REPUBLIC OF SOUTH AFRICA

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THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

JUDGMENT

Case no: C 86/2013

In the matter between:

OVERSTRAND MUNICIPALITY **Applicant**

and

A MAGERMAN N.O. **First Respondent**

MARIUS HENDRICKS **Second Respondent**

Heard: **10 October 2013**

Delivered: **28 October 2013**

Summary: LRA s 158(1)(h) – review of disciplinary findings by chairperson of disciplinary hearing in terms of collective agreement in local government – consideration of review of "any act performed by the State in its capacity as employer" in terms of LRA s 158(1)(h).

JUDGMENT

STEENKAMP J

Introduction

[1] This judgment considers, once again, the applicability of s 158(1)(h) of the Labour Relations Act.[1] The question arises whether a municipality can review the disciplinary findings of a chairperson, pursuant to a process embodied in a collective agreement, in terms of that subsection.

Background facts

[2] The second respondent, Mr Marius Hendricks (the employee) is the Chief: Law Enforcement and Security of the applicant (the Municipality). He is responsible for general law enforcement. He was found to have committed misconduct by being rude and abusive to the Chief of Traffic Services; and more seriously, by fraudulently submitting representations for the withdrawal or reduction of his personal speeding fines on the false grounds that the fines had been incurred in the course and scope of his official duties. The first respondent, Mr Magerman, was the chairperson of a disciplinary hearing that was held in terms of the provisions of a collective agreement applicable to local government. He imposed a sanction of a final written warning valid for 12 months on the first charge; and suspension without pay for 10 days, coupled with a final written warning valid for 12 months, on the second charge.

[3] The Municipality seeks to have the finding on sanction reviewed and set aside in terms of s 158(1)(h). It argues that, given the employee's position as a senior law enforcement official, coupled with the seriousness of the misconduct and his dishonesty, the sanction is so unreasonable that no reasonable arbitrator could have imposed the same sanction.[2] It argues that the employment relationship has irretrievably broken down, that the employee has destroyed the trust relationship with the Municipality, and that dismissal was the only fair and reasonable sanction given the specific circumstances of the case, the nature of employment and the seriousness of the misconduct.

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[1] Act 66 of 1995 (the LRA).

[22] Using the test in *Sidumo v Rustenburg Platinum Mines Ltd* 2008 (2) SA 24 (CC) and *Herholdt v Nedbank Ltd* [2013] ZASCA 97.

In limine: condonation

[4] The employee has argued that there has been an unreasonable delay in bringing this application. The LRA does not set a time limit for the bringing of a review under section 158(1)(h). This court suggested in *Weder*[3] that a delay of more than six weeks should at least trigger an application for condonation; and that the period of 180 days provided for in PAJA[4] would be at the outer limit for condonation to be granted. In this case, the ruling of the chairperson was made on 12 December 2012. The municipality launched the application on 13 February 2013, i.e. two months later. In the light of the rule of thumb that I have referred to and the fact that no exact time limit is prescribed by section 158(1)(h), I do not consider that to be an unreasonable delay. The explanation for the delay is satisfactory, even though part of it is blamed merely on the intervening "holiday period" and the fact that its attorneys' offices were closed. And as will become apparent, the municipality's prospects of success are good. It is in the interests of justice that condonation be granted.

Section 158(1)(h), *Ntshangase, Chirwa* and beyond

[5] The first legal question to be decided is if this Court has, *überhaupt,* the power to overturn the findings and sanction imposed by the chairperson.

[6] Mr *Leslie* argued that, post *Gcaba*[5], section 158(1)(h) cannot be read to include the power of the Court to review a decision such as this. In order to consider that argument, it is necessary, once again, to embark on a Cook's tour of the various court decisions from *Fredericks*[6] to *Chirwa*[7] and beyond.[8]

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[3] *Weder v MEC for the Department of Health, Western Cape* [2013] 1 BLLR 94 (LC) para [8].

[4] The Promotion of Administrative Justice Act, Act 3 of 2000.

[5] *Gcaba v Minister of Safety & Security and Others* 2010 (1) SA 238 (CC); (2010) 31 *ILJ* 296 (CC); 2010 (1) BCLR 35 (CC).

[6] *Fredericks & others v MEC for Education & Training, Eastern Cape and others* 2002 (2) SA 693 (CC); (2002) 23 *ILJ* 81 (CC); 2002 (2) BCLR 113 (CC).

[7] *Chirwa v Transnet* 2008 (4) SA 367 (CC).

[8] See also the discussion in Steenkamp & Bosch, "Labour dispute resolution under the 1995 LRA: Problems, pitfalls and potential" 2012 *Acta Juridica* 120 at 134-144.

Evaluation: the applicability of s 158(1)(h)

[7] Section 158(1)(h) provides that this Court:

> "...may review any decision taken or any act performed by the State in its capacity as employer, on such grounds as are permissible in law".

