



**PHSDSBC**

PUBLIC HEALTH AND SOCIAL DEVELOPMENT  
SECTORAL BARGAINING COUNCIL

# ARBITRATION AWARD

Case Number: **PSHS528-12/13**

Commissioner: **Mangisi Mrwebi**

Date of Award: **18 September 2014**

In the **ARBITRATION** between:

**Zolile Meve**

(Applicant)

And

**The Department of Health- Eastern Cape**

(Respondent)

**Union/Applicant's representative: In person**

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## **DETAILS OF THE HEARING AND REPRESENTATION**

1. This arbitration came before me in terms of section 191(5) of the Labour Relations Act No 66 of 1995, as amended (the Act).
2. It was heard on 14 October 2013 at Marjorie Parish TB Hospital in Port Alfred.
3. The applicant attended in person and was not represented.
4. The respondent was represented by Mr. D May from the respondent's Labour Relations Directorate.
5. The parties agreed to submit their written closing arguments on 27 August 2014.

## **PRELIMINARY ISSUES**

6. The parties did not raise any preliminary issues.

## **ISSUE TO BE DECIDED**

7. I am required to determine whether the sanction meted out against the applicant by the respondent at the appeal hearing constituted an unfair labour practice within the meaning of section 186(2)(b) of the Act. If I find that it constitutes an unfair labour practice I must determine the appropriate remedy in terms of the Act.
8. I have considered all the evidence and argument, but because the Act 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.

## **BACKGROUND TO THE ISSUE**

9. Prior to this dispute the applicant was employed by the respondent as the Hospital Manager at Marjorie Parish TB Hospital in Port Alfred.
10. The applicant was charged and found guilty of charges relating to assault of a fellow employee. It was recommended that the applicant be suspended for three months without pay as an alternative to dismissal. This recommendation was changed by the respondent's Superintendent General (SG) to a dismissal.
11. The applicant appealed to the Executing Authority against the dismissal sanction. On appeal the dismissal was substituted with suspension for three months without pay and a final written warning valid for six months.
12. The applicant challenges that the final sanction constituted an unfair labour practice.

## **SURVEY OF ARGUMENT AND EVIDENCE**

### **Submissions by the Applicant**

**The Applicant submitted two bundles of documents marked as the "Employee Bundle A" and "B". He called six witnesses in support of his case.**

### **The Applicant**

13. The applicant joined Marjorie Parish Hospital in 2000. This hospital was then not under the Government. It was run by SANTA, an NGO. In April 2005 the hospital was taken over by Government as a going concern.
14. The applicant testified that he continued working at this hospital until February 2012 when he was transferred. Owing to the transfer issue he was refused entry at the hospital. He was moved to Makana on 29 May 2013.
15. The applicant stated that his case was based on an unfair labour practice that involved a disciplinary sanction short of dismissal. He was charged and found guilty of charges relating to assault. The SG recommended that the applicant should be dismissed. On appeal this was substituted with a suspension for three months without pay and a final written warning valid for six months.
16. The applicant testified that from the beginning there was no proper investigation of the assault incident as envisaged in the respondent's Disciplinary Code and Procedure and Resolution 1 of 2003 (Amendments to Resolution 2 of 1999: Disciplinary Code and Procedures for the Public Service).
17. Furthermore, he stated during the disciplinary hearing the chairman failed to apply his mind to the facts before him. He maintained that he did not assault the complainant: Mr. Zozi.
18. The applicant's version was that on the day in question Mr. Zozi conducted himself in an unbecoming manner while the applicant was busy with a community member; Mr. Joe Mngaka. Mr. Zozi without appointment went into his office ignoring his Personal Assistant (PA).
19. He testified that Mr. Zozi started shouting at him. Mr. Zozi was apparently under the influence of alcohol. Mr. Mngaka stood up and enquired from Mr. Zozi whether he had an appointment with the applicant. Mr. Mngaka escorted Mr. Zozi out of the applicant's office.
20. The applicant testified that Mr. Mngaka did not assault Mr. Zozi.
21. The applicant testified that he heard a loud noise and people screaming. When he went out she heard from Ms. Siyasanga Dayile that Mr. Zozi was threatening to assault other employees.
22. The applicant further testified that he reached for Mr. Zozi and took him out of the building. While going back to his office he heard another commotion. It was Mr. Zozi fighting with Mr. Ntlokwana. He decided to call police. While contemplating this he heard that Mr. Zozi had been taken away by members of the Anti-Crime Unit. The security guards at the gate informed him that Mr. Zozi had been taken to the police station and detained for four hours.
23. The applicant submitted that on 10 December 2010 Mr. Zozi's group, in a meeting, alleged that the applicant had assaulted Mr. Zozi. In particular it was the then matron Ms. Mngunyana who was saying this. Ms. Mngunyana threatened that this was going to be reported in the press hence the article in the Daily Dispatch of 13 December 2010.
24. The applicant as a result of these developments was charged with assaulting Mr. Zozi. Mr. Zozi further laid criminal charges against the applicant for assault.
25. He further testified that prior to his disciplinary hearing Mr. Zozi came to him and apologized for alleging that the applicant assaulted him and further for the Daily Dispatch article. Mr. Zozi further indicated to the applicant that he was going to withdraw the assault charges against the applicant.
26. The applicant submitted that when Mr. Zozi denied this meeting during the disciplinary hearing, the tape recording of the conversation where Mr. Zozi made these statements was played.

