



# ARBITRATION AWARD

Case No: PSHS684-16/17

Commissioner: T ERASMUS

Date of Award: 3 April 2017

In the matter between:

**NEHAWU obo Macebo, H**

(Union/Applicant)

and

**DEPARTMENT OF HEALTH- WESTERN CAPE**

(Respondent)

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## DETAILS OF HEARING AND REPRESENTATION

1. This matter was set down for Arbitration at the Public Health and Social Development Sectoral Bargaining Council in terms of section 191(5)(a) of the Labour Relations Act 66 of 1995 ("the LRA") and was heard at The Boardroom, Paarl Hospital, Paarl on 8 and 9 February 2017. The matter was postponed as a part-heard matter to 23 February 2017. Applicant was represented by Mr M Zamaxolo from NEHAWU, whilst the Respondent was represented by Mr A Mniki, Labour Relations Officer at Respondent.

## ISSUE TO BE DECIDED

2. I must decide whether Applicant's dismissal was both procedurally and substantively fair.

### **APPLICANT'S OPENING STATEMENT**

3. Applicant commenced employment with the Respondent during February 1996. Applicant has a clean disciplinary record. It is Applicant's case that he has never been trained in the particular allegations against him. Applicant was not informed of the rule that the Respondent claims he has broken.
  
4. Applicant received an *audi* letter from Respondent on 9 May 2016 where the allegation was made that he broke a rule from 18 April 2016 to 6 May 2016. Applicant received a letter of suspension on 1 June 2016. Applicant was not well informed how to respond, as he does not follow English and there was no interpreter present, as a result of which Applicant did not respond to the letter of suspension. The letter of suspension included allegations from 11 April 2016 and not from 18 April 2016. Applicant then received a notification of a disciplinary hearing on 6 June 2016 and the allegations started on 27 January 2016, which is seen as a further way to punish Applicant as he did not receive any other letters. Applicant was dismissed on 24 August 2016 at which time he earned R8 000.00 per month, plus housing. The chairperson relied on evidence that was only handed to the Applicant in the course of the disciplinary hearing and the Applicant did not have enough time to consider same. Applicant seeks retrospective reinstatement. Applicant disputes both procedural and substantive fairness.

### **RESPONDENT'S OPENING STATEMENT**

5. Respondent stated that the 27 charges levelled against Applicant originate from April 2016 when Respondent became aware of the case. An investigator was appointed to investigate a case of a government vehicle being misused and part of that investigation included the request of a tracker report. Once the movement report was received, the daily movement of the vehicle was investigated as from 1 January 2016 to 31 May 2016 and the conduct was picked up from this behaviour. Respondent cannot ignore Applicant's conduct during January 2016. Therefore the Applicant was charged with misuse of the government vehicle, he was driving until the end of May 2016. Applicant received an *audi* letter on the 9<sup>th</sup> of May 2016. The Applicant follows Afrikaans therefore the fact that he does not follow English is irrelevant. Applicant's supervisor explained the *audi* letter to him in Afrikaans. Applicant continued with his behaviour in spite of the *audi* letter. Twenty five (25) of the charges relate to the misuse of a government vehicle. Applicant was found not guilty on charge 20 and charge 21 was withdrawn. Therefore Respondent will not lead evidence on charges 20 and 21.

6. Charges 1 to 19 deal with Applicant's deviation from routes that he was supposed to travel. It is clear from charge 22 that Applicant was charged with conducting himself in an improper and disgraceful fashion when he refused to leave the premises at the time when he was handed a letter of suspension.
7. Charge 25 is viewed in a very serious light and influenced Respondent's decision to dismiss Applicant. Applicant entered information in his log books that was an untrue reflection of his actual travelling. Applicant misled the Department. He was selective in the trips he entered in his log book. Applicant did not disclose other travel he undertook, it borders on dishonesty.
8. Charge 24 overflows with charge 25 and the two charges should be combined. Respondent included an addendum to the charge sheet, which reflects the destinations to which Applicant travelled that were unauthorised.
9. Respondent seeks confirmation of the finding of guilty and the sanction of dismissal.

## **RESPONDENT'S CASE**

10. **JOLENE DELPORT testified on behalf of Respondent (hereinafter referred to as "Delport")**
11. Delport confirmed that she is the Buro and Customer Support Supervisor at AFSOL which is a service provider to government motor vehicle transport. She works with daily motor tracking, maintenance and reporting. She has been employed by AFSOL for the past four years. Delport referred to Annexure A which includes the daily movement report of the vehicle selected with registration number GBK541G. Delport confirmed that the units are ICA approved and the information can hold up in a court of law.

## THE FOLLOWING ENSUED FROM CROSS-EXAMINATION:

12. Delpport confirmed that ICASA approved the units and functionality. The ICASA certificate had to be handed into GMT before installation can be done. Delpport confirmed that the manufacturing of the systems are tested on a yearly basis to ensure that the software and technology is up to date. She confirmed that she trust the information as she works with it on a daily basis and government transport would not have allocated a tender if the ICASA documents were not correct and up to date. Delpport confirmed that the information is 100% correct. Their documentation was handed to GMT and they would not been awarded the tender if they did not meet the required standards. Delpport confirmed that the units rely on satellite for positioning. It can happen on occasion that the vehicle is parked in an area where the satellite could not be picked up in that specific location and once the vehicle moved out of range where the satellite can be located, once again it will reflect. It could be that the vehicle was in a building or a basement, therefore it could possibly not give the departure location. She referred to page 30 and noted that the trip possibly ended in an industrial area, it could be a built up area, therefore the satellite did not pick up the departure location. Delpport confirmed that they don't rely on one satellite only, therefore it is impossible for the satellite to pick up an incorrect location. Delpport confirmed the information is 100% reliable and a map can be requested to show exactly from where the vehicle left. She is unsure why the transport officer requested the tracker report. The Department requests these kinds of reports on a daily basis. The request will come from the transport control or transport officer and they are only allowed to send out reports to these persons in question. The report is then generated and sent back to the person who requested it.
13. They are not usually informed of the reason for the request is made or who they are for. Her function is simply to generate the report and make it available to the person who requested it. Delpport confirmed that they have a number of vehicles, therefore they do not only have one person checking the vehicles. They have a team who does checks on the vehicles on a daily basis. Delpport confirmed that when their systems are installed, the vehicle odometer is used to set the tracker system, therefore they function in conjunction with each other. Delpport confirmed that because the vehicle works with an odometer and their system works with a GPS there is a 10km allowance for difference, but there should not be a huge difference. Delpport was challenged that the report is not reliable. Delpport however confirmed that the report is 100% reliable.

#### **THE FOLLOWING ENSUED FROM RE-EXAMINATION:**

14. Delpport confirmed that they install the tracker according to the vehicle's odometer. Satellites only work in straight lines, they do not use the bends in the road, thus the variance allowed. Where a vehicle has stopped or moved from, if the tracking device makes a mistake, it will not make a mistake about the road it is in, but perhaps about the number of the building in the road. When the vehicle leaves, the satellite will pick up the next number in the road. The ICASA certificate is easily available should it be required, although it is not in dispute.
15. **JACOMINA HENDRINA DU PLESSIS testified on behalf of Respondent (hereinafter referred to as "Du Plessis")**
16. Du Plessis confirmed that she worked together with Applicant for a number of years. Applicant was employed to transport patients for instance to x-rays, audiology and to collect post. Du Plessis testified that on 18 April 2016 Applicant only turned up at work at 11:10 to collect a patient whilst he had to be there at 10:30. His supervisor was not on duty on that day. Du Plessis wrote something on a piece of paper. Paarl Hospital does not like it if they are late with patients. Mr Jacobs, Applicant's supervisor, requested her to obtain a tracker report. Du Plessis confirmed that she works at Sonstraal Hospital together with Applicant. She asked Applicant where he was and he informed her that he was at Paarl Hospital from 8:00 until 11:15. He was not dutied to go to Paarl Hospital at that time. Du Plessis is unaware where Applicant was before 10:00 when he had to take patients to audio and x-rays. Du Plessis confirmed the document evidenced on page 79 is a transport book, where all the trips for the day has to be written. Information is also written on the board to indicate where Applicant had to go for the day and there was nothing on the board before 10:00 on the day in question. Applicant told her that he had to go Paarl Hospital. He did not tell her what he was doing at Paarl Hospital.

#### **THE FOLLOWING ENSUED FROM CROSS-EXAMINATION:**

17. Du Plessis stated that there were times that Applicant did not turn up at work on time. She is not his supervisor. If Jacobs is not there he reported to Ms Andrews. Du Plessis confirmed that there was no authority for Applicant to be at Paarl Hospital on the day in question. He did not turn up for the patients whose appointment was at 11:15 on that day. Andrews was there on the day in question. Du Plessis confirmed that there is a big white board where everyone can see the trip for the day in

Femo ward and she is the operational manager of Femo ward. There were no other trips on the board, Applicant only had to take patients to Paarl Hospital to audiology and x-rays and deliver a parcel. All staff of Femo ward could see the board. Applicant's supervisor, Andrews, could also see the board. It is on the stoep as they come out of the office and go into the tearoom or to other offices, all staff member pass the board and can be viewed. The Femo ward staff writes on the board. Interns of the Femo ward write on the board. Du Plessis was challenged whether the interns were going to testify. She stated they were not going to testify and that it was too long ago, they would not remember what was written on the board on the day in question.

