



PHSDSBC

PUBLIC HEALTH AND SOCIAL DEVELOPMENT
SECTORAL BARGAINING COUNCIL

ARBITRATION AWARD

Case No: PSHS441-17/18

Commissioner: Zuko Macingwane

Date of award: 11 February 2019

In the matter between:

PSA obo Motaung, Dinah. S

APPLICANT

and

DEPARTMENT OF HEALTH – FREE STATE

RESPONDENT

Details of the parties and representation

1. The matter was set down for arbitration on 10 occasions which were 10 January, 19 & 20 March, 24 & 25 May, 16 & 17 July, 25 September 2018 and on 21 & 22 January 2019 at the Respondent's premises at Mofumahadi Manapo Mopeli Hospital in Phuthaditjhaba. The applicant, Ms. Dinah. S Motaung was present and represented by Mr. J. Jack, the union official with the Public Servants Association (PSA).
2. The respondent, the Provincial Department of Health in Free State was represented by Mr. M Nhlapho, its Labour Relations Officer. The proceedings were digitally recorded and the interpretation services were provided by Mr. T. Tshabalala. Both parties submitted their bundle of documents. The respondent's bundle was marked "A" while the applicant's bundle was marked "B". The parties were given an opportunity to submit closing arguments on 28 January 2019.

Issues to be decided

3. I must determine whether the applicant's dismissal was procedurally and substantively fair or unfair.
4. The applicant indicated that she seeks retrospective reinstatement in the event that I find that the dismissal was unfair.

Background and opening statements

5. The applicant was employed by the Provincial Department of Health, the respondent as a Cleaner: Grade 2 at Salary Level 3 at Mofumahadi Manapo Mopeli Hospital in Phuthaditjhaba. The applicant started working for the respondent on 1 September 2005 and was dismissed on 16 May 2017.

Charges

6. The charges put against the applicant were as follows:

Charge1: That you are allegedly guilty of misconduct in terms of the Disciplinary Code and Procedure resolution 1 of 2003, in that on 09 February 2016, you solicited and took a bribe of an amount of R3500-00 from a member of the community, Ms H.M Pitso by promising her to get employment in the hospital.

Charge2: That you are allegedly guilty of misconduct in terms of the Disciplinary Code and Procedure resolution 1 of 2003, in that on 17 February 2016, you solicited and took a bribe of an amount of R3500-00 from a member of the community, Ms Ms M.N Mabizela by promising her to get employment in the hospital.

Charge 3: That you are allegedly guilty of misconduct in terms of the Disciplinary Code and Procedure resolution 1 of 2003, in that on or around May 2015 and on the 17 February 2016 respectively, while on duty you conducted yourself in an improper, disgraceful and unacceptable manner by committing fraud to the members of the community when you exercised power that you do not have to mislead them that there

are posts at the hospital when you knew very well that there were no advertised posts at the hospital.

Charge 4: That you are allegedly guilty of misconduct in terms of the Disciplinary Code and Procedure resolution 1 of 2003, in that on or around May 2015 and 17 February 2016 you were dishonest when you sold employment to members of the public by creating an impression that is how people are hired in the hospital and the department.

Charge 5: That you are allegedly guilty of misconduct in terms of the Disciplinary Code and Procedure resolution 1 of 2003, in that on 4 May 2015, you solicited and took a bribe of an amount of R3000-00 from a member of the community, Ms Ms Moloi by promising her to get employment in the hospital.

Charge 6: That you are allegedly guilty of misconduct in terms of the Disciplinary Code and Procedure resolution 1 of 2003, in that on 12 June 2015 you solicited and took a bribe of an amount of R4000-00 from a member of the community, Ms Ms Manyanye by promising her to get employment in the hospital.

Charge 7: That you are allegedly guilty of misconduct in terms of the Disciplinary Code and Procedure resolution 1 of 2003, in that on or around December 2015 you solicited and took a bribe of an amount of R4000-00 from a member of the community, Ms Mothinjwa by promising her to get employment in the hospital.

Charge 8: That you are allegedly guilty of misconduct in terms of the Disciplinary Code and Procedure resolution 1 of 2003, in that on or around December 2015 you solicited and took a bribe of an amount of R18 6000-00 from a member of the community, Ms M Mokoena by promising her to get employment in the hospital.

Charge 9: That you are allegedly guilty of misconduct in terms of the Disciplinary Code and Procedure resolution 1 of 2003, in that on or around July 2015 and August 2015 you solicited and took a bribe of an amount of R3500-00 from a member of the community, Ms M Molobela by promising her to get employment in the hospital.

Charge 10: That you are allegedly guilty of misconduct in terms of the Disciplinary Code and Procedure resolution 1 of 2003, in that on or around July and August 2015 you

solicited and took a bribe of an amount of R3500-00 from a member of the community, Ms Ramabodu by promising her to get employment in the hospital.

Alternative to charges one to ten

That you are allegedly guilty of misconduct in terms of the Disciplinary Code and Procedure resolution 1 of 2003, in that on or around May 2015 and February 2016 respectively you of the department, office of institution of the state when you committed the above-mentioned misconducts.

7. In the opening statements, the applicant's contention was that the applicant was charged with misconduct, dismissed, appealed and the appeal was declined. The applicant is challenging the procedure, substance and sanction. The applicant seeks a relief of retrospective reinstatement. In procedure, the applicant stated that her right regarding interpretation was denied by the chairperson, she wanted the services at the disciplinary hearing to be interpreted in Sesotho. The applicant during the disciplinary hearing was faced with 10 charges, was found guilty even on an alternative charge. The charges that the applicant pleaded on were charge 1-4 but in charges 5 to 10 the applicant never pleaded but was found guilty in all charges. The chairperson misconducted herself, she did not apply her mind and had to consult outside people. On the substance, the evidence is challenged in that as per the respondent's allegation the bribes were solicited for employment while the applicant's contention is that she was requesting loans for those people. The applicant was involved in loan schemes, never solicited a bribe in promise to give them employment. The chairperson considered an aggravating factor while the applicant was not or never found guilty of a similar offence. The applicant called 3 witnesses.
8. The respondent contends that it will prove that procedurally and substantively, the disciplinary hearing was conducted in a fair manner. The misconduct was so serious in nature and appropriate sanction was dismissal. The respondent called 9 witnesses.

Survey of evidence

9. It is not the purpose or the intention of this award to provide a detailed transcription of all evidence placed before me at arbitration, even though all evidence was considered. I have however summarized the portions of evidence that are relevant to me in making a determination in this dispute.

