



ARBITRATION AWARD

Case Number: ECGQ3251-24

Commissioner: Clint Warren Enslin

Date of Award: 10 December 2024

In the **ARBITRATION** between

PSA obo Van Rooyen, Tanya

(Union/Applicant)

and

National Health Laboratory Services

(Respondent)

DETAILS OF HEARING AND REPRESENTATION

- APPROVED**
1. This matter was set down for arbitration in terms of Section 191(5)(a)(i) of the Labour Relations Act 66 of 1995 as amended, on 5 September, 11 November, 12 November and 22 November 2024, at the offices of the CCMA in Gqeberha.
 2. The Applicant, Ms Tanya Van Rooyen, was present and represented by Mr Anthony Kilian, an office bearer of PSA, a registered trade union. The Respondent, National Health Laboratory Service ("NHLS") was represented, by Ms Motlasi Gwala, an Employee Relations Officer of the Respondent.

BACKGROUND TO THE ISSUES

3. The following facts were common cause between the parties:

- 3.1 The Applicant commenced employment with the Respondent on 1 February 2006.
- 3.2 At the time of her dismissal, she was employed as the Laboratory Manager ("LM") - Livingstone Hospital.
- 3.3 She earned R69 342, 81 per month.
- 3.4 She was dismissed on 3 May 2024 for Gross Negligence and Bringing the name of the NHLS into disrepute. (See page 50 of A)
- 3.5 A hearing was held prior to the dismissal.
- 3.6 The Applicant lodged an appeal on 6 May 2024.
- 3.7 An appeal hearing was held on 25 June 2024.
- 3.8 The outcome of the appeal has to date not been received.
- 3.9 The sanction of dismissal was implemented on 3 May 2024.
- 3.10 Two hearings were held, one for the Applicant (on 6 March 2024) and one for Ms Samantha Jonck (on 5 March 2024).
- 3.11 Both hearings were chaired by the same person.
4. The Applicant stated that she wanted retrospective reinstatement. She also confirmed that she had not been working since the dismissal.
5. The Respondent handed in a bundle of documents, which I marked "R". The Applicant handed in a bundle of documents, which I marked "A". Parties agreed that the documents were what they purported to be. At the sitting of 11 November 2024, the Applicant introduced new documents, which I marked "A1 to A5" The Respondent did not object to same and agreed that they were what they purported to be, except for A3.
6. She challenged her dismissal on the grounds that:

- 6.1 the chairperson was biased;
 - 6.2 the sanction was implemented prior to conclusion of the process (before the appeal outcome);
 - 6.3 proliferation of charges;
 - 6.4 that she was not guilty of the charges; and
 - 6.5 that the sanction was too harsh.
7. The proceedings were digitally recorded.

ISSUES TO BE DECIDED

8. I am required to determine whether dismissal of the Applicant was procedurally and substantively fair and if not, determine appropriate relief.

SURVEY OF EVIDENCE AND ARGUMENT

9. This award constitutes a brief summary of evidence and arguments as well as my reasons for the award issued in terms of Section 138(7)(a), of the LRA, relevant to the dispute at hand and does not reflect all the evidence and arguments heard and considered in deciding this matter.

RESPONDENT'S EVIDENCE

Ms Nokukhanya Mthethwa (Business Manager ("BM") of the Respondent.)

10. Ms Mthethwa testified that she had been employed by the Respondent since 2011. She was initially a Medical Technologist ("MT"), later a LM and she was finally promoted to BM in March 2023. NHLS had 246 laboratories ("labs") providing medical lab diagnostic testing to 80% of the public sector. On a day to day basis they ran samples (tests) and provided the results thereof to doctors and nurses, etc. Page 3 of R was the initiation of complaint form. It was used to initiate a disciplinary process. She was the complainant on this form and the Applicant was the accused. The Applicant reported to her at the time. Pages 23 to 37 of R were a chain of e-mails. Page 35 was an e-mail from Shaun to the Applicant. He was the Lab Information System Manager and was situated in Johannesburg. In the e-mail he requested her to verify the

accuracy of access granted to staff in her lab. Information Technology ("IT") would periodically send e-mails to check access and give steps to follow if access was correct or if there were issues.

11. These e-mails are sent to the LMs and it confirmed that if someone is not correct they needed to inform him. They were sent to the LMs as they were senior personnel that ran the labs and they were also the custodians of policies and procedures of the Respondent. Page 10 of R was the LM's Job Description ("JD"). Some of the key objectives of the post included:
 - 11.1 Manages the correct application of quality assurance processes and standard operating procedures to ensure corrective actions are taken as required.
 - 11.2 Reviews and recommends change to the standard operating procedures in order to ensure the lab is consistently able to provide high quality, cost effective and safe service.
 - 11.3 Generate management reports as required to monitor work and performance status of the lab and take corrective action when required.
12. The Respondent was responsible to action the e-mail from Shaun (page 35 & 36 of R). This e-mails heading was *"Please verify users for UF Livingstone Lab"* and it was sent to her on 29 May 2023. It set out what required and the spreadsheet on page 69 and 70 of R was attached. The two highlighted entries on page 69 were where there were changes to be made. The first one (Voster) indicated a change from "Medical Technician" to "Data Clerk" and access to change from "Analyt Auth" to "Peri-Analytic". The second one (Jonck), under the column "Security Group" it stated "Analyst Deauth PatLink". In labs there were various access levels. Clerks and Lab assistants were not fully qualified and as such they had limited access. Technicians were semi-qualified and such they had more access but they could not review or authorise results. MTs were fully qualified and had full access. Ms Jonck had full access per page 69. It further indicated that she should be changed to "Peri –Analytic and PatLink" which was basic access.
13. Page 64 of R was an e-mail from the Applicant to Ms Jonck, Mr Herselman and Ms Blazek confirming that staff access was to be checked and they were to inform if any changes were required. The spreadsheet on page 69 and 70 of R was not sent back to Shaun by the Applicant. They had received a complaint and she had asked her secretary to request the LM to forward the confirmation sent to Shaun. Page 63 of R was the e-mail from the Applicant to her secretary to which the spreadsheet on page 69 and 70 of R was attached, which was then forwarded to her. On 31 July 2023 she then sent an e-mail to

the Applicant (page 61 of R), which read as follows: *"How was Samantha granted a Technologist access on Trak? Do you perhaps have an idea because someone must have filled in a form for her and if it's Trak mistake I need to raise it with Sarafina."*