[8] In *Fredericks*[9], decided in 2001, the Eastern Cape Department of Education refused to approve applications for voluntary severance packages determined in terms of a collective agreement. The High Court held that the dispute concerned a collective agreement, a matter governed by s 24 of the LRA over which this Court – and not the High Court – had exclusive jurisdiction. On appeal to the Constitutional Court, that Court [per O'Regan J for a unanimous court] held that the applicants' claim was based on their 'constitutional rights to administrative justice and equal treatment' and flowed from the special duties imposed upon the State by the Constitution. The Court held that the jurisdiction of the High Court would only be ousted in respect of matters that 'are to be determined' by the Labour Court in terms of the LRA. It held that s 157(2) confers concurrent jurisdiction on the High Court and the Labour Court in the limited circumstances prescribed in that subsection. It must be borne in mind that *Fredericks* concerned a direct application to the High Court in terms of ss 9 and 33 of the Constitution and was decided (in the Constitutional Court) on the basis of an interpretation of s 157(2). It did not concern a review of an act performed by the State as employer in terms of s 158(1)(h). With regard to that subsection, O'Regan J merely noted:[10]

> "Whatever the precise ambit of s 158(1)(h), it does not expressly confer upon the Labour Court constitutional jurisdiction to determine disputes arising out of alleged infringements of the Constitution by the State acting in its capacity as employer"

[9] In *Chirwa*[11] the employee was dismissed for poor work performance. She applied to the High Court to have that decision reviewed and set aside, arguing that it was administrative action. The Constitutional Court handed

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[9] *Supra*.

[10] Para [42] – [43].

[11] *Chirwa v Transnet Ltd & others* 2008 (4) SA 367 (CC); (2008) 29 *ILJ* 73 (CC).

down judgment on 7 October 2009. In a majority judgment, Skweyiya J distinguished that position from the one in *Fredericks.* In *Fredericks* the applicants disavowed any reliance on their constitutional labour rights and relied instead on their rights to equality and just administrative action. It was not a labour case where the applicants relied on the LRA. *Chirwa*, on the other hand, was a labour matter. Because her claim was framed in a way that sought to impugn a failure to properly apply sections of the LRA, Ms Chirwa had to follow the specialised framework provided for in the LRA. In short, it was an unfair dismissal claim over which the High Court did not have jurisdiction.

[10] Some three weeks later, on 21 December 2012, the Labour Appeal Court handed down judgment in *Dorkin.*[12] It did not refer to *Chirwa.* It held that the conduct of disciplinary enquiries where the employer is the State is administrative action and thus open to review in terms of s 158(1)(h) of the LRA. Zondo JP[13] held:

> "[I]f the conduct of compulsory arbitrations relating to dismissal disputes under the Act constitutes administrative action, then the conduct of disciplinary hearings in the workplace where the employer is the state constitutes, without any doubt, administrative action. If it is administrative action, then it is required to be lawful, reasonable and procedurally fair. Accordingly, if it can be shown not to be reasonable, it can be reviewed and set aside."

[11] That judgment went on further appeal to the Supreme Court of Appeal. It is reported as *Ntshangase v MEC for Finance, KwaZulu-Natal and another.*[14] The SCA handed down judgment on 28 September 2009. The applicant's claim was squarely based on s 158(a)(h). The chairperson of a disciplinary hearing (Dorkin) had imposed a sanction of a final written warning. The LAC had reviewed and set aside that sanction in terms of s 158(1)(h) and replaced it with a sanction of dismissal. The employee appealed to the SCA. The SCA dismissed the appeal. During argument before the SCA, the employee relied on *Chirwa* to argue that a decision by

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[12] *MEC for Finance, KwaZulu-Natal v Dorkin NO* (2008) 29 *ILJ* 1707 (LAC).

[13] (as he then was) at 1716 B-C para [10].

[14] 2010 (3) SA 201 (SCA).

an organ of State to dismiss an employee or not, is not administrative action and therefore not reviewable by the Labour Court. However, his counsel conceded that the Labour Court did have jurisdiction to adjudicate a claim under s 158(1)(h). He submitted that the decision not to dismiss the employee was not administrative action and therefore not reviewable.[15]

[12] The SCA held that the decision by the chairperson – exercised in terms of a collective agreement that is given statutory force by s 23 of the LRA – constitutes administrative action. It held that it was reviewable in terms of s 158(1)(h). It held further that the sanction imposed by Dorkin was grossly unreasonable and therefore open to review by the MEC (the employer).