Respondent's case

10. Ms. Elizabeth Linda Sikhosana, the Police Officer with the rank of a Captain stationed at Phuthaditjhaba Magistrate's court testified that she wrote a sworn affidavit for Ms Dinah Motaung, the applicant which was stamped on 16 March 2016 and signed by the applicant. She only knew the applicant on the day at which the affidavit was written, not before. She explained that the purpose of a sworn affidavit is to prove that a person is stating an issue under oath. Ms. Sikhosana testified that she wrote the statement as she was on duty and was at the charge office, but the information was given to her by the applicant and it was on the applicant's request. The applicant was not forced by anyone, but when Ms. Sikhosana wrote the statement there were few other people with the applicant. Ms. Sikhosana asked if the applicant will be able to write the affidavit, the applicant said she would ask Ms. Sikhosana to write the affidavit. The applicant confirmed that she took the money from those people in a fraudulent manner. Her explanation was that she promised those people that she would give them jobs as she was working at Manapo Hospital. As time went on without the jobs, those people went to the police station and it is then that the applicant had to make an affidavit. Ms. Sikhosana reiterated that the applicant signed the affidavit, it was binding to her conscience and the first signature in the affidavit is for the applicant, then the second signature is hers. Ms. Sikhosana testified that she would let a person read the statement after writing it. Those people were members of the community.
11. During cross-examination, Ms. Sikhosana confirmed that on 16 March 2016 she was a Lieutenant and had been with the police service for 26 years. Ms. Sikhosana confirmed that the applicant approached her for the statement and the applicant was alone when she approached her, it is then that she noticed that the applicant was not alone when the other people gave her their identity numbers indicating that they were involved, but there was no influence. Ms. Sikhosana denied the applicant's version that was put to her that the applicant was phoned and told that there were people at the police station when she arrived, and expressly stated that she does not agree with the version of the applicant. Ms. Sikhosana also disputed the applicant's version that she did not participate in writing of the statement and that the affidavit was never read back to her. Ms. Sikhosana explained that it is the procedure for the statement to be read back to the person. Ms. Sikhosana elaborated that the applicant was willing to give back the money, the people

were interested in getting their money, that is why there was no arrest. If it was loan money, it would have been written so in the affidavit.

12. Ms. Sikhosana maintained that her first encounter was with Ms. Motaung, the applicant, not other people. Ms. Sikhosana disputed the version of the applicant that she phoned her in order for the applicant to sign the statement, saying that she never called the applicant. Ms. Sikhosana admitted that she did not explain to the deponent the implications of an affidavit and of an oath, but would not say that such is a standard procedure. Ms. Sikhosana denied the allegation put to her by the applicant that she consulted with the people owed by the applicant before the applicant arrived, stating that those people are the ones who gave their identity documents.

13. At re-examination, Ms. Sikhosana explained that the purpose of the affidavit is for one to record what one wants to say. Ms. Sikhosana confirmed that the applicant was not influenced, the applicant gave her the identity number by herself. Ms. Sikhosana reiterated that she gave the affidavit to the applicant to read it herself and then she signed it. It is not the requirement at the police service for one to tell a person about the implications of an affidavit. When asked why would the applicant deny, Ms. Sikhosana's response was that maybe the applicant did not realize where would this go. Ms. Sikhosana stated that she is convinced that the applicant took the money fraudulently from those people promising them work because the applicant told her. When Ms. Sikhosana asked the applicant how can she do that in a human manner, the applicant's response was that she did it but does not know why. Ms. Skhosana stated that if it was a loan, she would have written it exactly that it was a loan.

14. Ms. Ntsebo Florence Moloi, the second witness of the respondent testified under oath that she is residing at Scopas, previously she did not know the applicant, she got to know the applicant on the day she was going to handover the money to the applicant in order for the applicant to get her employment at Manapo hospital. Ms Moloi stated that she knew the applicant through her sister who got injured and had come to the hospital. Her sister met the applicant and she received a phone call that night from the applicant as she was told by her sister that the applicant would call her. When she was calling her, the applicant asked if her sister had given her the information and also said they will not talk at length as it was on the phone. Ms Moloi was then phoned by Ms Mofokeng with the number of Manapo hospital for her to come urgently as people from Bloemfontein

were coming to collect the money. Ms Moloji explained as she indicated that the applicant said her sister would explain and her sister explained that the reason they had to pay was to secure employment. R3500-00 was requested from the applicant, which she did not have, so she paid R3000-00, her sister paid R4000-00. Her sister paid R4000-00 as she was advised by the applicant to organize a loan. The applicant wanted R3500-00 from each of them and on basis that Ms Moloji did not have the whole amount, her sister made a loan for her R3500-00 and R500-00 was for topping up for Ms Moloji in the R4000-00 loan. The money was to secure employment at Manapo hospital.

15. Ms. Moloji clearly explained that the money was not borrowed from the applicant or for a loan, it was for the applicant to organize work for them as the applicant also asked for her CV. Ms Moloji stated that they were never employed and no reasons were given, the applicant said they must wait for August, until they demanded their money. Ms Moloji stated that they never met with Ms. Mofokeng. Ms Moloji was taken through to the applicant's statement in page 8 of bundle "A", the bundle of the respondent, she confirmed that she knew the said statement and explained that it was an affidavit at which she has an original in her possession. When asked how the statement was written, Ms Moloji's response was that when they realised that the applicant was not refunding them, they went to search for the applicant's residential place. On arrival at the applicant's place they found Suzanne and Ms. Nkane Ntseleng at her place. They asked them who were they, their response was that the applicant took R3500-00 from them and promised to secure them jobs at Manapo Hospital. They decided to go to the police station. On arrival at police station they met the applicant by the door. They informed the applicant that they had been to her residential place and she was not there. The applicant said she was going to refund them. The applicant told them that she was at the police station to lay charges against someone who had taken her stove. Ms Moloji asked what they should do, and it is then that the affidavit was drafted and their identity numbers were requested. Ms. Moloji stated that she did not know Ms. Nkane Ntseleng and Suzanne before and that the applicant was not at her place, they only met with her at the police station. Ms Moloji also stated that the very person allegedly to have taken the applicant's stove was owed by the applicant an amount of R3500-00 for which the applicant had promised to organize a job for. Ms Moloji explained that when they went to the police station their intention was to seek direction on how they can get help. They were assisted because they met with the person that they went to complain about. The police officer authenticated the statement of the applicant. The applicant sat next to the lady who was assisting with the

statement when the statement was written. Ms. Sikhosana wrote the statement on instruction of the applicant. The applicant said she had a small child and was asking for an opportunity to pay that money. Ms Moloji confirmed that her identity number was among those given to the police officer and explained that Ms. Sikhosana asked for the identity numbers of all those people that the applicant had taken money from. Ms. Sikhosana asked why did the applicant take the money, the applicant confirmed that she had taken their money and she signed the statement. The captain neither read nor let the applicant read the statement. The content of the statement was based on what was said by the applicant. Ms Moloji explained that no body forced the applicant to write a statement, the captain said she was going to arrest her. Ms Moloji stated that they did not get the money.

16. During cross-examination, Ms. Moloji confirmed that she gave the money to the applicant by hand and on that day Ms. Moloji was with her husband and her elder son. Ms Moloji repeated her initial version on how she got to know the applicant as well as how the loan was organized by her sister and further stated that eventually the applicant spoke to her at Manapo hospital, Ms. Mofokeng phoned her and said they should be quick with the money as it was required on Friday.

17. Ms. Nkane Tseleng, the third witness of the respondent confirmed that she knows Ms Moloji. Ms. Tseleng also stated that she knows the applicant from her school years ago when they were still young. She then met with the applicant when they boarded a taxi. The applicant asked her if she was looking for a job or not and how many were they, her response was that it is her and her siblings. The applicant informed her that she needed R3500-00 as she was employing cleaners. Ms. Tseleng confirmed that she gave the applicant the R3500-00 as promised. Ms. Tseleng also confirmed that page 8 of bundle "A" is a sworn affidavit which was drafted when the applicant undertook that she will pay the money that she had taken from them. Ms. Tseleng testified that the applicant wanted to deny that she had taken money, then they had to go to the police station and the applicant informed the commissioner of oaths that she would pay their money, but she has not yet paid their money. Ms. Tseleng stated that after she gave the applicant R3500-00 she did not get employment and the applicant has not given her money back. Ms. Tseleng stated that she is not running a money lending business.