14. On the same day, approximately 20 minutes later the Applicant responded as per the e-mail on page 60 of R which read as follows: *"This would have been a mistake on Trak side as I never approved a form for Technologist access. The only additional access she was granted was for certain user site for the purposes of assisting with referrals and access to MRN consolidation as the Support Supervisor. I just had a look at the JD for Support Supervisor on QPulse and it states that the person is Medical Technologist, so that might be the explanation why she has defaulted to technologist by IT, but I can't say for sure."* (sic) Page 60 and 61 of R read with page 69 and 70 of R did make sense to her. The Applicant was responsible to verify if Ms Jonck was a MT. Page 78 of R was a screenshot from Oracle (HR System) where employees were uploaded. It showed that Jonck was a Supervisor Administration and not a Lab Support Supervisor ("LSS").
15. Page 83 of R was the JD template for Jonck. It did not say anything about MT. On page 84 it indicated that a grade 12 education was required for the position. The JDs had been updated in 2016 on the QPulse system. Managers had access to the system and could see the JDs of the persons reporting to them. Page 59 of R was an e-mail she had sent to the Applicant querying when Ms Jonck had been appointed supervisor and whether she had always had the access. On page 58 of R the Applicant responded that she had been appointed in 2012. Further, that to her knowledge, she had not always had technologist access. She had not initially fallen under the Applicant but under the previous LSS Manager and she believed the mistake may have come in when she was granted one of the additional access functions.
16. Page 87 of R was the JD for the "Supervisor Administration". The qualification required was a grade 12 as essential and a diploma in admin was desirable. Page 97 of R was the JD for the LSS. It indicated that the required qualifications of this post were 3 year relevant Medical Technology Diploma / Degree band registration with HPCSA. As per pages 57 and 58 of R, on 31 July 2023, she had queried from the Applicant if she had kept the forms that were sent to IT as they wanted to compare same with IT's forms. The Applicant responded, a few minutes later, that she would check if she kept them on file. She then immediately followed up by requesting the Applicant to check with Ms Jonck if she had ever used the MT access. The Applicant replied, per pages 53 and 54 of R, that she had spoken with Ms Jonck and she had said that she had noticed at some point that she had access to additional modules. She had only used it when the technical staff had come to her to assist with sorting out of referrals or

rejections of samples when they struggled with access of the referral labs. These were, however, function that Ms Jonck was allowed to do. Further that she did not see the original IT request form in her file and she would check with Ms Jonck the next day of she had them on e-mail.

17. Pages 22 A to I of R were lab results for different patients and hospitals (Livingstone, Cradock, Humansdorp, Dora Nginza, etc.). Ms Jonck had authorised the tests / results highlighted on pages 22C, 22D, 22E, 22F, 22G, 22H & 22I. On page 57 of R, on 15 August 2023, she e-mailed the Applicant confirming that IT had rectified the issue, but despite the previous confirmation that Ms Jonck had not used the access they had discovered that Ms Jonck had been verifying results as a MT and same was appearing in patient reports. She also attached 2 examples. The Applicant responded that she could not open the attachments and requested that they be resent. She then resent them. Page 47 and 48 of R was the Applicant's response to her which stated that she had gone through the examples provided and she was at a loss as to how she had ended up reviewing these episode numbers. She had never intentionally gone into the technical module to review, but only to assist staff members requesting her help to sort out a problem, which was normally done in the presence of the said staff member. Ms Jonck was horrified at the thought that she could send out results without even knowing she did. She had instructed her to send the staff to her, rather than assisting them when it comes to technical functionality.
18. On 17 August 2023 the Applicant sent her an e-mail, as per page 43 of R, where she confirmed that she had gone back and found an e-mail sent on 7 July 2021 informing Shaun that Ms Jonck's level of access was incorrect, but it seemed that this was not addressed by IT back then. It was again picked up this year and escalated, yet IT had only now taken action. Pages 71 to 74 of R were the 2021 e-mails between the Applicant and Shaun. Shaun had requested user verification to be done. Such requests were sent out intermittently, but at least every 24 months. On page 73, the Applicant had commented that Ms Jonck was not a MT but a LSS. This was ambiguous as a LSS is an MT (See pages 99 and 101 of R where it confirmed that the qualification required for the position of LSS was 3 year Medical Technology Diploma / Degree and registration with the HPCSA). This feedback was sent to Shaun on 7 July 2021. It indicated a title change but not an access change. She should have put specifically that Ms Jonck should not have been able to authorise as she had done with Mr Jan Oilivier on the same page (Page 73 of R), A MT and an LLS held the same qualifications. They could both authorise results as they had the clinical knowledge to do so. What the Applicant had sent Shaun in 2021 meant that Ms Jonck could authorise as MT and LSS could do so.

19. The Applicant had sent her an e-mail on 17 August 2023, as per pages 41 and 42 of R, where she confirmed that Shaun had initially requested user access checking on 29 May 2023. She had sent an e-mail to each supervisor to check with their staff that all the levels were correct. They had sent their feedback to her but it appeared that she had neglected to respond to Shaun. This was at a very busy time for her, including the Abbot evaluation and clearing on SANAS non-conformances, so it appeared to have slipped her mind. On 28 July 2023 an e-mail was sent to all managers requesting managers to check user access. She submitted same on 31 July 2023. That point she was engaging with me regarding the investigation requested. That the IT forms had been submitted to my office for approval on 15 August 2024, by which time it had rectified the user access. The investigation on their side had been delayed as they could not find the IT form granting Ms Jonck the access and had struggled to pull reports from Trak. Ms Jonck had not intentionally reviewed results. At that point they would ensure there were measures in place to mitigate risk by limiting levels of access to staff according to their JDs and qualifications and would engage with IT to do the checks more frequently. The only other measure she could think of was for IT to supply her with all the episode numbers in order for her to double check the raw data to ensure all results were entered and sent out correctly. She could write a non-conformance and keep all relevant paperwork as evidence thus ensuring that there were proper measures in place and indicating how they had mitigated risk after the error had been picked up.
20. Page 116 of R was a non-conformance raised by SANAS in 2017, where they stated that there was no evidence of the qualification of the LSS as per the JD. The corrective action by the lab was that it had been picked up that the incorrect JD had been printed and given to the auditor. The employee had signed the incorrect JD. The correct JD was printed and acknowledged by the employee and manager and it was placed on the employee's file. Page 117 of R was the new JD signed by Ms Jonck and the Applicant, as her manager. The title of the JD was "Officer Admin" and the qualifications required was a grade 12. The Organogram on page 126 of R showed that the position of "Officer – Administration" reports to the LM and also has clerks and messengers below them. The non-conformance, raised by SANAS, was closed by the JD on pages 117 to 126 of R being printed, signed and submitted to them, together with the letter of appointment, pay advice and copy of qualifications.
21. Page 128 of R was Ms Jonck's appointment letter as Supervisor (Administration). Page 129 was a copy of her payslip, with title of Supervisor Administration. Page 130 of R was a copy of her grade 12 certificate. Page 138 of R was an e-mail from Ms L Ngcwangu, the District Lab Co-ordinator for the metro. She worked for the Department of Health. In this e-mail, she confirmed that she had come across something, during her facility visits that had shocked her. A report from Chatty Clinic (Report UF2778464) on 25 November 2022. The TSH and T4 results had been authorised by a clerk, Ms Jonck.

She was concerned with the integrity of the results and the impact on patients. She further sought a response. Pages 138 and 139 of R were tests from Livingstone Lab that had been authorised by Ms Jonck. Pages 156 and 157 were from the Government Gazette that governs medical practice in South Africa. Page 157 confirmed that may practice various medical professions, unless they were registered in terms of the Act.

