



**PHSDSBC**

PUBLIC HEALTH AND SOCIAL DEVELOPMENT  
SECTORAL BARGAINING COUNCIL

# ARBITRATION AWARD

Commissioner: **Gail McEwan**

Case No: **PSHS1289-17/18**

Date of award: **25 June 2018**

In the matter between:

**NEHAWU obo THENJIWE MAXHAM**

(Employee)

and

**DEPARTMENT OF HEALTH- WESTERN CAPE**

(Employer)

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## **PARTICULARS OF PROCEEDINGS AND REPRESENTATION**

(1) Arbitration was held on 8 May 2018 and concluded on 12 June 2018 at the Paarl Hospital. Present was Thenjiwe Maxham who was represented by Zamuxolor Mzinyati (NEHAWU). The Department of Health (DOH) (employer) was represented by Abraham Solomon (labour relations officer). The certificate of outcome declaring the matter unresolved at conciliation is on file and is dated 7 March 2018. Condonation for the late referral to arbitration was granted in a ruling dated 9 March 2018. These proceedings were digitally recorded and both parties handed in a bundle of documents. An Afrikaans / Xhosa interpreter was present.

## **THE ISSUE IN DISPUTE**

(2) I am required to determine on a balance of probabilities whether the dismissal of Maxham was fair. The issues in dispute were narrowed to: (i) The chair of the hearing never allowed certain evidence to be led; (ii) There had been no interpreter; (iii) The appeal authority was involved

in the initial disciplinary hearing; (iv) Inconsistency in that Dr. Kruger (previous CEO) allowed staff to email him directly; (v) Degrading comments were passed when Maxham had analysed a meeting she had with Dr. Louw (acting CEO); (vi) The sanction is too harsh given the twenty four years 'service of Maxham. Maxham is seeking retrospective re-instatement.

- (3) I have considered all the evidence and argument, but because the LRA requires brief reasons (section 138(7)), I have only referred to the evidence and argument that I regard as necessary to substantiate my findings and the determination of the dispute.

## **BACKGROUND TO THE DISPUTE**

- (4) Maxham started working for the employer on 1 April 1993; worked a senior administration officer at Paarl Hospital; earned a gross salary of R27 880.22 per month; worked five days per week and was dismissed on 31 July 2017. Maxham was charged as follows: (1) Misconduct in that on or about 8 and 9 February 2017 you exchanged emails with the acting chief executive officer (CEO) of Paarl Hospital, Dr. Jacobus Louw, and two other management members wherein you repeatedly made comments of a disrespectful, rude, insulting and degrading nature directed at the integrity of the CEO. Your behaviour is unacceptable and viewed as you being grossly insubordinate and (2) Misconduct in that you made comments in email correspondence on 8 and 9 February 2017 to acting chief executive officer at Paarl Hospital, Dr. Jacobus Louw of a degrading, insulting and disrespectful nature; in so doing disregarding authority of the office of the CEO of Paarl Hospital. Your conduct is viewed as grossly insubordinate.

## **SUMMARY OF EVIDENCE AND ARGUMENT**

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

- (5) Dr. Jacobus Louw (manager medical services was acting CEO at time of the alleged misconduct of Maxham) testified that charges of gross insubordination were brought against Maxham as on ER bundle page 10 in the notification to attend a disciplinary hearing. The emails were sent over the period 8 and 9 February 2017 and despite being told to stop such communications which was copied to other managers, Maxham continued to send these emails. Referring to ER bundle page 29 the email dated 6 February 2017 was sent at 10h00

to nine managers at the hospital and was marked as being urgent. There had previously been emails being sent out by Maxham and this was not a first offence. On ER bundle page 28 Maxham had sent an email to Louw dated 6 February 2017 at 10h51 in which Maxham complained in general saying she was unhappy / disappointed with the ICAS (employee assistance programme) intervention; the current office politics and the interpersonal relationships in the office. Maxham claimed that ICAS had not helped with the situation and that some information had been shared during the ICAS intervention. Maxham later the same day sent a further email to Louw about a possible solution in moving Sister Cyster to a different office to be nearer to her staff and added some ideas regarding the problems with the customer care of some of the cashiers. Maxham had also suggested that Denise Watts (clerk) return to her other department as she is playing a prophet revealed by God whilst creating conflict. Watts should keep her post in the pharmacy and Maxham should get her post back. Maxham wanted to return to a normal situation and not like "Lentegeur" (a psychiatric hospital). Louw replied to this email from Maxham on 7 February 2017 informing her that she had the wrong impression and Louw was not going to solve her problems rather the matters should be taken up with her line management. Maxham responded by email the same day at 12h15 telling Louw that he was next in line when things at a lower level could not be resolved. Louw responded that both Andre Cornelissen (deputy director finance) and Maxham were capable and trusted to resolve the problems as raised. Louw added that Maxham should stop bombarding him with unnecessary emails. On 8 February 2017 Louw advised Maxham that he wanted to meet with her at 11h30 in his office. As head of the institution Louw needed to pay attention to avoid problems being referred outside of the hospital. Louw also had to ensure that line management were not undermined especially given his belief that the matter could be resolved between Cornelissen and Maxham. Louw expected to get further correspondence on this matter just not from Maxham. Louw found the emails from Maxham to be threatening. Initially Maxham did not want to meet with Louw as she had said she was too emotional and disappointed. However Maxham arrived at the office of Louw at 11h30. Louw spoke to Maxham so that she could understand that he is the acting CEO; was not just a medical doctor; was responsible for governing the hospital for a few months and the lines of communication had been crossed by Maxham. Maxham is a senior employee in administration and should follow her reporting line. Louw believed that some emails sent by Maxham were undermining the position of the CEO. The meeting with Maxham ended up being one sided as Maxham said very little. Later that day in an email Maxham conveyed her view of the meeting she had with Louw. Louw was taken aback by this email as the CEO should not be copied in on all email communications. Maxham felt that Louw was only there to hold the title; does no work; had a

