# ARBITRATION AWARD

**Arbitrator: A Andrews**
**Case Reference No.: WCRFBC 42363**
**Date of award: 26th April 2016**

**In the arbitration between:**

**DETAWU obo R Mponzo** **Employee party**

**and**

**IMPERIAL CARGO** **Employer party**

**Union/Employee's representative: M Matwa Democratic Transport Logistics and Allied Workers' Union**

**Union/Employee's address:** 208 - 212 5th Floor Murblo Towers Jeppe St Johannesburg 2001

Telephone:**021 917 1245** Fax: **021 917 1256**

**Employer's representative: Mr Malan**

**Employer's address:** Donker Vliet St, Northern Paarl email:

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## DETAILS OF HEARING AND REPRESENTATION:

The hearing took place at the premises of the NBCRFI ("the bargaining council") in Parow, Western Cape on 28th October 2016 and 27th February 2017. The employee was represented by Mr Matwa of the union DETAWU. The employer was represented by Mr Malan, human resources manager of the employer.
The parties were afforded an opportunity to submit closing arguments after the hearing which they did. Thereafter a transcript of the hearing of the arbitration hearing under case number WCRFBC 40309 was requested by the arbitrator and the parties were given a further opportunity to submit and supplementary closing arguments in regard thereto. The applicant's representative submitted supplementary closing arguments on 7th April 2017 which were forwarded to the arbitrator on 10th April 2017.

## ISSUE IN DISPUTE:

The dispute was referred as an alleged unfair dismissal to the bargaining council in terms of section 191 of the Labour Relations Act (LRA. The employee sought reinstatement. The issue in dispute was whether the dismissal was substantively fair, as no procedural challenges thereto were raised.

## BACKGROUND OF THE DISPUTE:

The employee was alleged to have been dishonest. The charges were stated as follows:

a) "Being dishonest on on 29/6/2016 which could have a negative impact on the company;
b) Breaking relationship of trust."

The employee had worked for the employer for four years during which time he had been given counselling on two occasions during 2014 for speeding, as well as a written warning in April 2014 for refusal to follow an instruction/insubordination. He had received a final written relating to absenteeism over the end of year period, on 4th January 2016.

On 29th June 2016 he was telephoned, whilst driving a truck, by a Commissioner who was conducting an arbitration at the bargaining council under case number WCRFBC 40309, related to a fellow employee, Mr Khetile. The issue being arbitrated in Ketile's case was the fairness of a final written warning for *inter alia* a pattern of not rendering services due to an alleged illness, in other words a pattern of absenteeism. The employee was asked on a telephone by the commissioner whether he had a final written warning, to which he replied that he did not. The employer presented in evidence in the present arbitration that he did have a final written warning which he had signed receipt of. The employee testified that at the time he was under the impression that he had received only counselling conduct relating to a pattern of absenteeism over the end of year period.

As a result of the said representation his employer charged him with misconduct and he was dismissed after being found guilty of being dishonest.

## SURVEY OF ARGUMENTS & EVIDENCE:

The following is a summary of the salient aspects of the evidence led by the witnesses in this matter and arguments. Not all evidence and arguments have been recorded hereunder it has all been considered in the drafting of this award

**Mr T van Rensburg**

1. The witness is the operational director of the employer and he testified that he appeared as a witness in the hearing on 13th January 2016, where the employee received a final written warning. Several other employees including Mr Ketile also received similar warnings at the time, for similar conduct, being a pattern of absenteeism over the end of year period.
2. The warning related to a problem of absenteeism over the end of year period. The employer had a problem with its drivers taking sick leave just before Christmas, and returning just thereafter. His view was that this conduct was an attempt to deceive the employer by not showing up over this period. It influenced the company negatively in the eyes of its customers. As such it harmed the employment relationship.
3. Van Rensburg testified that the employee signed the final written warning. He referred to his own signature on the document as the first witness thereto. He stated that the chairperson, Mr Jonker, read the document to the employee and then asked him to give his signature that he understood it.
4. However when employee was called by Commissioner Bennett at the arbitration of Mr Ketile, he indicated that he had been given a warning, not a final written warning. In his view this was dishonest conduct, which would have affected the outcome of the arbitration. Because drivers are in charge of assets worth millions of rands and are out on the road the issue of honesty is of very great importance to the employer.
5. The employee had received a final written warning within 12 months previous to his dismissal. This signalled that the employment relationship, though not broken, was damaged. His dishonesty in the arbitration broke the trust between the parties.
6. He could not agree that the warning was a mere instance of counselling, and that this had been stated at the hearing. Firstly a hearing had taken place. The employer did not go to hearings with cases involving mere counselling. An SMS message is usually sent to employee and it states that the full outcome is available at the human resources department, although he stated that he was not sure if the employee had received this message.
7. The disciplinary meeting was conducted in English. He could not remember if the final written warning document was interpreted to the employee, but if the employee did not understand there was a grievance procedure he could have used. He confirmed that the employee had requested representation by Mr Ketile, a shop steward, at this meeting but

