ARBITRATION AWARD

Panelist/s: **James Matshekga**

Case No.: **PSHS445-11/12**

Date of Award: **12 June 2012**

In the ARBITRATION between:

NEHAWU OBO NYAKANA N

(Applicant)

And

DEPARTMENT OF HEALTH AND SOCIAL DEVELOPMENT-GAUTENG

(Respondent)

Applicant's representative:	Mr Enrico Honnorat
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1. DETAILS OF HEARING AND REPRESENTATION

The matter was set down for arbitration on 8 March 2012 at 10:00AM. The arbitration became part-heard and rescheduled for continuation on 24 and 25 May 2012. The hearing was finalized on 25 May 2012 and closing arguments were submitted in writing on or before 1 June 2012 by agreement between the parties. The hearing took place at the offices of the Department of Health & Social Development- Gauteng ("the Respondent") situated at Bank of Lisbon Building, 14th Floor, Cnr Sauer and Market Streets, Johannesburg. Both parties were present. Ms Nkanyini Susan Nyakana ("the Applicant") was at all material times represented by Mr Enrico Honnorat, a practicing attorney from the law firm Ismail and Dahya Attorneys. The Respondent was at all material times represented by Ms Dikeledi Radebe. The proceedings were digitally recorded.

2. ISSUE(S) TO BE DECIDED

I have to decide whether or not the dismissal of the Applicant by the Respondent was for a fair reason (i.e. substantively fair) and whether or not the dismissal was effected in accordance with a fair procedure (i.e. procedurally fair). I also have to determine the appropriate relief if I find that the Applicant's dismissal was either substantively or procedurally unfair or both. The relief sought by the Applicant is retrospective reinstatement in terms of section 193 of the Labour Relations Act 66 of 1995 ("the LRA"). The Respondent wants the Applicant's dismissal to be upheld.

3. BACKGROUND TO THE ISSUE IN DISPUTE

The Applicant was employed by the Respondent on or about 1 June 2007. She occupied the position of Deputy Director: Administration. The Applicant earned a gross salary of thirty nine thousand three hundred and ninety six cents (R39300.96) per month.

On 23 February 2011, the Applicant was dismissed by the Respondent for alleged misconduct, the details and circumstances of which are set out below. The Applicant's dismissal was upheld by the Respondent in an outcome of an internal appeal that was made on 28 July 2011. On 14 September 2011, the Applicant, through the trade union National Health Education and Allied Workers' Union (NEHAWU) referred a dispute to the Public Health and Social Development Sectoral Bargaining Council ("the Council") challenging the fairness of her dismissal by the Respondent. The dispute remained unresolved at a conciliation hearing that took place on 21 October 2011 and a certificate of non-resolution was issued by the Council under the hand of

Commissioner TT Serero. The Applicant's referral of the dispute for arbitration was made to the Council on 8 November 2011.

4. SURVEY OF EVIDENCE AND ARGUMENT

THE RESPONDENT'S EVIDENCE

Documentary evidence

The Respondent submitted a bundle of document that was marked bundle A. The documents in the bundle were agreed as being what they purported to be and their contents were also not in dispute (unless specified otherwise). The individual documents are not listed here for the sake of brevity and due to the number of items involved.

Oral evidence

The Respondent relied on the oral testimony of four (4) witnesses.

Ms Nadia Bechor ("Nadia") testified that she was employed by the Respondent in the position of transport officer in the transport department. She is currently employed as an office manager in the asset management directorate. Her duties as a transport officer included issuing of vehicles and dealing with applications for Scheme A subsidized vehicles. She did not directly work with claim forms.

The documents that appear on page 35 to 45 of bundle A are the Applicant's claim forms that she submitted in respect of her subsidized vehicle. The Applicant's claim forms were incorrectly completed in respect of, amongst others, the number of passengers and purpose of the trip. The claim forms were also not signed by the Applicant's immediate supervisor as required by the Respondent's transport policy that appears on pages 65 to 79 of bundle A. She discussed the policy with the Applicant and gave her a copy. The Applicant was not required to sign acknowledgement of receipt of the policy.

On 24 February 2011 the transport department wrote a letter to the Applicant requesting her to submit outstanding claim forms for her subsidized vehicle on or before 3 March 2010. The Applicant's claim forms were outstanding from October 2009 to the date of the letter. The Applicant did not submit claim forms before the 7th of each month as required by the policy. The Applicant was reimbursed for the claim forms that she submitted for October 2009, November 2009,

December 2009, January 2010 and February 2010 on 23 August 2010. The Applicant's claim forms would not have been paid if Magda had not signed them. The claim forms submitted by the Applicant for March to August 2010 were not paid because Magda, after signing them, commented that they should be referred to Ian.

Mr Ian Van der Merwe ("Ian") testified that he compiled the report that appears on pages 16 to 19 of bundle A. The report relates to the events that led to the Respondent taking disciplinary action against the Applicant. The issue was about the trips that he was not aware of that were stated by the Applicant in her claim forms. The Applicant was office based and could not have taken the trips that she stated in the claim forms. The Applicant's claim forms were irregular. He was the Applicant's immediate supervisor and did not authorize any of the trips that the Applicant alleged to have taken. The Applicant's claim forms meant she was only at work for eight days from December 2009 to August 2010. The Applicant also claimed for days when she was participating in the public service strike and when her vehicle was taken for repairs after an accident. What made things worse was that in August 2010 the Applicant claimed and was paid an amount of R11367.00 for the period October 2009 to February 2010. The Applicant's claim forms were signed by Magda and not him. He picked up the Applicant's irregular claim forms because Magda stated that the claim forms should be referred to him. The Applicant had an intention to claim for trips that she did not take and submitted the claim forms to Magda who was not her immediate supervisor. He did not tell the Applicant to take the claim forms to Magda for signature because he would not have expected any claim forms to come from the Applicant as he did not authorize any trips. The Applicant should not have submitted the claim forms in the first place.

He wrote two letters to the Applicant after he saw her claim forms. He copied the HOD and Chief Director: HRM in the letters. The first letter was written on 21 September 2010 and the second on 23 September 2010. He requested the Applicant to, amongst others, explain the purpose of the trips, who authorized them and who did the Applicant visit at the institutions. The Applicant's response was that she could not keep the details as per his request, was not informed that she should keep records and details, was not told on the manner of reporting and did not get any circular/ guideline procedure in respect of how the claim forms should be completed. The Applicant's response showed that the trips were taken and if given another opportunity she would still have claimed for them. He disputes that the Applicant did not know how to complete the claim forms because the claim forms show, amongst others, that the Applicant understood the distinction between private and official trips. He expected better conduct from the Applicant. The claim forms show that the Applicant had a define intention to defraud the Respondent.

