insisted that the general talk that night had been about agency nurses and it was put to Thorpe that when Cingo testified Thorpe was talking about Ntshela this had not been disputed. Indeed the version of Ntshela had not been disputed and no-one had mentioned a discussion taking place about nurses from the agencies. These nurses are generally from different provinces of South Africa and this is the first this has been mentioned at arbitration and this subject had not been raised with any of the

witnesses. It was put to Thorpe that she had made the racial derogatory remarks to Ntshela which was denied by Thorpe. Thorpe was reminded that Ntshela had said she told Thorpe she had been to school; her certificate was not a fake and this evidence was also not disputed by Thorpe. Thorpe said that she had never spoken to Ntshela regarding her slow work and as the supervisor of Ntshela the matter was reported to Klaase (night matron). Thorpe confirmed she is the direct supervisor of Ntshela but problems had not been discussed directly with Ntshela. It was put to Thorpe that she is claiming that Ntshela is slow in the mornings and has never addressed this with Ntshela. Thorpe pointed out that that day sister Vos also had problems with Ntshela. Thorpe believed that both Cingo and Ntshela had lied about her talking to Ntshela about the slow pace at which Ntshela worked.

- (11) Under re-examination Thorpe confirmed that agency nurses were from all race groups and not only blacks. Thorpe has never said that Ntshela was slow and five people were present during the discussion that night on 17 March 2016.

In response to questions from me Thorpe confirmed Ntshela spread rumours that she was getting money from the CCMA although Thorpe had not believed the story. The employer confirmed that they had not applied for rescission of the default award in the case of Ntshela and had paid her the money awarded.

- (12) Elizabeth Scholtz (assistant director and HR at the Eerste River hospital) testified that she was aware of the incident between Thorpe and Ntshela. Lufhondo sent Scholtz an email asking her to investigate the incident. The matter was never fully investigated. Scholtz contacted François Brandt (deputy director) and was told to give Thorpe an *audi alteram partem* letter to explain her version. Such letters were received from Thorpe and Ntshela. Having heard both sides the outcome of the investigation was that Thorpe was to be disciplined for unprofessional behaviour. Thorpe was also to be sent on training for professionalism. Scholtz found Thorpe not guilty of the racism allegations including allegedly saying that blacks were lazy and should return to the Eastern Cape. Thorpe was guilty of unprofessional behaviour and Scholtz could not say whether or not Thorpe had said Ntshela was lazy. The unprofessional behaviour related to the way in which Thorpe spoke with her staff. Scholtz could not say what specifically what had been unprofessional and pointed out that overall such training could only help. Scholtz had been guided by Brandt. Scholtz had never said that Thorpe or Klaase were guilty of anything. Scholtz did not speak to Klaase about the incident and Thorpe was found not guilty of any of the allegations against her. Scholtz received a copy of the CCMA award and had been aware that the case was taking place. When Scholtz received the notice of set down from the CCMA she had been told to ignore that fax. In so far as the award was concerned Scholtz arranged for the money to be paid to Ntshela. Nothing was done about the other instructions to the employer as

contained in that award.

In answer to questions for me Scholtz confirmed she did not have the letter regarding the investigation; there was no letter of apology and Scholtz had no idea what happened to Klaase.

- (13) Under cross-examination Scholtz confirmed she had a meeting with Thorpe and Ntshela and the outcome was that Thorpe was to be sent for training and to face disciplinary action due to her unprofessional behaviour. Thorpe responded to the allegations of racism through the *audi alteram partem* process. Scholtz denied that the disciplinary action led to the dismissal of Thorpe. It was put to Scholtz that there were serious allegations of racism; Scholtz recommended training and disciplinary action and now could not say why Thorpe should have been disciplined. It was further put to Scholtz that she was unable to identify the unprofessional behaviour for which she found Thorpe guilty. It was pointed out that Scholtz downgraded the incident from racism to improper conduct and never did anything of her own accord. Scholtz is aware that the arbitration at the CCMA went ahead in the absence of the employer as Scholtz was told to ignore the letter received from the CCMA in this regard. It was put to Scholtz that she had mishandled the situation from the very beginning. Scholtz could not say why her manager was not at arbitration for Thorpe as Scholtz claimed she only did what she was told. Scholtz explained that she now sees the seriousness of the matter. Scholtz is the head of HR at the Eerste River hospital which is a senior post and could not explain why she only waited for instructions from her superior. It was put to Scholtz that she downplayed the matter. Thorpe was sent on the training and Scholtz could not say what the training covered. Training as arranged by head office was given on discrimination. Scholtz only spoke to Thorpe and Ntshela and never spoke to anyone else during her investigations. Scholtz explained she was not told by Brandt to speak to anyone else during her investigation. This had been the first case of racism that Scholtz has dealt with in her thirty four years' of service and twelve years at Eerste River hospital. Scholtz thought it was correct for her to have taken guidance from Brandt. It was put to Scholtz that the investigation was incomplete as she never spoke to others. Scholtz said she did not believe that had been important. Under re-examination Scholtz denied that she had downgraded the incident.