Ketile was not available hence he was not represented There was however another shop steward available to represent him in Ketile's place

8. He expressed the opinion that since the employee was able to ask for a representative this meant he would have asked for an interpreter if he did not understand what was taking place. He could not remember whether the employee had asked for an interpreter but he had the right to do so. In four years he could not remember one instance of the employee not following instructions, none of which were given in Xhosa.
9. Under cross examination it was put to van Rensburg that the employee had not been untruthful because he did not know he had received a warning. He replied that for the employee it might not have been a lie but for him it was a lie, because he knew the employee was not telling the truth.
10. It was also put to him that the employee had asked for a postponement but was told it was not a serious matter. van Rensburg responded by stating that if the employee had felt so strongly he would have followed a grievance procedure.
*11.* He testified that all drivers signed a contract of service incorporating a code of conduct which indicated that the employer expected employees to act honestly and in good faith towards the company at all times. The medium of instruction in the workplace was English and Afrikaans*.*
**12.** He stated that if the final written warning was in dispute he could have prepared to answer questions on it. The employee could have chosen another representative in that process. He could have filed a grievance if he had problems with that process. The shop steward (Ketile) took his final written warning to arbitration but the employee did not. During the hearing of Ketile the union brought up the issue of Mponzo stating that he did not have a final written warning.

**Mr M Barnard**

13. The witness is the general manager of the employer and was the prosecutor in the hearing that led to the employee's dismissal. He emphasised the importance of the trust relationship with drivers being entrusted to carry valuable cargo virtually unsupervised.
14. He described the employee as having had a record of a few disciplinary issues over the years and being on a final written warning. His conduct in being dishonest in the arbitration showed that he had not acted in the best interests of the company.
15. If the company had lost the case against Ketile at the arbitration, it would have had to scrap his warning from his disciplinary record, which would have impacted on the consequences of the next disciplinary offence.

**The Employee**

16. The employee testified that he had been entirely honest in answering the question put telephonically to him in the arbitration. He disputed being dishonest or failing to act in the employer's best interests. The information he gave was not false information but the information he knew at the time. He knew of no breach of trust. He was called by a commissioner while driving and asked whether he had a warning at the employer. He

answered “no”. The commissioner did not elaborate on what the warning was for or give him an opportunity to explain.

17. He was not aware at the time of this call that Mr Ketile had a warning pertaining to same absenteeism issue. He found out about it afterwards on 29th June 2016. He took up the issue with a shop steward but was dismissed thereafter.
18. Regarding the allegation that he was aware that he had been given a warning he testified that he was summoned by a Mr Jonker and Mr van Rensburg and told of the concerns that they were placing on him, saying that they were giving him counselling. They mainly wanted to resolve the issue of him staying out of work at the end of each year. He was asked to sign a document. When he asked if a representative could be present he was told it was not a major issue. They just wanted to take him for counselling to be an example to other workers.
19. He was asked to sign the form to indicate that they had had the discussion and there was agreement that he would not do it again. He signed it because his impression was that it was counselling, and he asked for a copy thereof but van Rensburg never gave it to him. If he had known it was a final written warning he would definitely have challenged it. He would also have admitted it to the Commissioner Bennett when he called him.
20. At work both English and Afrikaans were used by controllers. He struggled with some words in English. Under cross examination the employee stated that he was not saying that he did not follow English, although sometimes he did not understand. He stated that he denied admitting guilt in the hearing for absenteeism, or that he admitted that the sick certificate from the herbalist was fake as alleged in this meeting by his employer. However he agreed that if he got sick again the employer would check the doctor. He took it that this sick certificate he had tendered was accepted as he was paid for the days absent.
21. The employee when shown the counselling form during the arbitration agreed that it was not similar to the form for the final written warning
22. Under re-examination the employee testified that the counselling letters were explained to him in English and Afrikaans, in the case of the first one and in Xhosa in the second one.