On 28 September 2010 he sent an SMS to the Applicant in which he stated that he received her response to his letter regarding her claim forms. He further informed the Applicant that he was concerned about the contents of her response and wanted them to discuss the matter the following day. The Applicant's response was that he handled the matter in writing and copied the people he wanted to copy without the matter being discussed amongst them and that she did not think that it would be proper to discuss the matter.

In July 2010 he had some disagreement with the Applicant. He then consulted the Applicant on two occasions and indicated that they considered laterally transferring her to a different section. The Applicant blatantly refused to be laterally transferred. The Respondent is allowed to laterally transfer employees after a consultation process has been followed.

Ms. Magda Van den Heever ("Magda") testified that she in employed by the Respondent in the risk management and internal control directorate. She is primarily responsible for monitoring and facilitating risk assessment processes. She recognized the Applicant's claim forms that appear on pages 40-45 of bundle A. The Applicant phoned and requested her to sign the claim forms. The Applicant indicated that the transport department had again requested her to complete the claim forms. The applicant asked if she could sign the claim forms and she agreed to do so. They were busy with the audit at that stage. She was in the company of Mr. Koos Swanepoel when the Applicant brought the claim forms. She signed the claim forms without checking them. A few minutes later she started to think why she had to sign the claim forms if the CFO was there to do so. She recalled the claim forms from the transport department. She sent an SMS to Ian and informed him that she signed the claim forms for the Applicant and felt it was his duty to do so. She later took the claim forms to Ian for his signature. It was the second time that she was signing claim forms for the Applicant. The first time she signed claim forms for the Applicant was after the latter made contact and informed her that she had a subsidized vehicle, has not submitted the claim forms and has received a letter from the transport department to do so immediately. The Applicant informed her that Ian refused to sign the claim forms because he was not the CFO at the time the trips were taken. The Applicant told her that Mr Ramano (director in charge of transport) said one of the directors should sign the claim forms. She trusted what the Applicant told her. She signed the claim forms after the Applicant brought them to her. She did not know whether or not the Applicant took the trips but signed the claim forms because there was no CFO during the period in question. The Applicant's claim forms were supposed to be signed by Ian. Ian was not the Applicant's immediate superior at the time when the trips were taken. The Applicant's immediate superiors at the time the trips were taken were Babita and Mr Apple. Babita and Mr Appel were not aware that she signed the claim forms for the Applicant. Mr Apple was no longer at the department at that stage and Ian was the CFO.

The Applicant was expected to complete the claim forms and submit them to the transport department as soon as possible thereafter. The claim forms that she signed for the Applicant were for a couple of months and not one month.

She should not have signed the Applicant's claim forms. She did not entrap the Applicant. She did not approach the Applicant to complete the claim forms and give them to her for signature. She is still going to be charged for signing the Applicant's claim forms. The Applicant approached her to sign the claim forms because she was easy prey to her fraudulent scheme.

Ms Babita Deokaran ("Babita") testified that she is employed by the Respondent in the position of Chief Director: Financial Accounting. She is responsible for the Respondent's financial reports and statements. She is also responsible for the Respondent's payments. She reports directly to Ian. In Ian's absence she reports directly to the HOD.

She was the acting CFO from October 2009 to January 2010. She was the Applicant's superior at that time. The documents that appear on pages 35-38 of bundle A are claim forms that have to be completed and submitted by employees that have a subsidized vehicle. The claim form that appears on page 36 of bundle A is the Applicant's claim form for November 2009. The Applicant directly reported to her at that time. She did not sign the Applicant's claim form because it was not presented to her for signature. She would also not have signed the claim form because she is not aware of the Applicant taking any of the trips referred to in the claim form. In the time that she was acting as the CFO the Applicant was office-bound and was in the office.

The Applicant should have submitted the claim forms to Ian in August 2010. The claim forms were signed by Magda. Magda did not report to her. Neither the Applicant nor Magda bypassed her in August 2010.

The Applicant failed to submit her claims forms on the 7th of every month as required by the Respondent's transport policy. The Applicant's failure to submit claim forms in accordance with the policy had budgetary implications. The onus was on the Applicant to submit her claim forms in accordance with the policy. The Applicant was issued with a booklet explaining the rules and regulations pertaining to the subsidized vehicle. Department of transport officials are also able to guide users of subsidized vehicles with regard to the claim forms.

She recognized the document that appears on page 80 of bundle A. The document is a copy of a written warning that she issued to the Applicant on 21 November 2009 regarding her continued absence from the office on 18 and 19 November 2009. The Applicant was in the office on 18 and 19 November 2009 but yet on the claim form she claimed that she was at Sebokeng Hospital and went to Lenasia.

The document that appears on page 84 of bundle A is an e-mail that the Applicant sent to her on 2 November 2009 at 01:29PM. The Applicant was in the office on that date but yet on the claim forms she claimed that she was at the Auditor General's office.

She is employed at level 14. At the time of signing Ian's claim forms that appear on page 1 and 2 bundle A she was at level 13. Ian was at level 16. She signed the claim form in her capacity as director for financial accounting.

Magda was employed as a deputy director primarily responsible for risk management. Magda was competent in her job. She is surprised that Magda signed the Applicant's claim forms even though they were irregular.

She never had two official cell-phone contracts. She is not employed by the Respondent to maintain relationships. She is employed to do a particular job and expects people that work with her to have the same work ethic. She was part of the committee that approved the Applicant's subsidized vehicle.

THE RESPONDENT'S ARGUMENT

Ms Dikeledi Radebe's closing argument on behalf of the Respondent was in summary as follows:

- The Applicant was informed through NEHAWU about the dates of the disciplinary hearing.

- The Applicant sought postponement of the disciplinary hearing scheduled for 29 October 2010 through NEHAWU and that is the reason why the Respondent addressed further communications to NEHAWU.

- It was proper for the Respondent communicated with NEHAWU because in terms of the Resolution 1 of 2003 employees have a right to be represented.

- In respect of charge 1, the Respondent's case is that the Applicant was not supposed to have a subsidized vehicle because she was office based.