18. Du Plessis confirmed that she wrote on a small piece of paper which she gave to Andrews. Andrews requested her to write a report on the same day and as far as she knows, Andrews gave it to Jacobs. It was put to Du Plessis that Applicant takes orders from different people in the hospital. Du Plessis responded that the orders for trips, demand for trip authority to be written in the book and Applicant's supervisor will require same. It was put to Du Plessis that Applicant received an instruction from sister Fresho to go to Paarl Hospital. She stated that she was unaware of this, but that it must be written in the trip book or on the board. She is unaware of such instruction. The trips for the day are written on the board and in the book on a daily basis. Applicant also had to take SVVD tapes to the Paarl Hospital which is also written on the board and it is not an extra trip. Trips are written on the board in the morning and wiped off the following morning. She is unaware of the contents of the logbook as this will be attested to by Jacobs, his supervisor.
19. Du Plessis confirmed that she asked Applicant to buy dummies in the past for the children in the hospital. She cannot remember whether she gave him a trip authority, Applicant usually requested a trip authority before he left on these trips. This was 2 to 3 years ago. It was put to Du Plessis that Applicant will testify that she send him to buy dummies without following procedures. Du Plessis responded that she could not remember, but Applicant and his supervisor demanded trip authority. He was not sent without his supervisor's permission.
20. Reference was made to annexure D which are notes written by the witness. Du Plessis was challenged why she wrote the note. She responded that Applicant's supervisor requested her to write something down on a piece of paper, because they had a problem with him, not turning up for the patients' appointments. It was the first time that she was required to write such a memo for his supervisor. She spoke to Andrews on the day in question and to Jacobs the following day. Both

Andrews and Jacobs asked her to write down what was written on the board and the fact that Applicant did not turn up on time and the patients were therefore late for their appointments.

21. Du Plessis testified that Applicant's whereabouts from 08:00 until 11:15 was unexplained and he was not at Sonstraal Hospital on time. Applicant told her that he was at Paarl Hospital. Applicant's tracker report also showed that Applicant was not at Paarl Hospital. At that time the supervisor showed them the tracker report and explained it, although she did not work with the tracker report. It was probably two days later, when it came from the district office in Malmesbury. She is not familiar with the tracker report.

#### **THE FOLLOWING ENSUED FROM RE-EXAMINATION:**

22. Du Plessis confirmed that a trip authority and an entry must be made in the trip book if someone is requested to go somewhere as part of his duties and it was also written on the board that Applicant must transport patients to audiology and x-rays. When Applicant goes to Paarl Hospital as per annexure C, page 79, he must have a trip book and a trip authority form. Sometimes they do not write it in the trip book, but they write it on a trip authority form, which the supervisor must sign as well. Applicant is well aware of this procedure. Du Plessis confirmed that she did not write the names of the patients on the note, as it was in the trip book. Mr Afrika, the transport officer of Paarl Hospital said he saw him three days later. Afrika also sends Applicant to places.
23. **ALDRID EUSTACE JACOBS testified on behalf of Respondent (hereinafter referred to as "Jacobs")**
24. Jacobs testified that is the senior administrative officer, Human Resources and Support Services. Applicant reported directly to him as he is responsible for transport. Applicant was a driver and his trips report directly to Jacobs. Respondent arrived at the charges against Applicant. Jacobs was on leave during the period that the enquiries happened and on his return there were complaints which he had to follow up.
  1. Applicant drove to Malmesbury without permission.
  2. He drove to destinations that were not part of his trip authorities.

25. Jacobs had to follow it up on his track records and noticed various unauthorised stops. Jacobs, together with the deputy director, Mr Small and manager of medical services, Dr Cronjé informed Applicant about the allegations and gave him a copy of the deviations and asked him to give his side of the story. Respondent indicated on the report that there were areas where he parked and stopped where he was not supposed to be. Applicant was instructed to give either verbal or written response to Jacobs why he should not be charged. Jacobs then gave Applicant a written *audi* with all the contents of the meeting and asked Applicant to respond within a certain time limit. Once the time limit expired, Jacobs went to Applicant and asked him for his response. Applicant responded that Respondent could charge him and that he would respond at the hearing. Jacobs then requested the district office to investigate the matter further. Applicant's function was driving and Respondent had no alternative other than to suspend Applicant.
26. Applicant was then subjected to a disciplinary hearing and charged as per the charge sheet in Annexure B, together with annexure C. Applicant was charged with the charges 1 to 27 which commenced on 28 January 2016. It indicates four areas where he stopped where he did not have authority. Reference was made to charge 1 in annexure B. Applicant did not have authority to drive in these areas. Applicant's authority stem from Jacobs's instructions. Respondent has a template which is used by Applicant to record his trips. If Applicant has to collect patients, it is written on the form. Reference was made to annexure E, being the Sonstraal Hospital trip authority for the driver. As Respondent progressed they also went over to an A4 book. The trip authority was also put on the notice board. These destinations are indicated on that document, as they are not indicated anywhere on the record.
27. Charge 2: There were no trip authorities for these destinations in charge 2. Applicant is based at Sonstraal Hospital.
28. Reference was made to annexure B. Jacobs confirmed that on investigation it was confirmed that these destinations were not authorised. With relation to charge 3, Jacobs confirmed that there was no business for the hospital in those areas. Applicant's representative then placed on record that Applicant admits that he went to all the destinations in question and therefore Respondent does not have to lead evidence on these destinations as it is not in dispute. Applicant however disputes that the Employer trained him properly in completing his log book.

29. Charge 4 – the applicant admits that he went to all these destinations, but he states he did not have to obtain authority as the employer failed to guide him.
30. Reference was made to charge 22 on page 15 of annexure C. Jacobs confirmed that he served Applicant with a letter of suspension. Applicant was informed of the reason for his suspension and that he would receive his salary. Applicant stormed out of Jacobs's office and drove away. Jacobs contacted the shop steward when Applicant stormed out of his office and informed him in the presence of Dr Cronjé. Mashiana, the shop steward, told Jacobs that he must speak to Applicant on his own, as Applicant doesn't want to understand reason. Jacobs then made contact with Zama Mbodlane, the labour relations officer and told him when he handed the letter of suspension to Applicant, he refused to hand over the keys of the government vehicle Applicant started driving out of the hospital grounds. Zama told Jacobs that the security guard would assist him to confiscate the keys. Applicant would not listen to the security guard, where after Jacobs contacted the South African Police Services. When the SAPS arrived at the scene, Applicant quickly jumped into the government vehicle and parked the vehicle in the garage in the hospital premises where the vehicle is normally stationed. Applicant handed the keys over as Jacobs exited the vehicle and the two police officers approached him, whereafter Jacobs and the two police officers had a discussion with Applicant in the boardroom. He was informed that he was not dismissed, but only suspended. Applicant handed over the keys of the government vehicle and took the letter of suspension. Prior to leaving, Applicant went into the hospital and told everybody that he was suspended. The police left at the same time when Applicant left the premises.
31. Applicant's conduct was rude and insubordinate. Charges 24 and 25 were consolidated as one charge. Reference was made to page 72 in Annexure C, which is Applicant's log book that stretches from 27 January 2016 until 18 February 2016. Jacobs confirmed that Applicant indicated areas where he travelled. He confirmed where he signed at the bottom, that the vehicle was only used for government purposes. Applicant failed or neglected to mention certain unauthorised trips. The tracker reports contradict the log book. Applicant stated under oath that he used the vehicle for government purposes only and not for private purposes. He was guilty of the listed transgression from 27 January 2016 until 27 May 2016 and even beyond that up to 31 May 2016. It covered the dates on which Applicant completed his log book. Applicant was subjected to an *audi* in the beginning of May 2016 regarding the allegations. Jacobs explained the allegation to him when he handed the *audi* letter to Applicant. He was given a copy of the tracker report for the period from 27 March 2016 until sometime in April 2016. Advocate Small who was also present told Applicant that it was serious.

32. Reference was made to charge 16 on page 10. Jacobs testified that he expected that Applicant's behaviour would stop after receipt of the *audi*, but he did not care about the allegations against him. He continued with the unauthorised stops. He did not change his behaviour. It impacted on the trust relationship as they could no longer trust him, whenever he reported on the log sheet that he was being honest with management. Management believed that he only drove in the areas entered into his log book, but he continued with his conduct of unauthorised trips. The trust relationship has been breached as he lied and covered his tracks by not entering the trips in his log book. Applicant swore under oath that those are the only locations to which he drove. He transgressed after the *audi*, therefore the trust relationship cannot be repaired. He continued being dishonest and the Respondent cannot trust a dishonest person.
33. It was put to Jacobs that Applicant stated that he did not enter these trips into the log book, because he was not trained. Jacobs responded that he had discussions with Applicant about his trips on a monthly basis and Jacobs told him not to deviate from the trips. He has been driving for the department for a long time. He failed to indicate the areas where he stopped in any of the trips, whilst he knew how to complete the form. It is difficult to train a person not to be dishonest. There is no training on how to complete a log book.
34. Reference was made to the bottom of page 74, confirming that Applicant's name, handwriting and signature on the document. Applicant did not indicate that he did not understand how to complete the log book. If Applicant says that he was charged with incidents from 27 January 2016 in order to add more weight to the case, they should have dealt with it earlier. Jacobs responded that the investigating officer deemed it necessary to ascertain whether it was an on-going occurrence. When they drew the tracker report it was absolutely devastating to see it went on for such a long time. Applicant used the vehicle at his peril. Respondent only became aware of the January 2016 period during the investigation for the first time.

**THE FOLLOWING ENSUED FROM CROSS-EXAMINATION:**

35. Jacobs testified to the purpose of the log book. It was put to Jacobs that Applicant receives instructions from different people. Jacobs confirmed that Applicant reported to Ms Andrews, who will then gave him the trip authority. If he drove a different route he would also report it to Jacobs verbally.

