



# ARBITRATION AWARD

**Case Number:** PSHS 239-20/21

**Commissioner:** THABE PHALANE

**Date of Award:** 05 SEPTEMBER 2022

In the ARBITRATION between:

**NPSWU obo Sekwale, Dikeledi**

Union/Applicant

And

**Department of Health- Gauteng**

Respondent

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## DETAILS OF THE HEARING REPRESENTATION

1. The Arbitration hearing was held on 24 February 2021, 06 April 2021, 10 June 2021, 18 and 19 August 2021, 02 November 2021, 28 February 2022, 01 March 2022, 14 April 2022, 02 and 03 June 2022, 04 July 2022 and 17 August 2022 on the virtual platform and also at the Respondents premises, situated at no 45 Commissioner Street, Johannesburg.
2. The Applicant attended and was represented by Mr Godfrey Soetmelk, a Union Official, whilst the Respondent was represented by Ms Faith Masoka, the Respondent's Official.
3. The Applicant submitted a bundle of documents marked bundle "A1 and A2", and the Respondent submitted a bundle of documents marked bundles "R 1 to R 10".
4. The matter proceeded to arbitration and the Applicant testified and was cross examined. She also called one witness who testified and was cross examined.
5. The Respondent then called 5 witnesses who testified and were cross examined.

6. The parties also agreed to submit written arguments on or before 26 August 2022. The Applicant submitted on 25 August 2022, and the Respondent submitted their arguments on 28 August 2022. I then proceeded to issue the following award.

### **ISSUE TO BE DECIDED**

7. I am required to decide whether the Respondent committed an unfair suspension or disciplinary action by issuing a sanction of demotion and three months' salary deduction from the Applicant after a disciplinary hearing held against the Applicant for misconduct, and consequent thereon, to determine the appropriate remedy.

### **BACKGROUND TO THE ISSUE**

8. The Applicant referred a dispute of unfair labour practice after she was demoted and a three months' salary deduction was issued to her as a result of her pleading guilty at a disciplinary hearing.
9. The Applicant was charged with 12 charges and was found guilty after she pleaded guilty.
10. The charges were;

#### **Charge 1,**

**It is alleged that you, Ms D Sekwale, committed an act of gross dishonesty and lack of probity;** During the year 2016, knowingly or ought to have reasonably known that One all Distributors (Pty) Ltd was an illegible contender of procuring 100 HB test strips. Owing to the fact that it did not make a quotation in response of the request made by the end user around 2016 November, you nevertheless as Head of Finance and Supply Chain Management and also as the Chairperson of the Adjudication Committee despite glaring irregularities/discrepancies and by your own and collective conduct misled the CEO to approve the awarding of the contract to an illegible company One all Distributors (Pty) Ltd. Your conduct amounts to gross dishonesty

#### **Charge 2**

**It is alleged that you, Ms D Sekwale, committed an act of gross dishonesty and lack of probity;** During year 2016, as the head of Finance and Supply Chain Management and also as the Chairperson of the Adjudication Committee, knowingly or ought to have known that the Supply Chain policy dictates that three (03) valid quotations have to be sourced to enable fair competition for eligible contenders, you nevertheless as the head of Finance and Supply Chain Management and also as the Chairperson of the Adjudication Committee in the absence of the three (03) valid quotations convened the Adjudication Committee which ultimately under your watchful eye irregularly recommended the awarding of the contract to one All Distributors (Pty) Ltd. Your conduct amounts to gross dishonesty.

### **Charge 3**

**It is alleged that you, Ms D Sekwale, committed an unlawfully act, not in compliance with and which is in contravention of the Gauteng Health Department Supply Chain Management Policy in that;**

During year 2016, as the head of Finance and Supply Chain Management knowingly or ought to have known that there should be segregation of duties between the recipient of quotation and the capturer as a control measure, that the RSL 01 is signed by the capturer before procuring any item including the items in issue-100 HB test strips and that the releaser of payment ought to be from Finance and not from Supply Chain Management, you nevertheless contrary to the Supply Chain policy provisions as Head of Finance and Supply Chain Management failed on your fiduciary duty to quality assure and ensure compliance of the documentation that form the baseline on the awarding of the contract to One All Distributors (Pty) Ltd.

### **Charge 4**

**It is alleged that you, Ms D Sekwale, committed an unlawfully act, not in compliance with and which is in contravention of the Gauteng Health Department Supply Chain Management Policy in that;**

During year 2016, as the head of Finance and Supply Chain Management knowingly or ought to have known that part of your fiduciary duty is to ensure compliance with the Supply Chain Management policy provisions including the fact that the members invited to adjudicate any tender/participants should be members in good standing and or authorised delegate by the head of institution, you nevertheless as the head of Finance and Supply Chain Management and also as the Chairperson of the Adjudication Committee contrary to the policy provisions, by your own conduct allowed participation of an illegible person including Mr S Thebe to participate towards making recommendation which ultimately led to irregularly awarding of the contract to illegible One All Distributors (Pty) Ltd company.

### **Charge 5**

**It is alleged that you, Ms D Sekwale, committed an act that amounts to gross negligence and or failure to do your work with due diligence in that;**

On or about 15 December 2016, as a responsible head of Finance and Supply Chain Management in the employ of Gauteng Health Department ( Bheki Mlangeni District Hospital), knowingly or ought to have reasonably known that inherently from your responsibilities as an accounting officer responsible for Finance and Supply Chain Management you were obliged to identify that the Infection Control Manager was not the end user of pillow cases and was not even eligible to make any request regarding the procurement of pillow cases on behalf of the end user and that the

request of two thousand pillow cases for a three hundred bedded hospital ( Bheki Mlangeni District Hospital), was irregular, unjustified and unreasonable, despite these discrepancies and or irregularities, you nevertheless failed to identify that she was not an eligible end user, negligently subjected the proposal to the adjudication committee, you negligently referred the documents for authorisation by the CEO and also failed to stop the purchasing of the quantity requested as it was too excessive and also exceeding the minimum and maximum efficiency and effectiveness of the purchase itself when compared to the size of the hospital. Your conduct amounts to gross negligence and or failure to do your work with due diligence.