22. Employees were granted their access levels on the Trak System, by way of their managers filling out the required form (LIS form) upon their employment. Such form was then sent to IT to grant the required access. If changes need to be made, the LM requests same and IT makes the changes as prompted by the LM. The LM cannot make the changes on the system on their own, they must request same to be done. The LIS form is completed and sent to IT who the grants or removes the access. They did not have the form where Ms Jonck was granted access. They had requested it but it, IT stated they only kept same for 5 years. She agreed that it could have been a system glitch that initially granted Ms Jonck her access, however, the Applicant's spreadsheet in 2021, during the verifying, she said "not a MT, but an LSS. Both required a medical qualification. In 2023 Shaun again said the person still had access, per the spreadsheet, As a LM this was a high risk, which she failed to mitigate timeously.
23. Once the corrections were made to Ms Jonck's access on the system, she would no longer be able to authorise results. Pages 94 to 97 of A was a report from the Respondent's central data warehouse. The top of page 94 confirmed that it sets out the years and months of results that Ms Jonck had entered and authorised from 2019 to December 2023. Pages 92 and 94 of A was an e-mail that she had sent the Applicant on 15 August 2023 confirming that IT had rectified Ms Jonck's access. The period from October 2019 to November 2022, per page 94 of A, was affected by the Applicant not responding in 2023 as she sent an ambiguous spreadsheet in 2021. As a result, Jonck still had access is 2022. In 2023 the access review was sent out again with Jonck's access as red flag. The Applicant only actioned it after she was prompted about the June deadline. She agreed, however, that a failure to report or the late reporting in 2023 could not have affected 2019 until 2023 (prior to the reporting), but stated that the failure in 2021 to rectify it had impacted same. She further agreed that the Applicant had responded timeously in 2021 and that they did not know who had granted Ms Jonck the access.
24. She could not dispute that the Applicant had only become Ms Jonck's supervisor in 2021 or that the Applicant's previous supervisor had been Ms Debbie Sheesby. Page 77 of R was an LIS form granting an employee access. She agreed that if this form was submitted, without an HPCSA number, IT could not grant access on the system. It could have been a system glitch that got her the access as she did not have a HPCSA number to fill in on form as she was not registered. As far as she had always been

aware, an LSS needed to have a medical qualification. She could not argue that the JD on pages 83 and 84 of R was the official JD of Applicant in 2011 and that despite it being named Supervisor (Administration) on page 83, it indicated on page 84 that the position was that of LSS and required a grade 12. Page 137 of R was the organogram for Livingstone Lab which she had signed on 29 February 2024. The position was captured as LSS on the said organogram because the Applicant had put Ms Jonck down as LSS instead of Supervisor Admin. She disputed that her signature on this document that she had agreed with its contents and stated that it meant it was an official document. She had checked the document before signing it. When she picked up this error, she alerted the quality assurance auditor to change it when it went for review.

25. The investigation was done by the risk department and an investigation report was issued. It was not in the arbitration documents as it had been submitted to the NPA. The complaint had come to her and she was the initiator in the hearing. She had also been the main witness in the hearing. Ms Jonck had full access on the system, which she had given herself. A data clerk could not authorise results on the Trak Care System as they could not be registered with HPCSA. On the form, however, Ms Jonck had indicated that she was a LM / Area Manager. She did not know who had verified Ms Jonck as a MT. The Applicant had started signing as Ms Jonck's direct supervisor in 2014, as she had signed her JD at that stage. At the time of the incident, Ms Sheesby was manager LSS. Although Ms Jonck technically reported to Ms Sheesby, as she was at Provincial Hospital Ms Jonck reported to the LM on site (the Applicant) as per the JD. She was not sure when the Applicant had been appointed as LM.
26. Ms Jonck as well as the Applicant's hearing had been chaired by Mr Thabo Sealea, who was a BM from another province. Pages 98 to 128 of A was the disciplinary and grievance policy of the Respondent. Clause 1.1 on page 119 read: *"The appeal procedure is an extension of the disciplinary procedure. It allows for an employee to appeal the finding and sanction imposed at an enquiry."* She could not say if it was normal to stop a salary while a process was still on, as that was dealt with by HR. She had received the complaint on page 137 of R on 28 November 2023. Page 126 of R was a JD for Ms Jonck that the Applicant had signed, as her direct line manager, in 2017. The structure on this JD was LM with the position of "Officer – Administration" below that. Page 116 of R was a SANAS non-conformance form which the LM was responsible to fill out. The Applicant was the LM on this particular form. It was signed and closed off on 15 May 2016. Under corrective action on this form it read: *"Incorrect job description was printed for support supervisor when HR documents were loaded onto QPulse."* Pages 117 to 130 of R was the corrected JD which was attached and signed by the Applicant and Ms Jonck.

27. As the Applicant had used page 128 of R to close the SANAS non-conformance and it stated that Ms Jonck was offered the position of "Supervisor: Administration" she would have known Ms Jonck's job title. Page 129 of R (Ms Jonck's pay advice indicating she was a Supervisor: Administration in 2017) was also used, by the Applicant, to close the SANAS non-conformance in 2017. As such when the Applicant closed the non-conformance she had confirmation of Ms Jonck's position. The Applicant should have indicated on page 73 of R that Ms Jonck was LSS Administration as she had done in the SANAS non-conformance. Both MTs and LSS had medical qualifications and were registered with HPCSA but LSS oversaw lab support staff. They also both had the same access on the system.

Mr Babonke Zoleka (LM at Respondent)

28. Mr Zoleka testified that he had been employed by the Respondent for approximately 13 years. As a LM he implemented and oversaw systems in the lab. He knew Shaun via e-mail. They would normally get the e-mails from him, requesting user verification, minimum once a year. It would ask you to say no or yes on the spreadsheet when you verified and if no, to highlight what was incorrect. The LM was given the list of staff to work off. A MT had to have a diploma/degree, must have written and passed a board exam and had to be registered with the HPCSA. They would run tests and release results. A LSS depends on their role. There were two types. Some are MTs with experiences who are appointed to oversee lab support services. The others were administrative and therefore did not require the medical qualification or registration with HPCSA. They did more admin work. Shaun would not make changes if you put LSS. A LSS with the required diploma/degree and registration could authorise results and those without the qualification and registration could not.

29. A4 and A5 was a NHLS JD. They were signed by the employee, his/her immediate supervisor and the function head. This one was signed on 4 December 2014. The job title on it was "Lab Support Services Supervisor" (LSS). There were certain points crossed out on A4, which, to his understanding, meant they were not applicable. These crossed out points included participation in the delivery and promotion of Continuing Professional Development (CPD) activities within the department/lab to contribute to staff development and in compliance with HPCSA requirements. Also the point related to performing the role of MT as required in accordance with operational requirements. A3 (LIS form) was to be signed by the person granting the staff member access on the Trak Care system, usually the LM. A3 was filled in by the Applicant, on 8 July 2022, for Ms Jonck. Under user designation, other, it was marked as LSS Supervisor. This could mean either of the two he had explained (qualified or unqualified). Per his understanding if it was the qualification and registration that gave access and not the title. He would accordingly put it as MT if the person was qualified and as Data Capturer if they were not qualified.

30. He had taken over as LM of Livingstone in September 2024 (the Applicant's old post). He reported to M Mthethwa. He had said that the Lm had completed A3 as per the name that was written on the document. He agreed that he could not say who had completed this form, but according to the form it said it was the Applicant. The VQ access part of the form was blank. To his understanding VQ "verifying que" was where results went for someone to make a final decision on them. To him verifying meant to confirm results made clinical sense and on the other hand, authorising meant confirmation that results could be released to the doctor or patient. According to NHLS process, MTs with HPCSA registration played the role of verifying and authorising results. Some Medical Technicians could also verify but not authorise. As per A3, access to confidential results was given. It did not grant de-authorisation of results, releasing results to VQ and QC module (quality control) access.
31. To his knowledge the authority to authorise came from the person's qualification. Prior to becoming the Lm at Livingstone he had been a LM at a different lab for over 4 years. There was no HPCSA registration number filled in on A3. The said form was silent on what access was to be granted. It was also silent on qualification, which determined the level of access to be. He agreed that the fact that the fact that the point stating that the person performed the role of MT was scratched out on page A4 meant that the person did not do so. According to their JD, a data clerk did not have the power to verify and authorise results on the Trak Care system. A2 was a Trak Care system user code application form and it was for Ms Jonck. It indicated her user designation as data clerk and was dated 10 July 2012. The Applicant's name and signature were not reflected on this form. His current LM position was the first time he had a Supervisors Admin or LSS report directly to him. He agreed that as the Applicant had marked "no" on page 73 of R and wrote "not a MT but LSS", it meant the type of LSS without a qualification. Per A2, Ms Jonck was the LM and was granting herself access. The additional user site on A3 was to grant the person access to other sites they did not usually work at or have access to. This was extra access as they already had access to Trak Care.