**Mr L Ketile**

23. The witness testified that at his arbitration on 29th June 2016 he was testifying that he was given a warning for a pattern of absenteeism whereas the employee was not and at the suggestion of Commissioner Bennett the employee was phoned. After the call he contacted the employee to say he had been mistaken and that he indeed did have a warning to which the employee responded that he had been unaware of it. He stated that the chairperson had spoken to him and said “lets talk, it is not a big deal”. The employee told him it was “not a big thing, it was like counselling. Then he signed a document.
24. Ketile stated that he was shown the document, and it was a final written warning. He made the employee aware after arbitration hearing that he could not use him as a witness because of that warning. Initially when the matter was referred to the Bargaining Council by him it was his intention for the employee to testify for him.

25. Ketile stated that he was chosen by the employee to represent him in the hearing that resulted in the final written warning because he could translate from Xhosa to English. He was of the view that if he had been present in that hearing he could have explained what was written on the disciplinary form. He used to assist the employee in regard to many documents such as letters.
26. In his view if the employee had known that it was a warning he would have said so, and that he did not lie to Commissioner Bennett but stated what he was told by the chairperson in the hearing.

**ARGUMENTS**

The following is a summary of the parties' closing arguments made in written submissions. The employer argued as follows:

27. The employee had admitted to testifying during an arbitration that he received a counselling and not a final written warning. He claimed that his lack of command of the English language was the reason for him believing that it was a counselling letter. This claim should be regarded as aggravating as the evidence showed that he had passed grade 11 and all communications at the workplace were conducted in this medium. He had no problem reading English in the arbitration and indicated in the application form that he was able to read, write and speak English. The employee had received both counselling and warnings and knew the difference between these two kinds of documents.
28. The employer's witnesses had testified as to the level of trust required of drivers who operated largely unsupervised, often with millions of rand in company property under their control. The employee had failed to act in the best interest of the company and tried to conceal his wrong doing by pretending he could not understand English. He showed no remorse or comprehension of his wrongdoing which meant the behaviour was likely to be repeated. Evidence was led that his representations to the arbitration put the company at risk as Ketile, who was subsequently dismissed could have been reinstated had the final warning been reversed. This could have had major financial implications for the employer.

The employee's representative argued as follows:

29. It is common cause that the information given by the employee to Commissioner Bennett was not formal testimony given under oath. (Paragraph 7 of the employee's arguments dealing with what is in dispute is grammatically unclear and it is not possible to determine the meaning thereof).
30. It was argued that the only evidence tendered by the employer that employee was aware that he had received a final written warning was the fact that he signed it. The employee had disputed this allegation and stated that he had signed for counselling. His version was the more probable considering that he was not given a representative at this hearing despite advising the company that he needed a representative. Had he had a representative there would have been no misunderstanding.
31. It was disputed that English is the only language at the workplace. It was argued that the evidence shows that both English and Afrikaans were

used. When there was a misunderstanding they would switch to the other language. It was submitted that all previous warnings were explained in properly in a language that he understood.

32. For the employee to be found to have been dishonest the employer had to show that what he was saying was false, that he had intention to deceive, and had benefited from what he said. None of these aspects were present in this case, qualifying the statement to be dishonest. The fact that he did not later testify at the arbitration proceedings for Ketile's case gives credence to the evidence of Ketile that after the initial proceedings on 29/06/2016 he was informed that what he had said was incorrect, as Ketile had been given a copy of the final written warning concerned.
33. The employee's representative argued that if he was found to have been dishonest he should be given a final written warning, as not all dishonest conduct warrants dismissal.
34. As regards the second charge, "breaking the relationship of trust" it was argued that this depends on a finding of guilt in the first charge. The employee disputed that the trust relationship had been broken. It was arged that this charge is based on the evidence of Mr Barnard's evidence who had no firsthand knowledge of the allegations levied against the employee. It was also argued that the trust relationship is not always breached when an employee has committed an act of dishonesty.
35. After receiving a transcript of the hearing WCRFBC 40309 the employee's representative argued in further submissions that it was unfair to proceed to dismiss the employee when he did not continue and testify under oath regarding his warning, in this arbitration.