#### **Alternative to Charge 5**

**It is alleged that you, Ms D Sekwale, committed acts that amounts to gross negligence and or failure to do your work with due diligence in that;**

On 15 December 2016, as a responsible head of Finance and Supply Chain Management in the employ of Gauteng Health Department ( Bheki Mlangeni District Hospital), you failed to ensure that verification was done through the end user (Logistic-Laundry) to establish whether or not there was any shortages regarding pillow cases justifying purchasing of two thousand pillow cases, you nevertheless without any evidence and or information committed the state funds by allowing the procurement of two thousand pillow cases under your watchful eye as an accounting head of Finance and Supply Chain Management. Your conduct amounts to gross negligence and or failure to do your work with due diligence.

#### **Charge 6**

**It is alleged that you, Ms D Sekwale committed derivative misconduct in that;**

On 15 December 2016, as a responsible head of Finance and Supply Chain Management in the employ of Gauteng Health Department ( Bheki Mlangeni District Hospital), you knew or ought to have known that the motivation prepared by the Infection Control Manger and submitted to the adjudication committee through your office was misleading as it stated that the pillow cases are medical pillow cases for the protection of pillows and prevention of contamination by body fluids coming from patients whereas the contrary existed that there is nothing called medical pillow cases preventing contamination by body fluids, you nevertheless by your conduct as the head of Finance and Supply Chain Management, failed to stop the purchase, induced the adjudication committee to recommend the procurement of pillow cases through CTU's Manufacturing Primary Co-operative and also directly induced the end user( Logistic-Laundry) and the Nursing Assistant Manager to receive the incorrect delivery not in line with specification.

#### **Alternative to charge 6**

**It is alleged that you, Ms D Sekwale committed a derivative misconduct in that:**

On 15 December 2016, as a responsible head of Finance and Supply Chain Management in the employ of Gauteng Health Department ( Bheki Mlangeni District Hospital), you knew or ought to have known that the motivation prepared by the Infection Control Manger and submitted to the adjudication committee through your office was misleading as it stated that the pillow cases are medical pillow cases for the protection of pillows and prevention of contamination by body fluids coming from patients whereas you knew and ought to have known that there are no medical pillow cases in the true sense and no pillow cases exist that prevent contamination by body fluids coming from patients, you nevertheless induced and or allowed the adjudication under your watchful eye to recommend the procurement of not correctly defined items. Your conduct amounts to derivative misconduct.

#### **Charge 7.**

**It is alleged that you, Ms D Sekwale, committed acts that amounts to gross negligence and or failure to do your work with due diligence in that;**

On 15 December 2016, as a responsible head of Finance and Supply Chain Management in the employ of Gauteng Health Department ( Bheki Mlangeni District Hospital), knowingly or ought to have known that inherent in your responsibilities is to ensure that amongst other things to quality assure the work of your subordinates or ensure efficiency of your department as an overall supervisor and the head of Finance and Supply Chain Management but you nevertheless failed in your duty to ensure that the RLS 01 document for procuring two thousand pillow cases is completely filled by the capturer and the releaser before it was captured in the system thus potentially creating a possible audit queries with negative findings against the hospital. Your conduct amounts to gross negligence and or failure to do your work with due diligence.

#### **Alternative to charge 7**

**It is alleged that you, Ms D Sekwale, committed an unlawfully act, not in compliance with and which is in contravention of the applicable policies including the Gauteng Health Department Supply Chain Management Policy and treasury guidelines in that;**

On 15 December 2016, as a responsible head of Finance and Supply Chain Management in the employ of Gauteng Health Department ( Bheki Mlangeni District Hospital), knowingly or ought to have known that inherent in your responsibilities you had no authority to commit public funds by allowing payment of CTU's Manufacturing Primary Co-operative under your watchful eye without the signature of the releaser who amongst others ought to have satisfied herself that the money is available and the pillow cases are budgeted for, despite such glaring discrepancies and under your

watchful eye, you nevertheless committed the public funds/departments funds to the tune of seventy six thousand, nine hundred and forty rand( R 76 940,00). Your conduct amounts to gross negligence and or failure to do your work with due diligence.

#### **Charge 8**

**It is alleged that you, Ms D Sekwale, committed an act of gross dishonesty and or lack of probity during the period leading up to awarding of a tender to CTU's manufacturing Primary Co-operative by the Gauteng Department of Health( Bheki Mlangeni District hospital) in that;**

On 15 December 2016, as a responsible head of Finance and Supply Chain Management in the employ of Gauteng Health Department ( Bheki Mlangeni District Hospital), knowingly or ought to have known as the head of Finance and Supply Chain Management that the records at your disposal and submitted by you and your team from Supply Chain Management before adjudication Committee evinces the fact that the contract with CTUs Manufacturing Primary Co-operative expired on the 30 June 2016, you nevertheless directly and or indirectly subjected the expired contract document and failed to alert the adjudication committee that the contract was invalid. You induced the adjudication committee to commit acts that are irregular and unlawful by recommending the appointment of CTUs Manufacturing Primary Co-operative under such dubious circumstances. Your conduct amounts to gross negligence and or lack of probity.

#### **Alternative to charge 9**

**It is alleged that you, Ms D Sekwale, committed acts that amounts to gross negligence and or failure to do your work with due diligence in that;**

On 15 December 2016, as a responsible head of Finance and Supply Chain Management in the employ of Gauteng Health Department ( Bheki Mlangeni District Hospital), knowingly or ought to have known as the head of Finance and Supply Chain Management that the letter that was supposedly extending the contract of CTUs Manufacturing Primary Co-operative( 01 July 2016 to 31 December 2016-obtained by your office after the commencement of investigations on this matter) evinces discrepancies including that it was signed by a Senior Admin Officer and not by the CFO of Gauteng Health Department, the attachment (signed on the 30 June 2016 requesting response by 29 June 2016) to the said letter if contrasted with the purchasing contract stipulating contractual arrangements beyond ( 01 July 2016 to 31 March 2017) the supposedly extended period ( 01 July 2016 to 31 December 2016) despite such glaring discrepancies appearing in the documents you negligently failed to identify them such discrepancies. Your conduct amounts to gross negligence and or failure to do your work with due diligence.