Jacobs does not keep written record as he just reports to him. It was Applicant's responsibility to enter it into his log book.

36. Jacobs was challenged as to whether there should be an SOP to hide abuse. Jacobs responded that Applicant's reporting was never a problem. He would report if he drove to Klipheuwel or the Durbanville route, but the routes on the charge sheet was never communicated to him. Jacobs was under the impression that Applicant was doing a fantastic job. He never said no if the sisters asked him to do extra driving for the patients. The problem is that he did not report the routes on the charge sheet. Even the trips to Cape Town, Kuilsriver, Bloekombos, Sandrift, Milnerton on 4 February 2016, he failed to report. He also failed to report Dal Josafat and Kraaifontein trips. He never once came back to Jacobs to report that he stopped or did a detour. Whenever Jacobs told Applicant that he had to sign the trip authority, he would respond "ja ek ken daa".
37. Jacobs cannot tell Applicant not to withhold information, that is his own integrity, he did not inform Jacobs, whilst he had the opportunity to do so. Jacobs cannot tell Applicant where he must drive if he does not tell him.
38. I questioned Applicant's representative as to whether the Applicant admitted the trips were not on the log book. Applicant's representative confirmed that although he admits the trips, Applicant's case is that he did not know how to fill in the log book, or that he had to report if he deviated from this route. It was put to Jacobs that Applicant will testify that Jacobs did not inform him how to deal with deviation if he stopped in a different street. Jacobs responded that he told Applicant on numerous occasions to complete these trips and not to deviate. When he drove through Agter Paarl, there were many bends in the road, he would report it to Jacobs. He did not report the areas he knows that he should not be in. If Applicant has to stop on the route to take a phone call he does not have to report it as it is not a huge deviation. As from the tracker AFSOL testimony a 10km deviation is allowed.
39. It was put to Jacobs that sometimes patients ask Applicant to go to a particular address such as to collect their identity books. Jacobs responded that Applicant may not take instructions from the patients. He may only take instructions from the department. It was put to Jacobs that Instructions to the Applicant to go to the Community Hall with patients would only come from the social worker and not from patients directly. Jacobs responded that if Applicant's version is accepted it would mean that the patients have left their ID's at home a few times. It was put to Jacobs that although he testified that Applicant understands Afrikaans, he disputes it. Jacobs responded that Sonstraal Hospital has 65 staff members and if 64 of these staff members were questioned whether Applicant

understands Afrikaans, they would confirm that he does. Jacobs also testified that Applicant worked at the Respondent for over 20 years and if he was communicating in a language he does not understand one would expect him to raise it. He could have approached the labour relations department, therefore Applicant is not truthful. The letter of dismissal was given to Applicant in Xhosa with a shop steward. He is unsure why Applicant requested that the *audi* letters be translated into isiXhosa.

40. Applicant refused to leave on 1 June 2016 before the Police was called in. It was put to Jacobs that Applicant will testify that he wanted clarification on the day and he was also given work to do. Applicant's duty was to discuss his trips with Jacobs. Jacobs said to him "here are your trips for today", he then received the letter of suspension which had to be implemented with immediate effect. Dr Cronjé asked him "do you understand what we are saying, you will still receive your salary". Luiso spoke to him and he said he must have been spoken to in Xhosa. Less phoned Jacobs and told him he no longer wants to be involved as Applicant is too stubborn and would not listen to him, whereafter Jacobs was obliged to call the police. When Applicant saw the police, he parked the vehicle.
41. It was put to Jacobs that Applicant will testify that Applicant was confused and that he did not refuse to leave. Jacobs confirmed that the SAPS officer spoke to Applicant in both English and Afrikaans and he understood, therefore it is unclear how he could not understand Dr Cronjé.
42. Luiso (shop steward) was there to interpret to Applicant when the SAPS were there. Luiso had the opportunity to tell Applicant to hand over the keys. Applicant understood, but he still refused. Jacobs then contacted Mr Botlana at the security office and he advised him to contact SAPS, which he did. Applicant stuck out his hands and gave the keys to Jacobs after he parked the vehicle.
43. Jacobs confirmed that he was not at work on 20 April 2016. On his return on the 21<sup>st</sup> Du Plessis informed him that Applicant had to take patients to Paarl Hospital to x-rays and audiology and he only arrived after 11:00. When she asked him where he was, he told her that he was at Paarl Hospital, but when the tracker report was checked it materialised that he was all over Mbekweni. Jacobs originally requested a tracker report for a period of two weeks and he noticed that Applicant deviated often, whereafter he subjected Applicant to an *audi*. He told Applicant that he could reply either verbally or in writing.

44. Once the time limit within which Applicant had to reply expired, Jacobs went to him and asked him for his response. Applicant told Jacobs that he was not going to respond and that Respondent should charge him. Jacobs checked all the trip authorities for the 20<sup>th</sup> of April 2016 and saw there was only a trip at 09:00 in the morning that he had to take surgical stuff to Paarl Hospital, however he had to take patients to the Hospital at 10:30 and to TC Newman and audio, but he only arrived at Sonstraal Hospital at 11:25. Applicant left Paarl Hospital at 09:25 and only came back to Sonstraal Hospital at 11:15. Although Applicant was at Paarl Hospital early in the morning, he was not there for the whole time. It should take him less than 10 minutes to return to Sonstraal Hospital, whilst it took him almost two hours.
45. Jacobs was challenged that Applicant was sometimes instructed to go to Phoenix on his way to Malmesbury and Phoenix is close to Joe Slovo Park, behind Century City. Jacobs responded that it seems that every time they asked Applicant to go to Observatory, he would go via Joe Slovo Park.
46. Applicant was sent to collect payslips in Observatory and drop them off in Malmesbury, but he would go via Maitland (Pitt Street) to Observatory and then Joe Slovo Park in Milnerton and then to Malmesbury. He should not even have been in Maitland. Jacobs was challenged on whether he thought Applicant would intentionally drive unauthorised routes and hide it. Jacobs responded that he trusted Applicant and Applicant made him believe that what he was following is correct procedures. He would never have believed that Applicant would deviate and be dishonest. The track report that was drawn for six months and only for Applicant's vehicle. The Respondent had a Toyota Hi-Ace previously, without a tracker, therefore Respondent does not know what happened before Applicant was driving with a tracker. It was put to Jacobs that Applicant did not falsify his log book, but Respondent failed to train him. Jacobs responded that he believes that Applicant became arrogant, as he got away with it for such a long time whilst there was no tracker and his only failure was trusting Applicant.

#### **THE FOLLOWING ENSUED FROM RE-EXAMINATION:**

47. Applicant reported to Jacobs whenever he took a different route. It was not only a once off situation, the first time was in the winter and the next time during the summer. Applicant was driving without air conditioning. Jacobs checked the tracker reports on the distance and there was not a big difference, therefore it was not in dispute. Jacobs was asked why Applicant informed him of the detours if he did not know he has to inform him. Jacobs responded that when they discuss these matters he would remind Applicant not to deviate from the routes. Applicant was part of the inspection

in loco during the disciplinary hearing. Certain of the places did not form part of the business such as Mbekweni, as there were no clinics nearby. Isipingo Avenue near Joe Slovo Park gets so tight that one cannot even reverse in the township. Pitt Street is in Maitland where there is a meat market and gearbox centre. Respondent has no business there. They visited Bloekombos in Kraaifontein during the inspection in loco.

48. Applicant's representative said they were no longer in disagreement, therefore it was not necessary to proceed with the inspection any further.
49. Reference was made to Phoenix in charge 2 that was visited by Applicant on 4 April 2016. It is impossible that it could take Applicant 36 minutes to refuel. In the initial hearing Applicant said it sometimes happens that he got lost. Jacobs responded that Applicant would not get lost for 30 minutes in the same place as last week and he also does not believe that Applicant put in fuel. He was sometimes sent to Roeland Street in Cape Town to collect drivers' license disks, but Respondent does not have any business in Maitland or Sanddrift. Some days Applicant would drive back to Mbekweni. On 28 February 2016, Applicant went to Bloekombos, whilst this was not covered by his trip authority. He was sent to Paarl Hospital for surgery and Bloekombos is in Kraaifontein.
50. On 18 February 2016 as per page 153 Applicant was sent to Home Affairs. Jacobs also confirmed that on the day the letter of suspension was handed to Applicant, Luiso was there before the police arrived at the premises. It was after the discussion between himself and Applicant and Dr Cronjé. Applicant stormed out and therefore he was driving unauthorised at that very moment.

## **APPLICANT'S CASE**

51. **LUIISO LESLEY MASHIANA testified on behalf of Applicant (hereinafter referred to as "Mashiana")**
52. Mashiana testified that he worked with Applicant for many years. He had never seen Applicant in this kind of situation. On 1 June 2016 he worked as a chef, cooking for the patients at Sonstraal Hospital. Applicant called him. He met Jacobs, Applicant, Ms Andrews and 2 police officers. They were told to go into the boardroom. Jacobs informed the police that Applicant refused to hand in the car keys. When the police wanted to confirm with Applicant, he said that is not the case. The police asked Applicant what was really going on and he said he had permission to work. The police

instructed Applicant to hand over the keys, which he did and they escorted him off site. It was put to him that evidence was led that Applicant refused to hand over the keys, before the police arrived. Mashiana responded that he worked inside, but he never heard of it. Mashiana testified that the minute Jacobs explained, Applicant completely refused to hand over the keys, he wanted someone else in the presence of the police to ensure he handed over the keys. Applicant is not fluent in English. He was there to interpret. When Applicant was told to hand over the keys, he asked for written proof that he should not be on the premises, he was not given written proof, only a letter of suspension. According to Mashiana the letter of suspension was not clarified. Mashiana denied that Applicant refused to hand over the keys. Mashiana believes that Applicant thought he was following instructions that he was given in terms of his duties for the day. Mashiana denies that he stated that Applicant was stubborn during his conversation with Applicant. Mashiana is also a NEHAWU shop steward, therefore it is not his first case for NEHAWU. Mashiana was challenged on the allegations of deviation of trips. According to Mashiana Applicant had no knowledge as he did not receive training. He would be sent to someone else with more experience to get training. There was a similar case of Andrew Sacks who was charged with similar transgressions. He was an observer in that case. Drivers face many problems, as there are many people controlling transport. Every hospital has a transport officer. Sonstraal Hospital reports to Malmesbury, therefore the transport officer is in Malmesbury and controlled by Human Resources. Anybody would send the driver where ever they chose. Many of these people do not follow the route of the trip authorities. According to Mashiana the outcome of the Sacks matter was a final written warning.