18. During cross-examination Ms. Tseleng confirmed that she knew that the applicant was working at Manapo Hospital, she never mentioned to her the position she was holding but told her that she was fraudulently employed as well and told her that she was selling jobs. Ms. Tseleng stated that she firstly went to her brother, got the money and gave the applicant R3500-00 the following day at Manapo Hospital at the guardroom and was together with her siblings. The applicant said people should not see them and said she must ask for another person who seeks work.
19. Ms. Tseleng stated that she knew that the applicant was staying in Tibane. Ms. Tseleng said she believed what was said by the applicant as she was dressed in the uniform of Manapo Hospital. Ms. Tseleng mentioned that on the first occasion she went to the police station with the applicant as the applicant initiated it herself saying she was going to undertake and confirm that she took their money. At the police station the police wanted to detain her but she asked not to be detained as she had a child. Ms. Tseleng said she does not want to commit herself with dates as this happened a long time ago and could not immediately remember dates. Ms. Tseleng confirmed that it was her statement dated 15 June 2015 and signature which was in page 6 of bundle "A". Ms. Tseleng stated that when they left the applicant's place, they found her at the police station. Ms. Tseleng also stated that she saw Ms Moloji for the first time at the police station. The applicant was given the affidavit to sign and the affidavit was read to her. Ms. Tseleng stated that they told the police that the applicant took their money. Ms. Tseleng disputed the version of the applicant when put to her that she would say the statement was already written when she arrived, she was only told to sign or else she will be arrested, saying that the applicant voluntarily said she will sign and will pay their money back. Ms. Tseleng explained that the applicant was never forced to sign, she was avoiding detention and the statement was read to the applicant before she signed. Ms. Tseleng disputed the applicant's denial that she never gave her R3500-00 at the guard room and she never promised her work, saying that that is not the truth.
20. At re-examination Ms. Tseleng emphasised that the applicant was not forced to sign the affidavit. Ms. Tseleng further stated that there is no reason that could lead her to lie against the applicant. What she is speaking is the truth from her heart. They met at the place of the applicant because she owed them money. Ms. Tseleng further mentioned that she is the one who approached the hospital complaining about the applicant and reported to the Chief Executive Officer of the hospital because the applicant took her

money promising to give her a job. Ms. Tseleng said she did that because she wanted her money. Ms. Tseleng also explained that they were four when they reported at the hospital, they planned to come to the hospital and report the applicant.

21. Ms. Juanita Kotze, the Local Area Manager at Setsoso, who was the chairperson of the disciplinary hearing testified that she knows the applicant as she was the accused in a hearing at which she was the presiding officer. Ms Kotze testified that the 1st session of the disciplinary hearing was on 7th April 2016, the 2nd session was on 15 May 2016 and the 3rd session was on 16 May 2016. The first session could not proceed, the doctor's note was submitted by the representative of the applicant that the applicant was sick. The hearing was adjourned to 16 May 2016, the charge sheet was amended and the 1st charge sheet was withdrawn. The document was signed on 11 May 2016 and given to the applicant but was never given to the representative. The agreement was reached by both parties that they would deal with with charge 1-4 as per initial charge, then other charges would be deal with on another day. So they would do charge 5-10 on the next session as five days could not suffice for preparations. The applicant pleaded not guilty to all charges.

22. On the third session the applicant was asked whether she pleads not guilty or not, she pleaded not guilty. Ms. Kotze confirmed that those were the charges. The charges were that the applicant offered bribes for getting people jobs at the hospital and she put the department in bad reputation. Ms. Kotze testified that she is 100 percent sure that the notice was more than 5 days and all procedures were followed. Ms. Kotze testified that the applicant never requested the Interpreter, the issue of the interpreter was never raised. The outcome that was issued as indicated was that the applicant was guilty. The testimony of witnesses was in line, they were clear that they were promised jobs if they give the applicant money, those were not loans. There was an affidavit. There was no counter proof that it was otherwise. Ms. Kotze testified that by looking at the evidence presented to her and witnesses, she found reason to issue that outcome. The applicant was afforded an opportunity to present her case. Ms. Kotze also testified that her outcome was dismissal because of the seriousness of the case, there was fraud. Ms. Kotze stated that she was not influenced, as a presiding officer one should look at evidence. The applicant indicated on witness stand and said she had borrowed money from the witnesses, and said she did not ask them to bribe her.

23. During cross-examination, Ms. Kotze stated that she has been with the government for 14 years and has dealt with disciplinary hearings before the one of the applicant, but she could not recall the number of disciplinary hearings that she had dealt with. They were exposed to disciplinary hearings through workshops with the government and she keeps the document with guidelines step by step. After the disciplinary hearing she was going to send the outcome. There were findings and mitigation opportunity. Ms. Kotze reiterated that she is experienced in conducting the disciplinary hearings. Ms. Kotze stated that the disciplinary hearing first session was on 6 April 2016, the applicant was not present. English was used as she understands that language. Ms. Kotze confirmed that there was a request for postponement, she sought guidance because the postponement was opposed. On the 2nd session she phoned the Labour Relations department because there was an issue regarding the amended charge sheet. Ms. Kotze confirmed that there were four charges and that the documents were received on the 1st day, the charge sheet, witness statements and affidavits, but she was not given the amended charges.

24. Ms. Kotze stated that the disciplinary hearing of this case was held two years ago, in some details it is not easy to remember everything, she also stated that it is not the first time that she saw those charges. When asked if she read the rights of the employee in the 2nd session, Ms Kotze's initial response was that the original charge indicated and reflected the rights that were given to the employee. Ms Kotze further confirmed that on the 2nd session the rights were conveyed to the employee. When pressed at cross-examination, Ms. Kotze could not be sure whether she explained the applicant's right to have an interpreter or ascertained if the applicant wanted an interpreter. Ms Kotze further stated that there is no indication of the need for an interpreter in her records. Ms Kotze confirmed that from the 16 May 2016 the case was postponed to 15 June 2016. When the applicant's representative put the version to Ms Kotze that the CEO came and testified without reading of the charges, her response was that the charge was read out according to her and pleading was done. Ms Kotze could not confirm if what is in the minutes of the disciplinary hearing is the true reflection of what transpired at the disciplinary hearing, saying that she admits that there are gaps in the minutes of the disciplinary hearing. Ms. Kotze stated that she gave the respondent her hand-written notes. Ms. Kotze confirmed that she also found the applicant guilty of putting the department's name into disrepute. Ms Kotze confirmed that the applicant was found guilty in all charges as well as an alternate charge. Ms. Kotze confirmed that according

to her an employee can be found guilty on main and charges and the alternative charges. When asked who led evidence on the alternative charge, Ms. Kotze's response was that the CEO also indicated that the trust relationship has been broken. When asked when did she find out that the applicant had a previous conviction, Ms. Kotze responded by saying that the applicant she borrowed R1000-00 from someone. The PSA promised to appeal for the applicant but did not appeal. When asked about what she meant in page 2 of bundle "A" regarding her findings in particular paragraph 5, Ms. Kotze stated that she meant that the three months suspension without pay which had been previously issued to the applicant was alleged to have been for promising jobs while the applicant had indicated that the suspension was for asking for a loan, so she believed the respondent's version because there was no application for appeal filed from the applicant's side, such made her to believe the applicant's version was not true. Ms. Kotze stated that it was not mentioned in mitigation that the previous conviction was not for soliciting bribes as it was for loans. When asked if there are any documents or anywhere she analysed how did she arrive to a conclusion of dismissal and on weighing mitigating and aggravating factors, Ms. Kotze's response was that she does not have the actual notes on the date of arbitration, but due to the seriousness of the offence, such made her to reach that decision. Ms. Kotze further stated that such is not in the documents as she did not put it in writing. Ms Kotze maintained that mitigating factors were considered.