#### **Charge 10**

**It is alleged that you, Ms D Sekwale, committed an act of gross dishonesty and or lack of probity during the period leading up to awarding of a tender to Smith & Nephew (Pty) Ltd by the Gauteng Department of Health( Bheki Mlangeni District hospital) in that;**

On or about 21 June 2017 as a responsible head of Finance and Supply Chain Management in the employ of Gauteng Health Department ( Bheki Mlangeni District Hospital), knowingly or ought to have known as the head of Finance and Supply Chain Management that the records at your disposal and submitted by you and your team before adjudication committee evinces the fact that the Tax Clearance Certificate of Smith& Nephew (Pty) Ltd expired on the 12 June 2017, you nevertheless directly or indirectly subjected the invalid Tax Clearance Certificate of Smith & Nephew (Pty) Ltd to the adjudication committee to commit acts that are irregular, illegal and unlawful by recommending the appointment of Smith & Nephew (Pty) Ltd under such dubious circumstances. Your conduct amounts to gross negligence and or lack of probity.

**Alternative to charge 10.**

**It is alleged that you, Ms D Sekwale, committed acts that amounts to gross negligence and or failure to do your work with due diligence in that;**

On or about 21 June 2017 as a responsible head of Finance and Supply Chain Management in the employ of Gauteng Health Department ( Bheki Mlangeni District Hospital), knowingly or ought to have known as the head of Finance and Supply Chain Management that the records at your disposal and submitted by you and your team before adjudication committee ought to have been properly scrutinised to establish their accuracy, validity and compliance prior to tabling them to the adjudication committee, you nevertheless through reasons known to yourself failed to disqualify Smith & Nephew (Pty) Ltd but awarded it a tender despite the fact that its Tax Clearance Certificate expired on 12 June 2017, despite such glaring discrepancies appearing in the documents, you failed to identify them and also failed to stop the purchasing of Dry Dispensary [ Opsite Incise Dressing 28\*40cm & Opsite Incise Dressing 28\*30cm & Actisorb Silver 10.5\*10.5cm] through Smith & Nephew (Pty) Ltd and also committed public funds/departments amounting to two hundred and sixty four thousand and forty rand ( R 264 740,00) in this irregular purchase. Your conduct amounts to gross negligence and or failure to do your work with due diligence.

**Charge 11**

**It is alleged that you, Ms D Sekwale, committed an unlawfully act, not in compliance with and which is in contravention of the Gauteng Health Department Supply Chain Management Policy in that;**

On or about 21 July 2017, as a responsible head of Finance and Supply Chain Management in the employ of Gauteng Health Department ( Bheki Mlangeni District Hospital), knowingly or ought to

have reasonably known that inherently in your responsibilities and also as your fiduciary duty is to ensure that amongst other things quality assurance of the work of your subordinates to achieve efficiency, legislative and policy compliance of your department as a supervisor and the head of Finance and Supply Chain Management, you infringed your fiduciary duty of ensuring that the RLS 01 document is completely filled by the capturer, approved by the Chief Executive Officer(CEO) and that the releaser/authoriser of payment is empowered by the policy to release/authorise the payment of Dry Dispensary [ Opsite Incise Dressing 28\*40cm & Opsite Incise Dressing 28\*30cm & Actisorb Silver 10.5\*10.5cm], despite the non-signing by the capturer, non-approval by the CEO and the unlawful signing of the releaser without having the empowering provisions from the policy authorising her to commit public funds/departments amounting to two hundred and sixty four thousand and forty rand ( R 264 740,00), you nevertheless allowed such unlawful and irregular act to occur under your watchful eye.

#### **Alternative to charge 11**

**It is alleged that you, Ms D Sekwale, committed acts that amounts to gross negligence and or failure to do your work with due diligence in that;**

On or about 21 July 2017, as a responsible head of Finance and Supply Chain Management in the employ of Gauteng Health Department ( Bheki Mlangeni District Hospital), knowingly or ought to have reasonably known that inherently in your responsibilities is to ensure that amongst other things to quality assurance of the work of your subordinates as a supervisor and the head of Finance and Supply Chain Management you have a fiduciary duty to ensure that the RLS 01 document is completely filled by the capturer, after approved by the Chief Executive Officer(CEO) and that the releaser/authoriser of payment is empowered by the policy to release/authorise the payment of Dry Dispensary [ Opsite Incise Dressing 28\*40cm & Opsite Incise Dressing 28\*30cm & Actisorb Silver 10.5\*10.5cm], despite the non-signing by the capturer, non-approval by the CEO and in the absence of empowering provisions in terms of the Supply Chain Management policy for the person who released payment to commit public funds/departments amounting to two hundred and sixty four thousand and forty rand ( R 264 740,00), you negligently failed to identify, intervene and stop the purchasing of the items in issue. Your conduct amounts to gross negligence and or failure to do your work with due diligence.

#### **Charge 12**

**It is alleged that you, Ms D Sekwale, committed an unlawfully act, not in compliance with and which is in contravention of the Gauteng Health Department Supply Chain Management Policy in that;**

On or about 21 July 2017, as a responsible head of Finance and Supply Chain Management in the employ of Gauteng Health Department ( Bheki Mlangeni District Hospital), knowingly or ought to have reasonably known that inherently in your responsibilities and also as your fiduciary duty is to ensure that amongst other things quality assurance of the work of your subordinates to achieve efficiency, legislative and policy compliance of your department as a supervisor and the head of Finance and Supply Chain Management, you infringed your fiduciary duty of ensuring that three (3) quotations are sourced and subjected to the adjudication committee if the items to be procured (Dry Dispensary [ Opsite Incise Dressing 28\*40cm & Opsite Incise Dressing 28\*30cm & Actisorb Silver 10.5\*10.5cm]). Are not on contract and or supplied by the sole supplier prior to convening adjudication committee, you nevertheless failed to comply with the provisions of the policy in issue and or failed to provide the adjudication committee of a written approval by the CEO to procure he services of the sole service provider if applicable.