- The Applicant's claim forms were supposed to be approved by her immediate supervisor. The Applicant's claim forms for the period between October 2009 and February 2010 were supposed to be approved by Babita or Mr Appel.

- In respect of charge 2, Nadia led unchallenged testimony that the Applicant failed to submit her claim forms until the transport department reminded her to do so.

- In respect of charge 3, Ian and Babita led evidence that the Applicant was office-bound and there was no way in which she could have undertaken the trips stated in her claim forms that appear on pages 35 to 39 of bundle A.

- The Applicant admitted that the information in the claim forms is false.

- In respect of charge 4, the Applicant defied an instruction from the office of the acting DDG (Ms M G Msimango) that she is transferred to the facility management directorate.

- Ian led evidence that the process of transferring the Applicant was led by human resource directorate and consultation was done with the Applicant and NEHAWU.

- Ian could not have entrapped the Applicant because he was not in the Respondent's employment during the period between October 2009 and February 2010 and did not instruct or write the letter from the transport department addressed to the Applicant.

THE APPLICANT'S EVIDENCE

Documentary evidence

The Applicant submitted a bundle of documents that was marked bundle B. The documents in the bundle were also agreed as being what they purported to be and their contents were also not in dispute (unless specified otherwise). The individual documents are also not listed here for the sake of brevity and due to the number of items involved.

Oral evidence

The Applicant relied on her own testimony and did not call any other witnesses.

She testified that she was employed by the Respondent's CFO office in 2007. She was the PA to Ian at the time of her dismissal. She was paid until the finalization of her appeal. She is currently unemployed. It is not easy for her to get a job after her dismissal. She is divorced and does not have a husband that takes care of her financially. She has two dependents. She has financial problems since her dismissal.

She disputes that she is guilty of charge 1 as it appears on page 32 of bundle A. Ian was her immediate superior in August 2010. She went to Ian because she knew that she would be paid through his budget. She told Ian about the claim forms. Ian told her that he was busy and that anything that has to do with claim forms must be given to Magda. She trusted that Ian spoke with Magda and that the latter would help her. She then took the claim forms to Magda. The claim forms were already completed when she took them to Magda. She told Magda that Ian asked her to assist her with the claim forms because he was too busy. Magda did not say anything and just signed the claim forms. She just wrote anything in the claim forms because she did not know what was expected of her. The information that she wrote in the claim forms is false. Magda told her not to worry and said that was how they did things. She did not receive any guidance from anyone on what information she should put in the claim forms. She just received a phone call from Volkswagen to collect the vehicle. After she collected the vehicle nobody explained to her how the claim forms should be completed.

Babita was her immediate superior in October and November 2009. She did not take the November 2009 claim form to Babita because she was not instructed to do so. She would have submitted the claim forms to Babita or Mr Appel if she was instructed to do so.

Magda was her senior. Babita was junior to Ian. Ian reports directly to the MEC. Ian's claim forms must be submitted to the MEC.

As far as charge 2 is concerned, she did not know that she had to submit claim forms before the 7th of every month. She was not told about the policy after she collected the vehicle. She was not even aware that she had to submit claim forms. She got the vehicle because the former CFO travelled to institutions and wanted her to help him. He then requested and recommended that she should be given a subsidized vehicle. She also applied for a subsidized vehicle. The recommendation was approved by the Committee which Babita was part of. Between October 2009 and February 2010

nobody told her that she had to submit claim forms. She only learned that she had to submit claim forms when she received the letter from transport dated 24 February 2010 that appears on page 118 of bundle A. The letter requested her to submit outstanding claim forms for her subsidized vehicle on or before 3 March 2010. The claim forms were outstanding from October 2009 to the date of the letter. She did not object to the letter. The letter was written by Assistant Director: Transport. The letter was not written by Ian. At that time she had no immediate superior. She then decided to wait for Ian to be employed. She did not submit the claim forms on or before 3 March 2010 as requested in the letter. She only received a book from Nadia. Nadia informed her that her immediate superior will assist her to complete the claim forms. Nadia did not give her a copy of the transport policy. The document that appears on pages 65 to 79 of bundle A is a copy of the Respondent's approved transport policy. The policy was approved by, amongst others, the CFO's office. She did not find a copy of the policy in the CFO's office. She did not comply with the policy because she was not aware of it.

As far as charge 3 is concerned, she did not intend to defraud the Respondent. She just wrote anything that came to her mind because she was under pressure to submit the claim forms. She made a mistake of just writing because she did not understand the claim forms. She needed someone to help and give her direction with the claim forms. The information that she wrote in the claim forms was false. She was in the process of a divorce when she received payment for the claim forms. She received the payment on 23 August 2010. She divorced on 21 September 2010 and was suspended on 4 October 2010. She was in and out of the office at that time and could not go to the transport department to find out what the money was for. She wanted to repay the money to the Respondent.

The document that appears on page 46 of bundle A is a motor vehicle accident claim form for her subsidized vehicle. The accident occurred on 31 December 2009. The vehicle was taken for repairs after the accident. She cannot remember how long the vehicle was at the panel beater for repairs. She took the vehicle for repairs in early January 2010. The claim form for January 2010 appears on page 38 of bundle A. She claimed for the whole month of January 2010 despite the fact that the vehicle was taken for repairs. The claim form does not reflect that the vehicle was taken for repairs. She received payment for January 2010. She did not refund the Respondent the money that she received while her vehicle was taken for repairs. She defrauded the Respondent by receiving money that was not due to her.

The document that appears on page 48 of bundle A is a motor vehicle accident claim form for her subsidized vehicle. The accident occurred on 30 April 2010. The vehicle was also taken for repairs after the accident. She took the vehicle for repairs in May 2010. The claim form for May 2010 appears on page 42 of bundle A. She claimed for the whole month of May 2010 despite the fact

that the vehicle was taken for repairs. The claim form does not reflect that the vehicle was taken for repairs. She did not receive payment for the May 2010 claim forms because it was disapproved. The information in the claim forms would be falsified if she knew exactly what she was doing.

She feels that she was entrapped. The trap was put in motion when Ian wanted to transfer her to facility management. Entrapment is when people that are supposed to help with something do not do so and are aware that if they don't help one will be in trouble. In her case, she feels that Ian entrapped her because he always wanted to get rid of her. Magda should have been charged for approving her claim forms and the Respondent's failure to do so means she was entrapped.