25. Ms. Kotze stated that she did not see the need of seeking advice on dismissal because she had information at her disposal and she arrived at a conclusion after considering all issues. Ms Kotze did not agree to the allegation by the applicant that the employee was never asked to plead on charges 5-10 and that the alternative charge was never read to the applicant, saying that according to her notes when witnesses were asked, it was indicated by the applicant that she was not guilty. Ms Kotze disputed the applicant's version that on 16 May 2016 she was already knowing the contents of the affidavit and evidence to be tendered before it started as she had witness statement, and she responded by saying that the documents were not handed to her beforehand. Ms Kotze could not agree to the allegation by applicant that she made a decision before the sitting.

26. At re-examination, Ms. Kotze stated that she does not remember if there was a request for an interpreter, but if it was requested she would have granted. Ms Kotze stated that she did not consider the previous sanction of the applicant when she decided on a sanction and in absence of the previous conviction she would have arrived at the same

sanction of dismissal. Ms Kotze maintained that the sanction she issued was an appropriate one. Ms Kotze admitted that if everything was documented this matter could have been handled better. Ms Kotze maintained that there was no flaw on her part. She had information for her to reach her own decision and conclusion including a sanction.

27. Mr. Nkosana Motsitsi, the Senior Labour Relations Advisor testified that he was the representative of the respondent on 7 April 2016 when there was a disciplinary hearing of the applicant. Mr. Motsitsi stated that the procedure was followed, the applicant was put on pre-cautionary suspension, was charged with certain counts, appealed the outcome, the outcome of the appeal was issued. Mr. Motsitsi read the charges as reflecting in bundle "B" pages 1-3 and explained that the charges proffered were that money was taken from the people listed in charges and were promised work at the hospital. After the postponement of the disciplinary hearing, more people came to the hospital complaining about the same thing. The management considered the charges to be serious that is why the applicant was put on precautionary suspension.

28. Soliciting and taking bribe is a serious offence, it boils down to criminality, as per resolutions, such a person has to be put on precautionary suspension. Mr. Motsitsi testified that he brought witnesses to testify from charge 1 up to charge no 10. The witnesses testified, there was a guilty finding and ultimately the applicant was dismissed. Mr. Motsitsi testified that the applicant denied the allegations by saying she did not take money for promise of work, but these were loans that she took and confirmed that she took the money, but that argument was defeated. Mr. Motsitsi testified that he was at the CEO's office when those questions were asked and statements made by the complainants. Mr. Motsitsi also testified that the applicant was earlier charged and put on 3 months suspension for similar charges. The applicant was booked off-sick on the 1st sitting, then before the 2nd sitting the charge sheet was amended, but it was resolved that on the 2nd sitting parties would deal with the first 4 charges, then parties would re-schedule for the 3rd sitting to deal with charges 5-10. There was no problem with the charges, it is just that they were amended. All charges were considered, the applicant was found guilty on evidence. Mr. Motsitsi testified that there were instances where the employees were speaking Sesotho. Mr. Motsitsi could not remember any situation where the parties were having a dispute about the language, the rights were communicated. The right of having an interpreter was communicated to the applicant. The applicant was

subjected to due processes, she was never prejudiced, her rights were communicated, right to appeal, there was an appeal, the appeal confirmed the dismissal.

29. During cross-examination, Mr. Motsitsi confirmed that on 6 April 2016, the initial sitting, there was a chairperson, the applicant was not there, the representative of the applicant brought a sick note that the applicant was sick. When asked why he and the chairperson remember most of what transpired at disciplinary hearing, but do not remember the issue of the interpreter, Mr. Motsitsi's response was that it is because he does not remember them having a problem about the interpreter and the language, there was no dispute about interpretation, if there was a dispute he would not have objected. Mr. Motsitsi insisted and confirmed that the right of having an interpreter was communicated to the applicant and there was no objection. Mr. Motsitsi stated that he does not recall whether there was someone interpreting for the chairperson. Mr. Motsitsi testified that on the 1st sitting they did not give the chairperson anything, regarding the documents, because there was a postponement issue. Mr. Motsitsi said he cannot see how the chairperson got documents because the issue was not entertained.

30. On the 2nd sitting when the process was already in session, that is where the chairperson got to be aware of the amended charge sheet. Mr. Motsitsi state that he had to explain to the chairperson that the charge sheet has been amended. When previous conviction of the applicant was brought by the CEO about the 3months unpaid suspension, the applicant disputed the reason for suspension. Mr. Motsitsi admitted that they never provided proof of the reason for the unpaid suspension, they only presented oral evidence, they did not provide the documents because that was only raised by the CEO, so as the CEO she knew what she was talking about and she testified about that, but there was no proof in writing. In aggravating circumstances, Mr. Motsitsi stated that he only mentioned the issue of unpaid suspension. Mr. Motsitsi continued by mentioning that he got the documents to prove that the applicant was suspended, but he did not get the reasons or information on reasons of the suspension. Mr. Motsitsi admitted that there was no witness called to testify on the alternative charge, but mentioned that he does remember the CEO talking about prejudice caused by this conduct. Mr. Motsitsi later confirmed that the CEO was a witness in the alternative charge. In his heads of argument Mr. Motsitsi could not find any records of the CEO testifying in the alternative charge. Mr. Motsitsi said the CEO testified in the alternative charge but it is not captured in his heads of argument, he said he covered this issue in aggravating circumstances. Mr. Motsitsi

could not respond directly when asked if any evidence was led on charges 7 & 8, his response was that there was a document where there was a round figure.

31. At re-examination, Mr. Motsitsi stated that he taught by looking at the charges such would affect the trust relationship. The chairperson felt that under those circumstances, dismissal would have been a fair sanction. Mr. Motsitsi confirmed that the applicant was given an opportunity to plead on charge 5-11.

32. Mr. Hlanganani Mabizela's testimony was mainly based on charge 2. Mr. Mabizela was to shed light on what happened to Ms. N Mabizela, his niece as she could not come because she is now working in Johannesburg, so he testified on what transpired to Ms. Mabizela's situation as he is alleged to be an eye witness. Mr. Mabizela confirmed that he knows the applicant and testified that at approximately 11h:55AM in 2016, he met with his niece at the entrance gate of the hospital and she was in a hurry. Mr. Mabizela asked her what was happening as he thought that he was sick. She said she was not sick but was at the hospital to bring money to someone who said she must bring money at 12h:00P.M. She said she was going to give money to Dinah, the applicant at Mohau Clinic and the money was for promise that the applicant was going to provide her with a job. There were documents of Ms. Mabizela in a brown envelope.