Ms Nomzontsundu Makubalo (MT at Respondent)

32. Ms Makubalo testified that she had been a MT (Chemistry) for approximately 13 years. Her duties were to analyse samples to assist doctors to make informed diagnoses. Page 135 of R was her statement about Ms Jonck releasing results. A colleague (Sibelo) had picked it up and called them together, where he informed them he would address it with the Applicant. They saw him go to her office. No MT had asked Ms Jonck to authorise results as you needed to be a registered MT to do so. They had not approached that Applicant about the issue as she had already dismissed their colleague when he went to address her on the matter. None of them had accompanied Sibelo to the Applicant. She did not know

what was said in the office between Sibelo and the Applicant. She was not able to dispute the Applicant's version that Sibelo was never in her office to discuss Ms Jonck's authorisation.

Ms Vuyo Ndude (Medical Technician)

33. Ms Ndude testified that she was a Medical Technician at Livingstone Lab for approximately 4 years. Page 136 of R was her statement which she had written to defend a colleague and herself as she was a shop steward of NEHAWU. It was related to an issue where their manager (Applicant) had denied that she was aware of Ms Jonck authorising results. Mr Sibelo had informed them of Ms Jonck's authorising of results in late 2022. He had called a meeting and informed them of same. He was upset and said he would speak with the Applicant about it. She had seen him go to her office. She conceded that she did not know what had happened in the office between Sibelo and the Applicant.

APPLICANT'S EVIDENCE

Ms Tanya Van Rooyen

34. Ms Van Rooyen testified that she was previously the Respondent's LM at Livingstone Lab. She was suspended on 15 November 2023, pending an investigation into a matter with a subordinate verifying / authorising patient results. The hearing was held on 6 March 2024 and she received the outcome on 5 or 6 May 2024. She appealed within the 5 day period allowed for same in terms of the Respondent's policy. At the end of May 2024 she did not receive her salary. She approached her union and the CCMA referral was filed. She was initially appointed as a Chemistry Manager, however, at the end of 2012 the Haematology Manager retired and she then took that over as well. At the beginning of 2021 the Lab Support Manager retired and she then also took that over and became the LM, running all 3 at Livingstone. She also did quality assurance co-ordination extra for about 6 months while there was no one in the position. In February 2022 she was appointed as acting BM for 13 months, however, she still had to run her lab. During this acting period she was stationed at the Respondent's main branch next to the Provincial Hospital. She was also a disciplinary chairperson, for the Respondent, nationally. Additionally she was part of a committee dealing with hours of work and overtime.
35. Page 50 of A was her termination letter. It indicated that her services had been terminated for Gross Negligence and Bringing the name of the NHLS into disrepute. Pages 13 and 14 of A was her notice of the disciplinary hearing. She had been found guilty of Gross Negligence in that it was alleged that, in her capacity as a LM, she had failed to timeously verify and follow up on the Lab Users Access Verification.

Also for Bringing the NHLS into disrepute in that it was alleged, that in her capacity as LM, her failure of in terms of the previous charge resulted in her non-qualified subordinate authorising results to external stakeholders that may lead to litigation. The disrepute charge therefore flowed from the negligence charge.

36. In terms of the first charge (negligence), she had first been requested to do the Lab User Access Verification on 7 July 2021 (See pages 71 to 73 of R). Shaun sent the e-mail at 10h43 on the said day. At 11h15 on the same day she responded. This was within 30 minutes and was therefore timeous. As per the first and second bullets on page 72 (Shaun's e-mail) she indicated on page 73 that Ms Jonck's access was incorrect and then also that the problem was that she was not a MT. She did not see her response on page 73 as being ambiguous, as alleged. She had first stated that Ms Jonck was not a MT. Access was granted according to qualifications and registration. Stating that she was not a MT should have alerted IT that her access was not correct. Any possible ambiguity relating to the term LSS was not an ambiguity he had introduced. It was the Respondent that had done so as pages 83 and 84 referred to both Supervisor Administration as well as LSS as the same position. Page 137 of R was signed by the BM and the position is referred to as Supervisor Laboratory Support Services (LSS). The Respondent therefore used the two terms interchangeably. Ms Jonck had only fallen under her since 2021, however, as the only LM on site she would need to sign documents as her manager was not on site. All documents for her were confirmed to be correct with her manager, Ms Sheesby, before she would sign them.

37. In terms of the second charge (bringing the name of NHLS into disrepute) it spoke to charge 1, which she had complied with within 30 minutes and as such she could not see that her "failure" resulted in anything. When she responded IT that Ms Jonck was not a MT it should have raised red flags. They should have checked her access and amended it accordingly. Medical Technicians were allowed to release results on the Trak Care system. As soon as they released same it went into VQ. Once there only MTs and Pathologists could authorise the result and thereby release it to the doctors, etc. Page 81 of A onwards was the Respondent's Trak Care Lab Policy, which contained the user access groups of the Respondent's. At point 2.2 on page 82 and 83 from 2.2.1 to 2.2.6 it set out the tasks to be performed by clerical staff. Point 5, starting at the bottom of page 84, set out the user security groups (ie. to which modules on the system they had access to). Page 86 gave the staff categories and to which user security group they should have.

38. When access was to be granted, it was the LMs responsibility to complete the LIS form (see A3) which includes details such as qualification and registration number as well as an indication of the level of

access. This form was submitted to IT and as such it then became an IT process where they should check qualifications, registration, etc. and then grant access accordingly by configuring the system. A2 was an earlier version of the LIS application form, which was completed by Ms Jonck on 10 July 2012. She had no involvement in this. There was no HPCSA registration number reflected on this form as she did not have such registration. The user designation that was ticked on the form was that of "Data Clerk". As per this for she had proposed pre-analytical level of access for herself as per the functions listed on page 82 of A for clerical staff. She was therefore requesting the correct access on A2 as per user designation and the policy. It should therefore not have been possible for her to have access to verify and authorise results.

39. Pages 22A to 22C of R were quality control samples generated by the lab information system. Page 22 C correctly indicate that Ms Jonck was a Data Clerk, however, it indicate that she had authorised the result which according to her designation (Data Clerk) should not have been possible. Pages 22D, 22E, 22F, 22G and 22H were patient lab report that she had authorised as a Data Clerk. The reports were system generated and the system therefore recognised her as a Data Clerk. The sample in 22G had been collected by the Lab on 14 November 2022. The first print of the result was done on 5 January 2023. As such, as early as 5 January 2023 Ms Jonck's designation on the system was correct. The sample in 22F was collected on 20 March 2022. The lab received it on 21 March 2022 and the first print was on the same day. As such again, as early as 21 March 2022 the system had Ms Jonck as a Data Clerk.