The relationship between her and Ian was not good. Ian once told him that he could not work with a shop steward in his office. Ian also told her that Babita told him that she was not a good person. Ian called many meeting to inform NEHAWU that he was transferring her to facility department. She had no background in facility management. She was not insubordinate by refusing to be transferred to facility management. NEHAWU learned that she would be subjected to redundancy if she was transferred. Many letters were exchanged between the Respondent and NEHAWU. Ian ended giving him a letter that she must go to facility. She took the matter to NEHAWU and a dispute about unilateral change to terms and conditions of employment was lodged with the General Public Service Sectoral Bargaining Council (GPSSBC). GPSSBC advised her to refer the dispute to the Council, which she did. The dispute remained unresolved at a conciliation that took place on 7 March 2011. She applied for arbitration and the arbitration was scheduled to take place on 30 August 2011 but at that time she was already dismissed. The dispute was still pending before the Council at the time of her dismissal.

Mr Koos Swanepoel was working with Magda. Mr Koos Swanepoel was present in the office when she submitted the second batch of claim forms. She did not work directly with Mr Koos Swanepoel and does not know how familiar he was with claim forms and how they should be completed.

She was dismissed because Ian did not want her in his office. She was dismissed because Babita requested a second cellphone and Babita was upset when she requested the barcode number of the cellphone. She informed Ian about the cellphone after he was employed. Ian asked Babita about the cellphone and Babita promised to give him the sim-card for usage. Maybe Babita lied to Ian and told him that she was a bad person.

She did not attend the disciplinary hearing that led to her dismissal because she was not informed of the hearing. Ms Dikeledi Radebe and Ms Mpho Ramudzuli came to her house on 21 October 2010 and served her with the notice of the disciplinary hearing to take place on 29 October 2010. She was not able to attend on the scheduled date due to ill-health. She took the sick note to

NEHAWU and NEHAWU requested postponement on her behalf. NEHAWU was representing her. She later went to NEHAWU's office and was informed that the disciplinary hearing was postponed. She did not go to NEHAWU to find out about the rescheduled date of the hearing because she was told that the Respondent will inform her. Since then the Respondent did not come to her house to inform her of the rescheduled date of the hearing. On 28 February 2011 she received a letter signed by the HOD in her mailbox informing her of the dismissal and her right to lodge an appeal within five days. She learned that the Respondent informed NEHAWU of the date of the hearing. Resolution 1 of 2003 requires that the Respondent must serve the notice on her personally and she must acknowledge receipt thereof. It was not for NEHAWU to inform her of the rescheduled date. The chairperson of the disciplinary hearing was supposed to communicate his findings directly with her so that she could mitigate and not the HOD. The chairperson was junior to her. She was not given an opportunity to present her side of the story. She feels that the Respondent wanted to get rid of her and did not want to waste time by having her attend the disciplinary hearing.

Not everything that Ian did was correct. Ian was at level 16 and not level 15. Ian's travel claims were signed by Babita because he knew that no one will question them. Babita created Ian's invoices, approved and paid them. Ian claimed on a month to month basis. Ian's claim forms that appear on pages 1 and 2 of bundle B are also fraudulent. If she was wrong, that means Magda and Nadia were also wrong. The fact that she was the only person who was singled out from the whole thing shows it was planned. She lodged an appeal with the MEC. The same HOD (Kemp Chetty) who dismissed her also dismissed her appeal. She was unfairly dismissed.

THE APPLICANT'S ARGUMENT

Mr Enrico Honnorat's closing argument on behalf of the Applicant was in summary as follows:

- In respect of charge 3, the Applicant would like me to consider the issue of internal disciplinary consistency and the role played by the Respondent in setting the stage for the production of irregular claim forms and the subsequent nonchalant processing thereof by a string of qualified people, especially in the light of the poor testimonial performances on the part of the Respondent's witnesses, and the ample evidence of serious friction between the Applicant and at least Ian.

- In respect of charge 3, the Applicant would like me to evaluate afresh all the factors impacting on the selection of the appropriate disciplinary sanction, in particular the emotional and existential crisis she was going through during the incriminated period, as a

result of her debilitating divorce and related reasons, and some signs of remorse and willingness to undo the effects of her conduct.

- Had the Applicant been approached at once with the irregularity of the claims, even by forceful criticism, the whole saga could (and should) have been avoided.

- There was a clear element of aiding and abetting conspicuous irregularity on the Respondent's part.

- The Applicant in a way has realized her error and would be capable of rehabilitating herself and proving her trustworthiness upon a possible reinstatement.

- The Applicant has cleared her monetary "indebtedness" to the Respondent and owes no sum at present since pension contributions were deducted for that purpose prior to the first arbitration hearing on 8 March 2012.

- In respect of charge 1, no dishonesty can be evinced by the fact that the Applicant submitted claim forms to a capable authority who fully understood those documents, knew who was her immediate superior, and was at all times in a position to approach Babita to help shed light on the matter.

- There was no evidence that by approaching Magda (regardless of who selected her person) the Applicant was paving the way for the implementation of a fraudulent scheme.

- The evidence suggested at most a procedural irregularity, quite common to a number of top-echelons personnel at the Respondent, and which in any event should have involved charging and disciplining Magda for it as at that stage.

- In respect of charge 2, the evidence proved that if a policy existed on submission of claim forms for subsidized vehicles, there was no communication of it to the Applicant.

- When the transport department requested the Applicant to hand in all the forms at once, nothing was held against her in that regard from a disciplinary point of view, and no disciplinary action was taken against her for the period between May and August 2010.

- There was nothing in charge 2 to remotely ground anything more than a caution or reprimand of the Applicant, followed by proper formal notification of the governing policy and written acknowledgment of its receipt by her.

- In respect of charge 4, the Applicant committed no offence whatsoever as the issue of her proposed transfer to a new directorate was the subject of a dispute which was pending before the Council.

- A disciplinary inquiry is not a court of law where a party has indicated that notices and documents should be served on a professional firm of legal practitioners and their like. The dispute concerned the Applicant and the Respondent, and the fact that at one specific stage, due to the force majeure of illness, the Applicant was contingently compelled to use her trade union as an intermediary in no way justified the Respondent's departure from the fair requirement of communicating with her directly and making sure that she factually and personally knew about the disciplinary hearing which caused her to become unemployed.

- The Respondent failed to establish the fair processing of the Applicant's dismissal and she is therefore entitled to a degree of compensatory relief for such inequity.