33. Mr. Mabizela testified that he was at a distance from his niece when the niece gave money to Dinah, the applicant. Mr. Mabizela went to the applicant and told her to give money back to his niece. Mr. Mabizela immediately reported the matter to the CEO and the CEO came back to the applicant while she had the brown envelope still. The applicant was reluctant to disclose the contents contained in the envelope but she later confirmed that those were belongings of his nephew. The applicant was asked by the CEO to take out the contents of the envelope and asked what was she doing with those documents. Dr Letsela took photographs of the incident. The applicant did not respond, she kept quiet and looked scared. The CEO instructed everyone to go to her office and instructed Dr Letsela to take a video. Dr Letsela recorded, the CEO asked Mr. Mabizela's niece as to what was happening, the niece spilled the beans, that she had brought R3500-00 to the applicant, as the applicant had promised her a job and the money had to be brought on the day in question at 12h:00PM The applicant was asked where the money was and she took it out. The applicant was then asked to count the money while the video

recording was done. After that the CEO Gave money back to Mr. Mabizela's niece. The CEO reprimanded Ms. Mabizela and told her that it is not the way things are done at Manapo hospital.

34. During cross examination Mr. Mabizela confirmed her initial statement about how he met with his niece at the hospital and what led to him reporting to the CEO. Mr. Mabizela confirmed that it was his statement that was reflecting in the minutes. Mr Mabizela stated that his niece was so desperate for getting a job at Manapo hospital, and she thought that Mr. Mabizela do not want her to get the job. Mr. Mabizela confirmed that the money that was refunded to his niece was R3500-00. When put to Mr. Mabizela that the applicant's version will be that she did not take any money from his niece, his response was that the applicant would be lying. Mr. Mabizela further explained that the applicant started by not talking from the clinic and she did not respond and she kept quiet. Mr. Mabizela reiterated that he saw the applicant taking the money from his niece.
35. At re-examination, Mr. Mabizela confirmed that the money came out of the applicant, after she was instructed to take it out at the CEO's office. Mr. Mabizela confirmed that the applicant was his colleague, he knew her very well, they never had an argument. Mr. Mabizela said his version should be believed because he together with Dr Letsela and the CEO have the evidence.
36. Dr Ambrose Letsele confirmed that he knew the applicant, he knows her because she was working at Manapo hospital. Dr Letsela testified that they were at the office of the CEO on the date of the incident, a gentleman said there is something that he wanted the CEO to see. They went outside of the building and found the applicant and Ms. Mabizela and he captured the happenings on the video. They then went back to the CEO's office. The allegation was that the applicant was given bribery by Ms. Mabizela to provide her with work. The amount was R3500-00. There were other documents including CV supporting that. The CEO questioned the applicant and the applicant confirmed that she knew Ms. Mabizela and that she was offering her a job at Manapo hospital at R3500-00. The CEO said she was aware that the applicant has done this for a quite number of times and there were other people who gave her money with the promise of placement. Other people came to the hospital regarding the same issue and that they were promised jobs. The CEO asked the applicant to give back the money to Ms. Mabizela, which was R3500-00. Mr. Mabizela stated that he deleted the video after the dismissal of the applicant.

37. During re-examination, Dr Letsele confirmed that he saw the exchange of money and on numerous times repeated that the applicant confessed and confirmed that she took the money and she was selling jobs. He did not attend the disciplinary hearing and does not know if the video was presented at the disciplinary hearing. Dr Letsele stated that he was told that the case was over, so because of the space he deleted the video. The applicant confessed that she sold the jobs hence other people were brought to party, other people came looking for the applicant, they were brought to the CEO's office.
38. Dr Sibongile Mthimkhulu, the CEO confirmed that she was still the CEO at Manapo Hospital on 16 February 2016. She was then laterally transferred from Manapo to Boitomelo Hospital in Kroonstad, where she started on the 2nd of April 2018. She confirmed that there was an incident which took place in February 2016 which involved the applicant and Ms. Mabizela. As she was continuing with her duties one of her employees by Mr. Mabizela, the Boilermaker came to her and said that she must come and see what is being done by the applicant. Dr Mthimkhulu testified that she requested Dr Letsele who is one of Clinical Managers to accompany her, they went outside next to Mohau clinic, where they found two ladies, one of them was Mr. Mabizela's niece. When she arrived, the applicant had a brown A4 envelope, she then greeted them and asked what they were doing, the other lady said they were looking for directions. Dr Mthimkhulu instructed them to go to her office so that they can discuss what was happening with the envelope. The applicant never answered.
39. Ms. Mabizela said it was her envelope and also said that the applicant was selling jobs at R3500-00 and she just came from withdrawing money for the job. She was told that there is somebody from Bloemfontein who wanted to get the money before 12h:00PM and if she arrived with the money late the job would be given to someone else. The applicant admitted that she was soliciting bribes for money promising people jobs, she said the reason was because she had problems. Dr Mthimkhulu testified that it is not the first time that she heard of the applicant allegedly selling jobs and she serve the 3months suspension for selling jobs. It was a group of 4- 6 people, the other day was 12 people from the location who came to the institution alleging that the applicant took their money for loan or taking the money because she was going to employ them. She would request money from people in the community and not return it. This incident occurred on 16 & 17 shortly after everyone got paid. The CEO called the applicant to her office and told her

that there is an employee assistance programme in the institution, the applicant agreed and said that because of her medical aid she will lose in it if she attends the employee assistance programme. The CEO testified that she saw documents and a copy where it was stated that she was suspended for soliciting bribes. The CEO admitted that there were vacant posts, but the jobs were not advertised. The applicant was not entrusted with the duty of employing people. Such actions of the applicant are not acceptable at the workplace. A hospital is an institution of the community, it is where the community comes for health, so that action cannot be condoned. It tarnishes the whole hospital's image. This is a very respected and valuable institution, so now people would say Manapo Hospital sells jobs.

40. The CEO testified that the trust relationship has been broken down, she sat down and spoke with the applicant and she thought the applicant had listened as she promised to change her behaviour. She broke her promise. The CEO further stated that they have values of being trustworthy, patients and community would end up not trusting the institution. So, the trust with the applicant is broken down.

41. During cross-examination, the CEO confirmed that when she arrived at Manapo hospital the applicant was a Ward Clerk and later qualified her statement by saying that it is possible that the applicant was Cleaner on paper but did Ward Clerk functions. The CEO said she did not know if the applicant had information about vacancies which were not advertised in February 2016 and did not know of her intentions, if she knew she might have heard it in the Indaba, as the CEO would communicate such information to anyone, but at that point they were under administration. The CEO reiterated that the applicant admitted to her that she promised the people in the community jobs without being pushed, she said she was sorry and she cannot do that again. When it was put to her that as per Mr. Mabizela's testimony the applicant did not respond when asked, she was scared, the CEO's response was that whether Mr. Mabizela listened actively or not, she cannot account to that. The applicant did not quarrel with her, she admitted after anyone was given a chance and apologized humbly.