misperception of what his job is and what constitutes a threat. Further Maxham wrote that Louw prefers to take things outside of the hospital; does what he wants and Maxham must just accept this. Louw pointed out that all this was being said about him on his eighth day of taking office as the acting CEO when the previous CEO resigned on 31 January 2017. Maxham also wrote that Louw is an autocrat - this despite Louw asking Maxham three to four times to stop with all the emails. Maxham also told Louw to look into himself to see where the problem lies. Louw was accused of only listening to his direct reports and had got ICAS to do his job. Maxham wrote that Louw is brusque and did not want to solve problems in the hospital. Louw is accused of saying whatever he wants but does not allow anyone else the freedom to speak their minds. Louw explained this was just the tone of the email from Maxham. Louw responded by remarking that it was yet another example of how Maxham showed no respect for the authority and position of the CEO. Louw asked Maxham to answer him on whether or not she accepts the authority of the CEO. Louw requested a yes or no answer. Louw sent that email to Maxham at 15h37. Maxham responded at 16h40 and in her reply had copied in five others including Ken Cornelissen (deputy director of the hospital); Andre Cornelissen (her immediate line manager) amongst others. Louw had a serious problem with this email from Maxham as she had taken a conversation which she had with Louw to new heights when in fact the conversation had been private. The email included some unsavory remarks; some untruths and the tone were of a distasteful manner. Maxham wrote a further email on 9 February 2017 in which she remarked that Louw could not get HR to fight the battles of the CEO. Maxham remarked that she wants to get on with her job and had no time for a power struggle. It was clear to Maxham that authority is taken over before consideration of service delivery. Maxham in her response had copied in the chief director Saadiq Kariem who is the direct line manager of Louw. Louw deduced that Maxham wanted him to be aware of what was happening. The emails stopped after 9 February 2017 as Maxham was again told not to send and copy all in on the emails. As the CEO Louw found this to be unacceptable and therefore instituted disciplinary action. Maxham had about six subordinates who report directly to her. No-one should be spoken about or to in this manner. The instruction from Louw may be different to the way Kruger had done things. Louw was aware that some disciplinary action had taken place between Kruger and Maxham regarding the children of Maxham being in the office. Maxham had asked if she brought her children to work whether she would be disciplined. It was confirmed that such action would be taken should Maxham bring her children to the office. Despite this Maxham brought her children to work and was then disciplined.

(6) Under cross-examination Louw confirmed that the first email Maxham sent was on 6 February 2017. Louw was aware there was a problem in the office. Louw met with Maxham and tried to let her know that he was not going to solve the problems as the solution lay in following due process with Maxham dealing with Cornelissen. Louw said that Maxham should proceed in that direction as Louw trusted the process. Louw was not intimately involved in the issues and hence ICAS had done the intervention. The report from the intervention was sent to Kruger and line management. Kruger had held a collective group discussion and then asked ICAS to intervene. Kruger never handled the situation and Louw had a general idea as to the background of the problems. Louw was aware that ICAS was asked to run an intervention. It was put to Louw that ICAS could not be asked to intervene if the solution lay at the level of Maxham; the problem should be elevated to Andre Cornelissen after not being resolved at the level of Maxham and only then elevated to the CEO. It was stated that Maxham will say the issues were not resolved and she had approached Louw for help. Maxham had some ideas of what should happen and had been referred back to her line manager. Louw pointed out that the issues should have been elevated to the deputy director and thereafter to the CEO. It was put to Louw that Maxham went to the CEO level as her level had been exhausted without resolving the problems. At the meeting Louw had with Maxham she had not been asked about the problems. Maxham was told office specific problems should not be copied in to such a broad spectrum of people on her emails. The CEO would not solve these problems and Maxham was told to go through the ICAS intervention with her line manager. At the second meeting that Louw had with Maxham she had been disrespectful and insubordinate. Maxham was told that Louw would not tolerate insubordination and Maxham never made any comments. Louw did not recall everything said word for word but Maxham had not said much. Referring to ER bundle page 28 it was pointed out that in her email dated 6 February 2017 Maxham had written that she had a possible solution. Louw confirmed that such a discussion had been held in his office and then Maxham sent out an email in this regard. Louw had told Maxham she had the wrong impression as Louw would not be addressing the problems. Louw sent an email to Maxham on 7 February 2017 to confirm that the problem should be addressed through her line management. Louw denied that in the emails Maxham was asking for help and believed it was a case of Maxham having some ideas which she wanted Louw to facilitate. Maxham had never trusted Louw and was grossly insubordinate towards Louw. It was clear that Maxham tried to use Louw to solve her problems. Louw believed it was evident that Maxham had no trust with the office of the CEO as that office was belittled in all her emails. Louw explained that Maxham could elevate her problem through her line manager and not directly to the CEO. Louw had not consulted with the shop stewards when Maxham failed to

stop sending the emails as everything happened quickly in a short period of time. A disciplinary hearing was held as Maxham wanted Louw to intervene in office politics. Things may get personal at an ICAS intervention however being insubordinate, derogatory and not following a lawful instruction to stop sending all the emails was another thing entirely. The office politics was about interpersonal relationships; was localized in one area and caused by four to five people not seeing eye to eye. Louw did not agree it was about serious issues and not just office politics. The first meeting had with Maxham she appeared to be her usual self and Louw disagreed that she was hurt. Louw explained that Maxham gave no indication that she was hurt or traumatized. Maxham had said personal things about others. Maxham should not have been so very disrespectful towards Louw. Referring to ER bundle page 24 Louw explained that Maxham in her email dated 8 February 2017 had responded to comments he had made as she was unable to debate these points with Louw at the meeting. Maxham made a summary of her perception of what transpired at that meeting. Louw felt that having had a face to face meeting there had been no need for Maxham to email anything in this regard. It was put to Louw that the email was just the recollection of Maxham of what happened at the meeting and Louw disagreed and found the response to be insubordinate with derogatory personal comments. There had been no clear expectation that Maxham would comment and it was believed that she had copied in so many managers and others in her emails to ensure her point of view was known. Louw had worked with Maxham for sixteen years as a patient to doctor; employee to manager and as a doctor working on the floor. Currently the interaction with Maxham is as acting CEO which is a different hat to be wearing altogether. Louw made it clear he was acting in his capacity as acting CEO. It was put to Louw that the email sent out by Maxham is how she interpreted things to have happened. Louw disagreed that Maxham was aggrieved rather she had been disrespectful with no acceptance of the authority of the position as acting CEO and that email again showed such disrespect. Referring to EE page 31 Louw confirmed he is aware of the grievance submitted by Maxham as she had alluded to same in some emails with utterances such as the CEO will hear from head office. As the grievance was about the alleged victimization of Maxham by Louw, the grievance was heard by the chief director. It can be seen on EE bundle page 33 that Dr. Kariem (chief director: general specialist & emergency services) that the CEO had listened to Maxham and reverted her back to her line manager who sees to all the attendant problems. The grievance had been handled and yet Maxham persisted with a referral to the Council. Kariem found the complaints of Maxham to be unsubstantiated and her grievance was rejected. The CEO attends to problems in the hospital and had done that. Maxham had never liked that Louw did not attend to her problems and issues personally. The grievance is dated 13 February 2017. It was put

to Louw that the response is a projection of how Maxham saw herself and was very subjective. Maxham had thought that Louw was not up to the title as he diverted the problems of Maxham to ICAS and line management to solve. Maxham had never liked the answers she received. On ER bundle page 24 Louw pointed out that it was his eighth day as being acting CEO and he told Maxham that there were processes to be followed. The issues of Maxham are a different problem to be solved but it does not excuse her disrespect and insubordination. Louw asked Maxham to give him an answer as to whether or not she had respect for the position of acting CEO. Despite having several meetings Maxham refused to answer that question. Maxham was given clear instructions in an email from Louw and she disregarded these instructions. Referring to ER bundle page 22 Maxham had copied in her line manager plus Ken Cornelissen and two shop stewards. Maxham and Kruger had discussed these issues at a management meeting and hence Kruger was aware of the problems but never got involved. Referring to ER bundle page 21 Maxham in her email dated 9 February 2017 also copied in Juanita Abrahams (HR) and Saadiq Kariem (chief director). In that email Maxham made no mention of the office situation and writes her perception of Louw; his way of managing and this could never be seen as an escalation of the office issues. In the entire chain of emails Maxham had little to say about the office situation and had attempted to set Louw up but Maxham was never in a vulnerable situation. Maxham ultimately stopped the emails. Maxham had not followed the instruction initially as she had continued sending out emails which ultimately led to Maxham facing disciplinary action. Louw had met twice with Maxham about her communications. Referring to ER bundle page 29 Maxham in her email dated 6 February 2017 had copied in nine senior employees to get her version across when in fact it was not a true reflection of the situation. The problem was interpersonal relationships which is a minor issue in the office space which could be handled by ICAS.