27. He further submitted that the criminal charges against him were withdrawn for lack of evidence.
28. The applicant further testified that the injuries that Mr. Zozi had at the time of this incident were as a result of an assault he sustained at his girlfriend's place in Alexandria. Mr. Zozi had reported the incident to his supervisor: Mr. David Wili and Unathi Mpongo.
29. He was surprised that despite all this evidence presented during his disciplinary hearing the chairman still found guilty of assaulting Mr. Zozi. He maintained that he did not assault Mr. Zozi.
30. He further submitted that Mr. Mngqaka was willing to come and testify in his disciplinary hearing but was threatened by Mr. Zozi's group. Fearing for his life he could not attend.
31. The applicant further submitted that his disciplinary hearing was concluded sometime in November 2011 but he only received the outcome in May 2012. He was not called to testify and also to submit mitigating circumstances. He denied the suggestion by the chairman that he willfully did not testify.
32. He received the dismissal letter. He found it strange why the chairman's sanction of three months suspension without pay was changed by the SG to a dismissal. He appealed to the Executing Authority and this was substituted with a suspension for three months without pay and a final written warning valid for six months.
33. He further challenged that the respondent was not consistent. In the case of Ms. Mngunyana who was found guilty of gross insubordination and was dismissed; Ms. Mngunyana appealed to the Executing Authority. She was transferred to another institution as if she had done nothing. He also referred to Mr. Zozi's case wherein Mr. Zozi was issued with three months suspension without pay for absenteeism from work. The suspension was lifted and no further sanction was imposed.
34. He further testified that as a result of the unfair conduct of the respondent he lost almost R120 000.00 as result of the three months suspension without pay.
35. Under cross examination it was put to the applicant that it was his duty to secure the attendance of his witness; Mr. Mngqaka.
36. Furthermore it was put to the applicant that the matter was in deed investigated prior to the disciplinary hearing. The applicant was referred to his letter dated 12 August 2011 in which he acknowledged receipt of the investigation report of the incident in question. However, the applicant responded that the investigation was flawed in that some of the eyewitnesses were not interviewed.
37. It was further put to the applicant that he was not cooperating with the investigation maintaining that he was innocent. It was further stated that the District Manager in Port Elizabeth tried to persuade the applicant to cooperate with the investigation but the applicant maintained that he had submitted grievances and these were not attended to. He found it strange why Mr. Zozi's matter was so hurriedly pursued.
38. It was put to the applicant that Mr. Zozi filed a complaint that he was assaulted by the applicant. The letter reads as follows (verbatim)