#### **THE FOLLOWING ENSUED FROM CROSS-EXAMINATION:**

53. It was put to Mashiana that Jacobs testified that he spoke to Mashiana and Mashiana told him that Applicant refused to hand him the keys when the letter of suspension was given to him. He then spoke to Applicant, where after Mashiana informed Jacobs that Applicant is too stubborn and that he would have to deal with him himself. Mashiana responded that when he is called by someone at the hospital to speak to an employee, he cannot refuse to speak to him, as he is a shop steward. According to Mashiana, Jacobs never called him. The only conversation he had with Jacobs was when the police arrived. It was put to Mashiana that he was not telling the truth. Jacobs testified that he contacted him after Applicant refused to hand in the keys. Mashiana confirmed that he understood what the letter of suspension was all about. It was put to Mashiana that the letter of suspension is sufficient reason for someone to leave the premises. He responded that his understanding of a letter of suspension was that it was not the kind of proof that Applicant wanted. He explained to Applicant

what the letter of suspension meant, after the police left. He could not remember if it was before or after the police left. It was put to Mashiana that Applicant's version was that he refused to hand over the keys due to the fact that the letter of suspension was not explained to him, yet Mashiana testified that he explained the letter of suspension to Applicant. He did not respond.

54. **HEBE MALEBO testified in support of his own case (hereinafter referred to as "Applicant")**
55. Applicant was employed by the Respondent for the past 20 years and he has never been subjected to a disciplinary hearing? Applicant started working as a driver, during 2008.
56. It was put to Applicant that his supervisor testified he did not give him training, as there was no need for training. Applicant replied that as a permanent employee he required training for the job, in order that he may know what to do. He needed training on how to complete the log book and trip authority and how do deal with patients' I transport and the confidentiality of the letters he had to transport.
57. Applicant avers that his lack of knowledge was the very cause of the charges against him. It was put to Applicant that Jacobs testified he informed Applicant not deviate from his trip authority. Applicant replied that he is not aware of that (this was not put to the witness. Applicant' representative responded that it is Applicant's case that his version differs from that of Jacobs).
58. It was put to Applicant that according to Jacobs Applicant informed him in some instances that he deviated. This was denied by Applicant. Applicant stated that his home language is Xhosa, he asked Jacobs on numerous occasions if something work-related is written to him, it must be given to him in Xhosa, Jacobs reported it to the Malmesbury office (this was not put to Jacobs).
59. On the 9<sup>th</sup> of May 2016 Applicant received an audi letter. On arrival with patients at the hospital he was informed to go to Jacobs' office, where he found Jacobs, Advocate Small and Dr Cronje. When Applicant left his office he gave Applicant the audi letter and instructed Applicant to read and sign the letter. When Applicant opened the letter Applicant informed Jacobs that he could not read or sign the letter. Applicant informed Jacobs that all written communication addressed to him must be in Xhosa, because it is an official language in SA (this was not put to Jacobs at all). Jacobs got up and went to Dr Cronje's office, where Advocate Small was and he called them to the boardroom which is in a prefabricated construction, a type of container. Jacobs called Applicant to the boardroom and gave the letter to Advocate Small. Small informed Applicant testified that in terms of the meeting held

between himself and Jacobs, the decision was taken which resulted in the audi letter. Applicant asked him which meeting he was referring to, as he is unaware of such a meeting (this was not put to Jacobs).

60. Small then advised Applicant that there is a tracker report attached to the audi letter and he gave it to Applicant to peruse. Applicant returned the audi letter to and asked Respondent to highlight the places with which they have a problem, as all his trips were in execution of his duties. Advocate Small left and Applicant left shortly thereafter, leaving the tracker report with Jacobs for him to highlight the places with which they had a problem and he requested a translation into Xhosa, which never happened.
61. It was put to Applicant that Jacobs testified that he informed Applicant on the 1<sup>st</sup> of June 2017 that he had to leave the office and Applicant refused to adhere to the instruction. Applicant replied that he asked for the trip authority on his arrival at work and for signature by Jacobs and Cronje. According to Applicant, the intern then returned with a list of names of patients who had to be taken x rays. Applicant took the patients for x rays at Paarl East Hospital and the others to Paarl General hospital. He left them there and returned to Sonstraal and when he arrived at Sonstraal Hospital, Jacobs handed him a letter of suspension. Applicant told Jacobs he must have the letter faxed from Malmesbury in Xhosa in order for Applicant to understand the letter and he informed Jacobs that there were still patients outside that had to be brought back in terms of the trip authority and duties for the day. Applicant left Jacobs in his office, because they could not agree about the issue of the Xhosa letter (this was not put to Jacobs).
62. Applicant then left to fetch the patients at Paarl General hospital, but they were not finished yet. Applicant left them there, because Jacobs called him and told him that he must return to Sonstraal hospital. On his arrival Jacobs instructed him to hand over the car keys. Applicant informed Jacobs that he couldn't hand over the keys, as he still had patients to fetch, where after he would agree to hand the keys to Jacobs. He then went to fetch the other patients at Paarl hospital and took them to Sonstraal hospital and on arrival he saw Mr Sacks going out with the other patients in a sedan car and Applicant realized had to complete his normal duties, he then returned the vehicle to the garage where it is normally parked. Applicant was busy reversing the vehicle, at which point 2 police officers passed the car, Applicant then parked the car. He was busy logging the milage when Andrews and Jacobs approached him together with the two police officers. The shorter of the two police officers could speak a little bit of Xhosa and asked Applicant what the problem was. Applicant responded that

there was there was no problem. He handed the keys to the police officer on request thereto. Applicant took the log book, showed Jacobs the last kilometre reading. Jacobs inspected the car, he was satisfied and from there the car was parked.

63. The taller police officer asked Applicant whether he had a shop steward and on Applicant's confirmation, offered to call the shop steward, as he could pick up that Applicant did not follow what was going on. Applicant called the shop steward and they went to the boardroom. Applicant requested a letter from Jacobs confirming the condition of the car. According to Applicant, the letter of suspension was not explained to him. He left the letter with Jacobs.
64. The shop steward, Luiso, was invited to Sonstraal Hospital on 1 June 2016 when Applicant informed him that the police were present, where after Luiso explained the letter of suspension to Applicant, although Luiso did not see the letter. (This was not put to Jacobs).
65. It was put to Applicant that the Respondent avers that he was dishonest in completion of the log books. Streets are not written down on any GG log books and that the streets in question are not in the areas where Applicant was supposed to drive. According to Applicant he has been traveling in these areas for years in execution of his duties.
66. Reference was made to charge 1 - Respondent avers that Applicant was supposed to inform them of his travels in this area, as it is not in the area where the Respondent renders services. This was denied by Applicant, if patient documentation are required they must be fetched at a later stage if other staff members are on sick leave. Andrews and Jacobs would often send Applicant to Malmesbury for signature of sick leave forms, in which case he would not be given a trip authority. Applicant received instructions from various people.
67. Applicant travelled through Sanddrift when he fetched payslips and via Maitland, if he missed the garage on the N7 on his way to Malmesbury. He stopped at a shop to buy himself a cool drink in the area recorded in charge 4. According to Applicant the Pagalasia Street is close to Mbkweni Clinic. There is a park across the road. There was a lorry offloading items and he had to park across the road and take the items to the clinic.
68. Applicant was in Maitland at a petrol station, as the route is from Maitland through Brooklyn Chest hospital, Ysterplaat, De Noon/ Table View, N7 and then to Malmesbury. He used the restroom in Joe

Slovo Park and it is not even 100ms from the route to Malmesbury. These restrooms are used by other GG drivers, therefore Applicant decided that he should be allowed to use it as well (This was not put to Jacobs).