40. As per the Respondent's IT policy, it should have been impossible for her to authorise results, given her designation. How IT had configured the system to allow same, she could not say. A3 was dated 8 July 2022 and as such it was after 21 March 2022 and before 5 January 2023. The signature on A3 was hers, but she had not completed the form as it was not her handwriting. She was not sure, but assumed from the handwriting that Ms Jonck had completed it. For a person to be allowed to verify and authorise results, the qualification and HPCSA registration number were a must on this form. This was missing from the form. Supporting documents were also required to confirm the level of access required. It also indicated under "VQ Access Required" only confidential access was marked "yes", while the others, including De-authorise results, release results to VQ and QC module were marked "no". As such, the person should not have been allowed to verify or authorise. The title of LSS could not grant such access as a title on its own did not grant access. A qualification, registration and the completion of the appropriate sections of the form were required for same. When there was no qualification and HPCSA registration number on the form it informed the person granting access on the system that the person was not qualified or registered with HPCSA.

41. She had to date not received the outcome of her appeal, although the appeal hearing was held on 25 June 2024. Page 98 to 128 of A was the Respondent's Disciplinary and Grievance Policy. Page 119 was headed "Procedure and Guidelines: Appeals.". Clause 1.1 under this heading read: "The appeal procedure is an extension of the disciplinary procedure. It allows for an employee to appeal the finding and sanction imposed at an enquiry." She understood this to mean that the disciplinary procedure was not finalised until the appeal was finalised. Clause 2.5 on the same page read: "The chairperson is to render a decision and the reasons therefore within ten (10) working days and notify the appellant in writing of his/her decision." The Appeal hearing was held on 25 June 2024 and no outcome was received to date.
42. Her salary was stopped at the end of May 2024, which meant that the sanction was implemented while the appeal was still pending. This affected her as she lost her home and her medical aid and she has a 5 year old with a medical condition. As a single mom she struggled to provide for her 3 kids. Her mother had renal failure and she used to pay for her medical aid which she could no longer do and as such her mother had to move out of town for proper care. The respondent had made up its mind before the appeal was completed as her post was advertised and filled prior to the appeal outcome. When new staff started in the lab, sometime the Lab Supervisor would fill in the forms and bring them to her to sign. This could possibly explain how her signature appeared on A3 despite her not having filled it in. She denied that Sibelo had come to her office to speak to her about an admin clerk authorising results. The first time she became aware of Ms Jonck authorising results was when the BM informed her, after her submission to her office on 31 July 2023.
43. The credibility and reliability of results released was very important as patients were treated based on same. She had never chaired an appeal hearing. She believed that, according to the Respondent's disciplinary policy, when a notice of termination was received and an appeal was lodged, the Respondent still had a relationship with the employee as the appeal was an extension of the process. She denied that the appeal did not extend the relationship but was there to give the employee a fair opportunity to contest the outcome of the disciplinary hearing. It was not fair as four and a half months later she still did not have an outcome. She was aware that the Respondent had been hit by a cyber-attack from the middle of May to the middle of August 2024. She denied that this and the fact that she had referred her dispute to the CCMA already were reasons for the delay in outcome. She had referred her dispute to the CCMA on approximately 11 June after receiving no response to her request for appeal.

44. At her Disciplinary Hearing they were aware that the chairperson had chaired Ms Jonck's hearing. Her representative had indicated that there was no objection at that stage, but that they would see how it unfolded as there was a concern that he had chaired Ms Jonck's hearing. She could not recall if there was any objection to the chairperson during the proceedings, but did not think so. Ms Sheesby had been based at the main branch approximately 7 to 8 kilometres from the Livingstone Lab. Page 116 of R was a SANAS non-conformance report, for Livingstone Lab that had been closed by her. She had attached a new signed JD, letter of appointment, a copy of the pay advice indicating job title and a copy of qualification to it. This was on 4 May 2017. The JD she had attached was on pages 117 to 127 of R. The title was not the same as the offer of employment on page 128 of R. She was not Ms Jonck's direct supervisor at the time and as such she had to run it through her manager. The non-conformance was raised due to incorrect JD qualification being attached. She was told, by Ms Sheesby, to use this JD as Ms Jonck's equivalent at the main branch was an Office Administrator.
45. The JDs on pages 85 and 117 of R were not the same as they had different document numbers. Page 85 was activated on 7 November 2016, while the one on page 117 had been activated on 8 November 2016. The job title on page 85 was "Report for Job Supervisor Administration" and on page 87 of r it listed the job title as "Supervisor administration". This was her LSS but is said Supervisor Admin. The JD on page 85 was for LSS Admin, however, Ms Sheesby had told her to use the one on page 117. She agreed that it was part of her responsibilities to ensure corrective action was taken to close of SANAS non-conformances. Lab support did not fall under her at that stage and as such she took instruction from Ms Jonck's direct manager on how to close it. She had cancelled points 11, 13 and 15 on A4 in 2014. In 2014 she had signed most lab staff's JDs, including Ms Jonck's. In 2014 most JDs had been redone due to SANAS requirements for the document centre. Ms Sheesby had instructed her to sign of A4.
46. Her communications with the BM had started on 14 August 2023 (page 53 of R). The e-mail from Shaun on pages 65 and 66 of R, requesting Lab User Verification, was sent to her on 29 May 2023. On 30 May 2023 she had forwarded his e-mail to the supervisors that reported to her. Shaun's e-mail on page 66 *inter-alia* read as follows: "Trak Care Lab users are allocated access based on their role in the laboratory – Refer to QPulse: GP10275 – User Security Groups in Trak Care Lab and GP10282 – Adding and Modifying users on track Car Lab. Attached is a spreadsheet with the list of all users that have access to your User Site. Please review the users and confirm the following:
1. The users listed are currently employed in your lab.
 2. Their names are correct.

3. *The access level granted to the user is correct.*

On the spreadsheet indicate the following:

User details correct (Y/N)

List the changes to be made (here you will list why the user's details are not correct)....."

47. On page 69 of R she had mistakenly put "yes" under User Details for Ms Jonck. She had, however, listed changes which were highlighted (put in red) on the said spreadsheet. So despite her having mistakenly putting "yes" in the first column, they should have known there were changes to be made. No form was filled in when she sent the spreadsheet on page 69. In 2023 a form was required to accompany any changes. She had not attached a form, but explained the reason for same to the BM in her email on page 41 of R. In summary, during May and June 2023 there Lab had been busy with new business and there had been a lot going on. She had therefore missed the May/June 2023 deadline for User Access Verification. She had not denied this. When the BM then asked for their spreadsheets my 31 July 2023, she had complied with same. She had filled out a form after sending the spreadsheet. Page 77 of R was the form she had sent to the BM. The BM had requested the form as per page 76 of R and she then sent it to her. She had foiled in the form on 15 August 2023.
48. The report on page 22A of R was reprinted on 17 August 2023, which was after the communication between the BM and the Applicant on the Jonck issue. Page 22D of R was reprinted on 22 March 2022, which was when the BM picked up the issue. As far as she knew the IT system, if an amendment was made, for example to the title, it would be marked with an asterisk next to it. She agreed that the reprints were after the access issue had been rectified. The communication between her and Shaun started in 2021 (see page 71 of R). The process to be followed was the policy on page 81 of A. The policy did not refer to LSS, it referred to qualification, such as MT. She had specifically stated in page 73 of R that Ms Jonck was not an MT and therefore she should not have got any access related to an MT. There were two types of LSS, one qualified and one not, therefore by saying that she was not a MT implied she is the one without the qualification. Page 86 of A (User Security Groups in policy) did not have LSS under its job categories. If they used the SOP on page 86 of A, IT could not grant Ms Jonck access to authorise, etc. as a result of her stating that Ms Jonck was not an MT. Although Shaun's e-mail on page 72 of R confirmed that user access is based on the security group, LSS was not mentioned on page 86, which set out the security groups. There was also no mention of Supervisor Administration, but she had specifically said that Ms Jonck was not a MT. Page 86 of R did not reflect all the NHLS job titles / categories, hence her comment. They referred to her as a MT and she specifically said she was not an MT.