*Statement of assault*

*"I Bonisile Felix Zozi would like to state that on the 6<sup>th</sup> of December 2010 was assaulted by Mr. Meve who is the Hospital Manager at Marjorie Parish TB Hospital in Port Alfred.*

*I came to his office to enquire about my end of November salary which I did not receive without any explanation.*

*He said I must wait for him because he is still in the meeting. I went to HR Office to request a leave credit receipt and also a statement of salary. There I was told wait. As I was approaching the door off HR Office, he (Mr. Meve) came by the door and he too clap me in the face, took me outside and he kicked me and I fell down. He again kicked me while I was down.”*

39. The respondent's representative further submitted that Mr. Zozi again raised the issue with the office of the District Manager on 6 January 2011 after he was threatened and insulted by fellow employees. He reported the matter to the applicant in his capacity as the Hospital Manager. The applicant did not act on the matter.
40. The applicant's response was that the matter was not related to the incident in question.
41. It was further put to the applicant that as the Hospital Manager why he did not charge Mr. Zozi for reporting to work under the influence of alcohol. The applicant responded that because of constant interference by the District Office officials he referred the matter to the Head Office.
42. The applicant further testified that Mr. Zozi had conceded that he was drunk on the day in question. He also submitted that the people from the Anti-Crime Unit would also confirm that he was drunk.
43. It was further put to Mr. Meve that the National Prosecuting Authority (the NPA) was reinstating the criminal charges against the applicant. A letter from the NPA in this regard was tendered as evidence. The applicant conceded that he was not aware.

**Ms. Ntombekhaya Ncanywa**

44. The witness works at Marjorie Parish TB Hospital as the Client Information Clerk. She joined the hospital on 1 December 2004.
45. She testified that at the time of the incident on 6 December 2010 she was the Personal Assistant (the PA) in the office of the Hospital Manager. She stated that on that day she received a call from a gentleman who was shouting: Mr. Meve... Mr. Meve... The person suddenly dropped the phone.
46. After approximately two minutes of the telephone call Mr. Zozi entered the applicant's office without knocking. At the time the applicant was with a community member; Mr. Joe Mngaka. The witness heard Mr. Zozi saying "I am here."
47. After some few minutes the witness saw Mr. Mngaka escorting Mr. Zozi out of the applicant's office saying Mr. Zozi should respect the office of the Hospital Manager.
48. The witness further testified that Mr. Zozi appeared to be under the influence of alcohol. This was not his normal behavior.
49. Under cross examination the witness confirmed that she did not know why Mr. Zozi visited the applicant's office.

**Ms. Siyabonga Dayile**

50. The witness is employed as the Human Resources Clerk at Marjorie Parish TB Hospital. She has been with the hospital since 20 January 2009.

51. She testified that on 6 December Mr. Zozi visited the HR offices enquiring about his leave print-out. At the time Mrs. Meve was still on phone and witness asked him to wait. Mr. Zozi threatened and insulted the witness. He smelt alcohol.
52. Mr. Zozi left. In no time the witness heard noise and saw the applicant taking Mr. Zozi out the building.
53. The witness testified that he did not see the applicant assaulting Mr. Zozi.
54. Under cross examination the witness submitted that even though there was noise outside she did not see the applicant assaulting Mr. Zozi.

**Mr. Gideon Ntlokwana**

55. The witness is the Senior Foreman: Maintenance at Marjorie Parish TB Hospital. He has been with the hospital since October 1996.
56. He testified that on the day in question he was alerted to the commotion with Mr. Zozi by the security guard. When he found Mr. Zozi he noticed that he was excessively drunk. Mr. Zozi was staggering. Together with the security guard they took Mr. Zozi to the Administration block.
57. On the way out of the Administration block the witness picked up a brown envelope. Mr. Zozi claimed that it was his and started swearing at the witness that should he open it he would kick him.
58. He testified that the applicant and Mr. Tshem did not assault Mr. Zozi on the day in question.
59. Under cross examination it was put to the witness that the applicant and Mr. Tshem assaulted Mr. Zozi after he was brought back to Administration block from the matron's house where he had taken refuge (from further assault).
60. The witness denied the allegations.