In answer to a question from me Scholtz was unaware of the difference between an investigation and a disciplinary hearing in that the investigation was meant to gather all the facts about the incident.

- (14) Jacob Klaase (area manager / night matron) testified that he was not present at the time of the incident and never formed part of that discussion. Ntshela claimed Klaase called her in to terminate her probation period but this was not correct. Thorpe and Vos had complained that Ntshela was very slow and when

called in Ntshela admitted that she was slow. Klaase undertook to assist Ntshela with her problem and Ntshela had said she was unhappy with Thorpe. Ntshela said she knew what she had to do and it was Ntshela who said this would be her first warning with the next warning the following night. Ntshela had been absent on the third day and it was rumoured that she claimed she was dismissed by Klaase. Klaase also heard that he was to be placed on suspension which never happened. Ntshela had asked Klaase what his relationship was like with black people. Klaase explained that he grew up on a farm and was carried on the back of many black women. Lumphondo who is Venda had told Klaase that he should leave the blacks from Eastern Cape out as they would return to the Eastern Cape to practice witchcraft (referring to Xhosa people). Ntshela was not telling the truth although Klaase was not present when the discussion took place. Klaase has never heard Thorpe saying anything as contained in the charges against Thorpe.

- (15) Under cross-examination Klaase confirmed that Ntshela started a rumour that he was having an affair with Thorpe although this had not been said directly to him. At the interview Klaase had with Ntshela they had discussed the complaints about Ntshela working too slowly. Klaase explained to Ntshela that the discussion was about her work performance following a complaint received from Thorpe and confirmed by Vos. Klaase confirmed that the appointment of Ntshela on a permanent basis has now been confirmed and agreed that therefore her performance was of a satisfactory standard. Klaase agreed that Ntshela remains a good worker although there are many complaints about her and everyone is too afraid to say anything. Ntshela was slower than others but the quality of her work was regarded as being good. Klaase still gets complaints that Ntshela is lazy and he does not know whether he can trust Ntshela to tell the truth. Klaase could not say why he thought Ntshela was lazy as he had just confirmed she is a good worker. Ntshela had signed on the interview form and then gone home.
- (16) Maria Titus (enrolled staff nurse) testified that she was present when West, Thorpe, Cingo, she and Ntshela discussed the nurses from the agencies. These nurses did not understand how to operate the equipment and there was no time available for other nurses to be training the agency nurses. Thorpe never said any racist remarks on 17 March 2016 – which had been the last night before Titus brought cake for everyone. The words as listed in the charges had not been heard that night by Titus nor had she heard Thorpe call Ntshela stupid. Titus mainly did observations and Ntshela mainly did the bedding and washing of the patients.
- (17) Under cross-examination Titus confirmed that no-one would be at the station if needed by a patient. Titus was present at the discussion. Titus agreed that agency nurses tend to be slow and Ntshela is also slow as reported by Thorpe. Thorpe had addressed this with Ntshela and it was put to Titus that Thorpe had

denied ever addressing this with Ntshela. Titus was not present at the disciplinary hearing held for Thorpe. Under re-examination Titus confirmed that Ntshela tended to wash the patients and do the bedding.

- (18) Audrey West (Auxiliary nurse) testified that she knows and has worked with Thorpe. On 17 March 2016 West, Titus, Thorpe, Cingo and Ntshela were all present when the discussion took place. Thorpe never spoke the words as listed in the charges and is not a racist. West has never heard Thorpe call anyone stupid. Ntshela is slow and Thorpe had spoken to her in this regard.
- (19) Under cross-examination West confirmed she was not present at the disciplinary hearing for Thorpe. West had never heard Thorpe pass any racist remarks and West agreed she had not been present the entire time at the nurses' station.
- (20) Both parties submitted closing arguments, the contents of which have been noted.

#### **ANALYSIS OF EVIDENCE AND ARGUMENT**

- (21) I am required to determine on a balance of probabilities whether the dismissal of Thorpe was fair. In narrowing the issues in dispute SHOWUSA confirmed that there are no procedural challenges. On the substantive side Thorpe denied that she had made the racially charged comments as alleged. Thorpe was charged with the following: - (i) On 17 March 2016 you discriminated against Plumeza Ntshela on the basis of both race and language by uttering the following remarks: (a) Black people are lazy and slow and should work at Khayelitsha hospital; (b) That you do not like to work with black people as they cannot speak Afrikaans; and (c) Ntshela reminds you of Zuma who stole your money to build Nkandla. (ii) During the period of March 2016 to June 2016 you acted in an improper manner by telling Ntshela that she is stupid when she raised questions pertaining to her work.
- (22) It was established that Ntshela lodged a discrimination claim with the CCMA which in a default award dated 23 August 2016 she had been awarded R10 000.00 under case number WECT9679-16. It is trite that I am not bound by another commissioner's award and specifically not the discrimination award in respect of Ntshela.
- (23) There were no procedural challenges in this dismissal and the procedure followed by the employer aligns with the provisions of Schedule 8 – Code of Good Practice: Dismissals of the LRA. The dismissal is found to be fair on procedural grounds.