49. As there was no LSS on page 86, if she needed to grant such person access, she would need to call IT and explain to them and ask what category to use. In 2021 she had not phoned Shaun when she saw Ms Jonck's position was not on the SOP as he had requested them to check if the users were correct and make a comment. She had done so and commented. On page 69 of R, Charl Herselman was a Haematology Supervisor. His personal type stated "MT" as this was his qualification and he was registered with HPCSA. She did not follow up, to check access levels, after stating that she was not an MT. This was because Shaun was a manager and once she had made her submissions to him it became an IT issue that he should have followed up on.
50. During the period that she stood in as BM, there was acting LM at Livingstone and she relied on her supervisors. While she was acting BM she did not have a secretary and so Ms Jonck assisted her 1 day per week. On one occasion, whilst acting BM, Livingstone had requested her to assist in entering results. It was an A4 box of documents and as such both she and Ms Jonck did so. She had reported the issue of the system problem, requiring manual entry, on page 149 of A in a report. Per the IT SOP clerks were allowed to enter results, which is what Ms Jonck was asked to do. In 2021, she was aware that Ms Jonck's personnel type and security group were wrong but she was not aware that she had been authorising. She had never been asked to do so.
51. The reason she had indicated, for Mr Olivier, on page 73 of R that he should not be able to de-authorise and she did not make a similar comment for Ms Jonck was because Mr Olivier's personnel type was correct. Only his access need amendment. Ms Jonck's entire personnel type was incorrect. If this was corrected, any other access issues would have been corrected as well. In her view, a LSS could fall either under row 2, 3 or 5 on page 86, however, as Ms Jonck was administrative it would be row 2 or 3. She was aware that Ms Jonck was a supervisor: admin, however, admin supervisor and LSS were the same. She could not recall why she had not scratched out the 3 year degree requirement on A5, however, she had taken out (scratched) the responsibilities on the JD that were not applicable to her. All items requiring a qualification were scratched as they were not applicable to her.
52. A3 that was signed by her gave Ms Jonck access to other sites (other than Livingstone) but only at the specific access level. The form clearly confirms that she should not be able to verify results. When she granted the extra access in 2022 she assumed and expected that IT had rectified the access level issue she had brought to their attention in 2021. She did not check this. Page 10 to 12 of R was an updated LM JD. The objectives in it were the same as in the older JD she had received. Point 7 of same read: *"Accountable for the implementation and maintenance of the quality system that governs the laboratory and service components of the department to ensure compliance with the principles of Good Laboratory*

Practice and the fulfilment of SANAS accreditation requirements." On page 12 of R, under E6 Checking, it read: "*Checking work has been carried out to specification. Verifying the accuracy of calculations.*"

53. She denied that she was in breach of her JD by not checking on Jonck when giving her the extra site access. She did not have reason to check as she had not granted her access to verify or authorise and she was also not aware that she was doing so. As per the e-mail from the BM on page 61 of R, even the BM had immediately picked up from the Applicant's spreadsheet that Ms Jonck's access was incorrect, as she had queried how it was granted. She knew the person who sent the complaint e-mail on page 138 of R. She agreed that she was responsible for the lab that the complaint was about and that the complaint could bring the name of the NHLS into disrepute but denied that she had been negligent which had then resulted in same.
54. JD documents did not go to IT. When requesting access, it was sent a LIS form as per A3. None of the forms, A2, A3 or page 77 of R requested access for Ms Jonck to review or authorise. The earliest form was dated 10 July 2012 and as such from then to now there had been no for requesting such access. She was not sure how such access was then gained, however, she speculated that it was a glitch, as per Ms Mthethwa's testimony. The items under E6 on page 12 of R had nothing to do with access. She believed that the "other" on A3, by job categories, was for job titles not covered in page 86 of A. A3 was submitted on 8 July 2022 and yet page 131 of R indicates that there were still a of authorisations / entries after this. Page 128 of R1 was Ms Jonck's appointment letter. On it her title was "Supervisor (Administration) Laboratory Support Services. As such, she had been appointed as LSS. Page 138B of R was authorised by Ms Jonck as a Data Clerk.

APPROVED
ANALYSIS OF EVIDENCE AND ARGUMENT

55. The Applicant's dismissal is not in dispute and the onus is therefore, in terms of Section 192 of the LRA, on the Respondent to prove that the dismissal of the Applicant was fair. Section 188 of the LRA further states that a dismissal that is not automatically unfair is unfair if the employer fails to prove that the reason for dismissal was for a fair reason relating to the employee's conduct and was affected in accordance with a fair procedure. This must be decided on a balance of probabilities.
56. The Applicant challenged the procedural and substantive fairness of her dismissal. The procedural challenges were that the chairperson was biased, the sanction was implemented prior to conclusion of the process (before the appeal outcome); and that there was a proliferation of charges. The substantive

challenges raised was that the Applicant was not guilty of the charges and that the sanction was in any event too harsh.

Procedural Challenges

Was the chairperson biased?

57. The evidence on this issue seems to relate to the fact that the same chairperson was also the chairperson of Ms Jonck's hearing. The Applicant confirmed that she and or her representative had confirmed that they were ok to go ahead, despite having had the knowledge at the time that the chairperson had chaired Ms Jonck's hearing. They would see later if it was an issue. They also did not raise any objection to the chairperson during the process. In light of the above it is evident that the Applicant had upfront knowledge of the situation and did not at the onset or during the process object the chairperson. There is also no other evidence before me that leads me to conclude that the chairperson was biased. I accordingly cannot conclude that the chairperson was biased.

Proliferation of charges.

58. I must say that I find this claim strange. The Applicant was found guilty of two charges. Gross Negligence and Bringing the name of the NHLS into disrepute. I do see how there was a proliferation of charges. The fact that the second charge may flow from the first one is, in my view, not enough to amount to a proliferation of charges. To my mind, there is nothing wrong with the charges she was ultimately found guilty of. The Respondent is effectively claiming that her actions were firstly negligent and secondly brought the employer's name into disrepute. I note that she was initially charged with three charges, however, she was only found guilty of the two. I accordingly dismiss this claim as well.

Sanction was implemented prior to conclusion of the process

59. The evidence on this issue was effectively that the sanction of dismissal was implemented while the Applicant had appealed and was still waiting for the outcome of same. It is common cause that by the stage of the appeal, a hearing had been held where the Applicant could and did state her case. The Applicant sought to rely on the clause in the Respondent's Disciplinary Policy that states that the appeal is an extension of the disciplinary process. The Respondent's version that once the hearing outcome is given and it is a dismissal that ends the employment relationship. Also that it was during a period where

they had a cyber-attack, hence the delay in the outcome. Further that before they could issue the appeal outcome the Applicant had referred her dispute to the CCMA.