### **Charge 13**

**It is alleged that you, Ms D Sekwale, committed an unlawfully act, not in compliance with and which is in contravention of the Gauteng Health Department Supply Chain Management Policy in that;**

On or about 21 July 2017, as a responsible head of Finance and Supply Chain Management in the employ of Gauteng Health Department ( Bheki Mlangeni District Hospital), knowingly or ought to have reasonably known that inherently in your responsibilities is to ensure that amongst other things quality assurance of the work of your subordinates as a supervisor and the head of Finance and Supply Chain Management, your fiduciary duty amongst others is to ensure that you and your subordinates adhere to the policy provisions including that the purchase order is created/requested to be created after the approval by the CEO, you directly or indirectly requested a purchase order for procuring of Dry Dispensary [ Opsite Incise Dressing 28\*40cm & Opsite Incise Dressing 28\*30cm & Actisorb Silver 10.5\*10.5cm], despite the fact that the CEO did not sign the RSL 01 and you further committed funds/departments amounting to two hundred and sixty four thousand and forty rand ( R 264 740,00), without being authorised by the CEO.

11. The Applicant denies the charges and submitted that she pleaded guilty because she was coerced to plead to a lesser sanction. She added that she does not appoint the adjudication committee members and the CEO and other Officials at the hospital made numerous spelling errors but were not charges however for her it is a big issue. The CEO did not sign all the pages and there was no financial loss for the hospital and further that the items that were procured were used by the Hospital. The sanction was unreasonably harsh.

12. The Respondent on the other hand submitted that the Applicants submission that she expected the sanction would be a lesser sanction is a tacit admission of her misconduct. She pleaded guilty to the charges and the misconduct warranted the sanction imposed. The appropriate sanction should have been a dismissal and she was instead issued with a demotion.
13. The Applicant was not dismissed because she can be rehabilitated. There was no inconsistency and the Applicant must prove this allegation because she was not the only one charged.

## **SURVEY OF THE APPLICANT'S EVIDENCE AND ARGUMENTS**

**The Applicant testified and also submitted written arguments. I have summarised her submissions in so far as it is relevant for the purposes of the award.**

### **The Applicant, Ms Dikeledi Sekwale.**

14. The Applicant submitted that she was the Financial Manager at Bheki Mlangeni but after the demotion she is now the Finance Controller at Head Office. The Applicant was appointed as Finance Manager. The CEO ( Ms Ruth Mabyana) however said she must manage both Finance and Supply Chain.
15. Her problems started when the Labour Relations Officer (LRO) tried to appoint seven (7) unqualified clerks. They instead appointed qualified interns from Finance and other Units. She was asked to write a statement which she refused and the LRO threatened to charge her for appointing her own people. She was assisted by HR which gave her qualified people from Selby. She believes the LRO and the Risk Manager influenced the CEO because they were doing business with the state so it made sense that they wanted their own people. They then started to scrutinize all her documents.
17. During this time she also reported the LRO for sexual harassment but did not get assistance from Head Office. She wanted a transfer but it was denied by the CEO who said she does not know the person she wanted to cross transfer with. She also applied for a post in Germiston and was the best candidate but the 2<sup>nd</sup> best candidate was appointed instead.
18. The Applicant was first charged around November 2013. She attended the disciplinary hearing on 21 November 2013 and the presiding Officer said the charges were split and the case was dismissed. After a year the charges were reinstated and there was a new chairperson. Five more charges were added to the old charges. The outcome of the new hearing was received during 2019. She appealed and received the outcome during March 2020.
19. Her salary suspension started from April to June 2020, and the demotion started from July 2020. She was not told why the outcome took so long and the CEO said it was standard procedure.

20. She believes she was being treated unfairly as she continued doing the same work she was charged for.
21. The Applicant was part of the adjudication panel. The CEO must appoint a panel/committee every financial year consisting of all managers at the Hospital. They normally have 10 Managers but for the period of the charges they had 6 to 7 Managers, as it was during December.
22. The people who were charged was her, the acting HR ( Mr Thebe) and the scribe. The first time she was however the only one charged. The other 2 individuals were charged with her the second time around. Mr Thebe was charged because they said he was not appointed, and the other 3 were not charged because one ( Ms Nombeko Nama), said her signature was forged. No one was charged for allegedly forging her signature.
23. The Applicant submitted that there are 3 companies involved and three dates as well, and her evidence is aligned in that manner. The first relates to One All Distributors (Pty) Ltd. There was a quotation submitted. The 3 companies that sent quotations were One All Distributors, Thaba-Khensa Distributors and Top Exhibition (Pty) Ltd. All other relevant documents ( Tax clearance, BEE, declarations) are present.
24. The RLS 01 form comes from the end user. She is alleged not have ensured that the person who released was from Finance and not Supply Chain, This is incorrect because the person was not releasing payment, but releasing a purchase request form, that is she is requesting purchase of the items. It is impossible to release without receiving the goods first. The goods are received by stores department. Payment is done by Head office and not the Institution.  
The RLS 01 is signed by the end user Brian Molahlehi, and the CEO. Head office must verify when they receive it. They check for compliance, clearances, pricing, repetition of suppliers, CEO approval, and when satisfied they then approve. She did not receive any complaint from Head Office.
26. The adjudication is but only the first step. They also check compliance like Head Office and sent to the CEO for approval, and they will never send to Head Office if the CEO did not approve.
27. When the Manager was not available they normally called the person who was acting in the position. The CEO was not supposed to approve if she felt that Mr Thebe was not in good standing.
28. On the second batch of charges relating to CTU Manufacturing Primary Co-operative the Applicant submitted that the end user was Mr M.D Mareletse, and the motivation was approved by the acting Nursing Manager, Ms N Mchunu, and later by the CEO. The supply chain policy states that the end user is the one who certifies that the information sent to Supply Chain is correct.

She is not the Manager of the end user. This person, Mareletse, has always been motivating as the end user.