[13] Barely a week later, the Constitutional Court handed down judgment in *Gcaba*[16]*.* That Court did not consider the judgment in *Ntshangase*, nor did it deal with the provisions of s 158(1)(h). Van der Westhuizen J commented (in the context of a failure to promote):[17]

> "Generally, employment and labour relationship issues do not amount to administrative action within the meaning of PAJA. This is recognised by the Constitution. Section 23 regulates the employment relationship between employer and employee and guarantees the right to fair labour practices. The ordinary thrust of section 33 is to deal with the relationship between the State as bureaucracy and citizens and guarantees the right to lawful, reasonable and procedurally fair administrative action. Section 33 does not regulate the relationship between the State as employer and its workers. When a grievance is raised by an employee relating to the conduct of the State as employer and it has few or no direct implications or consequences for other citizens, it does not constitute administrative action."

[14] The court in *Chirwa* held that a failure to promote is not administrative action. The employee's claim was essentially rooted in the LRA and should have been adjudicated in the Labour Court.

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[15] *Ntshangase* at 204 G-H para [5].

[16] *Gcaba (supra),* 7 October 2010.

[17] *Gcaba* para [64] (footnotes omitted).

[15] As I have mentioned above, the Constitutional Court's decision in *Chirwa* did not consider a review of a disciplinary sanction in terms of s 158(1)(h), considered by the SCA in *Ntshangase*, nor did it discuss that judgment.

[16] This Court is faced with a review application in terms of s 158(1)(h) that falls squarely within the ambit of the SCA decision in *Ntshangase*. That decision has not been overturned by the Constitutional Court – at least not in clear terms. Is this Court still bound by the higher authority of the SCA in *Ntshangase,* or has that decision been overruled by implication, flowing from the Constitutional Court's decision in *Chirwa*, as Mr *Leslie* argued?

[17] This Court has attempted to grapple with the question before. In *Harri*[18] this Court had to consider an application very similar to the present one. It concerned a review in terms of s 158(1)(h) of Harri's decision, in his capacity as chairperson of a disciplinary inquiry in terms of the SAPS regulations, to impose a sanction short of dismissal where a police officer had stolen darts from a department store. In the course of the judgment[19] this Court examined the impact of *Ntshangase*[20]*, Chirwa*[21] *and Gcaba*[22] in some detail. I came to the following conclusion:[23]

> "The Constitutional Court has thus put it beyond dispute in *Chirwa* and *Gcaba* that the dismissal of a public service employee does not constitute administrative action. Why, then, should the state as employer be able to review a decision by its own functionary in this case?
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> The distinction appears to me to lie in the fact that, in this case, the state is acting qua employer; and the functionary is fulfilling his or her duties in terms of legislation."

[18] Having considered the decisions in *Dorkin*[24] *and Ntshangase*[25]*,* I concluded:[26]

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[18] *National Commissioner of Police v Harri NO & others* (2011) 32 *ILJ* 1175 (LC).

[19] Paragraphs [15] – [32].

[20] *Supra.*

[21] *Supra.*

[22] *Supra.*

[23] *Harri (supra)* paras [20] – [21].

[24] *Supra.*

[25] *Supra.*

> "The effect of these decisions seems anomalous. The dismissal of a public service employee does not ordinarily constitute administrative C action; yet the decision of the chairperson of a disciplinary hearing in the public service, appointed in terms of legislation, does. Yet I am bound by the decisions in *Dorkin* and *Ntshangase*."

[19] The judgment in *Harri* was referred to in the decision of the Labour Appeal court in *De Bruyn*[27]. It was not overturned. Mlambo JP noted:[28]

> "The supposition that public servants had an extra string to their bow in the form of judicial review of administrative action, ie acts and omissions by the state vis-à-vis public servants, evaporated when the Constitutional Court in *Chirwa v Transnet Ltd & others*, held that the dismissal of a public servant was not 'an administrative act' as defined in PAJA and therefore not capable of judicial review in terms of that Act. Any uncertainty regarding the interpretation of the *Chirwa* judgment was removed in the subsequent decision in *Gcaba v Minister for Safety & Security & others*. The result is that a public servant is confined to the other remedies available to him or her.
>
> One of the effects of *Chirwa* is that a dismissal is not to be regarded as an 'administrative act' by the state but merely as the act of the state in its capacity as an employer. This decision brought us to the situation where the pre-*Chirwa* substratum of s 158(1)*(h)* fell away, although there may conceivably still be employer acts which are almost indistinguishable from administrative acts. The post-*Chirwa* meaning of s 158(1)*(h)* has received the attention of the Labour Court in *De Villiers v Head of Department: Education, Western Cape Province*, *SA Revenue Service v Commission for Conciliation, Mediation & Arbitration & others*, and *National Commissioner of Police & another v Harri NO & others.*
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> But it does not follow that because the remedy of judicial review may still exist for public servants that the Labour Court will entertain an application to review 'any act performed by the State in its capacity as employer' as a matter of course. Recourse to review proceedings, in terms of s 158(1)*(h)*, takes place in the context of the law relating to judicial review as well as the

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[26] *Harri (supra)* para [29].