**EVIDENCE RECEIVED AFTER THE ARBITRATION HEARING**

36. On 30th March 2017 I was given an audio recording of the proceedings in case number WCRFBC 40309. The parties were also afforded an opportunity to collect this recording from the Bargaining Council and make and submissions that they wished to in regard thereto, which the employee's representative then did.
37. The recording indicates that Commissioner Bennett spoke to the employee telephonically while presiding over the arbitration. The employee admitted to signing a document relating to his absenteeism over the previous end of year period. The responses relevant to the present matter are transcribed where possible *verbatim*. Not all words uttered by the employee were clearly audible.

    Commissioner: "There was a disciplinary procedure and we need to get clarification from you in regard to your absence at the beginning of the year. What was the sanction, were you given a warning. Were you given a warning this year, a final written warning?"
    Mponzo: "They said to me I am going to sign because I have to made sure it wont happen again"
    Commissioner: So did you get a warning or not?
    Mponzo: "(indistinct...) ... a warning
    Commissioner: "You got a final written warning ?"
    Mponzo: "no,,... no"

**ANALYSIS OF ARGUMENTS & EVIDENCE:**

38. The term dishonesty in the employment context implies an intention on the part of the employee. Just as one cannot steal negligently, negligence, however gross cannot give rise to a charge of dishonesty. (*Nedcor Bank Ltd v Frank and others (2002) 23 ILJ 1243 (LAC)*. The existence of a document indicating that it was a final written warning signed as received by the employee is *prima facie* evidence that he received a final written warning. The first charge against the employee turns on whether he intentionally misrepresented to an arbitration that he did not have such a warning, or whether he made out a credible case that he made this statement as a result of a *bona fide* mistake.
39. In the conversation with Commissioner Bennett, the employee stated that he had been asked to sign a document "because I have to make sure it won't happen again." The context was an exchange with his employer regarding his absenteeism from work over the year end period. Although he did not use the word "counselling" in this interchange, this description of what took place was tantamount to counselling followed by his signing a document. The document itself contains both a final written warning and an undertaking regarding future absenteeism.
40. The audio recording was inaudible on the issue of a warning, but the employee definitely stated that he did not receive a final written warning. In the current arbitration he stated that he had received counselling, not a warning.
41. The employee did not impart the information to Commissioner Bennett under oath nor was it subject to cross examination and re-examination. The Commissioner did not ask for details. Without the benefit of cross examination and re-examination I conclude that the employee represented to Commissioner Bennett that he had been subject to some form of discipline and had made a signed undertaking but that the procedure fell short of a final written warning.
42. The question is whether this was a dishonest representation, and for it to be so there needed to be an intention to mislead. The employee's version was that was called to a hearing to resolve the issue of his staying out of work at the end of the year. On the strength of being told that it was not a major issue, just counselling, he did not persist with his request for a representative (as initially requested) at the meeting.
43. He did not dispute that he could speak and follow English, apart from sometimes not understanding it. His evidence was that he was misrepresented into believing that the process was a minor one and that he was signing to confirm an undertaking. He did not suggest that he had read the document when he signed it. He stated that he asked for a copy but did not get one. If he had known that he was signing a final written warning he would have contested it.
44. The employer's witness Mr van Rensburg stated that the chairperson read the document as he wrote it. He asked the employee if he understood it and if not he explained it. The employee was asked to give a signature that he understood. He could not remember if an interpreter was present. The chairperson, having passed away in the interim, did not give evidence corroborating this hearsay evidence. However, the document does not confirm that the employee understood it, merely that he received it. Van

Rensburg signed to verify that the employee received the warning on the date of the hearing.

45. The employee's evidence was that he did not receive a copy of the warning after the hearing, despite requesting one. Van Rensburg stated that a copy of the warning was given to the employee afterwards. This was put in dispute by the employee's representative in cross examination. No evidence was led to corroborate this aspect of the employer's version, nor was it suggested that such corroboration existed.

46. Van Rensburg disputed that the employee was advised that the hearing was for counselling, averring that Jonker explained the warning to the employee, and therefore he did not understand how the employee could have taken it as counselling. However he did not explicitly deny the version put to him repeatedly: that the employee wanted to postpone the hearing so that Ketile could represent him, but was told it was not a serious matter and that he did not need a representative, and hence that he proceeded with the meeting. Van Rensburg, instead of contesting this averment, answered that if the employee felt so strongly he would have followed a grievance procedure.