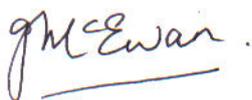
(24) In this case there are two mutually destructive versions in terms of who was present at the time it was alleged that Thorpe made the racist comments and whether those comments had indeed been directed at Ntshela or the nurses who were appointed through the agencies or never made at all. It is evident that the matter was handled extremely poorly by the employer in that Scholtz did not carry out a thorough investigation and seemed not to understand exactly what was expected of her or able to explain how / why she came to the conclusions she did. Having found Thorpe guilty of unprofessional conduct Scholtz was unable to verbalise what exactly the unprofessional behaviour had been. It is the function in any investigation to gather all the facts pertaining to the case and in this regard Scholtz limited her investigation to *audi alteram partem* letters from both Thorpe and Ntshela and such letters were not made available at arbitration. It is common cause that nursing staff are supplemented by the use of nurses from various agencies. Even nurses from agencies were what was being discussed Thorpe and all involved should have known better than to generalise about such staff in such a derogatory manner. In the event that such nurses were unable to work the equipment or carry out the simplest of nursing tasks then the proper recourse was through the correct channels to the agency that put forward such nurses to rectify any such shortcomings. Derogatory racial slurring is totally unacceptable. In the post-apartheid South Africa this is constitutionally prohibited. From the evidence before me I conclude that a discussion was held in which the agency nurses were discussed and racial slurs were cast. The evidence points to two different discussions on the same night. One discussion was no doubt about the agency nurses and the other discussion was specifically about Ntshela. It appears that at the Eerste River hospital employees generally have a problem getting along with different races and the employer should take steps to eradicate such arbitrary behaviour which is unlawful and unconstitutional. This was evident when Scholtz complained about what blacks said about whites and was cut short by me. I find on a balance of probabilities that both West and Isaacs were present during the discussion of the agency nurses.

(25) I find on a balance of probabilities that a discussion took place on 17 March 2016 which was directed at Ntshela. I have no doubt that Cingo was present during that discussion. It is expected that a recently appointed enrolled nursing assistant would have questions about her work during her probationary period. Whilst others thought that Ntshela was slow it is evident that her overall performance was good considering that her permanent appointment was approved. It is likely that Thorpe did say that Ntshela was stupid which is supported by the reaction of Ntshela when she announced she had finished school; her certificate was not fake and further had passed the nursing examination. It is further likely that Thorpe asked Ntshela whether her or her family were connected to Lufhondo. Ntshela had responded that she sent in her CV and underwent interviews the same as others had done. Lufhondo is not a role model if she did say to

Klaase to leave the people from the Eastern Cape alone as they would return there to practice witchcraft. Such a comment is totally unacceptable coming from anyone let alone a senior manager in the hospital. I find it probable that Thorpe said that Ntshela should go to work in Khayelitsha as that is where black people work. This is again supported by the reaction of Ntshela saying that she had applied to work at Khayelitsha but was not appointed. It is an absurdity that Thorpe would say she did not want to work with Blacks as they do not speak Afrikaans. Many blacks are fluent in Afrikaans and for many it is their home language. Again such a comment is untrue and unconstitutional. It is unclear why Thorpe should say that Ntshela reminded her of Zuma who stole her money. Only Ntshela remembered this comment and Cingo had no recollection of it having been said. In the event that Ntshela, as was common cause, is slow but thorough that does not equate to her being lazy or stupid. It is probable that during this probationary period Thorpe did call Ntshela both stupid and lazy. As a nursing sister with some twenty seven years' experience it was incumbent on Thorpe to assist Ntshela and not to put her down by saying shameful things like Ntshela was stupid and lazy. If these issues were a problem they should have been dealt with through the correct channels and through the correct procedure. No evidence was put before me that Ntshela was told by her superior what she needed to do to rectify what was seen as stupidity and laziness. It was all very well for Klaase to claim he would help Ntshela but he never said exactly how this would be done. In the circumstances I find on a balance of probabilities that Ntshela was subjected to discriminatory behaviour based both on language and race by Thorpe. I find on a balance of probabilities that Thorpe spoke the racially charged statements at Ntshela which behaviour is unacceptable and for which dismissal is the appropriate sanction. The dismissal of Thorpe is found to be fair on substantive grounds.

## AWARD

- (26) I have found on a balance of probabilities that the dismissal of Celestine Thorpe was fair on both procedural and substantive grounds. Consequently this case is dismissed.



PANELLIST: Gail McEwan