5. ANALYSIS OF EVIDENCE AND ARGUMENTS

I am required to decide whether or not the dismissal of the Applicant by the Respondent was either substantively or procedurally fair or both and determine the appropriate relief if I find that the dismissal was either substantively or procedurally unfair or both. Section 138(7)(a) of the LRA enjoins me to provide brief reasons for my findings.

Section 192 of the LRA provides that in any proceedings concerning any dismissal, the employee must establish the existence of the dismissal. If the existence of the dismissal is established, the employer must prove that the dismissal is fair. The dismissal of the Applicant was not in dispute in this matter. Therefore, the Respondent bears the onus of proving on the balance of probabilities that the dismissal was fair.

According to Section 188(1) of the LRA, the dismissal of the Applicant by the Respondent will be unfair if the Respondent fails to prove that the Applicant's dismissal was for a fair reason related to the Applicant's conduct or capacity or based on the Respondent's operational requirements and that the dismissal was effected in accordance with a fair procedure. In determining whether the Respondent has complied with the requirements for substantive and procedural fairness, I must take into account the provisions of schedule 8 of the LRA (section 188(2) of the LRA). In making the determination I am required to make "a moral or value judgment as to what is fair in all the circumstances" (See in this regard *Metro Cash & Carry Ltd v Tshehla [1997] 1 BLLR 35 (LAC)*; and *Numsa v Vetsak Co-Operative Ltd and Others [1996] 3 All SA 311 (A)*).

SUBSTANTIVE FAIRNESS

Item 7 of Schedule 8 of the LRA provides 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 the 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 was an appropriate sanction for the contravention of the rule or standard."

Did the Applicant contravene a rule or standard regulating conduct in, or of relevance to, the workplace?

It is common cause that the Applicant was charged by the Respondent with various acts of misconduct. The charges leveled against the Applicant by the Respondent and in respect of which the Applicant was dismissed read as follows (pages 32 and 33 of bundle A):

"Charge 01

Are guilty of dishonesty in that; you, in August 2010, requested Ms Magda van der Heever to sign your petrol claims for the period October 2009 to February 2010 and bypassed Ms Babita Deokaran and Mr Appel who were acting Chief Financial Officer during the time and were your direct supervisors.

Charge 02

Are guilty of misconduct in that; you claimed petrol for the period October 2009 to February 2010 in August 2010; thus contravening the policy of scheme A vehicle which stipulates that all claims should be done by the 7th of every month.

Charge 03

Are guilty of fraud in that, you indicated in your claim forms that during the period October 2009 to February 2010, you were working in the institutions, whereas you were around Bank of Lisbon during that period.

Charge 04

Are guilty of gross insubordination in that; you on the 01 September 2010, defied the instruction from the office of Acting DDG (Ms MG Msimango) that you are transferred to the Facility Management Directorate"

As far as charge 1 is concerned, I find that the Respondent failed to prove on a balance of probabilities that the Applicant was dishonest as alleged in the charge. My main (but not only) reasons for this finding are set out hereunder.

It is self-evident from the versions of the parties summarized above that there are very little material differences between their respective versions in respect of what occurred in August 2010. It is common cause that the Applicant submitted her claim forms for the period October 2009 to February 2010 in August 2010 to Magda. It is also common cause that Magda was not the Applicant's immediate superior when the Applicant requested her to sign the claim forms in August 2010. The Applicant's immediate superior in August 2010 was Ian. In other words Babita and/or Mr Appel were not the Applicant's direct supervisors when the claim forms were submitted in August 2010. According to Magda's testimony Mr Appel was not even in the Respondent's employ in August 2010. It is therefore not factually correct that the Applicant bypassed Babita and Mr Appel when she submitted her claim forms to Magda in August 2010. If there was any person that the Applicant bypassed when she submitted the claim forms in August 2010 that person is Ian. Charge 1 does not state that the Applicant bypassed Ian. It was also not Magda's testimony that the Applicant misled her to sign the claim forms. Magda testified that she signed the claim forms because she trusted the Applicant. In the circumstances, I find that the misconduct stated in charge 1 has not been established by the Respondent.

As far as charge 2 is concerned, I find that the Respondent proved on a balance of probabilities that the Applicant contravened the policy as alleged in the charge. My main (but not only) reasons for this finding are set out hereunder.

It is not in dispute that the Applicant submitted claim forms for the period October 2009 to February 2010 in August 2010 and not on the 7th of every month. The Respondent submitted into evidence a copy of its policy. I accept that the Respondent established the existence of the policy. Paragraph 16 of the policy requires that claim forms must be directed to the departmental transport officer on or before the 7th of each month.

The Applicant disputed that she was aware she had to submit claim forms by the 7th of each month. I reject the Applicant's evidence that she was not aware of the policy. Item 7 of the LRA does not only require actual knowledge or awareness of the policy. It is sufficient for the Respondent to prove that the Applicant could reasonably be expected to have been aware of the policy. Nadia testified that she explained the policy to the Applicant although the Applicant was not required to sign acknowledgement of receipt of the policy. The CFO was one of the custodians and signatories of the policy and as a senior employee within the office of the CFO the Applicant could reasonably be expected to have been aware of the existence of the policy. The Applicant was given the subsidized vehicle on the basis of her application. It was therefore incumbent upon the Applicant to familiarize herself with the rules and regulations of the scheme that she applied for. Any reasonable person in the Applicant's position would have made an effort to familiarize him or herself with the rules and regulations of the scheme.

It is also common cause that on 24 February 2010 the Respondent's transport department addressed a letter to the Applicant in which she was advised to submit her claim forms by no later than 3 March 2010. In that letter the Applicant was advised of the policy requirement and her failure to comply therewith. Even if the Applicant may not have been aware of the policy requirement after she obtained the vehicle, she was at the very least made aware of the requirement on 24 February 2010. Despite this fact she failed to submit her claim forms as required and only did so in August 2010 for reasons best known to her. The Applicant's explanation for her failure to comply with the policy was that she was waiting for Ian to be employed. That reasoning is very shallow and weak considering the facts of the matter. It is common cause that Ian was employed in March 2010. The Applicant led no evidence that she approached Ian to sign the claim forms at any time after his employment and prior to August 2010. The only evidence that the Applicant led was that Ian referred her to Magda in August 2010. I completely reject the Applicant's evidence in this regard. Ian led reliable evidence that he only became aware of the Applicant's claim forms in August 2010 after they were referred to him by Magda. In the circumstances I find that the Applicant was aware that she had to submit claim forms for her subsidized vehicle to the transport department on or before the 7th of each month but failed to do so.