29. The items were delivered and if they thought it was too much they should have rejected the items. The initial request was for 4 000 pillow cases and it was reduced to 2 000. The Applicant does not know what the requirements of the end user are, and this item is not an item from Supply Chain or Finance. She has no way of knowing if the requested pillow cases are correct or not and it is the responsibility of the end user to provide the correct information. She is not a medical professional but works in finance. The specifications do not fall within her competency.
30. The items are part of items that on contract. This means that they are on the list of companies that are appointed by the National Treasury, not the institution, and these pillows were bought from a company that is on contract.
31. When a contract expires the system automatically rejects any entry about the company. The items were used and there was no audit query because there were still funds available in terms of the budget. The extension of contracts is done by the Head Office and National Treasury.
32. The end user was part of the adjudication committee and the Manager did not say the specifications were wrong. The Applicant was only charged because she was the chairperson of the adjudication committee.
33. Other institutions also submit RLS 01 before it is captured. These include Charlotte Maxeke, Dr George Mukhari, Weskopies, Tshwane and Hillbrow Hospitals. The examples of documents were not signed by the releaser and capturer at the bottom of the pages.
34. On the third set of charges the company Smith & Nephew sent a clear Tax Clearance Certificate. The system would have rejected their bid if the Tax Clearance had expired. Other Institutions, Pretoria West and Kalafong Hospital used the same items from the same supplier.
35. The CEO did not sign the RLS 01 but signed the motivation but forgot or omitted to sign the RLS 01 and other times she signed the RLS 01 and not the motivation but she was instead charged. Items were then delivered and used but in this case she took the documents and decided to charge her. Again no payments are released from the Hospital level.
36. They received 4 quotations in this transaction. The winner quoted all items, no 2 did not submit a quote all items, no 3 said they did not have the items and no 4 never even responded. Most Institutions get the supplies from the same company.
37. The CEO has previously approved where there were requests issued for a quote but 1 supplier responded and they assumed it was practice where there was 1 supplier who responded.
38. The Applicant had a bad relationship with the LRO. The representative of the Province, Mr Mkhonza, who was the Investigating Officer, pleaded with her to plead guilty and she would

receive a 3 months' suspension as the case was a fraud case and the Institution ( LRO) wanted to dismiss her. The CEO also said she would get 3 months suspension. All of these discussions were done in front of the Presiding Officer, Mr Seiso Thebehadi.

**Cross examination.**

39. The Applicant submitted that she was appointed during 2016 as the Assistant Director, Finance. She has now been demoted to financial Controller.
40. Mr Mkonza came to her office and said she must plead guilty as the Institution wanted to dismiss her so it was going to be better if she received 3 months' suspension. They said she is a single parent with 2 children and it would be difficult for her going forward. The suspension was a better deal than dismissal. She was represented by NEHAWU and her representative echoed the same sentiments after meeting with the Respondents officials. The case was not presented or argued as she pleaded guilty to the charges.
41. She did not report the sexual harassment case to the Police but reported to Head Office. They said she was supposed to record the harassment of have proof and she thought she had lost.
42. On the charges she said that the successful bidder must have the Tax Clearance, SBD forms (declaration of interest, Vendor number amongst documents that qualify a company to submit a quotation.
43. She admitted that the minutes recorded that one member ticked not recommended but it was not her. The proof that an item is recommended occurs when the item is removed from list sent to the CEO for approval.
44. The adjudication committee members were managers that came from Finance, HR, Allied, Nursing, Quality Assurance and Pharmacy. If a Manager objects to the order for items in their department they must not sign the motivation by the end user so that it should not be sent to the CEO for approval. One All Distributors were awarded the contract because they were the lowest bidder.
45. The Applicant agreed that the RLS 01 is supposed to be signed. The practice was however different and she requested training from Head Office. The documents she retrieved from the system also show documents were not signed, for example Far East Rand and Weskopies Hospitals. After this case the documents are now signed.
46. The Applicant also conceded that the CEO was on leave when she was supposedly signed the RLS 01 on the 19 December 2019. The scribe of the adjudication committee is the one who takes the documents to the CEO. She does not know that the CEO signature was forged or not and it is possible she may have been at the office before she left.

47. The purchase order is generated from Head Office and not at the institution. It shows that the supplier is paid. The documents that are brought to the adjudication committee are the motivation, RLS 01 and the quotations. No one, from the buying section to Head Office saw that the quotation was made before the motivation by end user.
48. She admitted that it was however an error for it to be sent to the CEO, but the process starts with the buyer, their supervisor, the adjudication committee then the CEO, who was also not supposed to sign without checking, and then to Head Office, which created the purchase order, and the people who received the stock.
49. She denied that she was aware of the forgery and that the company did not qualify or that the error was intentionally ignored. It is only the quotation which is incorrect, but other documents, the Tax Clearance, declaration and BEE status are valid. It was therefore unfair that the adjudication stage is the only one which is charged, and even there only 3 people and not the whole committee were charged.
50. She was also charged for a typing error but the LRO was not charged for the typing errors that he made.
51. She conceded that the quotation from one company was dated 15 December 2016, the day the committee sat, and not at least 5 days before the sitting of the adjudication committee. This was possible because if it was not accepted, then there was no adjudication that was going to take place for lack of at least 3 quotations.
52. She submitted that although the RLS 01 was not signed, and that it was against policy, that was however the practice that has since been corrected after these charges against her. Head Office pays the suppliers and if it was wrong they should not have released payment.
53. The participation of Mr Thebe in the adjudication committee was proper because he is a supervisor and was acting in HR. His Manager was Ms Getrude Ntswane and she does not know where she was, either sick or on leave. The practice she found being applied when she arrived at the Hospital was that the acting Manager will be called in the absence of the Manager appointed by the CEO.
54. She submitted that the Infection Control Manager was Mr Mareletse, who then becomes the end user that submits a motivation. She denied that the end user was Ms Vakalisa from laundry. Ms Vakalisa accepted and used them and only complained after they were damaged.
55. The items (medical pillow cases) relating to CTU Manufacturing were items on contract and on that list of items appears medical pillow cases. Even so, the items still go for adjudication. These items were accepted and used. If the items delivered are incorrect, they send an email to Head Office to cancel the request because the end user has rejected the items and it will not be paid.

56. If there is no such thing as medical pillow cases then it was the duty of the Manager to alert the committee that there is no such this as medical pillow cases. These professionals approved and used the items she is charged for items that are on contract and were budgeted for.
57. The contract for CTU Manufacturing had not expired on 30 June 2016 but was going to expire December 2016. If a contract had expired, the system was not going to allow it to be captured and they were paid when Head Office released the purchase order. The Institution has no control over who signs documents at Head Office.
58. On the Smith & Nephew case she submitted that their Tax Clearance had not expired. The date is 12 August and not 12 June as alleged by the Respondent. The CEO did not sign the RLS 01 but signed the motivation and these tow documents go together. She was often forgetting to sign both documents and this time when it was sent to her she decoded to charge the Applicant.
59. She agreed that the quotation was not in line with the motivation but the end user (Mr Theo Rantshana) approved and was happy with the items. Other companies said they did not have all the items, or not selling the items and there was no response from the 4<sup>th</sup> company.
60. The Applicant does not see the documents that are sent to the CEO after she chairs the adjudication committee meeting and only saw them after she was charged. The patients used the items and the company was paid. The end user is still working at Stores receiving stock..