- (7) Under cross-examination Louw clarified that Maxham had never said she felt hurt and in her emails had said she was disappointed. Louw had expected Maxham to say she understood and would continue with her job. Maxham had never complained about her direct manager and no grievance was ever lodged in this regard. Maxham was instructed to stop the emails on 7 February 2017; was told not to send every email to Louw as the problem could be handled at line management level. Louw had asked Maxham whether she respected the position of the CEO and she never gave an answer. Louw had significant problems with the emails from Maxham.

- (8) Sandra Nieuwoudt (quality manager Worcester) testified that she had chaired the disciplinary hearing for Maxham. An interpreter was arranged by Andrews and had been present the entire time. Nieuwoudt could not think of any reason why Maxham now claims there had been no interpreter present. Sabelo Gili (shop steward) had said that an interpreter was not required and indicated that if anything was unclear they will ask and then never raised anything. Nieuwoudt could not say if she interrupted Maxham when questioned and would need clarity on the question. Nieuwoudt did not believe the sanction was too harsh. Nieuwoudt had made a summary; looked at case law; all the evidence and came to the conclusion that the behavior of Maxham amounted to gross insubordination and hence the penalty of dismissal was believed to have been appropriate.
- (9) Under cross-examination it was put to Nieuwoudt that the interpreter could only speak two languages. Nieuwoudt agreed that towards the end of the hearing the interpreter had said he only spoke English and Xhosa. It was said that Gili does not speak Afrikaans yet some of the information in the bundles of documents were in Afrikaans. Nieuwoudt said she had assisted with the Afrikaans. Nieuwoudt remembered that Gili had said they did not need an interpreter and where requested assistance was given. The caucus given to the shop steward could also have been a body break and no-one specifically had requested a body break. Referring to EE bundle page 6 listed under the reasons for the appeal of Maxham against her dismissal was that each and every issue raised by Gili was ignored; there was a struggle and a disagreement to have body breaks and Gili had to clearly state that he wants to go to the restroom. This was denied by Nieuwoudt as was the allegation that she intervened while Gili was questioning the main witness of the employer. It had been raised that Maxham was being victimized by the CEO and a grievance had been lodged in that respect. Nieuwoudt had told everyone to focus on the charges as per the notification. The role of the chair was to look at the charges; listen to the evidence and Nieuwoudt had no involvement with the grievance. Nieuwoudt denied that discipline was being used to victimize Maxham. It was denied that Nieuwoudt gave the investigating officer an opportunity to talk when it was the turn of Gili. Referring to ER bundle page 17 it states in notes of the disciplinary hearing which Nieuwoudt had recorded that Maxham had disputed she was the author of the emails when in fact it had already been acknowledged by Maxham that she was the author of the emails. It was confirmed that the hearing had been digitally recorded. Nieuwoudt had fifteen years' experience in disciplinary measures and did not believe that dismissal was too harsh in these circumstances. Nieuwoudt had been employed by the Department for twenty four years.

Nieuwoudt reiterated that her decision was based on all the facts and denied she had been biased or unfair.

- (10) Under re-examination Nieuwoudt confirmed that no-one had requested a body break and she had not intervened when Gili was asking questions. Gili had not submitted any emails and Nieuwoudt was not asked during the hearing to interpret that which was written in Afrikaans. A grievance and a disciplinary hearing are two different and distinct processes.
- (11) Andre Cornelissen (deputy director – finance) confirmed that the assistant director post was vacant. Maxham reports directly to Cornelissen. The charge sheet for Maxham is on ER bundle page 10 and Cornelissen was called as a witness to the hearing. The emails in question were attached to the charge sheet. The ICAS intervention was done due to bad relationships in the section managed by Maxham. The intervention had served its purpose. Louw was the acting CEO. ICAS had discussed conflict management and other issues and then Maxham sent the emails. Cornelissen did not recall if he had responded to any of the emails and thought that he had not. In one email addressed to everyone in general management, Maxham had asked for assistance and ideas. ER Bundle page 26 shows that Cornelissen was copied in on the email sent by Maxham on 7 February 2017. Maxham requested to have a discussion with Louw which was followed up with the emails at a time when Cornelissen was not involved. Cornelissen never interacted with Maxham or Louw and these emails happened over more than one day. Louw, as CEO had asked Maxham whether she respected the post of CEO and accepted his authority. Louw had expected a yes or no answer. Cornelissen was not included in the email on ER bundle page 24 dated 8 February 2017 and had been included thereafter. It was clear on reading the emails that Maxham had met with Louw as agreed but Louw said he had never agreed. A trend had been picked up where Maxham tells the CEO what should be done. Cornelissen did not stop the emails as it was in the hands of Louw. Maxham had previously received two verbal warnings regarding her behavior and this then led to a grievance being lodged. It seemed that if facing discipline then Maxham would lodge a grievance. Maxham was issued with a written warning after having requested a different lunch time and her children were allowed to be in the office after school. In reality children cannot be in the office and it is an institutional instruction that children cannot be brought into the offices. This issue arose in June/July 2016 with Kruger and Maxham. Emails went backwards and forwards with the bottom line being that children are not allowed to be in the offices. Maxham asked Kruger (then CEO) if she would be disciplined if she brought her children to the office. The answer was yes and then Maxham brought her children to the office so had been disciplined

and sanctioned with a written warning. An appeal was lodged against the written warning to the then CEO who had already said that if Maxham brought her children to the office she would be disciplined. Maxham had then resigned and three days later had withdrawn her resignation. There had been an altercation between Maxham and a cashier when Maxham again had brought her children to the office. The cashier had asked if Maxham could help her children and Maxham had sworn at the cashier in full view of her colleagues and the public. Maxham was sanctioned with a written warning for threatening and using foul language. The appeal was not upheld. In other incidences Maxham was reprimanded for not following the correct channels of communication. Cornelissen had in an instance authorized overtime for the case manager and others working with the hospital fees. Sufficient overtime was authorized to get the backlog back up to date. Maxham was denied permission to work overtime and this resulted in Maxham writing a letter to head office requesting overtime for her section when this was not required. The request was denied as no line manager had signed off as authorizing the working of overtime. Generally head office will permit overtime where the line manager had agreed. Maxham had asked Cornelissen; he had declined the request and told Maxham in future to follow the correct lines of communications. Maxham had persisted for about two to three days asking for pre-approved overtime to be worked. ER bundle pages 30 to 33 confirm the written warnings issued to Maxham on 10 June 2016 and 26 January 2017. Maxham never approached Cornelissen to say she felt the ICAS intervention was not working and instead the emails between Maxham and Louw had started. During December 2016 there had been various ICAS interventions. Issues arising were addressed with Cornelissen and the group was told they needed to be specific. The employees involved were told to tell ICAS or to give Cornelissen specifics. It was then that Maxham did not agree with ICAS. In January or February 2017 Maxham submitted a grievance about the ICAS intervention scheduled between Maxham and T Stevens who reports to a case manager. Thereafter Maxham was given a written warning relating to threatening and verbal abuse and it was believed that employees had to learn to behave themselves. ICAS put forward a programme which had to be followed. Skills training took place on one day where they were taught skills to avoid apportioning blame.

