



PHSDSBC

PUBLIC HEALTH AND SOCIAL DEVELOPMENT
SECTORAL BARGAINING COUNCIL

ARBITRATION AWARD

Case No: PSHS675-16/17

Commissioner: A C E Reynolds

Date of Award: 12 April 2017

In the matter between:

NEHAWU obo Sylvia Nokulunga Gom

(Union/Applicant)

and

Department of Health- Western Cape

(First Respondent)

and

Didier Duimpies

(Second Respondent)

DETAILS OF HEARING AND REPRESENTATION

1. The matter was referred for arbitration to the Public Health and Social Development Sectoral Bargaining Council (PHSDSBC) for a dispute relating to an alleged unfair labour practice relating to promotion referred in terms of section 186(2)(a) of the Labour Relations Act 66 of 1995 as amended (the LRA) and was completed over four sittings, the first scheduled at 10h00 on 6 December 2016, the second scheduled at 09h00 on 28 February 2017, the third scheduled at 09h00 on 1 March 2017 and the fourth scheduled at 09h00 on 22 March 2017 at the premises of the Department of Health in George. At the first sitting of the arbitration a preliminary issue was raised that the successful candidate for the advertised post, Mr

Didier Duimpies, who would have a substantial interest in the proceedings, had not been joined in the dispute. After hearing the parties' submissions surrounding this preliminary issue, a verbal ruling joining Mr Duimpies in the dispute was issued, which was confirmed by a written joinder ruling on 7 December 2016. The arbitration continued thereafter in the presence of all the affected parties on 28 February 2017, 1 March 2017 and 22 March 2017.

2. Present at the arbitration for the employee party (the applicant party) were Mr Patric Brown (NEHAWU Regional Organiser as the applicant's representative) and Ms Sylvia Nokulunga Gom (the referring employee or applicant). Present for the employer party (the first respondent) was Mr Ayanda Mniki (Assistant Director Labour Relations as the first respondent's representative). Mr Didier Duimpies, the successful candidate (the second respondent), represented himself. Mr Mandilakhe Mbohi (Interpreter) was present to assist with interpretation in and from IsiXhosa and Afrikaans.
3. It was agreed that the arbitration would be conducted in English, IsiXhosa and Afrikaans. Electronic and digital recordings were made of the proceedings. The parties did not require an explanation of the arbitration proceedings, except Mr Duimpies, the second respondent, for whom a full explanation was provided, which included the onus of proof and the basic rules of evidence.

ISSUE TO BE DECIDED

4. The purpose of this arbitration is to determine whether the first respondent had committed an unfair labour practice in terms of section 186(2)(a) of the LRA by not appointing Ms Sylvia Gom, the applicant, in the advertised position of food service supervisor level 4 at George Provincial Hospital, advertised as Post 17 in Bulletin G22 of 2016, as well as the appropriate relief if unfairness is found. The relief sought was for the applicant to be appointed in the position that she had applied for, alternatively to be placed on the same salary and benefits of a level 4 post.

BACKGROUND TO THE DISPUTE

5. The following facts were common cause:

6. The applicant was appointed permanently at George Provincial Hospital on 1 February 2009 as a food service aid level 2. Prior to this she was employed in a contract position from 2006. The applicant had a positive criminal record in 2007 for theft. She is currently working in the hospital's kitchen under the supervision of Ms Marchelain Buys, a food service supervisor, and still occupies the position of food service aid level 2. She applied for the position of food service supervisor level 4, which was post 17 advertised in Bulletin G22 of 2016, and was invited to attend an interview for the position on 12 July 2016. She was thereafter selected by the interviewing (selection) panel as the best scoring or most suitable candidate but was not selected for the position of food service supervisor because of a positive criminal record in 2013 for theft. The applicant was the highest scorer and Mr Didier Duimpies, the successful candidate, was the second highest scorer for the advertised position. Mr Duimpies' appointment was approved by the Executive Authority on 1 August 2016 and he assumed duty on 1 September 2016 in the position of food service supervisor. The panel was aware of the applicant's criminal record of 2007 at the time of interviewing her. The applicant had disclosed a criminal record on the Z83 application form and during the interviews. The first respondent has an obligation since 2010 to perform criminal verifications after interviews have been conducted and before candidates are appointed. The key performance areas (KPA's) for the position of food service supervisor as contained on page 36 of the first respondent's bundle apply. A grievance relating to her non appointment was lodged by the applicant on 12 August 2016, but was not found in the applicant's favour, which led to a formal dispute being referred. Her persal number is 54767644 and she earns a gross remuneration of R9590,69 per month. The gross remuneration for the advertised post is R119154,00 per annum, based on the current pay level for the successful candidate, Mr Duimpies.

7. *The following facts were in dispute:*
 - Whether the applicant was charged disciplinarily on 10 October 2010 due to a positive criminal record of 2007 and whether this charge relating to the non disclosure of a criminal record was overturned at arbitration during 2011, resulting in her being acquitted of this charge.

- Whether the applicant had acted continuously since 2007 in the position of a food service supervisor when a supervisor was absent.
- Which criminal record(s) the applicant had referred to on her Z83 application form and during the panel interview.
- Whether the applicant disclosed her criminal record(s) to her previous supervisor Mr Vuyo Witbooi, in particular the criminal record of 2013.
- Whether the selection panel was aware that the applicant also had a criminal record for 2013 at the time that she was interviewed.
- Whether the applicant should have been appointed in the advertised post instead of the successful candidate Mr Duimpies.

SURVEY OF ARGUMENTS

8. Ms Sylvia Gom, the applicant, and Mr Vuyo Witbooi, food service supervisor at George Hospital, testified under oath for the applicant party. The applicant party had initially advised that they would not be calling Mr Witbooi to testify, but requested at the commencement of the final sitting of the arbitration, after Ms Marichen Greyling for the first respondent had concluded her evidence in chief, that their case be re-opened so that both Mr Witbooi and another witness, Ms Patricia Ludak, could be called testify for them. They stated that the reason for this request was that they had only become aware of new documents and evidence after they had finished leading their evidence. This evidence related to the applicant's performance reviews that were handed in as additional documents, of which Ms Greyling was the author and which they regarded as relevant to their version that the applicant had acted continuously as a supervisor and had performed certain duties of a supervisor which the respondent had disputed. In the circumstances this was permitted on the condition that Ms Greyling could augment her evidence in chief in response to Mr Witbooi's testimony before her cross-examination commenced, which was done.
9. Ms Alinda van Blerk, assistant director support services and chairperson of the selection panel, and Ms Marichen Greyling, food service manager, testified under oath for the first respondent.