**Mr. Themba Tshem**

61. The witness is employed as a general worker in the maintenance section at Marjorie Parish TB Hospital. He has been with the hospital since December 2004.
62. Mr. Tshem testified that on the day in question he saw Mr. Zozi in front of the applicant. Mr. Zozi was shouting and swearing at the applicant. The security guards came and took Mr. Zozi away.
63. Then the witness saw the scuffle between Mr. Zozi and Mr. Ntlokwana about a brown envelope. Mr. Zozi tried to kick Mr. Ntlokwana but missed him instead kicking the witness. The witness testified that Mr. Zozi was drunk on the day in question.
64. He further testified that the applicant did not assault Mr. Zozi.

**Mr. Vukile Thembani**

65. Mr. Thembani is the Chief of the Anti-Crime Unit. He testified that on the day in question he received a telephone call that there was trouble at the hospital.
66. Together with his team he went to the hospital to attend to the problem. He found out that the problem was caused by Mr. Zozi who was under the influence of alcohol at the time. He tried to talk to him but he would

not listen. His team members took Mr. Zozi out of the hospital premises. He was taken to the police station in one of the Anti-Crime Unit's vehicles.

67. The witness testified that the applicant was called to the police station. Mr. Zozi pleaded with the applicant not to lay criminal charges against him.
68. The witness further testified that Mr. Zozi had visible marks suggesting that he had been assaulted. He stated that the Anti-Crime Unit members did not assault Mr. Zozi. Furthermore, he did not see the applicant assaulting Mr. Zozi.
69. The witness stated that on the day in question he only saw the applicant at the police station. Mr. Zozi apologized to the applicant for the nuisance he made at the hospital.
70. Under cross examination it was put to the witness that the members of the Anti-Crime Unit further assaulted Mr. Zozi on the day in question. The witness denied that the members assaulted Mr. Zozi.
71. It was further put to the witness that according to Mr. Tshem's evidence Mr. Zozi was taken to the police station using the applicant's vehicle. The witness could not deny except to say any member of the Anti-Crime Unit would assist as the Unit did not own vehicles.
72. Asked about his relationship with the applicant, the witness testified that he was at some stage the board member of the hospital. That was prior to the incident in question.

### **Mr. Bright Nzima**

73. Mr. Nzima is employed by the respondent at Port Alfred hospital. He represented the applicant in the disciplinary hearing.
74. He testified that at the commencement of the disciplinary hearing they complained that the incident in question was not investigated as was contemplated in the respondent's Disciplinary Code and Procedure.
75. He further testified that the applicant did not testify in the hearing because the chairman had advised him that there was no need as he had cross examined the respondent's witnesses.
76. He further testified that the applicant was not given enough time to prepare his mitigating circumstances. The chairman gave them few minutes which were tantamount to a refusal to present the mitigating circumstances.
77. He further submitted that there was substantial delay in presenting the outcome of the disciplinary hearing. The hearing was finalized in November 2011 but the outcome was only received in May 2012.
78. He also found it strange that the SG interfered with the chairman's recommended sanction. It was only on appeal that the respondent reverted to the chairman's primary sanction.
79. He further submitted that even the appeal outcome was issued long after the stipulated thirty days. This was not in accordance with the respondent's Disciplinary Rules and Procedure.
80. It was put to the witness that the applicant was afforded an opportunity to testify but he elected not to testify. The witness denied the statement maintaining that he was not afforded the opportunity.