47. As regards the employee's state of mind, and possible intent to mislead when answering Commissioner Bennett, van Rensburg testified that for the employee it might not have been a lie, but for him, it was a lie because he knew the employee was not telling the truth. This was because four employees had been to hearings for the same misconduct at the time and no one got counselling.

48. Under cross examination the employee admitted that the document for counselling, presented to him in the arbitration differed from the document containing the final written warning. However he stated that in the hearing preceeding the final written warning he was called into a board room and the warning was not explained nor was he given a copy of it. If it had been he would have gone back and enquired about it.

49. The employee confirmed that he had signed previous counselling documents, that were explained to him in English and Afrikaans in the first case, and Xhosa in the second case.

50. His evidence was consistent that he asked the meeting about being represented by Ketile but did not persist with the request as he was told it was not a serious matter, that he was just being given counselling and then he was told to sign a form. His version was that if he had known it was a warning he would have challenged it, and informed Commissioner Bennett of it.

51. The employer's representative objected to questions being put to van Rensburg regarding this hearing, stating that the employee had not challenged the sanction at the time and could not do so now in an arbitration concerning his dismissal. The questions were allowed for the following reasons. Because this case turns on whether the employee had been dishonest when answering Commissioner Bennet's question, it was necessary to hear evidence as to what he understood to be the position regarding his disciplinary record, and for the employer to test his credibility in that regard. Central to this was the issue of how he understood the proceedings and disciplinary outcome of 13th July 2016. The purpose of the present arbitration is not to consider the fairness of the process that led to this warning in itself, but to consider the process in its totality in order to

establish the employee's state of mind when answering Commissioner Bennett's question.

52. Whether he was credible in averring that he understood the process to be a counselling session requires a consideration of the context, the conduct of the parties at that meeting, and the document itself. Thus questions regarding what took place in that process are highly relevant to the current enquiry and were allowed.

53. I conclude that there is insufficient evidence that the employee was read or explained the final written warning, as the hearsay evidence regarding chairperson Jonker, and who has since died, has little probative value. Van Rensburg's assertion that the employee signed the document to indicate that he understood it is not borne out by document itself. It is unlike other documents in this matter used by the employer, where an indication of having understood something is confirmed by a signature. For example the notification of the disciplinary hearing requires the employee signs to confirm having understood rights and obligations completely. Prior to this warning the employee had previously been counselled twice and had signed forms confirming that this had taken place. Hence the mere signing of a form confirming receipt thereof does not necessarily prove that the employee confirmed he had understood the contents thereof, and in particular that he was being given a warning, as opposed to counselling.

54. The employee gave consistent and credible evidence and his version - that he was told that it was not a serious matter - was not contested when put to the only witness present at that hearing, van Rensburg. This version is consistent with the employee not persisting with a request for a representative or interpreter, whereas he had initially requested representation by a Xhosa speaking shop steward, Mr Ketile. It appears on the balance of probabilities, and is also entirely plausible, that the employee thereafter did not read or apply his mind to the final written warning believing, on the strength of the discussion preceeding the signature that he was merely signing an undertaking not to repeat the alleged misconduct. I am unable to make a finding that it was explained to him or that he received a copy.

55. Having not read the document, and possibly not having received a copy thereof it is altogether probable that the employee was labouring under a misapprehension as to what he had signed, and that he did not act in bad faith when he informed Commissioner Bennett of his understanding of what had taken place. In the circumstances the employer failed to prove that the employee had acted dishonestly when responding to Commissioner Bennett's call. There is an alternative completely plausible explanation and that is that he made an error, after the employer had not properly explained the process or document and not having read the document concerned.

56. This explanation is fortified by other circumstantial evidence. The employee wanted a shop steward to represent him at the hearing. This is recorded in a note to the employer dated the date of the hearing. If the employee had known that he had received a final written warning I consider it most improbable that he would take no steps to challenge it, choosing instead to lie about it in an arbitration hearing of that same representative, and where the employer would have had ready access to its documentation on his disciplinary record.