10. Mr Didier Duimpies, the second respondent, elected not to testify in person and cross-examine witnesses, confirming that he would rely on the first respondent's evidence and cross-examination of witnesses. The other parties also confirmed that they did not wish to cross-examine Mr Duimpies on any issues, and that it was therefore not necessary for him to testify in person.
11. Documents were handed in by the applicant party and first respondent at the commencement of the arbitration, with additional documents added during the proceedings and admitted as evidence.
12. At the conclusion of the final sitting of the arbitration on 22 March 2017 the applicant party requested that written closing arguments be submitted. This was consented to and it was agreed that submissions would be made via e-mail as follows to one another, myself and the PHSDSBC: The applicant party to submit theirs by latest 28 March 2017, the first respondent theirs by 30 March 2017 and the applicant party to reply by latest 3 April 2017. The second respondent confirmed that he would not be submitting closing arguments. All written submissions were received by 5 April 2017, which are not repeated here but have been taken into consideration in arriving at the award.
13. Only the evidence relevant to the facts in dispute are summarised below and that which was established as common cause is not repeated, unless relevant.

ARGUMENT FOR THE APPLICANT

14. The applicant party's case was that the applicant was appointed at George Provincial Hospital on 1 July 2008 (actual date 1 February 2009) as a food service aid level 2. She was charged disciplinarily on 10 October 2010 due to a positive criminal record of 2007. After a successful appeal at arbitration on the charge was overturned and she was acquitted. She is currently working in the hospital's kitchen under the supervision of Ms Marchellain Buys. She had acted in a supervisory position for several years in the absence of a supervisor. She applied for the position of food service supervisor at level 4, which was post 17 advertised in Bulletin G22 of 2016, and was invited to attend an interview for the position on 12 July 2016. She was thereafter selected by the panel as the best scoring candidate but was not appointed in the position because of a positive criminal record of 2013. The applicant had disclosed the criminal record on the Z83 application form and during the interviews, as well as to the previous supervisor who had supervised her. A grievance was lodged, but was not found in her favour, which led to a formal

dispute being referred. The relief sought was for the applicant to be appointed in the position that she had applied for, alternatively to be placed on the same salary and benefits of a level 4 post.

15. Ms Sylvia Gom, the applicant, testified as follows under oath in her evidence in chief: She commenced with George Provincial Hospital in a contract position on 1 November 2006 as a food service aid and was appointed in a permanent position as food service aid level 2 on 1 February 2009. In the previous years from 2007 until to date she acted as food service supervisor when a supervisor was absent. At present there were 11 of them working in that section on a shift basis, which included two supervisors on each shift, of which the non supervisory staff were all on level 2. She used to supervise the other level 2 staff when a supervisor was absent or sick on a shift. She then acted on a level 4. There were two levels of supervisors in the kitchen, level 4 and the principal level 5. When supervisors were present she used to report to Ms Marichen Greyling, the unit manager. The criminal record for theft in 2007 related to an incident when she had carried her son on her back in a towel in Discom and he had taken a ball which was discovered when she was searched on exiting the store. She was appointed in the permanent position in 2009 after the criminal record which was obtained in 2007. She did not disclose this criminal record when she applied for the permanent position because she was not aware that she was admitting to guilt when she paid the fine that was imposed, since she did not go to jail. She also did not disclose the criminal record when she later applied in 2010 for the position of food service supervisor. When they found out that she had a criminal record she was called to a disciplinary hearing for not disclosing that criminal record. The outcome of the disciplinary hearing was that she was told to return to work and that she should disclose the criminal record now that she was aware that she had one when she again applied for a position. She thought that this happened in 2011. In 2016 she applied for the position of food service supervisor level 4. She had answered the question on the Z83 application form that she had a criminal record, but the form did not ask for the details. When she answered yes to that question she referred to both criminal records of 2007 and 2013. She was given a SAPS Enquiry form to fill in by the interviewing panel at the interview on which there was a section that she had to state the year of the criminal record, on which she stated both, being George 2007 and 2013. She had to take it to the police station for fingerprints and verification, which was done. She was also given another form, a Personal Credential Disclosure Form, to complete at the interview which she signed on 12 July 2016 on which she checked off that she had previous charges and/or convictions, but with no conviction details supplied. She received the documents on the day of the interview and completed them that day. When she acted she acted as a supervisor level 4. She was the only one who acted in a level 4 position after Ms Greyling the unit manager informed them all that they could act so that they could be uplifted to a much higher position in the future. She explained her duties when she acted in the supervisory position, which are not

repeated here for the sake of brevity. She had also made a sworn affidavit that stated the duties that she performed when she acted as a supervisor. She did not think that her manager was aware of the affidavit but that her manager would agree with the content and what was stated there. No complaints were received from any person, supervisor or manager in the workplace regarding loss of stock while she was acting. She had been evaluated more than once on the staff performance management system (SPMS). Reference was made to the key performance areas (KPAs) in the job description for the food service supervisor position contained in the first respondent's bundle of documents. When she was evaluated on the SPMS by her manager she was evaluated on the level 4 food service supervisor position that she acted in and not the level 2 food service aid position that she was employed in. She had disclosed her criminal record of 2013 to the one supervisor, Mr Vuyo Witbooi, as well as on the Z83 application form and the document provided to her in the interview. Reference was made to an e-mail of 3 November 2016 in which Mr Witbooi on an enquiry from Mr Hein Jacobs of the first respondent advised that the applicant had notified him in a casual way while they were just talking about her criminal conviction of 2013, but that he did not know whether she notified any other supervisor other than him. Her current supervisors were Ms Marchellain Buys and Mr Didier Duimpies. There were four supervisors, two for each shift and they changed to the other shift every year and then got other supervisors. At that time the supervisors were Mr Vuyo Witbooi, Ms Marchellain Buys and Ms Angelina Ntsendewane, with the fourth supervisor position vacant. She applied for the vacant position of food service supervisor in 2016 of her own accord but in the process she approached Ms Greyling her manager to confirm if she was doing the right thing due to her criminal record. Ms Greyling had told her that she could apply for the position as long as she disclosed the criminal record on the Z83 application form. Ms Greyling was not part of the selection panel since she was on leave at the time. Mr Duimpies was at the time one of the nine level 2 food service aids whom she supervised when she was acting as a supervisor. She was not informed in writing nor otherwise after the interviews that she was unsuccessful and the reason therefor, but was only informed by a supervisor in a meeting that Mr Duimpies was appointed in the position. She afterwards went to Ms Alinda van Blerk the selection panel chairperson and enquired why she did not get the position, which she was informed of verbally and requested Ms van Blerk to put this in writing. While she was acting as a supervisor she and Mr Duimpies were not on the same shift but she heard that he had acted on that shift. It would happen that they would work together on only one shift a month. She had started working long before he did. She was not aware of the first respondent's Recruitment and Selection Policy which was handed in and admitted as evidence during her testimony, in particular section 14 relating to guidelines when a positive criminal record is established, when she was acting as a supervisor. She had never been subjected to a disciplinary hearing while she was acting as a supervisor. She was also never subjected to a disciplinary hearing for theft in the workplace.