**Applicants witness, Mr David Melk.**

61. The witness is the NEHAWU Regional Paralegal Co-ordinator. He was deployed by the Union to represent the Applicant at her disciplinary hearing.
62. There was another case of Ms Bathakathi which started first and the two cases were joined. The LRO was aiming for a dismissal on both cases.
63. They wanted to expedite the process due to Ms Bathakathis' health and the employer's representative was amenable to a final written warning and 3 months. Pay suspension. This was communicated to the chairperson of the hearing. They tendered a guilty plea and awaited the sanction.
64. They were surprised that the sanction differed to what they agreed on. Demotion was added to the sanction. The appeal also confirmed the sanction.
65. Had they known about the demotion they would not have agreed to plead guilty.

**Under cross examination**

66. The witness submitted that there is nothing preventing the parties from not adopting the formal route in disciplinary matters. Their agreement was however not written down.

67. They were aiming for a sanction short of dismissal, and not because the Applicants were guilty.

### **SURVEY OF THE RESPONDENT'S EVIDENCE AND ARGUMENTS**

**The Respondent called 5 witnesses and I have summarised their evidence in as far as it is relevant for the purposes of my award.**

#### **1<sup>st</sup> witness, Ms Nombeko Nama**

68. The witness is talking to charges 1 to 3. She is a Pharmacist at Bheki Mlangeni Hospital and has been employed since 2013.
69. She knows the Applicant as the Head of Supply Chain and Finance and was the chairperson of the adjudication committee.
70. During December 2016 she was acting on behalf of her Manager, Ms Nkambule.
71. She became aware that there were discrepancies in the awarding of the tender to One All Distributors when the Risk Manager told her that there were discrepancies.
72. The quotation was dated 2015, a year before they sat as the adjudication committee and had expired after 90 days
73. She ticked not approved as the item was not presented for adjudication. She submitted that her signature was forged as she did not approve an item she did not see.

#### **Under cross examination**

74. The witness was not appointed by the CEO but was acting on behalf of her Manager. The CEO was also aware of her acting duties.
75. She heard that Mr Thebe was charged for attending the adjudication committee whilst acting but does not know what the charges were. She was not charged like him.
- She told the Risk Manager that the document presented her does not contain her signature and she does not know whose signature appears on the minutes. No case was opened about the falsified signature.
77. She conceded that her signature on 3 documents was not consistent but denied that the signature on the minutes was hers.

#### **2<sup>nd</sup> witness, Ms Duduzile Audrey Vakalisa**

78. The witness was the Laundry Supervisor for 10 years and was working with the Applicant. She is now retired.

79. Her duties included ordering pillow cases, sheets and pyjamas for the Respondent. She submitted that Ms D Mareletse worked in Infection Control and was not supposed to order the pillow cases.
81. She was shocked when 2 trucks came with items which quality was not good. They were supposed to have sat down and discuss how much was left and how much was needed. This is why she did not therefore sign for the delivery when they received them. She did not see what happened to the pillow cases because she went on pension.
82. She submitted however that the number ordered was low and they needed more than 2 000 as well as pyjamas.

#### **Under cross examination**

83. The witness confirmed that the nurses wanted more than 2 000 pillow cases. She received them after a struggle and did not know that they ordered them. She also said she was the end user because the items ended in Laundry. When they receive items they call the relevant departments to see if the items are correct.
84. The witness admitted that she did not know that Ms D Mareletse was the Infection Prevention and Control Manager, and that Ms N Mccunu was the Nursing Manager, and conceded that they were the relevant department/Unit to order the pillow cases, and also agreed to the order at the adjudication meeting.

#### **3<sup>rd</sup> witness, Mr Albert Mkhonza**

85. The witness is working at the Office Of the Premier in Labour Relations and was the Investigating Officer in this case against the Applicant and another employee who has since passed on.
86. There was an Auditors' report implicating both employees. He went to verify the allegations and conducted a fact-finding exercise. The allegations were found to be concrete and misconduct charges were preferred against the employees.  
They attended a hearing, was represented by a Union, and pleaded guilty. There was no plea bargaining entered into between the parties as that will be a miscarriage of justice. He however advised Management based on the merits of the case and asked for something short of a dismissal as they did not benefit from the misconduct.
88. The sanction was appropriate because if the Applicant has something that she does not understand she must be demoted in order to learn. She pleaded guilty because she committed the offence. Her position, Assistant Director, means that she understand the consequences of pleading guilty. It is an admission of the charges.

### **Under cross examination**

89. The witness said the Audit Report came from Mr Msimango, the Risk Officer, and it came to Labour Relations.
90. He denied playing a role in coercing the Applicants into pleading guilty, and added that the Applicants said that is how things were done at the Hospital and other Hospitals, and he asked them if they wanted to take that submission to the disciplinary hearing or not. They were in discussions and he engaged the Applicant in her office regarding the exchange of documents because he did not want to ambush the employees.
91. He submitted that it was not brought to his attention that the applicant was appointed in finance and not Supply Chain and she was given the additional tasks during her first year of probation.

### **4<sup>th</sup> witness, Mr Jabulani Nzimande**

**This witness repeated the evidence that has been led and answered, and is common cause. I have only included aspects which were not covered in the evidence led so far, especially his answers under cross examination.**

92. The witness was the Labour Relations Manager at Bheki Mlangeni Hospital.
93. The matter came to him through the office of the Security and Risk Manger., who was satisfied that misconduct has been committed. The witness was then referred to the Office of the Premier to have the case attended to.
94. He denied that the misconduct investigations and sanction came because of the misunderstanding between him and the Applicant. He also denied that he influenced the CEO to bring the charges because she has many more years' experience than him. The discussions with the Union and the CEO took place in his absence.
95. The sexual harassment case was dealt with in the Civil Courts. There is a default judgment against the Applicant.