### **Submissions by the Respondent**

**The respondent's representative submitted a bundle of documents marked as the "Employer Bundle B". He called four witnesses in support of the respondent's case.**

**Ms. Yaziwe Beatrice Jiki**

81. The witness is employed at Marjorie Parish TB Hospital as an Assistant Nurse. She joined the hospital on 1 January 1989.
82. She testified that on 2 December 2010 she was from the ward to the kitchen when she saw the administration staff members standing outside the and there was somebody lying down. The applicant's foot was on the chest of the person. At that stage she did not know the person.
83. The witness went back to the ward and informed other nurses about what was happening. The group went outside to witness the incident. As she came from the MDC ward she saw Mr. Vukile Thembani from the Anti-Crime Unit with another person; Vukile. The latter had a knobkerrie in his hand. They were coming from the Administration block
84. The witness saw Mr. Thembani holding Mr. Zozi him towards the gate. At the same time Mr. Thembani was assaulting Mr. Zozi with a knobkerrie and the patients were crying that he should not kill him.
85. The witness testified that after seeing Mr. Thembani holding Mr. Zozi she realized that this was the person whom the applicant had put his foot on his chest.
86. Under cross examination the witness submitted that the applicant was the one who put his foot on Mr. Zozi's chest. This incident happened at the veranda in front of the Administration block. He also saw Mr. Thembani holding Mr. Zozi by the neck.

**Mr. Bonisile Felix Zozi**

87. Mr. Zozi joined the hospital on 1 November 2007 as a porter. He testified that on 6 December 2010 he went to the Administration block to speak to his supervisor about his salary which was not paid in November 2010.
88. He testified that since he was under financial pressure he decided to go the applicant's office. He came to the applicant's PA who informed him that the applicant was still busy with another person.
89. He peeped through and the applicant informed him to wait for ten minutes, he would meet him. In the meantime the witness decided to go to HR for his salary advice from Siya. The latter told him that to go Mrs. Meve, the applicant's wife for the salary advice. Mrs. Meve asked the witness to wait. He insisted that the matter was rather urgent but Mrs. Meve told him that was not his (Mr. Zozi's) hospital.
90. The witness complained that each time he wanted something from her it was difficult to get it. The witness testified that as he was Mrs. Meve he found the applicant standing in front saying "hey kwedini (this is an indication that he was addressing a young boy)you came to make trouble here". The witness explained that came for his salary advice.
91. He testified that the applicant grabbed him by the chest (T-Shirt) and threatening him. The applicant eventually clapped him on the face with an open hand. He further manhandled him outside the Administration block to the veranda.
92. The witness further testified that the applicant further tripped him and he fell down. His brown envelope fell. The applicant continued to kick him on the ribs and put his foot on his chest saying he would kill him. The

witness was crying for help all this time. The Administration staff members namely: Siya; Bomoyi and Ms. Ntlokwana witnessed this incident.

93. He further testified that as he tried to get hold of his brown envelope, Mr. Ntlokwana wrestled this from him. Mr. Ntlokwana further clapped him with the back of his hand. The applicant witnessed this incident and he failed to intervene.
94. The witness decided to leave the envelope and rescue himself by going to the police. While leaving, Mrs. Meve and Mrs. Ntlokwana pelted him with stones. He ducked and dived and as a result the stones missed him.
95. He further testified that as he reached the gate the security guard closed the gate saying he received the instructions from the applicant. He ran to the matron's house in order to phone the police. While still here Mr. Ntlokwana and Mr. Tshem arrived saying the applicant wanted to meet with him. He enquired whether the applicant wanted to beat him again.
96. He decided to go with them to the boardroom. He was locked inside. He testified that approximately after fifteen minutes Mr. Thembani and his team (of four gentlemen) arrived and asked why he was making trouble at the hospital. Mr. Thembani beat him with a knobkerrie and the rest of the team started assaulting him. They took him outside the Administration block. The patients and other staff members were crying. Mr. Thembani chased the patients away calling the witness "uyinja" (meaning he was a dog).
97. The witness was taken outside the hospital premises. Mr. Thembani phoned Mrs. Meve to bring her vehicle. He was taken to the police station by the applicant's son. At all this time the mob continued to assault him. At the police station Mr. Thembani reported that the witness was making nuisance at the hospital. It was only then that the Anti-Crime Unit team left.
98. He was later released. He laid a criminal charge against the applicant; Mr. Ntlokwana and the Anti-Crime Unit members. He later went to the hospital and a J88 (a form with details of injuries filled by the treating doctor). His face was swollen and his arms were bruised. He also had scratch marks on his chest.
99. The witness testified that it was not true that he begged the applicant not to lay criminal charges against him. He further denied that he was drunk on the day in question.
100. He stated that the incident was even reported in the Daily Dispatch of 13 December 2010. He testified that his relationship with the applicant was already not good when this incident occurred.
101. He further submitted that the incident was investigated by the respondent. Mr. Warren Petersen together with another gentleman came down to interview him.
102. During May 2013 the witness received communication from the NPA that the NPA has decided to charge the applicant and others. The criminal charges were earlier withdrawn under the guise that the witness had forgiven the applicant. The issue was investigated and it was found not to be so. The charges were reinstated.
103. Under cross examination the witness was asked when the assault commenced exactly. He responded that the applicant beat him whilst still inside the Administration block. He continued again outside the building.
104. The witness as asked the details of the assault. The witness responded that the applicant handled him by the neck; clapped him on the face; tripped him on the veranda and put his foot on his chest.

