



ARBITRATION AWARD

Commissioner: **Jacques Buitendag**

Case No.: **WECT18973-22**

Date of Award: **26 June 2023**

In the ARBITRATION between:

VUYO LUFELE

(Union / Applicant)

And

NATIONAL UNION OF METAL WORKERS OF SOUTH AFRICA (NUMSA)

(Respondent)

APPROVED

PARTICULARS OF PROCEEDINGS AND REPRESENTATION

1. The arbitration hearing under the auspices of the CCMA took place on 14 June 2023 at the CCMA offices in Cape Town.
2. The applicant, Mr. Vuyo Lufele was represented by an attorney, Mr. Bret Aarninkhof. The respondent, NUMSA did not attend the proceedings. The proceedings were digitally recorded.

RULING TO PROCEED WITH THE ARBITRATION IN THE ABSENCE OF THE RESPONDENT

3. Section 138(5)(b) of the Labour Relations Act 66 of 1995 as amended (LRA) provides arbitrators discretion when, a party who did not refer the matter, does not attend the scheduled hearing and is not represented. The arbitrator may proceed in the absence of that party and hear the matter on the applicant's version, which will result in a default award, or adjourn the proceedings to a later date.
4. Rule 30(1)(b) and rule 30(2) of the CCMA rules provide that an arbitrator should only proceed in the absence of the non-referring party if the arbitrator is satisfied there has been proper notification of the date, time and venue of the arbitration on the party, i.e. the party who is not present is in willful default.
5. Case Management confirmed that the set down notice was sent to the respondent's contact details on record. I am accordingly satisfied that the CCMA properly notified the respondent of these proceedings. I ruled that the matter proceed in the absence of the respondent.

THE ISSUE IN DISPUTE

6. I must decide whether the respondent committed an unfair labour practice involving suspension and if so, I must determine the appropriate relief.

BACKGROUND TO THE ISSUE

7. The applicant referred an unfair labour practice dispute involving unfair suspension to the CCMA on 8 December 2022. A certificate of non-resolution of the dispute was issued on 14 December 2022.
8. The applicant claims that his precautionary suspension was unfair. He seeks as relief for the precautionary suspension to be lifted.

SUMMARY OF EVIDENCE AND ARGUMENT

9. I have considered all the evidence and argument, but because section 138(7) of the Labour Relations Act, 66 of 1995 as amended (the LRA) requires an award to be issued with brief reasons for the findings, I shall only refer to the evidence and argument that I regard as necessary to substantiate my findings in the determination of the dispute.

The applicant's case

10. **Mr. Vuyo Lufele** presented a bundle of documents into evidence and testified under oath.
11. Mr. Lufele is the Regional Secretary of NUMSA in the Western Cape. Mr. Lufele explained that in the run up to his precautionary suspension he raised questions concerning the National Manufacturing Workers Investment Trust.
12. On 12 September 2022 he was placed on precautionary suspension with pay by the General Secretary of NUMSA.
13. Mr. Lufele considers his suspension to be unfair for a number of reasons.
14. He referred to clause 7.2 of the NUMSA Disciplinary Code and Procedure which reads: *“The General Secretary or Deputy General Secretary, with the agreement of Regional Office Bearers at regional level, shall have the authority and powers to suspend an official on full pay pending the enquiry.”* Mr. Lufele submitted that the General Secretary did not seek the agreement of the Regional Office Bearers prior to placing him on precautionary suspension. The leadership in the Western Cape was merely informed of his suspension.
15. Mr. Lufele referred to Chapter 6(3)(v) of the NUMSA Constitution which provides that the National Executive Committee shall have the powers and duties *“...to suspend any office bearer or official for sufficient cause until the matter is decided at the next meeting of the General Committee.”* Mr. Lufele submitted that the General Secretary suspended him without the approval of the National Executive Committee.
16. Mr. Lufele referred to clause 7.4 of the Disciplinary Code and Procedure which provides that *“Suspension without charges being laid shall not be for a prolonged period.”* He testified that a disciplinary hearing was convened on 14 December 2022 but that the disciplinary hearing chairperson recused himself and that the disciplinary hearing has not reconvened since then.

17. Mr. Lufele submitted that his continuous suspension has prejudiced him, inter alia because as he can't explain himself to the members and is unable to compete for any positions within NUMSA whilst on suspension.
18. Mr. Lufele avers that his precautionary suspension is unfair and he prays for the suspension to be lifted.

ANALYSIS OF EVIDENCE AND ARGUMENT

19. Section 186(2)(b) of the Labour Relations Act, 66 of 1995, defines an unfair labour practise as any unfair act or omission that arises between an employer and an employee involving inter alia the unfair suspension of an employee. In *Koka v Director-General: Provincial Administration Northwest Government (1997) 7 BLLR 874 (LC)* the Court distinguished between two kinds of suspension. The first being a "holding operation", where the purpose of suspension is not to impose discipline but is imposed for reasons of good administration. The second being suspension as a form of a disciplinary penalty. The court concluded that the definition of "unfair labour practice" was sufficiently broad to cover both forms of suspension.
20. On 12 September 2022 the applicant was placed on precautionary suspension with pay by the General Secretary of NUMSA. The onus is on the applicant to proof that the respondent committed an unfair labour practice in this regard.
21. It does not appear from the NUMSA Constitution that the General Secretary has the power to suspend the applicant. This power lies with the National Executive Committee (Chapter 6 (3)(v) of the NUMSA Constitution). Mr. Lufele's uncontested evidence in this regard is that his suspension was indeed not approved by the National Executive Committee. Furthermore, clause 7.2 of the NUMSA Disciplinary Code and Procedure provides that the agreement of the Regional Office Bearers must be sought when an official is suspended pending an enquiry. Again, on Mr. Lufele's uncontested version, the agreement of the Regional Office Bearers were not sought by the General Secretary of NUMSA. I accordingly find the applicant's suspension invalid and unfair.
22. To place an employee on precautionary suspension, an employer must have a justifiable reason to believe, prima facie at least, that the employee has engaged in serious misconduct and that there is some objectively justifiable reason to deny the employee access to the workplace based on the integrity of pending investigation into the alleged misconduct or some other relevant factor that would place the investigation or the interests of the affected parties in jeopardy (*POPCRU obo Masemola & Others v Minister of Correctional Services* (2010) 31 ILJ 412 (LC) ; *Mogothle v Premier of the Northwest Province & Another* (2009) ILJ 605 (LC)).

23. Even I am wrong and the applicant's precautionary suspension on 12 September 2022 was valid, there is no evidence of an objectively justifiable reason that would justify the applicant's ongoing suspension of more than 9 months. The applicant cannot be suspended indefinitely, and he has clearly been prejudiced by the precautionary suspension because it effects his career as he is unable to communicate with members or stand for election for positions within the NUMSA structures.
24. In unfair labour practice disputes a commissioner has wide discretion to determine the appropriate remedy. The applicant is seeking an order for the precautionary suspension to be lifted and I have no reason to refuse the applicant the relief he is seeking.
25. This order obviously does not prevent the respondent from dealing with the allegations of misconduct in a manner it deems appropriate, provided it is fair.

AWARD

1. I find the applicant's suspension invalid and unfair.
2. I order the respondent, NUMSA to lift the applicant, Mr. Vuyo Lufele's precautionary suspension with effect from Friday 30 June 2023. The applicant must report for duty on Monday 3 July 2023.



APPROVED

CCMA Commissioner: Jacques Buitendag