- (12) Under cross-examination Cornelissen confirmed he had a fairly good relationship with Maxham up to about two years ago. Cornelissen had marked Maxham as underperforming and had not awarded her a pay progression notch. Thereafter their relationship deteriorated. Maxham had written a letter about her having no confidence in Cornelissen and the then CEO had said her complaint had no substance. An ICAS intervention was requested to assist Cornelissen and

Maxham with their relationship problems. At first each of them was seen alone and then they were seen together. Maxham was asked why she was unhappy and the perception was that Maxham no longer wanted to be part of the intervention taking place. Maxham also refused to attend the final follow-up done by ICAS. It was confirmed that Maxham received the last written warning in January 2017 and the emails had started in February 2017. Maxham appealed against her written warning and the appeal was declined. After the ICAS session it was not ideal that Kruger said Maxham must work through Cornelissen. It always happened that if Cornelissen said yes to Maxham for anything then she would be happy and the relationship was wonderful. Whenever Cornelissen said no to Maxham the relationship for the rest of the day would not be great. Maxham was not justified to go above the head of Cornelissen and Kruger had repeatedly said that Cornelissen was senior to Maxham. The correct norm is that Maxham should have come to Cornelissen and not gone straight to Louw. The issue with the children at work had been correctly addressed. All supervisors do the same and after the audi letter has been received it is decided whether or not to take disciplinary action. After the disciplinary action comes an appeal and only then the matter goes to the Council. There had been a couple of times when Maxham reported to Cornelissen that some-one had their child in the office. Each allegation was followed up and it was found, for example, that the child came in to deliver a key and then immediately left the office. Maxham had lodged two or three grievances against Cornelissen as Maxham will not accept authority. Cornelissen would be able to provide the email where Maxham asked Kruger if she would be disciplined if she brought her children to work and where Kruger had said yes that would happen. Maxham got upset to the extent that she resigned and later withdrew her resignation. The norm is that if you are unhappy with a sanction imposed there is an appeal process. With Maxham the appeal is always accompanied by a grievance. Referring to EE bundle page 22 it was confirmed that Maxham had written out the grievance against Louw. Cornelissen agreed that dismissal was the appropriate sanction to have imposed. Maxham had a constant challenge to authority as seen on ER bundle page 29 when the email was sent to nine different people. Cornelissen did not respond as the email was not addressed to him. Maxham thought there was an issue but never understood that she was part of the problem. At the ICAS intervention Cornelissen had welcomed everyone and then left. Cornelissen confirmed the four clerks went to see Louw. In the event that Maxham felt that Cornelissen was not good enough or as challenging his authority she could go to the head of pharmacy or nursing. Referring to ER bundle page 29 Cornelissen explained it was insulting to him that Maxham would go to so many others in management to get help and hence he had not reacted. Cornelissen believed that the ICAS intervention was appropriate whereas Maxham felt the opposite. Once Louw was aware of the

topic for discussion he had sent Maxham away to work through line management. Denise Watts was transferred from the pharmacy and Cornelissen had assisted Maxham in dealing with some individuals.

- (13) Under re-examination Cornelissen confirmed there is an administration officer between Maxham and Watts. When asked if he could trust Maxham if she is put back in the workplace, Cornelissen explained that Maxham walked away and he doubted that the relationship between them can be repaired.

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

- (14) Sharna Cyster (professional nurse; operations manager – reports to Hendricke Louw who in turn reports to the head of nursing) testified that she had known Maxham since 2012. The problem was the flow of patient's records which had been discussed with Maxham. Cyster and Maxham had a good relationship and Maxham does not report to Cyster. Maxham had never been rude to Cyster and Maxham is the senior in charge of medical records and those staff. Cyster handles outpatients and the files had been a challenge. Maxham assisted by providing additional staff to assist in medical records and that change assisted the patients to get to the clinic quicker than previously.
- (15) Under cross-examination Cyster read the charges against Macham into the record. Cyster confirmed that Louw was the acting CEO and the line manager of Maxham was Cornelissen. Cyster was not part of any of the conversations referred to in the charges and had not been present when Maxham interacted with Louw. Maxham did call Louw by his first name even when he became the acting CEO. Maxham always referred to Cyster as Mrs. Cyster.
- (16) Under re-examination Cyster confirmed that some subordinates had addressed her on office politics. This problem had been resolved privately by Cyster in her office. Cyster understood that Maxham approached Louw through the emails sent with a problem and Louw said he could not address such issues as it was about office politics. There was a problem with line management as subordinates do not follow their lines of authority. Maxham went to Louw but had been referred back to her line manager. It was thought that this had started the chain of disrespectful emails to the CEO and others. Cyster was unsure as to whether or not Maxham went back to discuss the problems with Cornelissen. If Cyster had been instructed to revert to her line manager then she would have done this. Referring to her own staff if one had skipped

a level in management then Cyster believed she would consult with that line manager. At times Cyster would call on the shop stewards to assist. In the event that Cyster approached the head of nursing then she would expect to be referred back to her immediate line manager.

- (17) Sabelo Gili (shop steward and porter) testified that he represented Maxham in her case. Gili did not recall the date on which Maxham had first approached him for assistance. Gili, if he had been aware, would have accompanied Maxham to the first meeting she had with Louw. Maxham was afraid of Louw and then Louw had asked if Maxham was aware he was the acting CEO. Only Maxham and Louw were present at that meeting. When Maxham's case reached the hearing stage she lodged a grievance against Louw and then the charges were laid against Maxham in that it was alleged that she had been rude to Louw. The incident happened in February 2017 and Gili had asked why it took so long for the results of the grievance to be given to Maxham. The grievance lodged by Maxham against Louw is on EE bundle page 31. Gili had not been called in to address this issue as it had been handled by the labour relations department. In the past the shop stewards were involved in all grievances of their members. Maxham told Gili about the grievance which had led to her being afraid when she had exited the meeting with Louw. The previous CEO had an open door policy and would listen to problems raised. At the disciplinary hearing Gili was present as was Maxham and Freddie Wolhuter (shop steward and staff nurse). The chair did the opening and was then stopped by Gili who asked for a translation of the Afrikaans emails. The interpreter present was unable to translate Afrikaans. The process was recorded but Gili had insufficient time to get a copy of the recording. The chair would not grant a further postponement and had forced the process to proceed. When the initiator called the first witness Gili had wanted to start at the beginning but the chair instructed him to deal with the charges. Gili believed he was prejudiced as he could not understand the emails. Gili had tried to ask questions but soon realized he was going nowhere so decided to wait until the matter reached the Council. The chair had prior knowledge of the case and was thus biased. Louw never told Maxham she had the right to have a shop steward present in his office. Louw and Maxham spoke about work related issues and Maxham had nothing to say as it appears she was under duress. This was a difficult case as there were versions from Louw and Maxham plus the emails. Maxham had not been rude or wrong in her emails but as Louw was victimizing Maxham he did not assist with the problems raised. During the hearing Gili had to ask if he had a right to go to the bathroom and the chair had laughed. At a time the chair had threatened to remove Gili from the hearing and the initiator had been allowed to interrupt Gili. The chair excused a witness then called Cornelissen who is the direct manager of Maxham. Cornelissen had said that the character and tone used in the emails had