42. The CEO stated that this issue was not reported to the police because in her leadership she thought that soliciting a bribe was unlawful, she has a responsibility of making sure that the employees are in an enabling environment. When you deal with an individual you cannot just go to the police, as you must make sure she is taken care of

psychologically etc such as through the employee assistance programme. The CEO admitted of borrowing money from Ms. Mosia but said she did not know that Ms. Mosia got money from the applicant, the borrowing of money was between her and Ms. Mosia, the applicant was not part of it.

Applicant's case

43. Ms. Dinah Selinah Motaung, the applicant, testified that she was based at Manapo Hospital and held a position of being a Cleaner Level 2, she started working for the hospital on 1 September 2005. The applicant testified that she made a request for the Sesotho interpreter at the disciplinary hearing. The language used at the disciplinary hearing was English. The interpreter was not provided, the CEO said Ms Kotze, the chairperson knows Sesotho. The applicant confirmed that she still remembers the charges that led to her dismissal. At the beginning there were 4 charges. She pleaded not guilty to those charges and does not remember any other time where she was requested to plead again. In charge number 1, the applicant stated that the R3500-00 was for a cash loan she had borrowed from the Ms. Pitso as she was a money lender. On the following month the applicant paid Ms. Pitso the interest of R1500-00, then in the middle of the month she gave her R500-00. It is not correct as drafted in the charge that the money was for getting Ms. Pitso work at the hospital.

44. In charge 2 the applicant denied the allegation saying that Ms. Mabizela is one of the money lenders, she was asking for money from Ms. Pitso that was requested by Ms Motaung and Ms. Pitso had to request it from Ms Mabizela. Ms. Pitso and Ms. Mabizela phoned her to come with the person who wanted money at the back of Mohau clinic here at the hospital, she met them and they requested her to make them two copies of their identity documents. They said they were going to submit their IDs to Seyathusa Mortuary, which is a private mortuary that does not have to do with Manapo Mopeli Hospital. The applicant testified that Ms. Pitso and Ms. Mabizela told her that they were going to withdraw money for Ms. Motaung, upon their return from the bank they told the applicant to come with the person who borrowed money as they were not going to give the money to her, but to the borrower. While they were waiting for the person who borrowed money, Dr Mthimkhulu, Mr. Mabizela and Dr Letsile arrived. Dr Letsile took the photos and Dr Mthimkhulu said they must go to the office. On arrival at the office, Dr Mthimkhulu never

said anything to her. The money of Ms. Motaung was in possession of Ms. Pitso and Ms. Mabizela. The applicant denied being confronted by the CEO and also said that she never confessed to taking the bribe, saying that is not the truth. The applicant tried to explain the issue about the money but Dr Mthimkhulu was not prepared to listen. The applicant said she was surprised of the taking of pictures while she was not aware of the reason for it. The applicant denied the allegation by Mr. Mabizela that her niece was going to pay the applicant money in return for providing her with a job. The applicant disputed the CEO's version that when she met the applicant at the clinic, she had a brown envelope in her possession, saying that she was not having anything in her hands, she did not have a brown envelope. The applicant denied that she made a confession to Dr Mthimkhulu and also denied that she was suspended for bribery, saying that the reason for suspension was for a loan of R1000-00. The applicants said the reprimands that she received from the CEO were for the money landing scheme, not for bribery. The applicant denied that the CEO recommended that she should attend the employee assistance programme. The applicant said she never took bribe from anyone.

45. Regarding charge 5, the applicant testified Ms Moloi never gave her money. The applicant connected Ms. Moloi to Ms. Motaung telephonically, but she was not involved in the transaction. Ms. Moloi dealt with another Ms. Motaung. It is her sister that gave the money to Ms. Motaung. The applicant denied requesting their ID's and Cvs and denied that they were ever at her residential place. The applicant testified that she was phoned by the police office to come and the police asked for her address. The policewoman had already drafted a statement, she was only told to sign the statement. The applicant denied the version of the community members that when they arrived, she was already at the police station to open a case against someone who had taken her stove, saying that when she arrived at the police station, they were already there. The applicant insisted that when she arrived at the police station the affidavit was already written. The police woman said she will arrest the applicant if she does not sign the affidavit. The police woman did not read the affidavit to her before signing, she said those people alleged that she was owing them money. The applicant denied the version of Ms. Sikhosana.

46. The applicant denied what was contained in charges number 7 & 8, saying that she referred Mr Thabo Mokoena and Ms. Motaung to Ms M Mokoena who is also a money lender. Each one had their individual reasons for borrowing money. The applicant stated

that she got to know Ms. Mothinjwa when she was with Ms Mokoena at the Small Claims Court as Ms Mokoena was refusing to pay them. At Small Claims Court they said the amount exceeded R12000-00 and they said the applicant is liable for payment because she is the one who contacted them. The applicant confirmed her statement in bundle A page 3 where she undertook that she would pay the money since she connected them and they said the money totalled R37200-00.

47. In charge 9 & 10 the applicant denied that the money was for bribes in return for promising jobs, saying that Ms. Moholobela borrowed her R3500-00 and she took her to the Small Claims Court, both of the people listed in those charges are money lenders. That money was for loan.

48. In charge 3 & 4, the applicant denied everything contained there, saying that it is not true. The applicant stated that Mr Thabo Mokoena, Nthabiseng Matsiame, Ms. Poleng Mokoena and Mr. Mosia know that she is a go-between in money lending and that Ms Nthabiseng Matsume and Mr Thabang Mokoena can testify about their knowledge of her involvement in money lending scheme. The applicant confirmed that what was contained at Mr Thabo Mokoena's statement in page 5 of bundle B was true and such relates to charge 8.

49. During cross-examination the applicant stated that she was at the police station because she was called by a policewoman and was told that if she does come to the police station she will be arrested. Captain Skhosana called her to the police station, requested her ID number and asked her to sign the affidavit, told her that she must either sign or she will be detained and also told her that the people said she owes them, she did not speak to the applicant alone. Captain Sikhosana was with 4 people when the applicant arrived. She was not given a copy of the affidavit and was not given a chance to go through that document, only those 4 people were given copies.

50. The applicant admitted that if someone has completed Grade 12 can understand what is written and confirmed that her highest qualification is Grade 12. The applicant said she does not remember what she signed for because she was not given a copy of the affidavit. When asked what could be the reason that the CEO, Mr. Mabizela, Dr Letsela and niece of Mr. Mabizela say similar things about her, specifically about soliciting a bribe of R3500-00, the applicant's response was she does not know. When asked why all

employees in the hospital implicate her, her response was that it is because everyone in the hospital knows that she is connected to money lenders. The applicant stated that she was issued with 3 months unpaid suspension by the CEO, there was no hearing and no documents issued, it was a verbal sanction and was for money lending. The applicant stated that she only borrowed money for herself from two people which are Ms. Mohllobela which was R3500-00 and R3500-00 from Ms Hilda Pitso, on others it was for Ms. Motaung. When asked why did she continue with money lending while she knew that it was wrong and had been issued with 3 months unpaid suspension, the applicant said a person would come to her requesting help on behalf of a child that is about to be suspended at school hence she assisted Ms. Motaung. When asked on what charges was she found guilty and the charges that led to her dismissal, the applicant's response was that she does not know. The applicant said she was dismissed on an allegation that she took a bribe. The applicant confirmed that she is satisfied with the responses she has provided. The applicant mentioned that she is currently unemployed. The applicant said that while she was working at the hospital she never interacted with neither patients nor visitors. The applicant confirmed that she knows that a person that does not speak truth under oath can be seen to be dishonest but said she does not know that lying under oath is an act of dishonesty. The applicant stated that she did not open a case of intimidation and did not lodge a complaint with the police against Ms. Sikhosana because she did not know that the affidavit will put them where they are at arbitration, Ms. Sikhosana just said she was drafting proof that the applicant owed those people.