57. The uncontested evidence of Ketile was that he too was unaware of the employee's final written warning. After the arbitration hearing he explained to the employee that this fact had come out in the arbitration, and he then decided not to call the employee him as a witness. I found Ketile to be an entirely credible witness. It is implausible that the employee would lie not only to the commissioner but to his shop steward that he did not have a final written warning, when the employer had ready access to this information in any hearing.

58. I pause to consider the warning document itself in order to shed light on this matter. It is not readily and immediately apparent that it is as a final written warning. It bears the heading "Quality Form" next to which is written "Disciplinary Record Form". The next line of the form has the heading "Nature of Offence." Here is stated "Employee found guilty of charges levied against him ito (*sic*) notification of discip (*sic*) hearing dated 4 January 2016 and the following provisos to apply." There was no evidence led that the charges were attached to the warning itself.

59. The charges contained in a notification of the disciplinary enquiry, like the warning form, are not a model of clear drafting, couched in a manner suitable for personnel that might not be mother tongue English speakers, or fluent in the type of English employed in this document. The charges are recorded in partly illegible handwriting, and are vaguely framed, as follows:

"(a) causing unnecessary service delivery and issues wrt (*sic*) an ongoing pattern of rendering services due to an alleged illness;

(b) not following procedures as known to the employee: communication;

(c) breaking the relationship of trust between the employer and employee"

60. Beneath the hand written information, in the middle of the page, under the heading "nature of offence" referred to above the following heading appears:

LEVEL OF WARNING: indicate with a X

| | | | | | |
|---|---|---|---|---|---|
| Verbal warning | | First written warning | | Final written warning | x |

61. After this table there is a heading "ACTION TAKEN (describe)":
The following is recorded in hand writing:
"Employee ordered in case of any further illness to submit for a 2nd medical opinion in relation to any illness at co (*sic*) behest and for their account: furthermore co ordered to check the legality of med certificates rendered if not legal period to be unpaid."

62. Thus, it is the presence of a single x next to the words "final written warning" in the centre of the document that designates this document to be such a measure. The document needs to be scrutinised to find the "x" and thereafter, how it links to specific charges. It is not therefore immediately apparent from this document that it is a final written warning, especially to a person reading in their second language without the aid of an interpreter. The charges are vague and it is not clear that they were attached to this document when it was signed by the employee.

63. The counselling form is a document which is also signed by the employee. The final written warning has features of counselling, ordering the employee to conduct himself in a certain way, if he was ill again. Usually warnings are limited to just that, and do not also counsel employees as to how to conduct themselves in future in regard to human resources issues. The reason this is important is because it suggests that the process may have been confusing, containing elements of discipline as well as counselling at the same time, and the employee is not entirely to be disbelieved when he states that he understood the session to be a counselling session. This is corroborated by his spontaneous utterance when phoned by Commissioner Bennett who starts off by asking "What was the sanction, were you given a final written warning this year?
Mponzo: "they said to me I am going to sign I have to made sure it wont happen again"

64. His employer did not confirm in unambiguous terms that he knew and understood the contents of the warning, and was given a copy of it. When it was put to van Rensburg, that the employee had not been untruthful because he did not know he had received a warning, he replied that for the employee it might not have been a lie but for van Rensburg it was a lie, because he knew the employee was not telling the truth. This statement accepts that the intention of the employee might not have been to deceive.

65. Having regard to all of the above I conclude that it is not improbable that the employee understood that he was receiving counselling rather than a final written warning and therefore that his communication to the commissioner was not a false representation. I find that the employer failed to prove that the employee acted with intent to deceive and therefore the charge of dishonesty fails. The act of conveying incorrect information, without a proven intent to deceive or prejudice the employer, falls short of conduct that breaches the trust relationship between the parties and the second charge therefore must fail too.

66. The employer failed to prove the employee is guilty on the charges and therefore there exists no lawful basis for the dismissal on the facts presented herein. The dismissal should therefore be set aside.

**AWARD:**

The following order is made:

a) The employee's dismissal dated 10th August 2016 is set aside;
b) The employee is reinstated with effect from 08th May 2017, retrospective to the date of his dismissal with no loss of benefits;
c) The employer is ordered to pay the employee the sum of R97 072 being wages for the period from 10th August 2016 to 08th May 2017;
d) Payment of the sum of R97 072 must be made by the employer to the employee by no later than close of business on 15th May 2017.

**Signed and dated at Cape Town**

**Arbitrator: A E ANDREWS**