also applied to him. Cornelissen confirmed that Maxham did her job and that Louw had not spoken to him about what happened between Louw and Maxham. The issue was that Louw only wanted Cornelissen and not Maxham to speak to him. The problem was about interpersonal relationships and the children of Maxham coming to the workplace. It had been requested that Maxham be moved to another section but Louw would still be the CEO. Cornelissen had called in ICAS to resolve the problems and Cornelissen was asked to assist his staff in the future. Referring to EE bundle page 6 the reasons for appeal are listed as: (i) the appeal authority was part of the emails which were attached to the charge sheet but failed at the time to intervene; (ii) Appeal authority handled the grievance lodged by Maxham for the same incident and twisted the answer to make Maxham guilty as she is the one who was aggrieved; (iii) Current appeal authority is the person who is head of the region and is supposed to be fully aware that Maxham was going to be charged for a formal hearing which is a counter-attack on the grievance which can be seen as victimization; (iv) Current appeal authority failed to attend to problems Maxham is facing in the section and all her grievances were blocked and now she is dismissed. The appeal authority in this instance was Dr. Kariem who had also heard the grievance which had never been resolved. The problems in the section of Maxham were overwhelming her and she needed the assistance of Louw. Maxham was told to stop the emails; the door had been closed and Maxham resigned due to receiving no assistance. Gili could not recall the date on which Maxham had previously resigned but after talking to Kruger Maxham was allowed to come back. The dismissal of Maxham is unfair as it does not assist anyone. Louw had sent Maxham away without offering her any assistance. Maxham had written an email on 8 February 2017 about what happened at the meeting with Louw. This version had also been explained to Gili. Gili was not part of the meetings so therefore he felt they could not have been important. Maxham had serious problems and Louw dismissed them as being office politics. Maxham stopped sending emails on 9 February 2017. Maxham had twenty four years' service and should not have been dismissed.

- (18) Under cross-examination Gili confirmed that the hearing stage was reached only after three months. Referring to ER bundle page 21 it was pointed out that Louw had sent an email to Anne-Marie Basson (deputy director's office) after his email to Maxham on 9 February 2017. The same set of emails is found on EE bundle page 29. The email from Louw tells Maxham that her emails will attract some attention. Gili confirmed that Basson is the deputy regional director. Louw on 9 February 2017 told Maxham in his email at 15h50 that she would be disciplined. It was put to Gili that the decision to take disciplinary action against Maxham had not taken three months. There had been an investigation and the first disciplinary hearing was

scheduled to take place in May 2017 but had been postponed to June 2017. Gili was reminded that disciplinary hearings are scheduled by the regional office. Louw had referred this case to Basson in February 2017. Gili confirmed that the appeal authority and grievance were handled by Kariem. Referring to ER bundle page 19 it was pointed out that the appeal outcome was handled by Basson (deputy director people management) who addressed her letter to Dr. Barnardo and not Kariem. Gili agreed that in that case Kariem only handled the grievance although had been aware of the incident. Gili conceded that Barnardo had not been aware of the incident. It was put to Gili that the chair had also not been aware as she was based at Worcester and had been asked to chair the hearing. Gili stated that it was the perception of the shop stewards that the chair was aware of the incident which made her biased. Gili added that the chair had never treated him well. It was put to Gili that the chair had testified that there had been no requests for a body break although there had been a request for a caucus. The chair also testified that breaks were given when requested. On the allegation of the chair interrupting Gili, it was explained that the chair had said that they should focus on the charges. It was further put to Gili that the chair had never denied an interpreter and the initiator had said he would translate until another interpreter arrived. Referring to ER bundle page 21 it was confirmed that Maxham had copied Gili in on her email dated 9 February 2017 which had the string of emails attached. Gili did not understand Afrikaans and had discussed some of the emails with Maxham. Gili was reminded that the opening comment of Maxham at the meeting with Louw had been “no comment”. It was put to Gili that after she had told Louw she had no comments then she should not have sent him an email setting out her perceptions of the meeting. When Louw asked for a yes or no answer to the question he asked regarding whether or not Maxham respects the office of the CEO, he expected Maxham to reply yes or no. Instead Maxham had written a one page email which Gili agreed he would not have done. Louw had a different management style to Kruger but Gili agreed that it did not mean that the style used by Louw was wrong. Louw had been correct to tell Maxham to speak to Cornelissen as she was aware that Louw was then the acting CEO. Maxham never reported directly to the CEO and Cornelissen had reported directly to Louw.

- (19) Under re-examination Gili confirmed that the email from Louw to Basson on ER bundle page 21 had no date. Gili could not say whether or not the outcome of the appeal for Maxham was written by Basson but had been sent to Barnardo. Basson on ER bundle page 21 had been briefed about the emails sent by Maxham.