The evidence points that the Applicant misled the CEO to approve the awarding of contracts. The mistakes or discrepancies cannot be attributed to everyone involved. The Applicant was the chairperson of the adjudication committee.

97. The quotation was also not signed and can be made by anyone. All 3 quotations should have been disqualified.
98. Not everyone can be allowed to sit in the adjudication committee. Mr Thebe was charged, showed remorse and pleaded guilty and was sanctioned a suspension without pay.

99. Other companies were excluded because they did not quote everything or not at all. Smith & Nephew should also not have been awarded the contract because they quoted incorrectly. They also presented as if they were the sole supplier of the items requested but they were not.

**Under cross examination**

100. The witness submitted that the Applicant was first charged but the Investigating officer then did not proceed with the matter as he said was close to the Applicant. Mr Mkhonza then took over the matter. The withdrawal was of the Investigating Officer and he does not know if the charges were levelled against the Applicant as there are no records held by the employer.
101. He facilitated the appointment of Mr Mkhonza by the CEO. Out of the 6 committee members, 3 were charged. Two resigned and the other was not charged. They looked at the responsibilities of the individuals. Mr Thebe was charged because he did not have a letter of delegation but Ms Nama did have one.
102. He is not aware of any Audit that was conducted. He submitted that he made a typing error but his was different because one cannot enter the mind of the bidder if it is not the drafter or the service provider saying there was an error.
103. The adjudication committee meeting is convened after quotations are received, and not on the day when quotations are received. The committee also had an opportunity to tell the bidders to correct their errors.
104. The pillows that were demonstrated in the executive meeting is not what was delivered. There is no practise that can be acceptable if it is outside the policy. Every process leads to payment.
105. The other employees involved would have been charged if they fell within the jurisdiction of the CEO.

**5<sup>th</sup> witness, Ms Ruth Sebolaishi Mabyana**

**Again this witness repeated the evidence that has been led and answered, and is also common cause. I have only included aspects which were not covered in the evidence led so far, especially her answers under cross examination.**

106. The witness was the CEO of Bheki Mlangeni Hospital and the Applicant reported to her.
107. The case came to her through the Labour Relations Officer. It was highlighted to her that things were not alright. When she came back from leave she told Risk Management Department to investigate.
108. Mr Mkhonza from the Premiers' Office was appointed. There was a plea bargain and the Applicant pleaded guilty to all charges and she was suspended and demoted.

109. The charges were relevant. The Applicant pleaded guilty because she knew she had committed the offence.
110. She was on leave and out of the Province. She is wondering how many fraudulent activities happened behind her back.
111. The Applicant was supposed to advise the adjudication committee and look at the gaps and check before they sit. She should have picked up these discrepancies. She should have stopped the process and charged her subordinates.
112. The Applicant should have asked Mr Thebe why she was in the meeting. Ms Nama was given a letter to act on behalf of her Manager who was on leave for 6 months.
113. The Applicant should have asked the supplier to demonstrate if she did not see the pillows in the catalogue, ask also why they are ordering and what happened to the ones they had. The motivation does not specify size and any pillow could have been bought.
114. The Applicant did not allow the charges to be tested by pleading guilty. People make mistakes and learn from it.
115. The sanction was lenient as it is a dismissible offence.

#### **Under cross examination**

116. The witness submitted that she is the Accounting Officer of the institution. The Applicant was appointed as a middle Manager in Finance. The post required that she must have in addition, have experience in finance and supply chain. The people who specialise are from the level of Deputy Director.
  117. The sexual harassment case she lodged was referred to Head Office.
  118. She became aware of the allegations against the Applicant after Risk Management and the Auditors' findings. She does not have the Auditors report and does not know where it is and denies that it only exists in her mind.
- She denies knowledge of the first disciplinary hearing charges against the Applicant and said her signature was forged in the charges as well because she has never acted as the Chief Director of Johannesburg Health District.
120. She is very shocked and concerned that her signature appears on many documents that she has no knowledge of. It appears that her signature was used to do acts that she is not aware of.
  121. After the quotations are received they are taken to the Applicant to verify. She also accepted that she also made a typing error when she said that the sanction against the Applicant starts February 2010, and not 2020, but submitted that the Applicant had many errors.

122. She agreed that the Contract Management Unit at Head Office is responsible for the awarding of contract, and not the Applicant.
123. The duty of buyers is to find quotations. The finance is centralised and they depend on what the institutions sent to them. There are people appointed to capture and release payments on the Department's system. She does not know how it was possible for Finance to make payments when the contracts/ purchase Orders were not captured on the system. It appears that there are many people that have been defying the policy and do as they please.
124. She conceded that it was her duty to double-check documents that were brought to her. On the documents that she either signed the motivation or RLS 01 only she said it appears that she was set a trap. None of her Officials told her she did not sign the one or other document.
125. If the Manager she appointed to the adjudication committee is not there then no one is supposed to be in that meeting. On the case of Mr Thebe, The applicant should have said that the Manager, Ms Ntsoane is not there so appoint someone. The practice of allowing the 2<sup>nd</sup> in charge to attend committee meetings was done without her knowledge. She conceded that she was lenient and should have taken steps before.
126. The PA/secretary in her office has amongst her duties to check the documents and signatures but she is not from Supply Chain.
127. She had cautioned the Applicant that the Institutions foundations were wrong, that jobs were sold and she must be careful because they are dealing with money.
128. She has not opened a criminal case against the unlawful use and forgery of her signature.
129. Ms D Mareletse was not the end user. She is her Manager and on the request she made the Manager section is not showing whether approved/recommended or not and admits that she was negligent.
130. She admitted that the Applicant was charged for committing money when there was a budget available.  
She denied that the charges against the Applicant were unfairly splitted as they deal with the same issue of what was supposed to have happened in the adjudication processes.

#### **ANALYSIS OF EVIDENCE AND ARGUMENT.**

132. The Applicants referred her matter in terms of section 86 (2) (a) (iii) of the Labour Relations Act 66 of 1995 (the Act).
133. There are thirteen charges and six alternatives to the charges, which in total amounted to eighteen charges. The Charges however can be classified or distinguished into 3 charges and the Applicant was correct to submit that there was a splitting of charges when she was charged.