105. He further testified that he suffered a swollen face; bruises from falling and sore ribs. He also conceded that he was assaulted in Alexandria but this was long time ago in September 2010. He sustained injuries at the back then because he was beaten with a brick and he reported this to his supervisor.
106. Under cross examination the witness submitted that Mr. Tshem; Mr. Biva and Mr. Pasenjara witnessed the assault.
107. The applicant denied that he assaulted the witness. The witness maintained that the applicant assaulted him. He however could not say whether Mr. Themhani and his team were instructed by the applicant to assault him. he further denied that he was drunk on the day in question.
108. The applicant put to the witness that he apologized to him for the nuisance he caused at the hospital. The witness denied the statement.

### **Mr. Mbuyiselo Pasenjara**

109. The witness testified that on the day in question he had a trip to Bhisho. While preparing to leave he saw Mr. Zozi coming from the direction of the kitchen to the Administration block. He later heard a noise from the Administration block. When he looked he saw the applicant holding Mr. Zozi by the collar of his T-shirt dragging him out of the Administration block.
110. At the veranda the applicant tripped Mr. Zozi and the latter fell to the ground. The applicant continued to kick and put his foot on Mr. Zozi's chest. He also witnessed the scuffle about the brown envelope which Mr. Ntlokwana and Mr. Zozi were wrestling about. Papers were strewn down.
111. Under cross examination the witness maintained that he saw Mr. Zozi held by the neck by the applicant. This was after he heard noise and Mr. Zozi was asking why the applicant was beating him.
112. The applicant denied that he dragged; kicked and put his foot on Mr. Zozi's chest. The witness testified that he saw the incident.
113. The witness submitted that he removed the vehicle after realizing that Ntlokwana had bricks and stones in his hands. He feared for the safety of the vehicle.
114. It was put to the witness that he was implicating the applicant because he was a friend to Mr. Zozi. The witness responded that he was testifying on what he saw on the day in question.

### **Mr. Mente Molo**

115. Mr. Molo was the chairman in the applicant's disciplinary enquiry. He now works for the Treasury Department in Bhisho. At the time of this disciplinary hearing he was seconded to the respondent.
116. In this particular matter he testified that the applicant was represented by a shop steward (Mr. B Nzima) from NEHAWU.
117. He stated that between 1996 and 2001 he worked in the HR section in particular he handled labour relations matters.
118. He testified that he has vast experience in chairing disciplinary enquiries. He elaborated on the procedure to follow when conducting a disciplinary hearing in the public service.