(20) Thenjiwe Maxham testified that she understood the charges to mean that she had been disrespectful, rude and insulting to the integrity of the CEO. Maxham denied that this was the case. Maxham had analysed the meeting she had with Louw. The relationship between Maxham and Kruger had soured. Cornelissen had given Maxham permission to let her children come to the office in the afternoons. This had happened over a period of two years after which suddenly Cornelissen had a problem with this arrangement. That broke the trust relationship between Cornelissen and Maxham. People were shifted to the section managed by Maxham who had psychiatric disorders and Cornelissen had said Maxham should ignore this as it was not normal. In answer to a question from me Maxham confirmed she had never seen a medical certificate that confirmed an employee had psychiatric problems but had thought this person was Bi-Polar. When Kruger retired Louw had taken over as CEO. Referring to EE bundle page 19 Maxham in her email dated 6 February 2017 had offered possible solutions to the problem and sent the email to Louw. On 7 February 2017 Louw had responded to Maxham in an email to say that Maxham misunderstood as Louw was not going to solve her problems and she should work through Cornelissen. Louw had said Cornelissen was capable so Maxham should not bother Louw. Maxham went to Louw as then if the problem is unresolved it goes to the regional office. Maxham met with Louw on 8 February 2017 at 11h30 and during the meeting only Louw had spoken. Maxham had not replied due to the way in which Louw had spoken to her. Maxham had thought it was best to just keep quiet and saw this as a sign of respect. Maxham and Louw were on a first name basis and addressed each other as such. After the meeting Maxham analysed what had happened and wrote an email outlining how she had perceived the meeting. Louw had told Maxham to stop sending him emails but then he demanded a yes or no answer. Maxham had said to leave the matter but Louw had continued. Louw after the second meeting had not told Maxham to stop the emails. Louw in his response had copied in Cornelissen and K Cornelissen and later had then added in Andrews on 9 February 2017 in his emails to Maxham. Maxham blamed Louw for expanding the group to whom these emails were being sent. Maxham had lodged a grievance against Louw as she felt she was being victimized. Kariem had responded to her grievance and said it was without substance as Maxham showed disrespect towards Louw. Kariem had waited for Maxham to lodge her grievance after she had copied Kariem in on the email she sent on 9 February 2017 at 09h42 (ER bundle page 21). Maxham believed that ICAS was not the solution to her problems and she did not need any counselling. The problem in her section was that people were identified as being abnormal so Maxham was sent to ICAS for the solution as if she was the bad person. The response from Kariem to her grievance had been in favour of Louw. The charges then came after Maxham had lodged the grievance against Louw for victimising her.

Cornelissen brought a case against Maxham and in response they had been sent together to an ICAS intervention. Kruger had given Maxham hope when she had been allowed to withdraw her resignation. On EE bundle page 29 Louw had told Maxham to stop all the emails on 9 February 2017 and this was the only time that she had been told to stop. Louw saw Maxham as being rude but Maxham had only analysed their meeting and how she had understood it. Those employees moved to the section managed by Maxham had been unable to function in their previous posts so Louw had them transferred to Maxham. Cornelissen held a grudge against Maxham as she had won the settlement money. In 2010 when Maxham transferred from Malmesbury she had requested some financial relocation assistance. This had been rejected by Cornelissen and eventually a year later Maxham was paid a relocation allowance. Maxham had attended three ICAS interventions and it was said by others that working under Maxham was toxic. ICAS could not resolve this situation which is why Maxham had not completed the intervention with Cornelissen.

- (21) At this point I spoke to NEHAWU and asked that he arrange the evidence in a chronological sequence and to restrict evidence to that which is relevant to prove an unfair dismissal. NEHAWU agreed and were given a twenty minutes break.
- (22) Maxham explained that she was unhappy when IUCAS returned again with the conflict management course instead of getting to the root of the problems she was experiencing. Some have a victim mentality but Maxham wanted ideas but never got any help from Cornelissen. Cornelissen said he never responded to any of the emails as they had not been addressed to him although he had been copied in. Louw called Maxham to his office and asked for solutions. This resulted in Maxham sending the email about possible solutions to Louw on 7 February 2017 at 14h13 (ER bundle page 20). Maxham claimed her section was nicknamed "Lentegeur" as employees were moved to her section when they had not been performing. Louw referred Maxham back to Cornelissen which made Maxham feel hopeless. Maxham met with Louw on 8 February 2018 at 11h30 as requested by Louw. Maxham saw Louw as wanting nothing to do with the problem and he had closed that door which left Maxham nowhere to go. During the second meeting with Louw Maxham was told to stop sending the emails and reminded her that she reported to Cornelissen and not to Louw. Cyster and Gili had spoken about the importance of always including your supervisor and Maxham acknowledged that she should have included Cornelissen. Maxham felt it was the responsibility of Louw to have called Cornelissen and tell Maxham she could have representation as Louw knew what he was going to say. Louw told Maxham to stop sending him copies of emails and Maxham thought that Louw had not

understood that the problem lay with Cornelissen. When sending the emails to Louw Maxham had not seen that she was rude as she had a friendly relationship with Louw. Maxham had never intended to be rude and respects others as they respect her. Maxham likes to speak straight and does not beat about the bush. People are unique and things change. Referring to EE bundle page 31 Maxham confirmed that this was the grievance dated 13 February 2017 she lodged regarding her being victimized by Louw. After Louw became CEO he changed and everything was his way or the highway. Maxham had previously resigned when her children were not allowed to come to the hospital after school. The children are both girls aged about 8 and 11. Maxham said it was not true that she never took criticism well. At the hearing the chair had asked if she could join the two charges and had then said she would first have to hear the case. The interpreter present did not understand Afrikaans and neither did her representative. Body breaks were denied. Kariem was in charge of her appeal and had held her grievance. Basson was also involved but held a lower rank than the CEO and it should have been a person of a higher rank than the CEO. Maxham felt that the sanction of dismissal was very harsh as she had twenty-four years' service and a lesser sanction could have been imposed. Maxham believed that if she had done anything wrong then she should have been corrected. The hospital now had a new CEO and Maxham sees that her analysing things was not well received and will not do it again. Referring to the dialogue in the emails Maxham explained that she is straight forward. Others had found loopholes; advised Cornelissen so he could then step in and get rid of Maxham.

- (23) Under cross-examination Maxham confirmed that she had not completed the ICAS intervention with Cornelissen as after the incident with her children she could no longer trust Cornelissen. Maxham moved to Paarl in 2010 and had been paid a relocation allowance in 2011. Maxham had worked overtime which had been approved by Cornelissen. Maxham had previously sourced funds to work overtime from the regional office. It was only when the cycle started that suddenly Cornelissen had a problem with Maxham sourcing overtime funding and then Maxham was dismissed. Maxham had previously worked at the regional office and knew how to get funds for overtime. Maxham confirmed that Cornelissen controls the budget so before funds are sourced or overtime worked Cornelissen first had to sign his approval for the expenditure. It was put to Maxham that Cornelissen had testified that the trust relationship between him and Maxham had broken down completely. It was further put to Maxham that her emails were rude and disrespectful. Maxham said that Louw had raised his voice at her to the extent that the secretary through the dividing panel would have heard Louw. Maxham agreed that the secretary's door is always open. Maxham elaborated that Louw had screamed so loud