16. Ms Gom testified as follows under cross-examination and re-examination: Ms Greyling had verbally appointed her into the position of acting food service supervisor. Ms Greyling had entrusted her with the responsibilities of the KPAs and outputs of a food service supervisor, although she never said that to her. She knew that she was entrusted with these responsibilities since in the time that she was acting for 11 years nothing got lost in the kitchen. She had nothing to hide and Ms Greyling could come to testify that she was not entrusted with all those responsibilities when she was acting as a supervisor. With reference to her affidavit contained in the applicant party's bundle of documents she responded that she was responsible for keeping the keys to the fridges when she was acting. What she did know was that the supervisors kept the keys on them and controlled everything and when she acted she kept the keys with her from 7 to 7, controlled everything that was used that day and took out or received stock. She did not include the issue of the keys in her affidavit since she could not enter a fridge or store room if it is locked without the keys. She had not done the capturing of bin cards on the computer system yet. Her responsibilities as acting supervisor were not limited to floor supervision only and included the store room supervision. Although Mr Wibooi was still teaching her to use the computer for the bin cards, she had performed all the other duties as written down. She had ordered stock from outside but did not do it continuously when she was acting, although it was more than twice. She did not order stock when the supervisor was there. Ms Aurelia Damons the supervisor ordered stock and when Ms Buys was not there she would order the stock. She was acting in the post filled by Mr Duimpies and if the supervisors were not there these were her day to day duties when she acted. She was evaluated at the supervisor level 4 position on the SPMS and not on her level 2 food service aid position. They were never informed nor appointed in writing in the acting position, which was always done verbally. When she sat with the supervisor to do the performance agreement she would be putting in extra work which she was not supposed to do such as the work of a supervisor or a colleague at level 2 who was absent, but she was not sure on what level management evaluated that or how the distinction was made. When questioned on whether the performance agreement in the respondent's bundle for the performance cycle of 1 April 2016 to 31 March 2017 was for her as food service aid level 2 she did not disagree nor dispute the document. Ms Greyling or Ms van Blerk must have known about her criminal record of 2013 since she had informed her immediate supervisor Mr Witbooi. She did not report this to them specifically since she did not think she was supposed to jump over her supervisor's head and assumed her supervisor would report this to the senior manager. From Mr Witbooi's e-mail to Mr Jacobs she read that Mr Witbooi did not himself notify other supervisors of her criminal record of 2013. She informed her immediate supervisor at the correct time and she was not aware of any authority that she must put it in writing or do it in any other way. She was not on duty on 3 October 2013 when she had to appear in court for the alleged theft

committed on 1 October 2013 since she was ill and therefore did not see nor inform management about the court case. In 2013 she bought something from the people outside selling on the street and was not aware that the person had stolen from one of the stores in town. The item was found on her when security searched her on leaving Shoprite. She was not aware that the item she bought outside was also sold inside the store and did not have a slip to prove it. She told Mr Witbooi about the court case after she returned from sick leave. She did not hide this criminal record from Ms Greyling and Ms van Blerk since she had reported it to her direct supervisor. If she had the opportunity to supply the details of her criminal records to the first respondent, she would have done so. The details of her convictions were not supplied by herself on the Personal Credential Disclosure Form since Ms R Crowley from Human Resources, who served on the selection panel, came to her with the form already completed and asked her to sign it only. She handed the form back to Ms Crowley and was given a different form to complete by herself and take to the police station. She was not sure if Ms Crowley who gave her the forms knew the details of her criminal record, but Mr Witbooi, Ms Damons and Ms van Blerk who were on the panel knew these details. When Ms Crowley gave her the Disclosure Form to sign she did not tell her to read it and enter the details of the criminal record, but only showed her where to sign the form. She had asked Ms Greyling whether she should apply for the position because she had a criminal record. She did not agree that she was not found suitable for the position because she had acquired another criminal record in 2013 and was therefore untrustworthy for that position. She confirmed the following under re-examination: She was responsible for the supervision of the maintenance and control of apparatus and equipment and related activities when she acted as supervisor; she was appointed verbally by Ms Greyling to act as supervisor and that Ms Greyling had the authority to appoint her as acting supervisor which she regarded as an official appointment since Ms Greyling was a unit manager; as acting supervisor one of her responsibilities was to keep the keys and control everything in the kitchen, which was an omission on her affidavit; the counting of stock and the capture of bin cards was one and the same thing; the reason why she was not capturing the bin cards on the computer system was because she was still being trained to do so; she occasionally ordered stock from outside not only once or twice; when she was evaluated by her supervisor she assumed that she was assessed on level 4 and was not aware that she was being assessed on level 2; her understanding was that it was her supervisor's responsibility to report her criminal record of 2013 to other levels; if she was to complete the Personal Credential Disclosure Form on her own she would have completed all the details required by the form but she trusted the person who asked her to sign the form (Ms Crowley) because she was on the panel; and the reason why she asked Ms Greyling about the criminal record when she applied for the position was because she knew that with two criminal records she may not be a successful candidate, which she regarded as unfair and unacceptable.

17. Mr Vuyo Witbooi, food service supervisor, testified as follows under oath in his evidence in chief: He had been employed in the kitchen at George Provincial Hospital since November 2005 and was currently a food service supervisor. He had known the applicant since 2006 when she started working there. The applicant had acted many times in his position and had performed all the same supervisory duties as himself when she acted as a supervisor. The duties that she performed as a supervisor when she acted were that she had the keys and opened up the store to take out the food that needed to be prepared. When you had the keys to the store room the same keys were used for the dry store and the various fridges, freezers and so forth. Because there were two supervisors on a shift the applicant used to act as store supervisor and as floor supervisor on different times. The applicant used to complete the manual bin cards. It would be difficult as acting supervisor to enter the bin cards on the computer since each supervisor had their own password. There was not much difference between writing an item on the bin card and punching it into the computer.