119. He further testified that prior to this disciplinary he did not know the applicant. He had no personal issues with him.
120. He further stated that he advised that the applicant was not forced to testify but that could have serious implications (adverse). It was not true that he advised the applicant not to testify. He also vehemently denied that the applicant was denied the opportunity to put his case in the disciplinary hearing.
121. He referred to his report on page 8 of 11 paragraph wherein the witness wrote: *"He was warned of the prejudice or negative inference that can be drawn against him should he exercise his right not to testify and provide the parties an opportunity to have a balanced view."*
122. The witness conceded that the investigation of the incident was not perfectly done hence he meted out a sanction short of dismissal in the circumstances. This acted as a mitigating factor on behalf of the applicant.
123. The applicant put to the witness that he did not testify because the latter advised him that there was no need if he was satisfied with the evidence of the witnesses. The witness denied this saying he warned the applicant about the implications of not testifying.
124. The applicant submitted that it took almost from November 2011 till May 2012 to receive the outcome of the disciplinary hearing. The witness submitted that after finalizing the outcome he sent the report to the Senior Manager: Labour Relations (Mr. Mganu) as he was appointed by him.
125. The applicant further challenged that the witness only gave them ten minutes to submit their closing arguments. The witness responded that that would be so if they had e-mailed their closing arguments as he requested them to do. After that the witness pronounced the verdict: that the applicant was guilty of assault. He thereafter gave the applicant ten minutes to prepare his mitigating circumstances.
126. In this particular matter he testified that the applicant was represented by a shop steward (Mr. B Nzima) from NEHAWU.

## **ANALYSIS OF EVIDENCE AND ARGUMENT**

127. In these proceedings the applicant challenged that the final sanction that he received pursuant his disciplinary hearing constituted an unfair labour practice as contemplated in the Act.
128. The applicant was issued with a dismissal after he was found guilty of assaulting a fellow employee; Mr. Zozi. This sanction was overturned on appeal and she was suspended for three months without pay and also issued with a final written warning valid for six months. As a result of this the applicant lost approximately R120 000.00 in lost wages.
129. In unfair labour practice disputes the applicant bears the onus of proving his case. In the present matter the applicant called six witnesses.
130. All the applicant's witnesses denied that the applicant assaulted Mr. Zozi whereas the respondent's witnesses who witnessed the incident all corroborated each other in that they saw the applicant, in particular, having his foot on Mr. Zozi's chest.
131. Mr. Pasinjara who was the eyewitness on the incident testified that some of the patients together with some staff members were crying saying they must not kill Mr. Zozi.
132. Mr. Zozi himself painted a very painful scene where at some stage he was concerned that he would be killed. This alone suggests that the extent of the assault was severe. He however could not ascribe all his

injuries to the applicant. The evidence of the applicant and his witnesses was not refuted by the applicant except to deal with irrelevant issues during cross examination.

133. His witnesses were not consistent in their evidence as to what happened on the day in question. They denied being present when this incident took place. Some of their testimony did not have a bearing on the assault charges which the applicant faced.
134. For example Ms. Ncanywa only testified on Mr. Zozi entering the applicant's office without first seeking permission from her as the PA to the applicant. Likewise Mr. Tshem only observed the scuffle between Mr. Zozi and Mr. Ntlokwana and not between the applicant and Mr. Zozi.
135. From the evidence before me it is clear that the applicant together with the Anti-Crime Unit members assaulted Mr. Zozi on the day in question. The fact that the applicant was a senior official acts as an aggravating circumstance in this matter.
136. Assault is a serious offence and our courts have long recognized that it is a dismissible offence. See the case of *Olivier v AECI Plofstowwe & Chemikaliee*, *Bethal (1988) 9 ILJ 1052 (IC)*.
137. In the present case the applicant was fortunate in that the dismissal sanction was overturned on appeal to suspension for three months without pay and a final written warning valid for six months.
138. The applicant has failed to discharge his onus of proving that the respondent's conduct constituted an unfair labour practice in the circumstances. .
139. In the circumstances, I make the following award:

## AWARD

140. I find that the sanction that was issued against the applicant by the respondent pursuant his disciplinary hearing did not constitute an unfair labour practice as contemplated in the Act.
141. The applicant is not entitled to any relief.
142. There is no order on costs.

Signature: \_\_\_\_\_

Commissioner: Mangisi Mrwebi