As far as charge 3 is concerned, I find that the Respondent proved on a balance of probabilities that the claim forms for the period February 2009 to February 2010 submitted by the Applicant were fraudulent as alleged in the charge. My main (but not only) reasons for this finding are set out hereunder.

It is self-evident from the Applicant's evidence summarized above that she does not dispute that the claim forms for the period February 2009 to February 2010 that she submitted were fraudulent although it was stated at the commencement of the arbitration that she disputed breach of the rule. The Applicant admitted that the information written in the claim forms, in particular the trips taken and the purpose thereof were false. Mr Enrico Honnorat submitted in his closing argument that the Applicant's claim forms were in fact irregular. The Applicant contended that she did not intend to defraud the Respondent. The Applicant also alleged that she was entrapped by, amongst others, Magda, Babita, Mr Koos Swanepoel and Ian.

As far as the Applicant's evidence that she did not intend to defraud the Respondent is concerned, I have absolutely no doubt that the Applicant had every intention to defraud the Respondent, contrary to what she stated in her testimony. It is common cause that in its letter of 24 February 2010 the transport department advised the Applicant that should the vehicle not have been used at all during the month or only private distances have been covered during the month the claim forms were nevertheless to be completed. It is thus common cause that when submitting the claim forms in August 2010 the Applicant was already aware that she was not compelled to have used the vehicle for official purposes. Despite that fact the Applicant went on and completed official trips and purposes of those trips in the claim forms that she knew did not take place and were false. The Applicant on two different occasions claimed for trips that allegedly took place even when her vehicle was taken for repairs after she was involved in accidents. She also claimed for trips during the period that she knew that she was participating in the public service strike. Her intention to defraud the Respondent is beyond question if her claim forms are anything to go by. Mr Enrico Honnorat argued that had the Applicant been approached at once with the irregularity of the claims, even by forceful criticism, the whole saga could (and should) have been avoided. What Mr Enrico Honorrat conveniently forgot is that Ian gave unchallenged testimony that he wrote two letters to the Applicant in which he sought an explanation on the claim forms. Ian also gave unchallenged testimony that after receiving a response from the Applicant he sent her an SMS in which he suggested that they should meet to discuss the issue. The Applicant rejected that suggestion. I therefore do not understand how else the Applicant could have been approached at once if she refused to meet with Ian to discuss the matter. The explanation given by the Applicant to Ian was that the trips took place even though she knew they did not. In the circumstances, her evidence that she did not intend to defraud the respondent is not supported by the available evidence and facts and therefore stands to be rejected.

I also reject the Applicant's claim that she was entrapped. The evidence before me does not remotely suggest that anyone entrapped the Applicant to defraud the Respondent. The entrapment is on the evidence before me a figment of the Applicant's imagination. The Applicant sought to blame everyone including Ian, Magda, Babita and Mr Koos Swanepoel for her nefarious conduct.

Mr Koos Swanepoel was implicated simply because the Applicant found him sitting with Magda when she submitted the claim forms to Magda for signature. Babita was angry because the Applicant told Ian about a cellphone contract. Magda was complicit in the fraud by signing the claim forms. Ian did not want to work with a shop- steward in his office.

The evidence before me shows that the Applicant entrapped herself. The Applicant applied for the vehicle on her own accord. She took delivery of the vehicle on her own accord. She failed to submit the claim forms before the 7th of each month on her own accord. The transport department requested her to submit the claim forms on or before 3 March 2010 which she failed to do on her own accord. She completed the fraudulent information in the claim forms on her own accord and took the claim forms to Magda for signature on her own accord (I have rejected her evidence that Ian referred her to Magda). In her evidence the Applicant suggested that Ian put the entrapment in motion after she refused to be transferred. The Applicant's entrapment story would make some bit of sense and have an iota of logic if after her refusal to be transferred Ian instructed her to submit the claim forms and told her how to complete the claim forms. Unfortunately none of that happened. In fact the Applicant submitted the claim forms, not to Ian, but to Magda. I therefore fail to understand how Ian could have entrapped the Applicant if he did not approve her subsidized vehicle, did not instruct her to submit claim forms or tell her how to complete the claim forms. The fact that Mr Enrico Honorrat did not pursue or mention the entrapment story in his closing argument after vociferously pursuing it during cross-examination of almost all the Respondent's witnesses is indicative of a subliminal concession on his part that the story has no logic or merit.

Mr Enrico Honorrat also argued in respect of charge 3 that the Respondent applied the rule inconsistently by disciplining the Applicant whereas Magda was not disciplined. An inconsistency argued is in my view completely misplaced in this matter. In the first instance, the evidence before me does not suggest that the Applicant and Magda committed the same or similar misconduct. The Applicant completed and submitted fraudulent claim forms whereas Magda signed them while she did not have the authority to do so. Magda can therefore not be used as a comparator because she did not commit the same misconduct as the Applicant. There was also no evidence that the information contained in Ian's claim forms that appeared on pages 1 and 2 of bundle B was fraudulent. In other words, there was no evidence that Ian claimed for trips that he did not take. The only argument was that Ian's claim form was signed by Babita who was not his immediate superior. There is therefore no legal basis upon which inconsistency can be alleged in this matter. In *Southern Sun Hotel Interests (Pty) Ltd v CCMA (2010) 31 ILJ 452 (LC)* it was held that a claim of inconsistency must satisfy both a subjective and an objective element. Subjectively, the Respondent has to know of the misconduct allegedly committed by the employee used as a comparator, whereas objectively the comparator must be a similarly circumstanced employee subjected to different treatment. Magda and Ian are not similarly circumstanced like the Applicant.

They did not submit any fraudulent claim forms to the Respondent. The court added that an employee cannot profit from an employer's manifestly wrong decision in the name of inconsistency. In the circumstances, the Applicant's inconsistency argument stands to fail.

As far as charge 4 is concerned, I find that the Respondent failed to prove on a balance of probabilities that the Applicant was grossly insubordinate as alleged in the charge. My main (but not only) reasons for this finding are set out hereunder.