18. Mr Witbooi testified as follows under cross-examination and re-examination: A floor supervisor supervised staff on the floor and wrote down what must be done. The applicant worked most of the time in the kitchen and cooked. Since she cooked more, she used to take out food to be prepared and items to be used in the diet kitchen when she acted as store supervisor. When Mr Duimpies' position was still vacant the supervisor on duty would ask who will act as supervisor for the day. If there was no (second) supervisor for a longer period then the duties would be divided up during a meeting every morning chaired by the supervisor on duty for the shift and it was decided who will act as floor supervisor and who as store supervisor. Ms Greyling had said to them as supervisors that the level 2s must get the opportunity to train for the next position of supervisor. Therefore, when a supervisor was sick or on leave the food service aid must act as a supervisor. A lot of people did not want the pressure to act as supervisor. The vacant position was on the applicant's shift. She and Mr Duimpies acted as supervisors. He responded to the statement that the applicant mostly acted as floor supervisor rather than storeroom supervisor that to his knowledge from working with the applicant she cooked most of the time and took out ingredients from the store room on her own. He responded to the statement that when Mr Duimpies' post was vacant nobody was given the overall responsibility to keep the keys, with staff only having access to the keys when needed, that he would not know since he worked on a different shift as the applicant at the time and would not know what responsibilities were given to the applicant. The duties of ordering stock from outside was that of the principal supervisor Ms Aurelia Damons on level 5. When Ms Damons was not around Ms Greyling will ask the supervisor present or the acting supervisor to order stock from outside. He could not agree or dispute the statement that the applicant did not have the responsibility of ordering

food from outside when she acted but was only asked once to do it, since he was on a different shift, but he did know that the responsible supervisor, whether acting or not, would assume the full duties of a supervisor. He confirmed the following under re-examination: The applicant did act as store supervisor since she cooked and took out ingredients on her own when she cooked, which were the responsibilities of a store supervisor; during the period that the applicant acted he was on a different shift therefore could not confirm whether the applicant or someone else had the keys, other than to say that when you acted as a supervisor you assumed the full duties of either the floor or store supervisor; during the period that he did work with the applicant since 2006 she had the opportunity to act as supervisor and assumed the full duties of a supervisor; and he heard that she acted as supervisor while he was away on suspension for three months.

ARGUMENT FOR THE RESPONDENTS

19. The first respondent's case was that it was common cause that the applicant was the highest scorer and the person appointed was the second highest scorer for the advertised post. The first respondent however has an obligation since 2010 to perform criminal verifications after interviews have been conducted and before they appoint candidates, with reference to circulars relating to verification checks on appointment as contained in the first respondent's bundle of documents. When the verification was done for the applicant the panel was shocked to discover that the applicant did not only have a criminal record dating 2007 but an additional criminal record for theft in 2013. The Z83 application for employment form requires that a person declares whether he or she has a criminal record or not, with no details nor date(s) relating to the criminal record required. The panel was aware of the applicant's criminal record of 2007, and assumed that the admission to a criminal record on the Z83 form related to the 2007 record. They were however unaware of the different record, also of theft, for 2013. The copies of the criminal records were contained in the respondent's bundle of documents. This alarmed the panel and they decided to not appoint the applicant in the post of food service supervisor since the responsibilities of the position require that the incumbent must be trustworthy. A person who was inclined to theft would have the opportunity to do so because of access to stock. The respondent had difficulty in curbing the theft of food in their kitchens, therefore it was very important to appoint a trustworthy person in charge of a kitchen. The applicant had stated that she had acted in the position of supervisor since 2007, which they disputed. They would lead evidence that she was not appointed continuously in an acting position, but would only act if a particular supervisor was not present on a particular day. She then also did not assume full responsibility for the position, but only for floor supervision to ensure food was served at

particular times. The panel had to also consider the key performance areas (KPAs) of the position of food service supervisor, with specific reference to the KPA of supervising the maintenance and control of apparatus, which would be the responsibility of the incumbent of the position. The panel therefore had to consider the criminal record of theft which the applicant was in possession of and would have been a risk factor in appointing the applicant.

20. The second respondent's case was that he had nothing to bring to the table and did not really know why he was present, since everything had been done by Human Resources and he was not involved in the selection panel. After the reason for his presence was explained to him and that the outcome could mean that he could be deposed of his position he stated that he had passed all the tests and did not know what to say.

21. Ms Alinda van Blerk, assistant director support services, testified as follows in her evidence in chief: The food services unit was part of her profile as assistant director support services. She transferred from the finance department in 2012 into this position. She was the chairperson of the selection panel for the appointment of Mr Duimpies. When the panel met after the interviews were conducted and did the scoring they decided to withhold the appointment of a candidate pending the outcome of the background screening or criminal record investigation. The criminal record check supplied by the SAPS for the applicant returned with a positive criminal record relating to two offences for theft, as a result of which she was not appointed in the position. This was discovered after the verification check. The panel considered the nature and job description of the position that the applicant applied for and the responsibilities and accountabilities linked to a level 4 position, such as to ensure that there were no stock losses and that all stock is controlled, monitored, locked away and the safety and security of the stock value held in the kitchen is ensured. The panel felt that a candidate with a positive criminal record for theft on two occasions over a span of six years could not be appointed as there was no guarantee that there would be no losses suffered. The first respondent's Recruitment and Selection Policy was referred to, specifically the guidelines when a positive criminal record is established. The provisions of sections 14.1.1 and 14.1.2 of the policy were complied with and considered when deciding on the appointment. When the panel received the positive criminal record check that there was a positive criminal record for both 2007 and 2013 for the applicant, with a suspended sentence of three years for the latter offence. They considered this when they decided on the appointment. She did not think that the applicant was rehabilitated due to the fact that she was found guilty twice for the same type of criminal activity. As the head of the food services section they had and still do have concerns regarding stock that is lost that nobody can account for and up until this stage they had been unable to pinpoint how the stock goes

missing, with examples provided. They did have those concerns in the period before the interviews and before Mr Duimpies was appointed. They needed to appoint a strong person who can implement measures and security controls and report and assist with limiting stock losses. As a manager of that section she would not trust a person who had repeated offences of theft. She was not aware of nor informed of the applicant's criminal record of 2013 prior to the interviews.