134. The first class of charges 1 to 4 relates to 16 December 2016. They relate to the company One all Distributors (Pty) Ltd). The Applicant was accused of misleading the CEO to approve the awarding of the contract despite the fact that One All Distributors did not make a quotation in response to a request, and there were accordingly no 3 quotations were sourced as dictated by the Supply Chain Policy. Secondly she is accused of not ensuring that there was a segregation between the recipient of the quotation and the capturer as a control measure, or that the RSL 01 is signed before the procuring of the items and therefore filed to quality assure the documentation forming the baseline of the awarding of the contract. Thirdly she is accused of allowing the participation of one Mr S.Thebe, who it is alleged was not a member of the Adjudication Committee in good standing to make recommendations.
135. The second class of charges 5 to 9 relate to the 15 December 2016 and concerns the company CTU Manufacturing Primary Co-operative. She is accused of not identifying that the motivation made by the Infection Control Manager was misleading as she was not the end user and that it should have been the Logistic-Laundry Manager who submitted the motivation. Secondly she was accused of failing to recognise that the purchase of two thousand pillow cases for a three hundred bed hospital was unjustified and unreasonable, further that there are no medical pillow cases that prevent contamination by body fluids. She was further accused of not ensuring that the RLS 01 document for procuring the pillow cases was completely filled by the capturer and the releaser before it was captured on the system. Finally she was accused of not realising that the contract with CTU had expired and that the contract extension was not signed by the CFO of the Department of Health but by the Senior Admin Officer.
136. The third class of charges 10 to 13 relate to 21 June 2017 and the company is Smith & Nephew (Pty) Ltd. She is accused of not alerting the committee that their Tax Clearance had expired, or even disqualifying Smith & Nephew due to the expired Tax Clearance Certificate. This is alleged to have occurred despite the fact that the CEO did not sign the RSL 01 and she therefore committed funds/departments amounting to two hundred and sixty four thousand and forty rand ( R 264 740,00), without being authorised by the CEO
137. The first issue to consider is whether the Applicant's plea of guilty bars her from challenging the sanction imposed on her. The Arbitration proceedings are a de novo proceedings and the applicant is entitled to challenge the fairness of the procedure and sanction imposed on her.
138. The Applicant has submitted that she hoped for a lesser sanction. The Respondents submission that she tacitly admits that she is guilty does not absolve her of proving the charges against her simply because she pleaded guilty at the disciplinary hearing. From the facts before the Council is acceptable that she pleaded so because of the promise of a lesser sanction. Nothing therefore

bars her from challenging the fairness of the sanction and she has submitted the most probable version that she did so because of the promise of a less severe sanction, and not that because she was guilty, as she has now challenged the fairness of both the procedure and substance of the sanction imposed on her.


139. The other consideration will be the whether the Respondent in light of the challenge to the charge of gross dishonesty. I find that the Respondent has failed to prove dishonesty on the part of the applicant but has succeeded in proving that she did not comply with applicable policies relating to the adjudication process. This however must be balanced with the fact that she was not a single player and there is also the conduct of the stakeholders that was also in conflict with the applicable policies.
140. The Applicant was in my view treated unfairly. All documents must be approved by the CEO and I find that she was selectively singled out for discipline. The allegations against her apply equally, if not more stringent, to the CEO as the custodian of the Institution. There is also the Head Office which failed to verify and check that there is compliance but proceeded to issue purchase orders.
141. The CEO also submitted that she was absent on around December 2016 and she believes her signature was forged. This only explains a portion of the charges and there is no explanation why she approved other documents when she was present but felt that there was no compliance with the policies in place.
142. This finding is supported by the admission that the CEO often signed the motivation but neglected or forgot to sign the RLS 01 however the Applicant was charged for similar infringement. I find that the CEO was not an honest witness and she tried to shift the blame to the Applicant for her shortcomings.
143. The Applicant has also been blamed for activities not within her competence. She does not sign motivations as she is not a medical professional, nor does she sign contracts with companies and will therefore not know if the items ordered are on contract or not, but her subordinates rely on the department's system that is loaded by officials from Head Office or the National Treasury. She cannot also extend the contracts of the companies when the contracts have expired as that is not within her competence.
144. On the other extreme end there is a contradiction by the Respondent's action in charging the Applicant and the evidence of their witness. The Applicant was charged for unlawfully committing an amount of R 76 940,00, however the witness said the Hospital actually needed more pillows.
145. I also find it was unfair that the Respondents Officials have admitted that they made typing errors on official documents but no one was charged however the Applicant was charged for her typing errors.

146. The Applicant must however also take some responsibility for the incorrect and sub-standard committee work, and although I accept that there was no loss and the items were utilised by the Institution. She has conceded, albeit indirect, that there were errors made and some errors were typos and some were lack of knowledge, whilst some errors were coming from past practice.
147. The Applicant added examples of other institutions that were processing documents the same way they were and said this is what generally occurs. This submission loses sight of the fact that if a practice is done without reprimand it does not mean it is acceptable. It is my finding therefore that the Applicant was negligent in the performance of her duties.
148. The next consideration is to determine whether the sanction imposed was an appropriate sanction. I find that the sanction of demotion and the sanction of 3 months' salary suspension were inappropriately harsh because she was not the only individual involved in the transactions. The Respondent therefore acted inconsistently in the application of discipline. The appropriate sanction should have therefore been at the most 3 months' salary suspension without any demotion applied.
149. The Respondent has also not disputed that the Applicant wanted assistance with training and conceded by the sanction that the Applicant is capable of rehabilitation and has not severed the trust relationship.
150. It is therefore my finding that the Applicant has proved that the Respondent has committed unfair labour practice by demoting her.

In the premises the following award is in order

## AWARD

151. The Respondent has unfairly demoted the Applicant.
152. The Respondent is ordered to reinstate the Applicant, Ms Dikeledi Sekwale, back to her position as Financial Manager at Bheki Mlangeni District Hospital,
153. The said reinstatement is to operate retrospectively from February 2020 and without any loss of benefits that would have been due to the Applicant as a result of pay progression and similar benefits.



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Thabe Phalane (Panelist)