Ian testified that the process that culminated in the Respondent's decision to laterally transfer the Applicant was initiated in July 2010 as a result of a disagreement that arose between the Applicant and Ian. It is common cause that on 17 August 2010 the Respondent addressed a letter to the Applicant in which she was requested to choose three (3) directorates in her order of preference for lateral transfer from Ian's office. It is common cause that the Applicant refused to be transferred. It is also common cause that the Respondent consulted the Applicant and NEHAWU about the Applicant's lateral transfer from Ian's office to the directorate facility management with effect from 1 September 2010. The reasons for the Applicant's transfer are not immediately apparent from the documents placed in evidence before me by the Respondent. Neither are the details of the consultation meetings. On 31 August 2010 the Respondent addressed a letter to the Applicant which simply stated that a decision had been taken to laterally transfer her (page 90 of bundle A). I therefore accept Ian's testimony that the decision to laterally transfer the Applicant was taken as a result of the disagreement between her and Ian.

It is trite that the Respondent has authority to transfer an employee from one position to another or from one area to another. In *Simelela and Others v Member of the Executive Council for Education, Province of the Eastern Cape and Another (2001) 22 ILJ 1688 (LC)*, the Labour Court stated that "in addition to fair administrative action, the State employees are afforded a constitutional right to fair labour practices. Although the unfair transfer of an employee is not catered for expressly in the Labour Relations Act, an employee is not precluded from relying directly on the Constitution to enforce his or her right not to be subjected to unfair labour practices. A decision to transfer an employee without prior consultation amounts to unfair labour practice."

Section 14 of the Public Service Act 103 of 1994 permits the transfer of an officer or an employee "when the public interest so requires". In *Nxele v Chief Deputy Commissioner, Department of Correctional Services (2008) 12 BLLR 1179 (LAC)* the Labour Appeal Court held that by implication, a transfer is not permissible when the public interest does not so require.

The Public Service Act 103 of 1994 does not define "the public interest". This gives rise to different interpretations. The Courts have attempted in several cases to define what is meant by the term.

In *Rail Commuter Action Group and Others v Transnet Ltd trading as Metro Rail and Others (2003) 3 BCLR 288 (C)*, the Cape Town High Court stated:

"In our view this narrow definition of public interest is inappropriate within the context of the present dispute. While the term 'public interest' may not be capable of precise definition, the use of the phrase is, to our mind, designed to ensure that the first and second respondents adopt a policy which promotes the general welfare of the public which uses the public facility in question…"

In *Transnet trading as Metro Rail v Rail Commuter Action Group v Minister, Safety and Security (2003) (12) BCLR 1363 (SCA)* the Supreme Court of Appeal observed that the phrase by itself is not capable of clear and comprehensive definition.

Although the term “public interest” is not defined in the Public Service Act 103 of 1994 my view is that a transfer of an employee simply on the basis of a disagreement with another employee cannot be in the public interest as envisaged. In *Saloojee v McKenzie N.O. and Others (2005) 26 ILJ 330 (LC)* the Labour Court held that the transfer of an employee for ulterior reasons was unlawful. The Respondent’s decision to laterally transfer the Applicant on the basis of a disagreement between her and Ian was not in the public interest as required by the Public Service Act 103 of 1994 and was therefore unlawful in the circumstances. In *MEC, Department of Roads and Transport, Eastern Cape & another v Giyose (2008) 29 ILJ 272 (E)*, it was held that the common law contract of employment must be developed under the Constitution to include not only the right to a pre-transfer hearing for a public employee but also the right to challenge the reasons for the transfer. It is not in dispute that the Applicant challenged the reasons for her transfer by declaring and referring a dispute to the Council. It is also not in dispute that at the time of her dismissal by the Respondent the dispute was still *sub judice*. The Applicant’s refusal to obey the Respondent’s instruction to laterally transfer her did not constitute insubordination (let alone gross insubordination) because the instruction was unlawful and the dispute was still *sub judice*.

I have found that the Respondent proved on an balance of probabilities that the Applicant breached the rule in respect of charges 2 and 3. I now proceed to consider whether or not the dismissal of the Applicant was an appropriate sanction. In other words, was the Respondent’s decision to dismiss the Applicant fair in the circumstances?

In deciding whether dismissal is an appropriate sanction for an act of serious misconduct, the test is whether the misconduct renders the continuation of the employment relationship intolerable. In the landmark decision of *Sidumo v Rustenburg Platinum Mines Ltd (2007) 12 BLLR 1097 (CC)*, the Constitutional Court, per Ncgobo J, held that "fairness requires that regard must be had to the interests both of the workers and those of the employer. And this is crucial in achieving a balanced and equitable assessment of the fairness of the sanction."

In evaluating the fairness of the sanction it must, in my view, be borne in mind that the Applicant submitted fraudulent claim forms to the Respondent on two separate occasions although she was dismissed for only one of those occasions. The Applicant's actions of submitting fraudulent claim forms entailed a high degree of dishonesty. Had she not been caught out she probably would have continued to submit such fraudulent claim forms. The Applicant's actions should further be viewed against the fact that she occupied a senior position which requires her to be honest. The question which needs to be answered is whether or not her conduct impacted on her employment relationship in such a way that her actions resulted in the breakdown of the trust relationship between her and Respondent.

Trust is considered to be an important element of the employment relationship whether or not the employee is employed in private business or within the public sector. In *Miyambo v CCMA & others (2010) 10 BLLR 1017 (LAC*), the Labour Appeal Court held that "It is appropriate to pause and reflect on the role that trust plays in the employment relationship. Business risk is predominantly based on the trustworthiness of company employees. The accumulation of individual breaches of trust has significant economic repercussions. A successful business enterprise operates on the basis of trust."

In *De Beers Consolidated Mines Ltd v CCMA & others (2000) 9 BLLR 995 (LAC)* the Labour Appeal Court held that "dismissal is not an expression of moral outrage; much less is it an act of vengeance. It is, or should be, a sensible operational response to risk management in the particular enterprise. That is why supermarket shelf packers who steal small items are routinely dismissed. Their dismissal has little to do with society's moral opprobrium of a minor theft; it has everything to do with the operational requirements of the employer's enterprise."

Dishonesty is also viewed in a serious light by the Labour Court. The Labour Court has come to the conclusion in most instances that dishonesty, once established, is deleterious of the trust relationship (see for example *Hoch v Mustek Electronics (Pty) Ltd (2000) 21 ILJ 365 (LC)*; *Kalilk v Truworths (Gateway) & Others (2007) 28 ILJ 2769 (LC)*).