22. Ms van Blerk testified as follows under cross-examination and re-examination: She was only aware of the applicant's criminal record of 2007 prior to the interviews. In her view if you are found guilty in a court of law then you have a criminal record and that a criminal record is a criminal record and theft is theft. The panel did not recommend the applicant for appointment as she had two criminal records for the same type of offence. She was aware of other people appointed who had criminal records. She could not respond to why Ms Sisanda Sizani who also had a criminal record for theft dated 21 November 2007 applied for and was appointed in a supply chain level 5 position since she was not involved in that selection panel. There was no difference between the applicant's offence and Ms Sizani's offence since they were both for theft. As a person of authority as assistant director support services she was aware of the first respondent's policies and was aware of the operations in her department, but not always in other departments. She did not attend senior management meetings since at George Hospital meetings are held between the executive management and the chief executive officer, with her supervisor giving her feedback as to what is relevant to her department. She did attend extended management meetings where operational issues regarding all the departments are discussed, such as complaints received from patients for the food services unit. They did not discuss employees who are subjected to disciplinary hearings in these meetings. The panel was of the view that the applicant was not rehabilitated since the last offence of 2013 since there was an offence of a similar nature in 2007 and another six years later in 2013, as well as the fact they were not aware of the positive criminal record in 2013 until the verification was done after the interviews. With respect to the e-mail correspondence between Mr Jacobs and Mr Witbooi, they were never formally informed of the 2013 record. According to the correspondence Mr Witbooi as a supervisor knew about it. With reference to the Recruitment and Selection Policy she could not say over what period a person would be rehabilitated, but it was two criminal offences over a period of six years and there was nowhere in the policy what period is to be considered. She confirmed that the applicant was not appointed because of her two criminal records for theft. The applicant was not an acting supervisor, she never acted but stood in a day here or there. When they had a staff shortage in the kitchen and say a supervisor is off sick, on leave or on a course, the whole team decides who is going to perform the duties of the supervisor for that day. The applicant would act for the supervisor for that day in certain tasks. She could not respond as to which tasks the applicant would act in since Ms Greyling

was in a better position to answer that since she worked daily with the staff. From what she was aware of the applicant would perform certain functions of a floor supervisor and not all functions. Although the applicant was performing some of the functions of a supervisor for seven years in the absence of a supervisor she could not confirm that the applicant was acting full time as a supervisor. She never said and neither was it documented that the applicant was not appointed because they assumed that the stock loss in the section was because of the applicant's two criminal records. She was not aware of any charge, accusation nor complaints about the applicant removing something without permission during the period after 2013 and 2016 until the position was advertised and the supervisor was appointed. She responded to the statement that this was an element showing that the applicant was rehabilitated that they were not aware of the criminal record of 2013 and that she could not agree that the applicant was rehabilitated. She was not aware of any formal disciplinary action taken against the applicant between 2013 and 2016. It could prove that the applicant had changed if she was not subjected to complaints nor disciplinary records. The candidates' criminal record verifications are done after the interviews are completed and the appointment of candidates are held back until the criminal record verification has been done. The Personal Credential Disclosure Form is given to candidates before the formal interviews commence and is given to the panel by the Human Resources representative after the interviews are conducted. The applicant did declare in the interview that she had a criminal record and the panel was aware of her criminal record. She could not confirm whether Ms Crowley had completed the form for the applicant to only sign during the interview as she did not know what the applicant's handwriting looked like. She did not have a problem if the applicant was reporting to and working for her. She would definitely trust the applicant to do her work that she signed her job description for and that would be monitored. The panel made the recommendation for the appointment of the applicant as the highest scoring and most suitable candidate for the position pending the outcome of the verification. In her understanding it was fair to judge a person on that basis as they needed to appoint the most suitable and acceptable candidate for the position and they needed somebody who can implement security measures. She confirmed as follows under re-examination: They as a panel did not trust the applicant sufficiently to give her the responsibility of the position, which was based on the repeated theft offence; she was not aware whether the policy gave a specific period that confirms a person has been rehabilitated; the fact that the applicant after a criminal record for theft in 2007 within five to six years got another criminal record for the same offence showed that she was not rehabilitated; if Mr Witbooi was informed of the applicant's criminal record of 2013, it did not guarantee that she nor Ms Greyling would have been informed; the panel was not aware of the criminal record of 2013; the fact that the applicant had responded yes to the a criminal record on the Personal Credential Disclosure Form did not indicate that there was a criminal record for 2013.

23. Ms Marichen Greyling, food service manager, testified as follows in her evidence in chief: As the food service manager at level 8 she worked office hours. Reporting to her was the principal food service supervisor at level 5 Ms Aurelia Damons, who also worked office hours. The other food services staff worked two shifts. On each shift were two senior food service supervisors at level 4, the one performing the duties of the store supervisor and the other the duties of the floor supervisor. On the one shift the supervisors were currently Mr Didier Duimpies and Ms Marchellain Buys and on the other shift it was Mr Vuyo Witbooi and Ms Angelina Ntsendwana. The floor supervisor supervises the 11 food service staff who prepare and provide meals to the wards and the store supervisor receives all the deliveries, counts and weighs, books items in and out on the bin cards, makes a list of all the items issued each day, etcetera, and keeps the keys. While Mr Duimpies' post was vacant before breakfast at 07h30 each morning the shift had an internal meeting and if there was no level 4 supervisor that day the staff would decide informally amongst themselves who is going to do what for the day. She and Ms Damons would not know on the day who the informal acting supervisor was since the staff were advised to change it the whole time. If the other level 4 supervisor for the shift was not there and the applicant was to act in that position then the other permanent supervisor on duty would attend to the stores and the applicant will act as floor supervisor managing the staff and allocating tasks to the different staff members. During 1 April 2016 until 31 August 2016 there was just one supervisor on that shift but every day different food service aids got exposure to act in the other supervisory position, with nobody appointed to act in the position. The applicant was also one of the food service aids responsible for cooking during the hectic period of April to August 2016 when they had a staff shortage of food service aids and usual absenteeism and annual leave. The applicant did not then have sole responsibility for the store room keys, which will move from person to person since all the other cooks would also have access to the keys. The applicant did not assume all the responsibilities of a food service supervisor as contained in the job description since it was like a skeleton staff, with all the rules not adhered to, such as the bunch of keys were not kept on one person but left next to the person who was cooking. The responsibility of implementing security measures when she was acting as supervisor also did not rest solely on the applicant. She never told the applicant that she was the supervisor in charge. Since the appointment of Mr Duimpies there is now a store supervisor and a floor supervisor, with the store supervisor keeping the keys. When the applicant assumed the task of managing staff she (Ms Greyling) was not aware of the applicant's criminal record of 2013. Mr Witbooi did not inform her of it either at any stage. She explained the process of the bin cards and that they were not maintained before Mr Duimpies was appointed because of the pressure in the section. The applicant would never count stock, which was the responsibility of Ms Damons, the level 5 principal food service supervisor. It was only in the extreme case that the applicant would be asked