69. There were road works and some of the roads were closed and alternative routes were jam packed by traffic during 2016, Applicant then switched off the car to save fuel. He could only move when the other cars moved. There were even road works on the R300 on the day he took Andrews to the airport, he had to take an alternative route in which case no trip authority was completed. (This was not put to Jacobs).
70. A trip authority was not completed when Applicant took the car for service or repairs or if he had a puncture and if Applicant had to go to a government registered garage. He was not familiar with the street names and when he need to go the garage, net fleet would be called for the approval of the repairs. Applicant conceded that he was aware of the fact that a tracker was fitted to the vehicle, as it shows as the car is started. Applicant was not aware that he was not supposed to travel on the roads in question.
71. Applicant testified that the other driver, Andrew Sacks, faced similar charges against him. Sacks started driving during October 1996, when they were still under the municipality. Sacks got a final written warning. According to Applicant, his dismissal was not work related, it was because of personal problems with Jacobs (this was not put to Jacobs). If it was work related he would have reported the matter to the transport officer first, but it got as far as Applicant's dismissal, without the transport officer ever being informed about his case. The investigating officer did not obtain Applicant's side of the story.
72. It was put to Applicant that the Respondent indicated that he never wanted training, nor do he need training. Applicant disagreed with this and stated that he wanted training on the routes to learn which stops he could to go to a restroom.
73. It was put to Applicant that he allegedly drove to unauthorised places. Applicant testified that his highest level of education, was standard 1 and he did not receive training in performing his duties.
74. Reference was made to: Bundle F – page 6 – (h). Applicant was questioned whether the transport officer completed these reports at Sonstraal hospital. According to Applicant the transport officer did not approach him once, which led to the charges against him being escalated, as the irregularities

were not pointed out to him earlier to allow him to perform his duties in the manner required by Respondent.

75. It was put to Applicant that Respondent indicated that the trust relationship between them was broken. Applicant responded that if he received proper training he would have done exactly what was required of him.
76. Applicant has never been subjected to a disciplinary hearing of this nature, other than the only case when he went for training, Sacks came to pick him up and he went to the township, nothing serious came off it, Applicant was not charged. Applicant is the only member of his family that is employed. He has a mother, a wife, 5 children and 6 children of his late sister for whom he is responsible. Applicant's family is suffering, due to his unemployment. Applicant currently earns money from fitting cv joints in people's vehicles and other than that, he borrows money.
77. It was put to Applicant that Respondent averred that he falsified a logbook. Applicant responded that the documentation that he must complete does not indicate the street names. Applicant testified that if he was to return to work, he would ask the Respondent to provide him with guidelines, according to which he can work, as well as the routes, so that if he deviates from the route, he can inform Respondent accordingly.
78. Applicant would apologize for deviating and breaking the rule. Secondly he would work in the way that he is supposed to, because he has a family that is dependent on him and he has no intention to do what he is not supposed to. Applicant seeks an order in terms whereof he is reinstated retrospectively.

**THE FOLLOWING ENSUED FROM CROSS-EXAMINATION:**

79. Reference was made to the following:
- ANNEXURE G - LIST OF GOVERNMENT APPROVED GARAGES
  - issue of language – charge 22 – “ *Applicant conducted himself in an improper and disgraceful fashion when he refused to leave the premises*”
  - Applicant only handed over the keys and left the premises, when the police was present.
  - Applicant was in the office with Willem Smal and Dr Cronje, when he received the letter of suspension

- It was put to Applicant that he is confusing two separate incidents. Mr Smal & Dr Cronje were involved in the audi letter that was given to him on the 9th of May 2016
  - It was put to Applicant on the day of the suspension letter, only Dr Cronje was called in
  - Applicant responded that Dr Cronje gave him a letter and Applicant told him I would not sign it, because the transport officer was not there
  - Dr Cronje told Applicant, he could not give him the letter, as the procedures were not properly followed, it could not have lasted longer than 2 minutes
  - Dr Cronje was not called to have a discussion with Applicant, but only to witness the handing over of the letter of suspension to Applicant
  - Applicant indicated that he was not prepared to sign the letter, because he disagreed with the procedures followed
  - As far as he can remember, Dr Cronje spoke to him in English
  - It was put to Applicant that he testified that he doesn't understand English or Afrikaans, but now he explained exactly the conversation he had with Dr Cronje?
  - Applicant explained that the manner in which he understands English, is very limited mostly to greetings only
  - His colleagues even mixed their language to accommodate him
  - Applicant was challenge that he is not being truthful and that he does understand both Afrikaans and English, even Jacobs indicated that Applicant understands Afrikaans
  - It was put to Applicant, that even if his knowledge of English is limited, the reason why he didn't want to accept the letter of suspension, was not that he did not understand English, but because he disagreed with the contents of the letter
  - Applicant responded that he didn't understand the suspension entirely, therefore he did not sign the letter
  - The union representatives arrived and said he must not sign if he didn't understand the letter.
80. It was put to Applicant that if Respondent serves him with a letter to the affect that he is suspended, indicating that he must leave with immediate effect, it means he is challenging authority, if he refused to accept the letter and to leave immediately. Applicant responded that if Respondent believes that he challenged the authority of the employer by not leaving immediately, he apologizes, but the transport officer was not there. According to Applicant he was not informed that he was challenging the authority of the employer, if he refused to leave the Respondent's premises. Applicant denies that Jacobs told him to leave the premises with immediate effect.

81. Reference was made to ANNEXURE B and it was put to Applicant that he testified that he mostly deviated from his routes when he had to go to a garage or restroom. Applicant stated that the routes in bundle E on page 128 and page 2 of bundle B are placed nearby a clinic and if he was not transporting patients, he also collected post from the clinic. It was put to Applicant that 90 Democracy Way Phoenix is his home address. Applicant responded that the street in question is both the street where he lives and where he works. Applicant stated that Mbekweni clinic which is nearby and if one parks in Pacalasi Street in front of the clinic, it will record Democracy Way. The GPS does not start with the number of the address where one is parked.
82. It was put to Applicant that T C NEWMAN CLINIC is another area where he was supposed to be, he went home on the day in question, whilst he was dutied to go to TC NEWMAN. Jacobs testified Applicant must ensure the trip authority is signed. Reference was made to page 129 – trip authority – PGH – Applicant was required to go to Paarl General Hospital, but on the logbook on page 1 of bundle B 4<sup>th</sup> from the bottom – it is clear that he visited Table Bay Boulevard in Kuilsrivier and he had no business going there. Applicant responded that even with the required paperwork, he would be send elsewhere, some of these places are unfamiliar to him. Applicant testified that Jacobs sometimes send him to places for which there were no trip authorities (this was not put to Jacobs under cross-examination).
83. It was put to Applicant on the 4<sup>th</sup> of February 2016 as per annexure B he spend 36min 36 seconds at 90 Democracy Street and he also fetched gas in the township. Applicant responded that he can recall that Jacobs phoned him about the payslips. Applicant was challenged whether he had to go inside the township to wait for a phone call from Jacobs. Applicant responded that road to Milnerton close to the Renault garage was closed, therefore he had to take Democracy way and go through Joe Slovo Park, where he stopped.
84. Reference was made to page 133, a trip authority for Paarl General Hospital in bundle B, page 2 – it was put to Applicant that on 8 February 2016, he was in in Moqoma Street, Bloekombos, Kraaifontein, where he was not supposed to be. Applicant responded that he went there to get the frame of the photo of Helen Zille, because the one at Sonstraal hospital fell off the wall. It was put to Applicant that the latter trip was not on his trip authority. Applicant responded that all he can recall that he was send there by Jaobs (that was not put to Jacobs under cross-examination). Applicant was challenged why he did not make an entry in his logbook that Jacobs send him there. Applicant responded that it

will not be the first time that he is send somewhere by Jacobs that was not in the logbook and the space in the logbook was not big enough to make provision for this entry.

85. Reference was made to page 72, Bundle C – It was put to Applicant that on the 8th of February 2016 there is a trip authority for Paarl General Hospital, but nothing about Bloekombos. Applicant was challenged on his election to enter certain places to which he travelled, whilst he omitted others. Applicant responded that he entered the places to which he travelled on a regular basis, in his log book.
86. Reference was made to Bundle E, pages 155 –157- It was put to Applicant that the trip authority does not make provision for a trip to Bellville as per charge 4, page 3. Applicant responded that he didn't write it down, because it didn't fit into the space provided in the log book and he wasn't trained. It was put to Applicant that he had no business in those places. Applicant responded that he would have been arrested if he had no business there. It was put to Applicant that he also had no trip authority for Joe Slovo Park. Applicant responded that he tried to explain earlier in his testimony that it is the road to Malmesbury and that he used an alternative route.
87. It was put to Applicant that he testified earlier that he was in Maitland, where he had no business as per charges 4, 15 & 19. Applicant explained that 8 Piet Street is opposite Shoprite, he put in fuel at the garage on the corner of Voortrekker road and Plein Street, he then parked to buy himself food. He is unsure whether it was Voortrekker Road or Old Paarl road. Respondent placed on record that as far as the list of approved garages go, none of the garages Applicant visited are on the approved list. Every time Applicant was questioned on deviating from the route, is it Applicant's evidence that he either received an instruction from Jacobs to fetch something or he was taking an alternative route, he didn't write it in the log book for no reason or because there was no space to do so. I asked the Applicant if it is his case the reason why he didn't record all his trips in the log book for the latter reasons recorded by Respondent. Applicant responded that he cannot remember everything. He did not record his trips to Cape Town.
88. Applicant placed on record that his explanation for not recording all his trips is as follows:
  - he was not always aware that he had to write them down
  - he didn't know how do to it, due to a lack of training
  - in some instances there was not enough space in the logbook to write it down

- sometimes he forgot to write it down
  - sometimes he would simply write down the broader area, instead of being more specific
  - some of the trips were no longer on the board as they were wiped off and would not reflect on the trip authority
  - sometimes he would take an alternative route or stop to take a call
  - sometimes he was instructed by Jacobs to do trips that were not on the trip authority
89. Therefore respondent's omission to deal with each and every charge will not impact on the process as agreed between the parties.
90. It was put to Applicant that not once during the Arbitration did he say that he didn't know how to complete the log book. Applicant was challenged whether he knew how to complete the logbook. Applicant responded the he understood how to complete the log book in the manner in which he was shown by his colleague, Mr Sacks.
91. It was put to Applicant that he understood, as he showed Respondent in the log book where he indicated the places he visited, such as Home Affairs. Applicant confirmed that it was the way he was taught by Sacks to which Applicant conceded.
92. It was put Applicant that Small asked Jacobs in his presence, therefore he must have understood and that Applicant was not being truthful in his testimony that he did not understand the audi letter. Applicant responded that he would have signed the letter, if he understood the audi letter. Applicant responded that he was waiting for the letter to be translated into Xhosa. It was put to Applicant that he indicated that his dismissal was not work related, but due to personal problems. It was put to Applicant that the latter testimony was not put to Jacobs. Applicant responded he was told to keep quiet during his Jacobs' testimony.
93. Sacks was subjected to similar charges with similar charges with which Applicant was charged. Applicant was initially charged with 25 charges of which 2 were withdrawn, whilst there were only 6 charges levelled against Sacks. Applicant responded that he did not break a rule.