51. When asked if she expects the Department of Health to view her as a good, trustworthy, honest and faithful employee while she continued with money lending as she is alleging despite being put on unpaid suspension, the applicant responded by saying yes because it is common practice at the hospital for hospital staff members to borrow money from the township and people from township coming to hospital. The applicant further said lending or borrowing money to each other is not theft but a way of helping one another. The applicant said even Ms Mthimkhulu is also involved in money lending scheme. When asked why did she choose the back of the clinic when she met with Ms. Motaung and other people, her response was that those people suggested that they meet at the back of the cleaning. When asked why is it always herself in particular who borrows money for other people, the applicant's response was that it is because she knows a lot of people and she part-takes in stokvels. When asked why would all those people accuse her of

soliciting bribes by promising people work at the hospital, the applicant said she does not know the reason.

52. At re-examination the applicant maintained that it is common practice to do money lending in that institution and Ms. Mthimkhulu herself does borrow money from these schemes. When asked how was her relationship with the witnesses of the respondent, she said she had an altercation over a comforter set with Mantwa Mokoena, she fought over money with Ms. Mothiwa as Ms. Motaung was refusing it pay. The applicant said she never hear about people paying money for jobs, she only overheard that on radio. The applicant said almost all the monies that she borrowed were at R3500-00 because the limit was R3500-00. The applicant confirmed that her understanding of signing a document is that a document has been read to you and you understand that document. The applicant said the rule of the hospital is silent on money lending, she does not know if money lending is allowed or not. The applicant confirmed that the punitive measure of 3 months unpaid suspension meant that she should not continue with money lending or borrowing schemes. The applicant said that she thinks those people are lying against her because they did not receive their money from Ms. Motaung.

53. Mr Thabo Mokoena testified that she works for Manapo Hospital as a Cleaner and he started on 26 October 2015. He knows Ms. Motaung as she is his colleague. Mr Mokoena confirmed that it is his statement that reflects in page 5 of bundle B. He read his statement and explained that he needed money and went to Ms. Mantwa Mokoena to borrow R1200-00 together with the applicant and Ms. Motaung. Ms. Motaung wanted R3000-00, but she does not recall the exact amount. Mr Mokoena testified that he approached the applicant because she was connected to a number of money lenders. Mr Mokoena stated that he paid back the money although it was after sometime due to problems encountered. Mr Mokoena said he does not know about the applicant taking money from Ms Mokoena and promising her work at the hospital, the money he knows was for a loan.

54. During cross-examination, when asked about the discrepancies in his written statement and testimony and which one should be believed, Mr Mokoena said both his written statement and testimony are correct. Mr Mokoena further mentioned that he is not sure if Ms. Mokoena was given the R3000-00 she wanted because they were given money separately, not in the presence of other people. Mr Mokoena said it is not true that Ms.

Motaung took money from those people promising them work at the hospital in exchange for money. Mr Mokoena said she met Mantwa at Setsing taxi rank and she informed her that Ms. Motaung was going to lose her job. Mr Mokoena said what he knows is that when they want money, they would approach Ms Motaung who would refer them to money lenders, he does not know her lending money. Mr Mokoena said he does not want to commit himself about an allegation of money given with the promise to give work, he does not know about that, what he knows is that he went to borrow money which was given to him. He only heard on the radio and newspapers about allegations of people promising jobs in exchange for money.

55. Ms. Dineo Nthabiseng Matsume testified that she works at Manapo Mopeli Hospital as a Household Aid and was appointed in March 2011. She testified that she knows the applicant but is not her friend and they do not have any relationship. Ms. Matsume testified that when she had problems, she would approach the applicant. The applicant would assist the people borrowing money by being a go-between. This occurred both at work and in the location. Ms. Matsume testified that the applicant would assist her in securing a loan, at some stage Ms. Matsume could not pay the loan, then the applicant repaid it for her. Ms. Matsume testified that she was present in the incident of Mr. Mabizela, she did not see when it started but she met with a group of women and overheard them mentioning the name of the applicant. These people were phoning someone saying to that person they are already at the hospital and she should not worry about money, she should not say the money that Ms. Motaung gave you is for money lending, say it was for bribing as she was selling jobs, we will then be refunded. Ms. Matsume testified that she was shocked about what was happening at the CEO's office, she did not believe that Ms. Motaung was at the CEO's office for those allegations up until she asked her colleague to accompany her to check if Ms. Motaung was at the office. Ms. Matsume testified that she was not the only one who had borrowed money through the applicant, Ms. Motaung, Thabo Mokoena and Ms. Morobi had borrowed money through the applicant. Ms. Matsume stated that she was not sure how much exactly did she borrow through the applicant because she borrowed money on many occasions.

56. During cross-examination, when she was asked if she confronted the women that she overheard speaking about the applicant, the Ms. Mtsume said she did not confront them. She only took an action when she heard that this was a serious issue and reported the

matter to Ms. Mosia at HR. Ms. Matsume said she wants to prove that the applicant does not sell jobs, she is a money lender. Ms. Matsume said she does not know that having loans at work is a misconduct. Ms. Matsume admitted that when the employer is suspending someone for doing something it means that is wrong it cannot be tolerated and that person must stop it.

57. At re-examination Ms. Matsume said she does not believe that the applicant was dismissed for selling jobs, the money was for money lending. Ms. Matsume said she did not tell the applicant about the conversation that she overheard, she did not have time to meet her and did not think of telling her. Ms. Matsume stated that she was not called to testify at the disciplinary hearing. Ms. Matsume said she is only sure about issues pertaining to 17 February 2016.

Analysis of evidence and arguments

58. Section 192(2) of the Labour Relations Act 66 of 1995 (the LRA) places the onus on the employee to establish the existence of a dismissal. Once that has been established, the onus shifts to the employer party to prove on a balance of probabilities that the dismissal had been for a fair reason and that a fair procedure was followed, with due regard to the standard of the Code of Good Practice: Dismissals as contained in Schedule 8 to the LRA (the Code). I have considered the relevant guidelines.

59. I have considered the parties' evidence, closing arguments, authority referred to as well as the documents submitted by the parties.

60. The applicant's contention was that she was dismissed by the respondent and challenges the procedure, substantive issues and the sanction. The charges emanated from the complaints lodged with the respondent by members of the community mainly with the allegation that the applicant solicited bribes by promising them to get employment at the hospital. The incidents which the applicant denied with the justification that those monies taken or exchanged were not for bribes but for loans as she was involved in loan schemes as a go-between as reflecting in the evidence led.