to order stock, such as when Ms Damons and the other level 4 supervisors are not there. She disputed certain of the statements that the applicant had made in her affidavit, such as that she counted the stock in the store and fridges on a daily basis, and that nothing had gone missing or was stolen since 2007, whereas they had experienced a severe problem with theft from the kitchen. She would not trust the applicant to implement security measures in order to limit loss of stock after they became aware that the applicant also had a criminal record in 2013, since there are times when there is no manager or senior supervisor on duty because of different working hours and the whole of the kitchen's integrity then rests on the four supervisors, who can open doors and take what they want after they have left, therefore a supervisor must be a person whom they can trust.

24. Ms Greyling augmented her evidence in chief as follows after she was recalled to testify in response to the testimony of Mr Vuyo Witbooi: If the applicant took out food herself from the store for cooking it did not mean that she assumed all the responsibilities of a store room supervisor because only part of a store supervisor's work was to issue ingredients to the person cooking the food. The other responsibilities of the store supervisor were to take temperatures at the meal conveyor belt, do production planning, accept deliveries, get bin cards up to date, and keep statistics on the computer. The applicant was not the only one cooking. All the food service aids must cook, but some have more talent to cook and they decide who will cook, with only a few of them cooking. When the other level 2 food service aids cook they also, like the applicant, have access to the store room to get ingredients. The applicant will not be expected to get ingredients for the others who cook, which they will get themselves. When there is not a supervisor there is crisis management and instead of the keys being kept on the supervisor at all times the keys will lie on the ingredient table to be accessed by whomever needs them. Now that there are two supervisors on duty the keys are the responsibility of the supervisor and are not lying on the ingredient table any more. Reference was made to the applicant's SPMS performance assessments for the periods 1 April 2009 to 31 March 2010, 1 April 2010 to 31 March 2011 and 1 April 2015 to 31 March 2016 which were handed in as additional documentary evidence by the applicant party. These were for the applicant and she had signed these as the applicant's supervisor. The applicant was not assessed on the outputs of a food service supervisor and she as the assessing supervisor only mentioned incidents when the applicant acted as a supervisor and did more than her normal job. The applicant was not formally appointed as an acting supervisor and she was not the only food service aid who acted as a supervisor. She did not decide who would act and only heard afterwards who acted as a supervisor.

25. Ms Greyling testified as follows under cross-examination and re-examination: The applicant had acted as a floor and store supervisor. If there was only one supervisor on duty the permanent supervisor would

move to the store and the acting supervisor would handle the floor. If the applicant was cooking she would get her own ingredients from the store and not perform the full store supervision duties. Removing ingredients from the store was part of the store supervision duties. The applicant only once phoned to place an order. The applicant had acted informally as a floor supervisor. She never appointed the applicant as an acting supervisor since every morning at the staff meeting convened by the supervisor on duty they informally nominated who would act as supervisor if a supervisor was absent. Although the staff themselves decided who would act as supervisor she knew that the applicant did not perform the full acting duties because she knew the bin cards were not done. Part of the applicant's acting duties were the store room and bin cards. She explained how the stock was controlled. She responded to the question on whether the stock had increased or decreased while the applicant was acting, that there was regular evidence of loss and there were rumours of theft, but it could not be pinpointed on whose shift this occurred. The applicant was never called into her office to ask about loss on her shift because it was not assigned as her responsibility. Some losses were still experienced and it was a constant problem. She was not part of the panel who did not appoint the applicant in the position and was on leave at the time, but agreed that she was not appointed due to her criminal record relating to theft. She did not agree nor know that the applicant was prejudiced because she was not appointed while loss was still experienced in the workplace. She felt it would be reckless for the panel to appoint someone who has a record of theft to ensure that there is no theft and have security in place if they knew there was a problem with theft. She responded to the statement that they believe they cannot appoint someone with a criminal record while still experiencing loss with a person with no criminal record, that they cannot appoint someone who stole in a position to ensure that others don't steal. The applicant never reported to her when she was acting as a supervisor, since Ms Damons was in between them. They did not go around asking what the staff were doing and she did not know who they decided to act and develop on a day. She agreed that the applicant acted as a supervisor throughout the year, but not as a formal appointment. The applicant was competent and a very hard worker who could perform three peoples' work. If the applicant had a criminal record which was not for theft she would have appointed her, but she was not the chairperson of the selection panel. She was aware of the applicant's criminal record of 2007 and only heard of the criminal record of 2013 after she returned from leave. She did not have the knowledge nor training to say if the applicant was rehabilitated between 2013 and 2016, but knew that the applicant was still on a suspended sentence. In her view a competent person was not necessarily a trusted person. She explained what happened in the store room, that it is locked and that there is a grocery store room, equipment store room, chemical store room, and walk in fridges and freezers containing perishable products. You needed the key to get your ingredients for cooking and the applicant was one of the people who had the key to remove her ingredients. The applicant was not performing the complete store

room supervision duties by removing ingredients herself from the store room. She confirmed the following in re-examination: When she stated in the applicant's performance review that she acted throughout the year she meant that the applicant was continuously rotating with other level 2 food service aids who also acted continuously as food service supervisors; the applicant did not act daily throughout the year but got the opportunity to act as supervisor throughout the year; the keys normally lie on the ingredient table and the person cooking will take the key and place it back after getting the ingredients; during the time that the applicant acted and went to the store room on her own she was not aware that the applicant had acquired another criminal record; the stock was not ordered by the applicant when Ms Damons was on annual leave but she would pack away the stock and update the bin cards; only the ordering of the standing order of bread and milk was part of the duties of store room supervision, with the rest being the responsibility of the level 5 supervisor; when it came to her attention that the applicant had another criminal record it affected how she trusted the applicant, but they did not on a daily level change her responsibilities as knew that the hearing was still in progress and it would have been awkward to instruct the whole shift that all can act as supervisor except the applicant, which they wanted to handle with discretion.