**THE FOLLOWING ENSUED FROM RE-EXAMINATION:**

94. Applicant requested a translation of the audi letter into Xhosa in order that he can understand the contents thereof. Applicant maintains that he did not understand the letter of suspension. Lesley was not called in by Jacobs to assist Applicant, but Applicant called him to translate the letter of suspension to him. Applicant had to finish the work he was instructed to do on the day of his suspension. Sacks taught Applicant how to complete his log book, Sacks was not his supervisor, but a co- driver.
95. **ANDREW SAMUEL SACKS testified on behalf of Applicant (hereinafter referred to as “Sacks”)**
96. Sacks and Applicant were colleagues, Applicant appointed as a driver when they were transferred from the municipality to the Department of Health. There was no training for drivers. Sacks was the general foreman and Applicant worked under his supervision as a general worker. Sacks showed Applicant the routes he had to go on. Sacks gained experience as a driver for local government. His predecessor taught him how to complete the logbook after every day’s driving and he in turn taught Applicant.
97. Sachs is aware of the charges against Applicant, as he testified at the disciplinary hearing. Sacks was also charged for doing unauthorised trips. Sacks went to his home address, as well as to maintenance guy to get a pop rivet. According to Sacks they were not required to complete the log book whenever they had to take a detour, due to roadworks. Sacks drove for more than 20 years and after he testified at Applicant’s disciplinary hearing, there were a lot of cases against him. Sacks suggested to Respondent, that all new drivers should be trained. According to Sacks his supervisor just completed the form and said they can drive the vehicle. The charges against Sachs started in July 2016. The lack of training had a negative impact of Sacks, as he lost his job.

**THE FOLLOWING ENSUED FROM CROSS-EXAMINATION:**

98. It was put to Sacks, that even if he received training, he still would have been disciplined, as he was not only charged with unauthorised driving. There were 6 charges levelled against Sacks, amongst which were theft, gross dishonesty, removal of property, unauthorised use of the GG vehicle. Therefore it is not correct to say that he was charged due to a lack of training. Sacks was found guilty of the above charges against him and received a final written warning.

99. Sacks cannot claim the GG vehicle was the sole reason for his sanction and that he didn't get training, as he showed Applicant how to complete the log book. According to Sacks an entry must be made in the log book indicating Sonstraal to Paarl General Hospital, but not the details of the streets.
100. Reference was made to page 72 of bundle C – Sacks conceded that Applicant did not complete the document as he taught him, as he should have indicated a place that falls totally outside of Paarl.

## **ANALYSIS OF EVIDENCE AND ARGUMENT**

101. Applicant was charged with 25 charges of misconduct ranging from 27 January 2016 until 3 June 2016, relating to unauthorized stops with a government vehicle.
102. The charges related to the following:
103. Unauthorized stops or locations not stipulated on the application to travel form and conducting himself in an improper disgraceful and unacceptable manner in that he refused to leave the Respondent's premises after receiving a letter of suspension.
104. Further charge: Leaving Respondent's premises at Sonstraal Hospital without permission of his supervisor, giving false information in the execution of his duties and using the vehicle for private purposes without permission.
105. Applicant commenced employment with the Respondent during February 1996. He had a clean disciplinary record. It is Applicant's case that he has never been trained in the particular allegations against him. Applicant was not informed by Respondent that he had broken a rule.
106. Applicant received an *audi* letter on 9 May 2016, where certain allegations were made that he broke a rule as from 18 April to 6 May 2016.
107. Applicant did not know how to respond to the *audi* letter as he does not follow English and there was no interpreter present. The letter of suspension included allegations from 11 April 2016 and not from 18 April 2016. Applicant received a notification to attend a disciplinary hearing on 6 June 2016 in which the allegations started on 27 January 2016.

108. Applicant believes that this caused the charges to escalate against him. He should have been charged earlier. Applicant was dismissed on 24 August 2016 at which time he earned R8 000.00 per month. According to Applicant the chairperson relied on evidence that was only handed to Applicant in the course of the disciplinary hearing. Applicant did not have enough time to consider the evidence. Applicant seeks retrospective reinstatement and he believes that his dismissal was both procedurally and substantively unfair.
109. Applicant stated that an investigator was appointed to investigate the case of a government vehicle being misused. As part of the investigation a tracker report was requested and only once the movement report was received, the Respondent established that the charges stem from 1 January 2016 until 31 May 2016. The conduct was picked up from this behaviour. The Respondent could not ignore Applicant's conduct during January 2016. He was charged with misuse of a government vehicle. He was driving until the end of May 2016. Applicant received an *audi* letter on 9 May 2016. Applicant does follow Afrikaans. Therefore the fact that he does not follow English is irrelevant. Applicant's supervisor explained it to him in Afrikaans. He continued this behaviour in spite of the *audi* letter. There were twenty five charges related to the misuse of a government vehicle. Applicant was found not guilty on charge 20 and charge 21 was withdrawn.
110. Applicant was charged with deviation from the routes that he was supposed to travel. He conducted himself in an improper and disgraceful fashion when he refused to leave the premises when he was handed a letter of suspension. The charges are viewed in a serious light. Applicant entered information in his log book that was not a true reflection of his actual travelling. Applicant misled the Respondent. Applicant was selective in his trips that he entered into the log book. Applicant did not disclose other travel he undertook. It borders on dishonesty. Respondent sought confirmation of the finding of guilty and a sanction of dismissal.
111. Jolene Delpont testified on behalf of Respondent. She is employed by AFSOL in the capacity as customer support supervisor. She works with daily motor tracking, maintenance and reporting. She confirmed that the units are ICA approved and that the information will hold up in a court of law.
112. Delpont confirmed that ICASA approved the units and functionality. An ICASA certificate has to be handed in to the GMT before installation can be done. She confirmed that the information was 100%

correct. Allowance is made for a slight deviation as it sometimes happened that a vehicle travels in a build-up area or in a parking garage. A map can be requested to show exactly from where the vehicle left. AFSOL is not informed of the reason for a tracker report. Such requests are done on a daily basis. Reports are generated and sent back to the person who requested it. Delport confirmed that when the systems are installed, the vehicle's odometer is used to set the tracker system. Therefore they function in conjunction with each other. Whilst the vehicles work with their own meter, their system works with a GPS and a 10km difference is allowed, but there should not be a huge difference. The vehicle with the tracker is installed according to the vehicle's odometer, as the GPS allowed only for a straight line. They do not use bends in the road, therefore a variation is allowed.

113. Jacomina Hendrina Du Plessis testified on behalf of the Respondent. Du Plessis confirmed that she worked with the Applicant for a number of years. He was employed to transport patients for instance to x-rays, to audiology or to collect post. She reflected the incident on 18 April 2016 when Applicant turned up for work at 11:10 to collect a patient, whilst he had to be there at 10:30. As his supervisor was not at work on the day, he had to report to Andrews. He was not duties to go to Paarl Hospital during the time. Du Plessis is unaware where Applicant was before 10:00. Du Plessis confirmed that the document evidence on page 71 is a transfer book, where all the trips had to be written in and there is also information written on the board to indicate where Applicant had to go for the day. There was nothing on the board on 18 April 2016 before 10:00 on the day. Applicant had to go to Paarl Hospital. He told her that he was at Paarl Hospital, but he did not tell her what he was doing there.
114. Du Plessis testified that there was no authority for Applicant to go to Paarl Hospital on 18 April 2016 before 10:00. There were times that Applicant did not turn up at work on time. Du Plessis wrote on a small piece of paper what happened on 18 April 2016, which she gave to Andrews. Andrews requested her to write a report on the same day and as far as she knows, Andrews gave the document to Jacobs. It was put to Du Plessis that Applicant takes orders from different people at the hospital. Du Plessis responded that the orders for trips demanded trip authority and the trip also has to be entered into the book, as Applicant's supervisor will require such information. According to Applicant he received an instruction from Sister Fresho to go to Paarl Hospital. Du Plessis was unaware of this and stated that it must be written in the trip book or on the board. She is not aware of such an instruction. Applicant also had SVVB tapes to take to Paarl Hospital and this was also written on the board. It is not viewed as an extra trip. The trips are written on the board and wiped off the following morning. Du Plessis mentioned that she once sent Applicant to buy dummies for the children at the

Hospital. She cannot remember whether there was a trip authority for this, but it was approximately 2 to 3 years ago. Applicant's whereabouts from 08:00 to 11:15 on 18 April 2016 was unexplained.