In the *De Beers Consolidated Mines Ltd* decision referred to above Conradie JA in a minority judgment held that where an employee shows no remorse that would be a factor in coming to a conclusion that the trust relationship cannot be mended. It was held that "It would in my view be difficult for an employer to re-employ an employee who has shown no remorse. Acknowledgment of wrongdoing is the first step towards rehabilitation. In the absence of a recommitment to the employer's workplace values, an employee cannot hope to re-establish the trust which he himself has broken. Where, as in this case, an employee, over and above having committed an act of dishonesty, falsely denies having done so, an employer would, particularly where a high degree of trust is reposed in an employee, be legitimately entitled to say to itself that the risk of continuing to employ the offender is unacceptably great."

In *Hulett Aluminium (Pty) Ltd v Bargaining Council for the Metal Industry & Others (2008) 3 BLLR 241 (LC)* the Labour Court held that "…the presence of dishonesty tilts the scales to an extent that even the strongest mitigating factors, like long service and a clean record of discipline are likely to have minimal impact on the sanction to be imposed. In other words whatever the amount of mitigation, the relationship is unlikely to be restored once dishonesty has been established in particular in a case where the employee shows no remorse. The reason for this is that there is a high premium placed on honesty because conduct that involves corruption by the employees damages the trust relationship which underpins the essence of the employment relationship."

In the present matter the Applicant made herself guilty of dishonesty conduct by submitting fraudulent claim forms from which she benefitted financially to the Respondent's detriment. The Applicant falsely denied having defrauded the Respondent and showed no remorse whatsoever for her actions. What made matters worse was the Applicant's feeble attempt to shift blame from herself and seek to blame Babita, Magda and Ian for her conduct. The Applicant falsely implicated Babita, Magda and Ian in a plot to entrap her to justify her actions, which trap she dismally failed to prove. I therefore find that the Respondent's decision to dismiss the Applicant was substantively fair in the circumstances of this matter.

PROCEDURAL FAIRNESS

Strictly speaking, no employee may be dismissed without a hearing being held first. The principle of *audi alteram partem* ("listen to the other side") must always be observed when a decision to dismiss an employee is being considered. This principle is a cornerstone of our labour law. Over the years, this tenet has been reinforced by both the courts and arbitrators. In the words of judge De Klerk in *CAN (Pty) Ltd vs CCAWUSA and Another (1991)* "nobody may condemn another without having listened to the accused and without having given him an opportunity to defend himself."

Although the *audi alteram partem* principle forms the cornerstone of our labour law, our labour law also recognizes that an employer is entitled to proceed with a hearing *in absentia* (in the absence of an employee) if an employee refuses or fails to attend or participate in the hearing without good cause.

In *Old Mutual Life Assurance Co SA Ltd v Gumbi (2007) 4 All SA 866 (SCA)* the Supreme Court of Appeal, per Jafta JA, held that "the right to a pre-dismissal hearing imposes upon employers nothing more than the obligation to afford employees the opportunity of being heard before employment is terminated by means of a dismissal. Should the employee fail to take the opportunity offered, in a case where he or she ought to have, the employer's decision to dismiss cannot be challenged on the basis of procedural unfairness".

In the present case the Respondent had offered the Applicant a chance to defend herself against the allegations of misconduct which led to her dismissal. It is common cause that on 21 October 2010 the Applicant was properly notified on of the date, time and venue of the disciplinary hearing to take place on 29 October 2010. It is also common cause that the disciplinary hearing scheduled for 29 October 2010 was postponed after NEHAWU brought an application for postponement on the ground that the Applicant could not attend due to ill-health. It is also common that the Respondent informed NEHAWU of the rescheduled date of the disciplinary hearing. It is also common cause that the Applicant and/or NEHAWU failed to attend and the disciplinary hearing proceeded in their absence.

The Applicant argued that the Respondent failed to notify her of the rescheduled date of the hearing. Mr Erico Honnorat argued on behalf of the Applicant that the Respondent was obliged to personally notify the Applicant of the disciplinary hearing because "a disciplinary inquiry is not a court of law where a party has indicated that notices and documents should be served on a professional firm of legal practitioners and their like" and the fact that the Applicant was contingently compelled to use NEHAWU as an "intermediary" in no way justified the Respondent's departure from the requirement of communicating directly with the Applicant.

There can be no dispute that the Respondent had an obligation to notify the Applicant of the disciplinary hearing. The Respondent discharged that obligation when the Applicant was served with the notice to attend a disciplinary hearing on 21 October 2010. After the Respondent served the notice on the Applicant, the latter appointed NEHAWU to represent her during the disciplinary hearing. The Applicant further informed NEHAWU (and not the Respondent) of her inability to attend the disciplinary hearing due to ill-health. NEHAWU represented the Applicant during the disciplinary hearing that took place on 29 October 2011 and requested postponement thereof on her behalf. The Respondent then correctly communicated the rescheduled dates with NEHAWU.

The Respondent had no obligation to communicate rescheduled dates directly with the Applicant since the postponement application was brought by NEHAWU on the Applicant's behalf and not by the Applicant herself. That obligation fell squarely on NEHAWU as the Applicant's representatives. Resolution 1 of 2003, which generally governs disciplinary proceedings for public service employees, provides that the Applicant had a right to be represented. Section 200 of the LRA also provides that NEHAWU may act in its own interest; on behalf of the Applicant; or in the interest of the Applicant in any dispute that the Applicant is a party. Contrary to Mr Enrico Honnorat's argument, NEHAWU acted as the Applicant's representatives and not as an "intermediary". If NEHAWU did not communicate rescheduled dates with the Applicant that is a matter that the Applicant can take up with NEHAWU. The Respondent cannot take the blame for NEHAWU and/or the Applicant's tardiness. The Respondent played its part and gave the Applicant an opportunity to be heard and the Applicant has, without just cause, failed to take that opportunity. I therefore find that the Applicant's dismissal by the Respondent was procedurally fair in the circumstances of this case.

6. AWARD

I make the following award:

6.1. The dismissal of the Applicant by the Respondent was both substantively and procedurally fair.

6.2. The dismissal of the Applicant by the Respondent is upheld and the Applicant's claim of unfair dismissal is dismissed.

6.3. I make no order of costs.

Panelist: **James Matshekga**
Sector: **Public Health & Welfare**