ANALYSIS OF EVIDENCE AND ARGUMENT

26. I am required to decide, on the balance of probabilities, to determine whether the first respondent had committed an unfair labour practice in terms of section 186(2)(a) of the LRA by not appointing Ms Sylvia Gom in the position of food service supervisor level 4 at George Provincial Hospital, advertised as Post 17 in Bulletin G22 of 2016, as well as the appropriate relief if an unfair labour practice is found.
27. Only the evidence that I consider relevant to determining the matter will be referred to. After considering the evidence presented, the following is found, on the balance of probabilities and under the circumstances of this case, with brief reasons provided as required by S138(7) of the LRA:
28. The applicant had informed the first respondent about her second conviction for theft in 2013 prior to applying for the position of food service supervisor via her supervisor Mr Vuyo Witbooi shortly after her conviction in October 2013. It was not disputed that she had informed Mr Witbooi of that criminal record. From the evidence it was established that Mr Witbooi had not informed his superiors of this second criminal record, which it is reasonably expected that he would or should have done. The applicant in her

version had therefore not thought it necessary to also report this further up the chain of command since in her mind she had complied by disclosing this second criminal record to her immediate supervisor.

29. It was common cause that the applicant had checked off on the Z83 application form that she possessed a criminal record. The selection panel had accepted this and assumed that it related to the criminal record of 2007, of which they had prior knowledge. Since the Z83 application form did not require details of the criminal record, the applicant had in her testimony confirmed that her understanding was that this would relate to both her criminal records of 2007 and 2013. The applicant furthermore did not disguise this by stating on the SAPS Enquiry form which was supplied to her during the interview, that she had two convictions in George in 2007 and 2013. Documents were presented which reflected that the applicant was sentenced on 18 July 2007 to pay a fine of R200,00 for theft committed on 5 June 2007 and sentenced on 3 October 2013 to pay a fine of R1000,00 and receive a suspended sentence of three years for theft committed on 1 October 2013.
30. It was also established as common cause that the applicant was identified as the most suitable candidate for the position, had scored the highest in the selection process and that the only reason why she was not appointed in the position was because of the second criminal record of 2013. All the other evidence relating to what functions she performed whilst acting as a supervisor, whether she acted continuously or not as a supervisor and for how long, become of lesser importance in these circumstances, except to support whether she was trusted to perform the functions that she did execute and whether her integrity was ever placed in doubt during the years that she had acted as a supervisor. The evidence of both parties also supported that the applicant was never subjected to any disciplinary action relating to alleged theft or misappropriation of the first respondent's assets and stock during her period of employment as a food service aid since 1 February 2009, and therefore for all purposes had a clean disciplinary record, bearing in mind that she was acquitted at arbitration of the charge for not disclosing the first criminal record of 2007.
31. What is relevant is whether, despite being identified as the most suitable candidate for the advertised position, she could be trusted, as a result of two criminal records for theft, to have custody of the assets and stock of the first respondent and implement security measures to prevent stock losses if she was appointed in the position. It is accepted that there is a high risk factor for stock losses in the kitchen and catering environment and that persons in positions of responsibility should have the trust and confidence of an employer, as also argued by the first respondent. The applicant's competency and diligence was not in dispute, since Ms Greyling, her unit manager, had in particular confirmed in her testimony that the

applicant was a hard working and competent employee, but added that in her view a competent person was not necessarily a trusted person and that she would not be able to trust the applicant to implement security measures in order to limit loss of stock after she became aware that the applicant had a second criminal record for theft in 2013.

32. The applicant party had also alleged inconsistency and presented documentary proof of other employees with criminal records who were appointed by the first respondent. Unfortunately the key performance areas (KPAs) of the positions that these employees were appointed in, as well as the selection panel reports for those appointments, were not provided to establish on what considerations those selection panels had recommended the appointment of those candidates. The criminal records and certain documents were however available for three of the employees who were cited as examples of inconsistent action by the first respondent, being Mr James Mathews who on 27 November 2015 applied for and was presumably appointed in the position of Senior Administration Officer: SCM and had a SAPS criminal record for illicit activity, with no details provided; Ms Sisanda Sizani who on 21 April 2015 applied for and was presumably appointed in the position of Administration Clerk: Wards and was found guilty of theft on 21 November 2007 and sentenced to pay a fine of R1500,00 of which R1000,00 was suspended with a suspended sentence of 5 years; and Ms Phakane Mooi who was appointed as a Professional Nurse and was found guilty of theft on 15 July 2015 and sentenced to pay a fine of R300,00. What could differentiate these examples from that of the applicant is that only one criminal offence was on record for each of these individuals, whereas there were two on record for the applicant.
33. The question arises whether the selection panel would have decided otherwise if they were aware of the applicant's second criminal record of 2013 prior to the interviewing process, considering that they had, despite the first criminal record for theft of 2007, still ranked her as the most suitable person for the position. It should be noted that section 12.3.19 of the first respondent's Recruitment and Selection Policy issued under Circular H147/2015 dated 29 September 2015 states specifically that selection panels have no decision-making powers but are responsible for making a recommendation in respect of the most suitable candidate to the relevant Executing Authority, which in this case was delegated to Mr M Vonk, the chief executive officer of George Provincial Hospital. The admitted documentary evidence furthermore confirmed that the mandatory verification checks before appointing employees, which included criminal record checks, were obligatory from 18 November 2010.