115. Aldrid Eustace Jacobs testified on behalf of Respondent. He is a senior administrative officer. Applicant reported directly to him as he is responsible for transport. Jacobs was on leave during the period that the enquiries happened and on his return there were complaints which had to be followed up. Applicant drove without permission to Malmesbury or that he drove to destinations that were not part of his trip authority. Jacobs followed the matter up on his track records and noticed various unauthorised stops. Jacobs together with the deputy director, Mr Smal and the manager of medical services, Dr Cronjé, informed Applicant about the allegations and gave him a copy of the deviations and asked him for his side of the story. Respondent indicated on the reports that there were areas where he parked and stopped where he was not supposed to be. Applicant was requested to give a verbal or written response to Jacobs as to why he should not be charged. Jacobs then gave Applicant a written *audi* with the contents of the meeting and Applicant had to respond within a certain time limit. On expiration of the time limit, Jacobs went to Applicant and asked him for his response. Applicant responded that he was not going to respond and he should be charged, whereafter Jacobs requested the district office to investigate the matter further.
116. As Applicant's function was driving, Respondent had no other alternative other than to suspend Applicant at this time. Applicant was subjected to a disciplinary hearing and charged as per the charge sheet. Applicant did not have authority to travel in these areas. Respondent has a template which the Applicant could use and he must fill in where he has driven for the day. If Applicant has to collect patients, it has to be written on a form. There is a Sonstraal Hospital trip authority completed by drivers. The trip authority is also entered on the notice board. The destinations that were picked up on the tracker report were not mentioned on Applicant's driver trip authority. There was no trip authority for these destinations listed in the charges and the investigations confirmed that these destinations were unauthorized. Applicant's representative placed on record that Applicant admits that he went to all these destinations in question, therefore Respondent does not have to lead evidence on all these destinations as it is not in dispute. According to Applicant although he admits that he travelled to these destinations, he stated that he did not have to obtain authority as the employer failed to guide him.
117. Jacobs testified that when he served Applicant with the letter of suspension, he informed Applicant of the reason for his suspension and that he would still receive his salary. Applicant then stormed

out of Jacob's office and drove away, whereafter Jacobs contacted the shop steward, Mashiana, who told Jacobs that he must speak to Applicant on his own, as Applicant does not want to understand reason. Jacobs then made contact with Mashiana, the Labour Relations Officer and told him that when he handed the letter of suspension to Applicant he refused to hand over the keys of the government vehicle and Applicant started driving off from the hospital grounds. Zama told Jacobs that the security guard would assist him to confiscate the keys. Applicant would not listen to the security guard either, whereafter Jacobs contacted the South African Police Services who arrived at the scene where after Applicant quickly jumped from the government vehicle and parked the vehicle in the garage on the hospital premises where the vehicle is normally stationed. Applicant only handed over the keys to Jacobs once the police officers arrived at the premises. He once again informed Applicant that he was not dismissed but merely suspended. Applicant handed over the keys of the government vehicle and took the letter of suspension. Applicant's conduct is viewed as rude and insubordinate.

118. Jacobs explained that Applicant indicated the areas that he travelled. He had to sign at the bottom of the form and that he only used the vehicle for government purposes. Applicant failed and/or neglected to mention certain unauthorised trips. The tracker reports contradict the log book. Applicant stated under oath that he used the vehicle for government purposes only and not for private use. Applicant was guilty of the list of transgressions from 27 January 2016 until 27 May 2016 and he continued his behaviour beyond that date up to 31 May 2016. It covered dates on which Applicant completed his log book, but these trips were not entered into his log book. Applicant was subjected to an *audi* in the beginning of May 2016 regarding the allegations, where Jacobs explained the allegations to him, when he handed the *audi* letter. Advocate Small was also present and explained the seriousness to Applicant. Applicant continued his behaviour even after he received the *audi* letter.
119. Jacobs trusted Applicant and believed that he only travelled to the areas listed in his log book, therefore the trust relationship has been breached as Applicant lied and covered his tracks by not entering trips into his logbook. Applicant swore under oath that those are the only destinations to which he drove. He transgressed after the *audi*, therefore the trust relationship cannot be repaired. Applicant continued his dishonest behaviour. Jacobs testified that he had various discussions with Applicant about his trips on a monthly basis and reminded him not to deviate from the trip authority. Applicant had been driving at the Respondent for a long time. He knew how to complete the form. It is difficult to train somebody not to be dishonest. It is common sense that Applicant should have

known not to be dishonest. Applicant did not inform Jacobs at any time that he did not know how to complete the log book. The investigating officer deemed it necessary to draw a tracking report to do a proper investigation and it was devastating to find out that Applicant has been transgressing for such a long time. Applicant used the government vehicle according at his own peril. Respondent only became aware of the January 2016 transgressions during the period once the tracker report became available. The log book is utilised to record all trips. Applicant reported to Andrews when Jacobs was not at work. Therefore he would get a trip authority from Andrews if Jacobs is not present. If Applicant drove a different route he would also report it to Jacobs verbally of which Jacobs would not necessary have written proof. Jacobs testified that Applicant's reporting was never a problem in the past. He would report if he drove to Klipheuwel or the Durbanville routes, but the routes on the charge sheets were never communicated to him. There were trips to Cape Town, Kuilsriver, Bloekombos, Sanddrift and Milnerton on 4 February 2016 which he failed to report. He also failed to report Dal Josafat and Kraaifontein trips. Whenever Jacobs reminded Applicant that he had to sign the trip authority, Applicant would reply "Ja ek ken daai." Jacobs could not tell that Applicant was withholding information. It was his own integrity to inform Jacobs when he had the opportunity to do so. It is Applicant's case that Jacobs did not inform him on how to deal with deviation if he stopped at a different street. According to Jacobs, if Applicant drove through Agter Paarl where there are many bends in the road, he would report it to Jacobs. He would not report areas he knows that he should not be in. If Applicant has to stop en route to take a phone call he does not have to report it, as long as it is not a huge deviation. Jacobs denied that Applicant was allowed to take instructions from patients to do unauthorized trips. He may only take instructions from the department. Jacobs disputes that Applicant does not follow Afrikaans, as it is highly unlikely that Applicant would be employed by the department since 1996 and failed to inform management that he does not follow the instructions given to him. It is highly improbable that Applicant would be able to follow instructions if he did not follow the language in which it was given to him. It is highly improbable that Applicant would be able to perform his duties if he did not understand the communication. The fact that Applicant exercised his right to request documentation in Xhosa, does not go the proof that he does not understand Afrikaans.

120. Jacobs testified that when he returned to work on 20 April 2016, Du Plessis informed him that Applicant failed to take patients to Paarl Hospital to x-rays and audiology, as he only arrived at work after 11:00. Applicant informed Du Plessis that he went to Paarl Hospital, but when the tracker report was requested, it materialized that he was all over Mbekweni. Jacobs originally only requested a tracker report for a period of two weeks, but then he noticed that Applicant deviated more often,

whereafter Applicant was subjected to an *audi* and Applicant could reply either verbally or orally. He failed to make use of this opportunity. He also picked up that whenever Applicant was asked to go to Observatory, he would go via Joe Slovo Park, which is way out of the way. Applicant was sent to collect pay slips in Observatory and to drop them off in Malmesbury, yet he would go via Maitland to Observatory and then Joe Slovo Park to Milnerton and then to Malmesbury. He should not have been in Maitland at all. The Respondent previously had a Toyota Hi-Ace without a tracker, therefore Respondent does not know what happened before Applicant was driving with the tracker. It seems that Applicant became arrogant, as he got away with it for such a long time whilst there was no tracker and his only failure was trusting Applicant. It is unclear why Applicant would inform Jacobs of detours if he did not know that he had to do so. The Respondent has no business in Mbekweni or Joe Slovo Park or Pitt Street in Maitland. They also visited Bloemkombos in Kraaifontein during the inspection in loco. Applicant's representative said that they are no longer in disagreement, therefore it is not necessary to proceed with the inspection any further. Applicant's averment that he put in petrol as per charge 2, is highly unlikely as it could not possibly take 36 minutes to put in petrol. It is also highly unlikely that Applicant would get lost at 30 minutes at a time, as per his averment.

121. Applicant called Louiso Lesley Mashiana to testify in his support. He was called by Jacobs, Applicant, Andrews and two police officers in the board room. Jacobs informed him that Applicant refused to hand in the car keys, which Applicant denied when the Police arrived. Applicant insisted that he had permission to work. Applicant was instructed by the police to hand over the keys, whereafter the police escorted him off the site. He is unsure as to whether Applicant refused to hand in his keys. Jacobs explained to him that Applicant refused to hand over the keys and he wanted someone present with the police to ensure that he hand over the keys. According to Mashiana Applicant is not fluent in English, yet Mashiana denied that Applicant refused to hand over the keys. He believes that Applicant thought that he was following instructions when he was given his duties in terms of the day. Mashiana denies that he stated that Applicant was stubborn during his conversation with Applicant. Mashiana is also a NEHAWU shop steward, therefore this was not the first case for NEHAWU. According to Mashiana Applicant had no knowledge as he did not have training. He would be sent to someone else with more experience to get training. Andrew Sacks was also charged with similar transgressions. He was only an observer in that case. Drivers face many problems as many people are controlling the transport and every hospital has a transport officer. Sonstraal Hospital reports to Malmesbury, therefore the transport officer is in Malmesbury, yet it is controlled by the Human Resources Department. Anybody can sent a driver anywhere as they like. Many of these people do

not follow the route of trip authorities. According to Mashiana, the outcome of the Sacks matter was a final written warning.