60. The Applicant confirmed that she was aware of the cyber-attack issue. She did not dispute that she had referred on approximately 11 June 2024 and that this was during the cyber-attack. It is, in my view, strange that the Respondent did not seem to communicate the problem (delay and the reason therefore) to the Applicant, however, although this may be poor communication it is, in my view, not a critical issue. The Applicant received a notice of hearing with the charges, a hearing was held, where the Applicant could and did present her version, and after this a decision was made. Despite the Respondent's Disciplinary Code providing for an appeal and stating that it is an extension of the disciplinary process, it is by now trite that even where an employer's disciplinary process allows for an appeal, an employee may opt to approach the CCMA without following the appeal route. In this case there was a reason for the delay in appeal outcome and the Applicant chose to approach the CCMA, which was within her rights to do so. I cannot see what difference the appeal outcome would have made to this, unless of course it reversed the dismissal. The fact that the Respondent has defended the dismissal at the CCMA, is in my view, indicative of the fact that this was not the case.
61. The requirements for a fair procedure, in a dismissal for misconduct matters, are set out in **Schedule 8, Code of Good Practice: Dismissal**. Item 4 states that normally the employer should conduct an investigation to determine whether there are grounds for dismissal. The employer should notify the employee of the allegations using a form and language that the employee can reasonably understand. The employee should be allowed the opportunity to state a case in response to the allegation. The employee should be entitled a reasonable time to prepare a response and to the assistance of a trade union representative or fellow employee. After the enquiry, the employer should communicate the decision taken, and preferably furnish the employee with a written notification of that decision.
62. The requirements for procedural fairness for misconduct dismissals were further confirmed in the matter of **Avril Elizabeth Home for the Mentally Handicapped v CCMA and others (2006) 27 ILJ 1664 (LC); [2006] 9 BLLR 833 (LC)**, where the court held that the employer was merely required to conduct an investigation, give the employee or his representative an opportunity to respond to the allegations after a reasonable period and thereafter to take a decision and give the employee notice thereof.
63. In view of the above, I believe that although the matter could and should have been handled better, there was no procedural unfairness. Even if I am wrong in this, in my view, any possible procedural unfairness was not of a serious nature.

64. I accordingly find that the dismissal of the Applicant was procedurally fair.

Substantive Challenges

Applicant not guilty of the charges.

Charge 1 – Gross Negligence (It is alleged that in your capacity as LM, you have failed to timeously verify and follow up on the Lab Users Access Verification) (See page 1 of R)

65. Much evidence was lead on this and the Respondent argues it over a number of years. In essence the Applicant was first requested to do a Lab Users Access Verification, by Shaun from IT, on 7 July 2021. She responds to this request on the same day, approximately 30 minutes later. It is clear that here there can be no talk of any failure to act timeously. In his request, he asks her to check that the users, on the attached spreadsheet are still staff members at her lab and also to check their access level. If the access level is not correct, she is to mark the "User Correct Column" as no and add any relevant comment. As per page 73 of R, the Applicant does exactly this. Her comment is "*Not a Medical Technologist, she is LSS Supervisor.*" Looking at the instruction/request, by marking "No" in the User Correct column, it indicated that the user access was not correct. If one then looks at the comment, it is made clear that she is not an MT. In simple terms this means that the person has MT access and is not an MT. As such she should not have same. I fail to see how it can be reasonably be interpreted in any other way.

66. There was much evidence lead and argument on the difference between LSS and Supervisor: Administration. The term is used interchangeably in some documents. Despite this, the Respondent's witness, Mr Zoleka, gave the following piece of evidence on this point. He stated that there were two types of LSS. Some are MTs with experiences who are appointed to oversee lab support services. The others were administrative and therefore did not require the medical qualification or registration with HPCSA. They did more admin work. This is, in my view, a critical piece of evidence. I say so because despite much upping and downing on this issue, the Respondent's own witness confirmed that there are two types of LSS, effectively one that was an MT with a qualification and registration and another that did not have such qualification or registration.

67. The Applicant's comment that she was not a MT, but a LSS Supervisor, could, in my view, therefore only have been construed to mean that she was the Administrative type of LSS. I say this because if she had the required qualification and registration she would have been an MT. Despite IT not testifying

to same, I cannot see where any confusion could have crept in, as alleged by the Respondent. I agree with the Applicant that the moment IT saw that she was not an MT, per the comment, they should immediately have known that any access granted to her as MT, as she was captured on the system, was incorrect. This flows as a natural consequence of her not being an MT. There is no evidence that IT did not get her response. What is clear is that this response, appears to have never been actioned by IT. It is further clear that only IT can make access changes on the system. If there was any confusion, which I fail to see the basis for and as stated was not testified to by IT, one would surely expect IT to follow up with the Applicant in this regard in order to clear any possible confusion. Should the Applicant have followed up to ensure that the information she gave IT was actioned? Possibly, but I do not find her explanation, to the effect that she had given her feedback to the IT manager and as such it was for IT to deal with and ensure that it was actioned, to be unreasonable. Without IT's testimony, we are also uncertain as to why it was not actioned.

68. I need to pause here in order to deal with what I will refer to as "the elephant in the room". No one seems to know how exactly Ms Jonck acquired her access level in the first place. It is further clear that access levels are granted by IT based on a completed LIS form. IT did not have the form granting her the access in the first place as they only kept forms for 5 years. This means that the access was granted to Ms Jonck more than 5 years ago. There is also no LIS form in front of me granting the Ms Jonck such access. In fact the forms presented clearly do not grant same. This is further confirmed by the fact that these forms do not have any qualification listed or any HPCSA registration number. Access levels requested on them are also not those that the Ms Jonck had. How then did she get the access in the first place? Ms Mthettwa testified that perhaps it could have been a glitch on the system. Surely, this must be of concern to the Respondent?

69. I now move to the second instruction to do a Lab Users Access Verification, by Shaun from IT, on 29 May 2023. Here the Applicant admits that she failed to respond timeously. She gave reasons therefore, effectively that it was a very busy period. The cut-off date for this response was 9 June 2023. She eventually responded, after being prompted / reminded by the BM, on 31 July 2023. This means that her response was approximately 7 weeks late. She also concedes that she put "yes" in the first column of the attached spreadsheet by mistake as it should have been "no". Shaun, in his e-mail request, again sets out how they are to go about their response, this time in more detail. He *inter alia* states that under the column "List changes to be made" they must indicate why the user details are not correct. He also indicates that users are allocated access based on their role in the lab.