and put on a facial expression which made Maxham feel scared. Louw had only told Maxham to stop the emails once. It was put to Maxham that she had said that Louw told her to stop the emails on 9 February 2017. It was pointed out that Louw told Maxham to stop sending him emails on 7 February 2017 (EE bundle page 20). Maxham pointed out that at that time the emails were only between her and Louw. Maxham met with Louw on 8 February 2017 at 11h30. Maxham agreed she had said no comment at the meeting and it was put to her that this had been an opportunity to speak to Louw face to face. It was pointed out that in the email where Maxham wrote about her perceptions of the meeting she had never said Louw raised his voice and this version was not put to Louw. Maxham agreed that the day before the meeting she had been too emotional to come to the meeting so on arrival Maxham was probably already disappointed. After which Maxham sent a very long email to Louw. The meeting had taken place at 11h30 and the response email from Maxham was sent at 14h29. It was put to Maxham if she had stuck with her “no comment” she may not have been dismissed. Maxham wanted to send the email so that Louw would read her understanding of the meeting. Maxham was reminded that she called Louw an autocrat and further in her email of her perceptions Maxham never said that Louw prevented her from leaving and she had never said she had been unhappy with the meeting or how Louw spoke to her. Referring to the grievance on EE page 31 it was pointed out that Maxham claimed Louw was victimising her but never explained exactly what had been happening despite the procedure allowing for additional pages to be added. Further Maxham was reminded that she made disparaging allegations against Louw. Maxham explained that the meeting was about respect. Maxham was reminded that she wrote in her email that Louw should get in a helicopter and look into himself. Maxham responded that only children answer yes or no to a question and she is not a child. Maxham was reminded that the question was whether or not she respected the office of the CEO. Maxham said she had no problem with authority now but at the time when asked she was unable to give an answer. Maxham confirmed that she was not apologising for the content of the emails and conceded that others may think that the content was rude. Maxham had not apologised to Louw and felt that these were new instructions not given previously by Kruger. Ken Cornelissen is in HR. Maxham had told Louw not to stoop so low and to work on his management skills. It was put to Maxham that her answers were disrespectful. Referring to ER bundle page 21 Maxham was reminded she told Louw to wait until contact is made. Maxham confirmed the grievance against Louw was signed on 13 February 2017 and Maxham confirmed a copy was sent to Kariem as he is Louw’s manager. Maxham added that she had declared a dispute regarding her grievance and the outcome was not yet known.

(24) Under re-examination Maxham confirmed that she had asked head office for money for overtime. The trust relationship between Maxham and Cornelissen had not been handled well as it had been done through ICAS. Maxham wrote everything down as she does not trust Cornelissen. Referring to ER bundle page 22 Maxham had written to Louw to leave the matter at that. Maxham felt that when Louw asked about respect for the office of the CEO he should have invited responses instead of telling Maxham to say yes or no. If given a chance Maxham would now apologise to Louw.

(25) The parties agreed to send in their closing arguments to me by no later than 17h00 on 21 June 2018.

(26) The closing arguments were received from both parties. The contents of the respective closing arguments have been noted.

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

(27) I am required to determine on a balance of probabilities whether the dismissal of Maxham was fair. The issues in dispute were narrowed to: (i) The chair of the hearing never allowed certain evidence to be led; (ii) There had been no interpreter; (iii) The appeal authority was involved in the initial disciplinary hearing; (iv) Inconsistency in that Dr. Kruger (previous CEO) allowed staff to email him directly; (v) Degrading comments were passed when Maxham had analysed a meeting she had with Dr. Louw (acting CEO); (vi) The sanction is too harsh given the twenty four years 'service of Maxham. Maxham is seeking retrospective re-instatement. Maxham was charged as follows: (1) Misconduct in that on or about 8 and 9 February 2017 you exchanged emails with the acting chief executive officer (CEO) of Paarl Hospital, Dr. Jacobus Louw, and two other management members wherein you repeatedly made comments of a disrespectful, rude, insulting and degrading nature directed at the integrity of the CEO. Your behaviour is unacceptable and viewed as you being grossly insubordinate and (2) Misconduct in that you made comments in email correspondence on 8 and 9 February 2017 to acting chief executive officer at Paarl Hospital, Dr. Jacobus Louw of a degrading, insulting and disrespectful nature; in so doing disregarding authority of the office of the CEO of Paarl Hospital. Your conduct is viewed as grossly insubordinate.

(28) On the procedural side the issues in dispute were narrowed to: (i) The chair of the hearing never allowed certain evidence to be led; (ii) There had been no interpreter. From the evidence

it is clear that the chair wanted Gili to address the charges rather than draw in an excessive amount of background information which was not relevant. This happened again at arbitration and not just with Gili. The issues in dispute were narrowed and the charges needed to specifically be addressed. I even gave NEHAWU time to ensure the evidence was given in some sort of chronological order and the actual charges were addressed. No mention was made as to exactly what evidence had been disallowed and as arbitration is a hearing “De Nova” the employee / NEHAWU were given much latitude to state her case. Maxham had a long history with the employer and a lot of the evidence given was simply background information. An interpreter was present at the hearing when it was found he was unable to translate Afrikaans. In respect of translating Afrikaans I have noted that Maxham herself is able to speak English, Afrikaans and Xhosa. As the author / recipient of the emails Maxham would have been in a position to assist with the translation of Afrikaans. Nieuwoudt as chair is fluent in Afrikaans and did assist wherever needed. I find on a balance of probabilities that Maxham was not in any way prejudiced by the lack of a tri-lingual interpreter and Nieuwoudt was correct in asking that only relevant information be put into evidence. The procedure followed by the employer aligns with the provision of Schedule 8 – Code of Good Practice: Dismissals of the LRA and the dismissal of Maxham is found to be fair on procedural grounds.

- (29) It was held that the appeal authority was involved in the initial disciplinary hearing. It was established through the evidence led that Louw advised Basson of the behaviour of Maxham and it was then the function of the regional office to make the requisite arrangements for a disciplinary hearing to be held. Nieuwoudt chaired the disciplinary hearing and once the outcome was known Gili assisted Maxham to lodge her appeal. Dr. C. Barnado (CEO of Stikland Hospital) was appointed as the appeal authority in the case of Maxham as confirmed in writing by Basson on 13 July 2017 (ER bundle page 19). It is proven that Barnado was the appeal authority. No evidence was put before me that Barnado was in any way involved in the initial disciplinary hearing. It was believed that there had been inconsistency in that Dr. Kruger (previous CEO) allowed staff to email him directly. It was agreed at arbitration that each manager may have a different management style. At the time of these emails reaching Louw in quick succession over a period of about three days, it should be remembered that Louw was in the position of acting CEO for the 8<sup>th</sup> day. It is trite that Maxham should have been working through Cornelissen as her direct line manager, regardless of any grudges held against Cornelissen. Louw had initially told Maxham to revert to Cornelissen and this instruction was ignored. I find that there was nothing inconsistent with the approach towards employees

working through their line managers. Anything less than this would have the effect of undermining Cornelissen which Louw clearly did not want to do.