61. It is common cause that the applicant was charged with 10 charges and an alternative charge, the disciplinary hearing was held, the applicant was found guilty in all charges and the outcome of dismissal was issued. The applicant appealed but the dismissal was confirmed. It is common cause that there are gaps in the minutes, as per the chairperson's admission as she could not confirm if what is in her minutes was a true reflection of what transpired at the disciplinary hearing. It is also common cause that only one complainant reflecting on the charge sheet testified at arbitration, the other complainants did not testify. It is also common cause that the applicant was previously issued with a punitive measure of 3 months' suspension without pay. However, the parties' versions are different on the reasons for such a punitive measure.
62. What is in dispute is whether the applicant was provided with the services of the interpreter during the disciplinary hearing, whether the applicant pleaded in charge 5-10 and the alternative charge, what was the reason of the previous conviction of the applicant, what is the effect of the minute recording not being available, whether evidence led without testimony of direct complainants in other charges should hold water, except charge 5 where Ms. Moloi, the complainant testified.
63. I am enjoined by section 138 of the LRA which provides that (1) the commissioner may conduct an arbitration in a manner the commissioner considers appropriate in order to determine the dispute fairly and quickly, but must deal with the substantial merits of the dispute with minimum of legal formalities.
64. Both Ms. Kotze and Ms. Motsitisi corroborated their versions that the applicant pleaded on all charges, I am inclined to find the version of the respondent more probable against the sole version of the applicant regarding the pleading.
65. I do not find the issue of the proper minutes amounting to being a procedural flaw considering that the evidence has been led at arbitration although it is encouraged for the presiding officer to keep proper recording and minutes of the disciplinary hearing.
66. In absence of the documents from the respondent clarifying and proving the reason for the 3 months' unpaid suspension, I am not convinced that this punitive measure was soliciting and taking bribes by promising community members employment.

67. Mr. Motsitsi and Ms. Kotze could not come directly to indicate if the applicant was provided with the interpreter, both of them could not remember whether the chairperson ascertained the need for the interpreter or explained the right of having an interpreter. In absence of minutes and a direct response I am inclined to consider the version of the applicant more probable in this regard than the respondent's version. The courts have pronounced that the right to have an interpreter at the hearing is a cardinal right which cannot be easily waived in South Africa. It is therefore my considered view that there was a procedural flaw on the part of the respondent by not providing the interpretation services.
68. It is my considered view that in charge 1, 2, 6, 7, 8, 9, 10 there is no direct evidence led by anyone of the complainants involved as per the charges to disprove the version of the applicant, I therefore find that on a balance of probabilities the version of the applicant will prevail in absence of a direct contrary version. The respondent had a duty of properly presenting by calling the witnesses directly involved in the above charges but it failed to do so. I am mindful of the evidence led by Mr Mabizela regarding charge 2, however most of his averments were based on hearsay by his niece but his niece's direct version was never put to the test. I will be acting ultra vires if I consider a strong suspicion without putting evidence to the test, therefore exception to hearsay rule cannot apply under these circumstances.
69. It is my considered view that the overwhelming evidence tendered by Ms Moloï in charge 6 alone against the applicant and the serious nature of the allegations against the applicant could justify the dismissal, especially considering that she said in unequivocal terms that the money they paid to the applicant was for organizing and to secure her employment at Manapo Mopeli Hospital, it was not for a loan. Such evidence was corroborated by the one of Ms. Sikhosana as she testified that the applicant admitted at the police station that she took money with the promise of providing the complainants with work and no body forced the applicant to right and sign the statement and Ms. Sikhosana drafted the statement based on what was conveyed to her by the applicant. The CEO as well confirmed that the applicant did admit and promised not to continue with her act of taking money from community members with the promise of providing them jobs.

70. Regarding the testimony of the applicant, I was not impressed with her as a witness, especially that she could not respond on issues at which she ought to have had firsthand knowledge of events. Such touches on the candor of the applicant, including her act of initially denying and later admitting with justification and not so concrete excuses. She mainly relied on excuses at which I could not find probability, especially considering the figure that she would request loans for was consistent at R3500-00, the people were unemployed, they were mainly approached by the applicant. The CEO and Dr Letsele's testimony implicates the applicant, especially by her own admission the applicant said there were no issues in her relationship with them. I could not find reason why they would fabricate this while their relationship was good. I was not well impressed by the demeanor of the applicant in his testimony. The witnesses of the applicant confirmed that the applicant assisted them in securing loans but could not provide concrete reasons to prove that the applicant did not solicit and took bribe from Ms. Moloï by promising her to get employment. For example, Ms. Matsume by her own admission she said she was only sure about 17 February 2016 while the allegation of Ms. Moloï relates 4 May 2015 and Mr Mokoena as he expressly stated that what he knows is that when they wanted money, they would approach the applicant, he did not know about the allegation of money borrowed with promise to give work and does not want commit himself.

71. The witnesses of the respondent's versions mainly corroborated each other during their testimony to an extent that I saw no reason to doubt their credibility, they did not falter in the evidence presented and were reliable in their evidence, if there was any inconsistency, I did not see it to be substantial and not on material issues.

72. The test that has to be considered in arriving at a decision is based on a balance of probabilities as to which version is more probable than the other, as opposed to the beyond reasonable doubt test.

73. On a balance of probabilities, the reasons submitted by the respondent for justifying the fairness of the dismissal are persuasive and there is a plausible justification for the dismissal.

74. I therefore find that the dismissal of the applicant is substantively fair. I find the dismissal to be procedural unfair as I found that the applicant was not afforded an interpreter. It follows that compensation will be ordered for the loss of the right to a fair pre-dismissal procedure. In order to determine the appropriate amount of compensation I have taken

into account the extent of severity of the procedural irregularity together with the anxiety experienced by the employee as a result of unfairness.

Remedy

75. The remedies that may be afforded to the applicant are set out in section 193 of the LRA. Section 194 states that compensation order to an employee whose dismissal is found to be unfair because the employer did not follow a fair procedure must be just and equitable. In determining the appropriate amount of compensation, I have taken into account the extent of severity of the procedural irregularity together with the anxiety experienced by the employee as a result of unfairness.

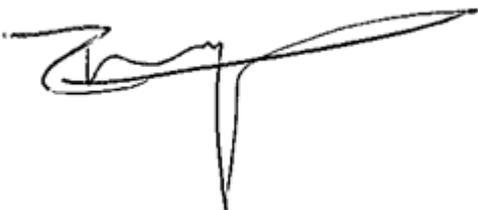
Award

76. I find the dismissal of the applicant, Ms Dinah. S Mofokeng substantively fair and procedurally unfair on a balance of probabilities.

77. The Department of Health- Free State, the respondent must pay Ms Dinah. S Motaung compensation equal to one month's remuneration of R6400-00 (Six Thousand and Four Hundred Rands).

78. The Department of Health- Free State must pay Ms Dinah. S Mofokeng the amount of R6 400,00, less statutory deductions, by no later than 1 March 2019, after which date interest will accrue.

79. There is no order as to costs.

A handwritten signature in black ink, appearing to be 'Zuko Macingwane', written over a horizontal line. The signature is stylized with a long horizontal stroke and a vertical stroke extending downwards.

Zuko Macingwane
Council Panellist