34. Reference was made by both parties to section 14 of the first respondent's Recruitment and Selection Policy which was handed in and admitted as evidence relating to the guidelines when a positive criminal record is established during the selection process. Section 14 reads as follows in full:

14. GUIDELINES WHEN A POSITIVE CRIMINAL RECORD IS ESTABLISHED

14.1 Successful candidates are subject to the verification process (see section 15 below), which includes a criminal record check. The HR component will provide selection panels with any illicit reports (criminal records) which are received after the verification process has been completed. Selection panels must apply the following guidelines in the handling of cases of current and prospective employees for appointment in advertised posts, where a positive criminal record was established through the verification process and where these candidates omitted to indicate on their application for employment that they have a positive criminal record:

14.1.1 It must be established through a process of consultation whether an employee/prospective employee has deliberately omitted to declare his/her criminal status on the application for employment (Z83 from);

14.1.2 The criminal offence must be considered in relation to the position the employee/prospective employee applies for;

14.1.3 The date of the criminal offence must be determined in order to establish whether the employee/prospective employee has rehabilitated;

14.1.4 The application of disciplinary action must at all times be consistent with the guidelines set out in this section, as well as the prescripts contained in the Disciplinary Code and Procedures;

14.1.5 A candidate or prospective employee that is awaiting trial but has not been sentenced yet does not have a positive criminal record. These cases should be dealt with due consideration of the circumstances (date of offence; reasons why the case has not been tried yet, etc.); and

14.1.6 Due consideration must be given to relevant arbitration awards issued and case law.

35. This clause should be read with section 15 relating to verification checks on appointment, which reads as follows:

15. VERIFICATION CHECKS ON APPOINTMENT

15.1 *The Employer reserves the right to verify the authenticity of all documentation as submitted by candidates. In terms of Public Service Regulations, 2001 Chapter 1, part VII.D 8 (a) an executing authority must with any appointment satisfy herself or himself that the candidate qualifies in all respects for the post and that her or his claims in the application for the post have been verified and recorded in writing before an appointment for the filling of the post is made.*

15.2 *The following types of verifications are applicable:*

- *Criminal records*
- *ID Validation/Citizenship*
- *Financial/asset record*
- *Qualifications/study*
- *Previous employment (reference checks)*
- *Inherent requirements such as Driver's license should also be verified.*

15.2.1 *The Department will not make an appointment offer until consideration has been given to relevant reference checks.*

15.2.2 *Reference checks will only be carried out for candidates who are seriously considered for the position, after the interview has taken place.*

15.2.3 *Only references listed on the CV of the candidate may be contacted.*

36. It is clear from the aforementioned document that the first respondent was required to perform the listed verifications in terms of the Public Service Regulations before making an appointment. It is noted that the guidelines only appeared to apply where a positive criminal record was established through the verification process and where the candidates omitted to indicate on their application for employment that they have a positive criminal record. In this case the applicant had declared her criminal status on the Z83 application for employment form. The guidelines would in my view however still be relevant in order for the selection panel to determine whether the known or declared criminal record would be an obstacle to appointing such a candidate into a particular position. The criminal offence in this case was considered by the selection panel in relation to the position that the applicant applied for and the potential risk factor where a candidate had two criminal offences for theft, especially in a scenario where continual stock losses were experienced. The dates of both criminal offences were also determined, and the debate then surrounded on whether the applicant had rehabilitated since the first offence of 2007 and also since the second offence of 2013, with the first respondent contending that it would be reckless for the interviewing panel to recommend a candidate who had two criminal records for theft in an institution which is experiencing stock theft.

37. The issue of rehabilitation and the assessment on whether a person has been successfully rehabilitated after being found guilty in a court of law for the criminal act of theft, was subsequently argued by the parties. This then became the crux of the matter, namely whether the applicant had been successfully rehabilitated since her second criminal offence for theft of 2013. The first respondent's Recruitment and Selection Policy does not provide a guideline period during which rehabilitation would be deemed to have taken place, apart from stating that the date of the criminal offence must be determined in order to establish whether the person has rehabilitated. Guidance in this regard is sought from The Concise Oxford Dictionary, Eighth Edition, which defines "rehabilitate" as follows: *1 restore to effectiveness or normal life, training etc, especially after imprisonment or illness; 2 restore to former privileges or reputation or a proper condition.* To this definition can be added the following from The Shorter Oxford Dictionary on Historical Principles, Third Edition: *To restore by formal act or declaration (a person degraded or attainted) to former privileges, rank, and possessions; to re-establish (a person's good name or memory) by authoritative pronouncement. To re-establish the character or reputation of (a person or thing). To restore to a previous condition; to set up again in proper condition.* The key elements presented in these definitions are that of "to restore" or "re-establish". In the context of the employment relationship "rehabilitation" could then be interpreted to mean the restoration or re-establishment of confidence and trust in an employee as a result of an incident that had occurred which placed doubt in that trust or confidence.

38. The evidence supported that the first criminal offence of 2007 was known and considered by the selection panel when they ranked the applicant as the highest scoring candidate for the position. The inference was then that the applicant had in their view been "rehabilitated" since the first offence in 2007 due to the effluxion of time. When the second and more recent criminal offence of 2013 came to their attention, whether it was known or not known to them at the time of the interviews and prior to the applicant's criminal record verification, the question then arose whether the applicant had in fact been successfully "rehabilitated" and could still be prone to commit the same offence again, not necessarily external to but also on the first respondent's premises. It is noted that the applicant was sentenced by the court on 3 October 2013 to pay a fine of R1000,00 and receive a suspended sentence of three years on the condition that she was not found guilty of committing theft during the period of suspension. This suspended sentence was still current at the time of her interview for the position on 12 July 2016 and when the appointment decision was made. It can then be inferred that any rehabilitation, in the criminal context at least, could only reasonably be assessed after the suspended sentence had expired. Although this suspended sentence had expired at the time of the arbitration, it had not yet when the dispute arose. In

these circumstances the first respondent would have felt justified to rather appoint another candidate with a clean criminal record into the position, even if he was the second ranked candidate, especially when the directives relating to compulsory verification and criminal record checks before appointments can be made have to be complied with and considered.

39. In this matter the onus was on the applicant party to show that an unfair labour practice was committed by the first respondent. In my view the applicant party was unable to sufficiently discharge this onus of proving, on the balance of probabilities, that the applicant was the most suitable candidate to be appointed in the position of food service supervisor level 4 on the grounds that she was regarded as having been fully rehabilitated after her two prior criminal convictions for theft, which includes the restoration of the trust and confidence of the first respondent in her, at the time that she applied for that position. This finding should however not prevent the applicant from applying for a similar position again in the future when such trust and confidence in her has been restored. The applicant party had submitted in closing that the applicant had paid her dues to society and that continued persecution in this regard would be constitutionally unfair, which is a point that should be borne in mind by the first respondent in the way forward.

AWARD

40. The first respondent, the Department of Health-Western Cape, had not acted unfairly by not appointing Ms Sylvia Nokulunga Gom, persal number 54767644, into the position of food service supervisor level 4 at George Provincial Hospital, advertised as Post 17 in Bulletin G22 of 2016.
41. The matter is accordingly dismissed.
42. No order as to costs is made.



Panellist: A C E Reynolds