- (30) This entire problem started when Maxham sent out an “urgent email” on 6 February 2017 which was sent to a total of nine members of management. In the email Maxham expresses her disappointment in the intervention arranged with ICAS as she felt they were not able to assist to sort out the conflict she was experiencing. Maxham had wanted someone to come in to assist to get to the root of the problems. No evidence was led at arbitration as to what the exact problems had been. Maxham stated that her intention was to make the work environment healthier but that she could not achieve this on her own. Maxham wrote that it was well known that some employees had psychiatric problems where they had been unable to perform and were then transferred into her section. Maxham later stated she had not had any co-operation or assistance from her own line manager (Cornelissen). By writing this email Maxham was derogatory towards Cornelissen stating that he never assisted her yet no evidence was put before me that Maxham had ever even approached Cornelissen for assistance. It seemed almost as if Maxham was trying to tell the other managers that Cornelissen was of no help to her. Maxham did not trust Cornelissen when she claimed that after two years he had stopped her children from coming to her office after school. It was not disputed that this was an institutional rule and hospitals cannot be expected to have their workers children running around the offices. Maxham also bore a grudge against Cornelissen in that in 2010 he had not approved a relocation allowance. However, Maxham even in those days undermined Cornelissen and at arbitration claimed she had “won” a settlement of that dispute as a year later DOH had paid her a relocation allowance. There can be no doubt from these two examples that Maxham had a grudge against Cornelissen and viewed him in a disrespectful and derogatory manner as demonstrated in her actions. Maxham had no right to try to source overtime funding without the approval of Cornelissen and yet that never deterred her - even after Cornelissen on one occasion had said that Maxham could not work any overtime. Cornelissen was in charge of the budget. As Maxham had previously worked at the regional office she should have known better. Maxham had little difficulty in writing that some employees have psychiatric disorders without any concern about the damage this may do to those involved. Maxham had never seen a medical certificate confirming any psychiatric disorder and is not a qualified medical professional to have made such an allegation to nine members of management. This behavior is totally unprofessional and not based on any facts. It is evident that Maxham lacked interpersonal skills as such behavior is unacceptable. Maxham believed that she did not need counseling; had failed to complete the ICAS

intervention to improve the relationship between Maxham and Cornelissen; and as Louw put it Maxham could not see that perhaps she was the problem. On 6 February 2017 Maxham wrote an email at 13h51 to Louw outlining possible solutions to her problems. In these solutions Maxham suggests: (i) Cyster be relocated so that she is closer to her staff and Denise Watts, who behaves as a prophet, should be sent back to the other department. At this point the email was sent directly to Louw.

(31) Louw responded to the email from Maxham on 7 February 2017 at 13h53 telling Maxham that she may have got the wrong impression. Louw had wanted to know why he was being sent so many emails. Louw further told Maxham to direct her emails to Cornelissen as he is her line manager. Maxham responded to this email stating that this was already the problem. Maxham made no mention of the office situation in her emails to Louw and wrote about her perception of Louw; his way of managing and this could never be seen as an escalation of the office issues as claimed by Maxham. Maxham points out that Louw is the manager of her line manager and if he cannot assist to solve the problems she could go to the next higher level of management. Maxham explained that staff whose supervisors were unable to manage them had been transferred to the section managed by Maxham. The solution for Maxham was to send this employee back to the section from which she came. Louw responded to Maxham on 7 February 2017 at 15h11 confirming he had confidence in both Maxham and Cornelissen and that Maxham should stop sending unnecessary emails to Louw. A copy of this email was correctly sent to Cornelissen (line manager) by Louw. This was the first time Louw told Maxham to stop sending him emails. Maxham seemed not to grasp the fact the Louw had different responsibilities and was in the process of taking on a new role to act as the CEO for the entire hospital. On 7 February 2017 at 15h53 Maxham responded to Louw and copied in Cornelissen. Maxham wrote that Louw is a line manager and CEO and that therefore must assist unless he wanted this matter to proceed to the regional office. This was seen as a threat to Louw to tow the line made by Maxham. Maxham continued that she had never studied psychiatry. At 16h13 Maxham sent a further email to Louw stating that she now felt too emotional and deeply disappointed in the answers of Louw to attend a meeting with him on the following day.

(32) Louw responded to Maxham on 8 February 2017 stating that he had to meet with Maxham at 11h30 to address all the communications. Louw added that this was an instruction and the two met at 11h30 as scheduled. The same day Maxham wrote an email to Louw confirming that he had called the meeting and had done all the talking. This was because when asked - Maxham had said no comment. Maxham had thought that Louw wanted to hear her version

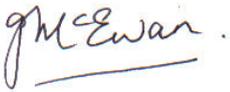
and Maxham then found that Louw was not interested so had not said anything. From the perceived disinterest Maxham concluded that Louw was there for the title and not to do the work involved in the title. Maxham further understood that that as head of the institution Louw chooses to allow further steps to be taken although he is not aware of what had happened. Maxham also understood that the head of the institution can speak at will to everyone but won't allow the same to happen to him. As Louw said that he will not allow the flow of emails to continue Maxham said that Louw was an autocrat. As both Cornelissen and Ken Cornelissen had arranged the ICAS intervention it looked to Maxham that they were allowed to do what they wanted as they were in her mind the "problem". It seemed to Maxham that Louw as head of the institution was not going to assist in getting any problems solved. Maxham ends this email by saying again that Maxham thought that Louw was delegating his job to ICAS and that Louw is an autocratic who will only listen to those who report directly to him regardless of the situation. The comments are totally inappropriately made towards Louw as Maxham did not want to work through her line manager. Louw responded to Maxham in an email asking a yes or no answer to the question of whether or not Maxham had any respect for the office of the CEO and had copied in Cornelissen and HR with his response. Maxham replied on 8 February 2018 and copied in the two shop stewards but never answered as was requested. Maxham wrote that Louw wanted to be respected without him respecting others like treating her as a child. Maxham points out that only a person lacking in leadership skills would ask such a question. To add insult to injury Maxham wrote that Louw should look in the mirror and turn like a helicopter to see where the problem lies. Maxham added that she is proud of her listening and analyzing skills. Yet she never listened when told to stop copying Louw in on all the emails. The emails continued with many more unnecessary and slanderous things being said about Louw. There is no doubt that degrading comments were passed about Louw as CEO when Maxham had analysed a meeting she had with Louw. As an intelligent woman what she wrote is totally unacceptable and she should have known better. Louw replied on 9 February 2017 confirming that Maxham had not yet answered his question. In this email Louw also copied in Andrews (HR). In her reply Maxham then also copied in Kariem with the full knowledge that he was the line manager of Louw. Maxham in her response tells Louw not to copy the world in on his emails to help fight his battles. Maxham states that she does not have time for such power struggles and that Louw only hears what he wants to hear. Maxham ends by telling Louw to work on his management skills. In his response Louw warns Maxham that her continued emails will attract a reaction. After this email Louw then got Basson involved for disciplinary action to be taken against Maxham. No-one has the right to speak to anyone let alone the CEO of the hospital in the manner done by Maxham. Maxham repeatedly made comments of a

disrespectful, rude, insulting and degrading nature directed at the integrity of the CEO. This behaviour of Maxham is unacceptable and was correctly viewed as her being grossly insubordinate

(33) Maxham had already been warned about her unacceptable behaviour and the manner in which she dealt with problems. I have noted that Maxham showed no remorse for her actions. In view of the above findings I find on a balance of probabilities that her dismissal is substantively fair. When one is so arrogant not to accept help as she feels it would not get to the root of the problem; failed to even give the ICAS intervention a chance to assist her and then goes on this type of rampage in emails there can be no doubt that dismissal is the appropriate sanction to have imposed.

### **AWARD**

(34) The dismissal of Thenjiwe Maxham is found to be fair on both substantive and procedural grounds. Consequently, this case is dismissed.

A handwritten signature in blue ink that reads "Gail McEwan". The signature is written in a cursive style and is underlined with a single horizontal line.

Gail McEwan