70. On the spreadsheet, which the Applicant responded to the above request with, she did the following: Firstly, as already stated she put "yes" in the first column when it should have been "no". Secondly, despite this error, she highlighted the entire row for this employee, as did she for certain other employees. Thirdly, under the column "User changes to be made", she indicated the following "1) Change Personnel Type to Data Clerk. 2) Change Security Group to Peri-Analytical and Patlink." Fourthly, she highlight MT, as captured under the column "Personnel Type" and also highlights "Ananlyst Deauth Patlink" under the column "Security Group". Despite the error in the first column, I accept that if one looks at what was captured and done on the spreadsheet in its totality, for the particular employee, it should be clear that changes were required and what changes were to be made. At the very least, I believe it should have been sufficient for IT to follow up with the Applicant if the first columns "yes" was in any way confusing, given the rest of what was done on the spreadsheet. Even if the spreadsheet was submitted without an accompanying form, surely this could not just then be ignored. I believe it could reasonably be expected that IT would then follow up with her and ask where such form was. It was, however, submitted approximately 7 weeks late though.
71. It is here where charge 2 becomes important. Charge 2 reads as follows: *"It is alleged that in your capacity as LM your failure of the above resulted in your non-qualified subordinate authorizing results to external stakeholders that may lead to litigation."* The reference to "failure of above" refers to charge 1. In other word, the Applicant's failure to timeously verify and follow up on the Lab User Verification has lead to charge 2. It is clear that the Applicant did act timeously during the 7 July 2021 request. A stated above, it is also clear that there was an approximate 7 week delay in actioning the request with cut-off at of 9 June 2023. As such, this can be the only delay (failure to act timeously) referred to. It follows then that in terms of charge 1 it can only be this failure to act timeously and follow up that lead to the situation described in charge 2. The stats provided on page 131 are fore a period prior to the 2023 issue and are therefore not applicable to the 2023 request, to which the Applicants response was delayed. Put differently, the delay by the Applicant in responding to Shaun in mid-2023 could have had no influence on any of the stats provided on page 131 of R as the said stats were for a period before his May 2023 request was even made.
72. Despite the charges, the Respondent also seeks to rely on the Applicant's responsibilities as LM. I would not dispute that the Applicant has a duty to mitigate risk for the Respondent. We, in my view, need to look at what she in fact did or did not do. As far back as July 2021, she responded to the request for User Verification. Although there may be some debate about whether it could or should have been done differently, in my view, it was sufficient for IT to realize what needed to change or at the very least follow up with the Applicant. The Applicant makes it clear that Ms Jonck is not a MT. None of the

LIS forms filled in, including the one that Ms Jonck appears to have filled in herself, either request any access that she may not have nor do any of these forms give a qualification or HPCSA registration number for the Ms Jonck. Again, in my view, from this alone IT should have realized there was a problem. How did she have the access she had without any qualification or registration number? In 2023, all be it approximately 7 weeks late she again informs IT of the problem. Why did IT not action her response in 2021 already?

73. IT did not testify and as such I am left in the dark on this issue. Various witnesses attempted to express what they believed the reason may be, but given that they are not IT and as such cannot speak on behalf of IT, this does not assist much. It is also argued that the Applicant should have followed up on her response to IT in 2021. This may well be correct, but the Applicant's testimony was that she had responded to the IT manager and as it is his department that actions it, she expected him to do so and follow up to ensure that it was actioned correctly. Even if I may have handled it differently, I do not believe that her explanation/view in this regard is unreasonable.
74. On the evidence presented, I do not believe that the Applicant was guilty of charge 1 and as a result thereof also charge 2.

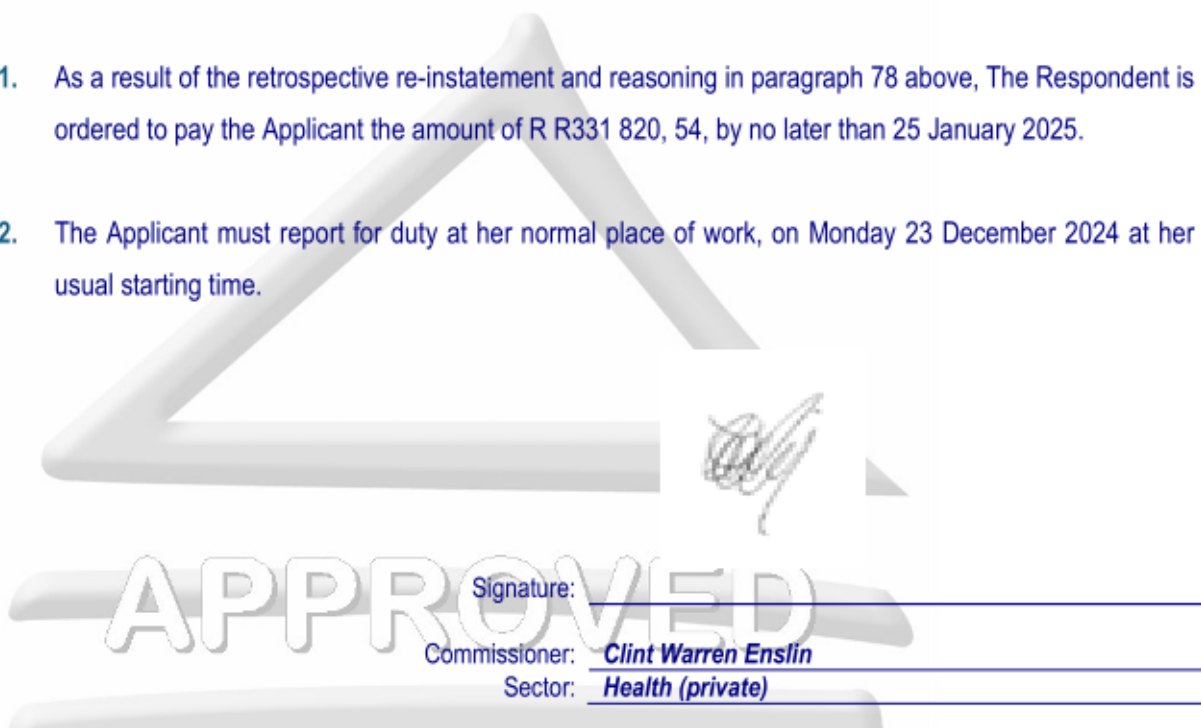
Was the sanction too harsh?

75. Even if I were to be wrong in the above, I am further of the view that given *inter alia* the totality of the circumstances, the Applicant's service period and record (no previous related warnings were presented) and the possible role played by IT, the sanction of dismissal would be too harsh.
76. In view of all the above, I find that the Applicant's dismissal was substantively unfair.
77. In terms of remedy, the Applicant has indicated that she seeks retrospective re-instatement. I can see no reason why this should not be awarded.
78. The Applicant was dismissed on 3 May 2024 and earned R69 342, 81 per month. She was granted condonation for late referral on 16 July 2024. In my view the Respondent cannot be held liable for the period of delay due to the condonation process unfolding. As such from 16 July to date of this award (10 December 2024), the Applicant has lost an amount of $R69\,342,81 \times 4 = R277\,371,24$ (16 July 2024 to 16 November 2024) + $(R69\,342,81 / 4,33 = R16014,50 / 5 = R3202,90$ (daily rate) $\times 17$ (working days

between 17 November and 10 December 2024) = R54 449,30). The total amount lost is therefore R277 371,24 + R54 449,30 = R331 820, 54.

AWARD

79. The dismissal of the Applicant, Ms Tanya Van Rooyen, by the Respondent, National Health Laboratory Service, was procedurally fair, but substantively unfair.
80. As a result of the substantively unfair dismissal, the Respondent, National Health Laboratory Service is ordered to reinstate the Applicant, Ms Tanya Van Rooyen, retrospectively with effect from 3 May 2024, into the same or similar position she held prior to her dismissal,
81. As a result of the retrospective re-instatement and reasoning in paragraph 78 above, The Respondent is ordered to pay the Applicant the amount of R R331 820, 54, by no later than 25 January 2025.
82. The Applicant must report for duty at her normal place of work, on Monday 23 December 2024 at her usual starting time.



Signature: _____
Commissioner: **Clint Warren Enslin**
Sector: **Health (private)**