122. Mashiana confirmed that Applicant understood the letter of suspension. He understood what the letter of suspension was all about, but that it was not the kind of proof that Applicant wanted in confirmation that he had to leave the site. He explained the contents of the letter of suspension to Applicant.
123. Mashiana testified when he started at Sonstraal Hospital in 2005, Applicant was already working there. He worked with the Applicant for 12 years. Applicant started in 1996. According to Mashiana, trip authorities were new as they did not have it in Drakenstein. It changed when Jacobs started working at HR. He is aware that the trip authority has to be completed and signed. The following information must be entered into the log book: kilometres of the vehicle on departure, closing kilometres and destination of the trip whereafter he must sign. The log book must be completed in proof of where he drove. He conceded that it is important for a supervisor to know where he drove for the day. He confirmed that it is not correct not to complete certain places where he had driven to. Mashiana testified that one needs to be trained for the job that you are hired to do. He also conceded that it is not necessary to get training on being honest as it is common sense. Mashiana stated that Applicant did not receive sufficient training.
124. Mashiana confirmed that an intern at the hospital told him how to write down the kilometres in the log book, therefore he had knowledge about it once he started at driving. He worked with Applicant for a long time. He seemed ruralish and takes longer to understand. He was called by Jacobs on 1 June 2016 to explain the letter of suspension to Applicant. He was not part of the discussions when the *audi* letter was issued on 9 May 2016. He confirmed that Jacobs approached him and asked him to accompany him to Applicant's house when a letter of suspension was handed to Applicant. Applicant said that he does not understand the reason why it was not interpreted to him. They returned without giving the letter to Applicant. Mashiana stated that Applicant did not understand Afrikaans or English.
125. Applicant testified in support of his own case. It is Applicant's case that his supervisor did not give him training and that is it the Respondent's case that he did not need training. Applicant believes that as a permanent employee he required training in order to know what he may do. He needed training on how to complete a log book and the trip authority and how to deal with patients that need

to be transported and the confidentiality of the letter he had to transport. Applicant believes that the lack of knowledge caused the charges to be levelled against him. Applicant denied that Jacobs told him not to deviate from his trip authority. Applicant's home language is Xhosa and he asked Jacobs on various occasions to address work related issues to him in Xhosa. This was however never put to Jacobs under cross-examination. Applicant did not respond to the audi letter that he received on 9 May 2016, as he did not understand the contents and that he requested all communication to be in Xhosa. This was not put to Jacobs under cross-examination.

126. Small informed him in the meeting when he received the audi letter that the decision was taken that resulted in the audi letter. Applicant asked him which meeting he was referring to as he is unaware of such a meeting. This was not put to Jacobs.
127. Applicant denies that he refused to follow instructions on 1 June 2016, that he had to leave the office and hand over the keys. He responded that he had instructions that he had to carry out in terms of his execution of his duties. Applicant's version that he told Jacobs that he must have a letter faxed from Malmesbury in Xhosa in order for Applicant to understand the letter, was never put to Jacobs under cross-examination. Applicant responded that there were still patients that had to come back from Paarl Hospital in terms of trip authority and duties for the day.
128. He left for Paarl Hospital to fetch the patients. Jacobs called him and told him to return to Sonstraal Hospital and on his arrival he was instructed to hand over the keys. Applicant informed Jacobs that he could not hand over the keys as he still had patients to fetch, whereafter he would agree to hand over the keys to Jacobs. This was not put to Jacobs either under cross-examination. Whilst Applicant was busy reversing the vehicle, the two police officers passed the car whereafter he parked the car. He was busy logging the mileage when Andrews and Jacobs approached him together with the police officers. According to Applicant the shorter of the two police officers spoke a bit of Xhosa and asked him whether he belonged to a Union or whether he had a shop steward. Applicant took the log book and showed Jacobs the last kilometres. Jacobs inspected the car and was satisfied where the car was parked. According to the taller of the two police officers asked him whether he had a shop steward and whether he could make contact with the shop steward of NEHAWU. Applicant stated that the letter of suspension was not explained to him therefore he left the letter with Jacobs.

129. Applicant however confirmed that the shop steward, Louis, was invited to Sonstraal Hospital on 1 June 2016, whereafter Luiso explained the letter of suspension to him, although Applicant stated that Luiso did not see the letter of suspension. This was not put to Jacobs.
130. Applicant denies that he was dishonest in the completion of his log book. According to him he had been travelling in these areas in the performance of his duties for years. Applicant denies that he travelled in areas where the Respondent does not render services. According to Applicant, if a patient documentation is required, he must fetch it at a later stage, if other staff members are on sick leave. According to Applicant, Andrews and Jacobs had often sent him to Malmesbury for signature of sick leave forms, in which case he would not be given a trip authority. According to Applicant he received instructions from various people at Sontraal Hospital.
131. Applicant explained that he fetched pay slips and went via Maitland, if he missed the garage on his way on the N7 to Malmesbury, he would also stop to buy himself a cool drink in the area referred to in charge 4. According to Applicant, Pagalasi Street is close to Mbekweni Clinic and he would park across the street if there was a lorry offloading items. Applicant was in Maitland at the petrol station as the route from Maitland to Brooklyn Chest hospital, De Noon, Table View, N7 then to Malmesbury. He used the rest room in Joe Slovo Park. According to him it is not even 100 metres off route and these rest rooms are used by either GG drivers and he thought that he would be allowed to make use of these rest rooms as well. This was not put to Jacobs under cross-examination.
132. Applicant also advanced the excuse that some of the roads were closed and therefore he had to take alternative routes. He would also switch off the car to save fuel.
133. Applicant admits that a trip authority was not completed when he took the car for a service or repairs or if he had a puncture or had to go to the government registered garage. He was not familiar with the street names where he had to go.
134. Applicant conceded that he was aware that the vehicle was fitted with a tracker, as it shows once the car had started. Applicant was not supposed to travel on the roads in question.
135. Applicant's dismissal was not work related but due to personal problems between himself and Jacobs. This was not put to Jacobs under cross-examination. Applicant disagreed with Respondent's version that he never requested training from Respondent in the execution of his

duties. It is also Applicant's version that the transport officer never approached him, in which he alleges that the charges escalated against him. If the irregularities were pointed out to him earlier he could have altered his performance and performed his duties in the manner required by Respondent. Applicant denies that the trust relationship had been broken between himself and the Respondent, as this would not have happened if he was properly trained.

136. Sacks faced similar charges than that of Applicant, yet he only received a final written warning. Applicant apologised for deviating and breaking the rule. Therefore Applicant conceded that he broke a rule. Applicant seeks reinstatement and is prepared to work according to the Respondent's rules.
137. Although Applicant maintains that he does not follow English or Afrikaans, he was able to repeat the conversation which Dr Cronjé had with him about the audi letter, which is highly unlikely if he did not follow the language.
138. Applicant stated that he did not understand the letter of suspension. Mashiana testified that he explained the letter of suspension to Applicant. Applicant stated that his union representative told him not to sign the letter of suspension. This was however not in accordance with Mashiana's testimony.
139. It is common cause that Applicant travelled to areas which he did not record in his log book and for which there was no trip authority. Although Applicant admits all these trips, he stated that he was not properly trained in completing the log book. I find it highly improbable that Applicant, having been employed by Respondent in the capacity as a driver since 2008, was unaware how to perform his duties and if that was the case, that he did not ask for guidance from management at any stage. I therefore do not believe that Applicant was unaware of how to complete the log book. I furthermore find that it is more probable that Applicant tried to omit these trips as he was aware that they were unauthorized and he should have known not to use the government vehicle for personal use and I find that training is not required to inform an employee not to make misuse of his employer's property. Applicant did not give a feasible explanation for his omission of certain trips.
140. Applicant did not challenge Respondent's version that the Respondent had no business in those areas for which he did not have trip authority. Applicant's explanation of the deviation to Maitland,

Joe Slovo Park, Bloekombos in Kraaifontein where not convincing either. Applicant's explanation for his omissions were that:

1. He was not always aware that he had to write them down
  2. He did not know how to do it due to a lack of training
  3. In some instances there were not enough space in the log book to write it down
  4. Sometime he forgot to write it down
  5. Sometimes he would simply write down the broader area in spite of being more specific
  6. Some of the trips were no longer on the board as they were wiped off and would not reflect on the trip authority and
  7. Sometime he would take an alternative route or stop to take a call and
  8. Sometime he was instructed by Jacobs to do these trips if they were not on the trip authority.
141. Therefore Applicant had different reasons for not completing the log book. Applicant conceded that he understood how to complete the log book in the manner which he was shown by his colleague, Mr Sacks. He did not contradict Sacks's evidence that he was trained by Sacks and would be driving for a longer period than Applicant.
142. Applicant was not charged with failure to fill in the log book incorrectly. Applicant was charged with dishonesty relating to the completion of the log book. Applicant clearly understood how to complete the log book. Applicant should be aware that he should be honest in completion of the log book and that he had to report any unauthorised trips. Applicant displayed arrogance in that he refused to response to the audi letter. Applicant furthermore refused to follow a reasonable instruction when requested to hand over the vehicle's keys to Jacobs.
143. I therefore find that there was clearly a rule in place, the rule was reasonable and Applicant was aware of should reasonably have been aware of the rule and that Applicant disregarded instructions received from his employer. The charges against Applicant are extensive. Applicant displayed arrogance to continue with his unauthorized trips and failure to complete same on the log book after he received an audi letter.
144. I therefore find that Applicant's dismissal was substantively fair. There was no evidence before me substantiating Applicant's averment that his dismissal was procedurally unfair. I therefore find that Applicant's dismissal was procedurally fair.

**AWARD**

145. I find that Applicant's dismissal was both procedurally and substantively fair. Therefore Applicant is not entitled to any relief.

A handwritten signature in black ink, appearing to read "T. Erasmus". The signature is fluid and cursive, with a long horizontal stroke at the end.

**COMMISSIONER: T ERASMUS**