[27] *PSA obo De Bruyn v Minister of Safety & Security* [2012] 9 BLLR 888 (LAC); (2012) 33 *ILJ* 1822 (LAC).

[28] At paras [26] – [28] (footnotes omitted).

> other elements of the system of dispute resolution which the LRA has put in place and also other applicable statutes."

[20] Two issues must be noted arising from *De Bruyn.* The one is that this Court may still entertain an application to review "any act performed by the State in its capacity as employer" in terms of s 158(1)(h) but it will not simply do so "as a matter of course". The other is that public service employees who have been dismissed, no longer have an extra string to their bow; *non constat* that a public service employer has been deprived of the apparent remedy embodied in section 158(1)(h) and applied in *Harri*.

[21] In *Kaylor v Minister of Public Service & Administration and another*[29] this Court again applied s 158(1)(h). It reviewed and set aside a placement directive of the Director-General, applying the principles in *Harri.*[30] The application of s 158(1)(h) in *Kaylor* was upheld on appeal.[31]

[22] Then, in *Booysen,*[32] this Court reiterated that it is bound by the application of s 158(1)(h) as applied in *Ntshangase*[33] and *Harri.*[34] *Booysen* was also upheld on appeal, although the LAC did not deal with s 158(1)(h) in terms, having upheld the appeal on the first point, namely Commissioner Petros's lack of authority.

[23] Lastly, in *Weder*[35]*,* this Court noted:

> "As I pointed out above, the Constitutional Court decided in *Chirwa* and *Gcaba* that the dismissal of a public servant is not an 'administrative act' as defined in PAJA and therefore not reviewable in terms of PAJA. That view was recently reiterated by the Labour Appeal Court in *PSA obo De Bruyn v Minister of Safety & Security.*'

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[29] (2013) 34 *ILJ* 639 (LC) paras [24] – [27].

[30] *Supra.*

[31] *Minister for Public Service & Administration and another v Kaylor* [2013] 9 BLLR 858 (LAC) paras [22]-[24] and [31].

[32] *Booysen v Minister of Safety & Security and others; Provincial Commissioner Petros NO v Joubert NO & another* (2012) 33 (*ILJ*) 1132 (LC) paras [30] – [32].

[33] *Supra*.

[34] *Supra.*

[35] *Weder v MEC for the Department of Health, Western Cape* [2013] 1 BLLR 94 (LC) paras [24] – [27] (footnotes omitted).

> But that is not the only possible statutory basis for the review. The application is brought in terms of section 158(1)(h) of the LRA. In *De Bruyn*, the Court sounded a cautionary note. It stated that this Court will not entertain an application to review "any act performed by the State in its capacity as employer" in terms of section 158(1)(h) of the LRA as a matter of course.
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> Nevertheless, having had regard to the judgments of this Court in *De Villiers* and *Harri*, the Labour Appeal Court did not overturn the effect of those judgments. It merely pointed out that not all review applications in terms of section 158(1)(h) will be entertained and that, in certain cases, the LRA may oust the jurisdiction of the Labour Court; for example, where the LRA requires that a dispute be resolved through arbitration in terms of section 157(5) or a binding collective agreement.
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> In the case before me, the applicant did attempt to refer the dispute to arbitration. The Bargaining Council held that it did not have jurisdiction, hence the referral to this Court. I am satisfied that this is a case where the Court does have jurisdiction to entertain the matter in terms of section 158(1)(h)."

[24] Given the judgments of the Labour Appeal Court in *Kaylor*[36] and the other judgments referred to, I am not persuaded that *Ntshangase*[37] is no longer good law and that s 158(1)(h) does not apply to an application such as the current one.

[25] The only possible conflicting judgment that Mr *Leslie* referred to, is the recent judgment in *SAMWU obo King & Solomons v Theewaterskloof Municipality.*[38] But that case concerned an unfair dismissal dispute. As the learned judge correctly pointed out,[39] the LRA requires that such a dispute be referred to arbitration. on those facts, the jurisdiction of the Labour Court was ousted.

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[36] *Supra*.

[37] *Supra.*

[38] C 719/2010, 28 August 2013.

[39] At para [18].

[26] The case before me does not concern an unfair dismissal. It fits squarely within the circumstances in *Harri*[40] and *Ntshangase*[41]. As I have stated before, I am not persuaded that the judgment in *Gcaba*[42] ousts the jurisdiction of this Court to review an act of the State as employer – such as the decision not to impose a sanction of dismissal after a disciplinary hearing in terms of statutory regulations – as opposed to the right of a public service employee to review a decision to dismiss. In the latter case, the employee must use the statutory dispute resolution process outlined in the LRA for unfair dismissal disputes. The Municipality, on the other hand, does not have a concomitant process available to it; its right of review is codified in s 158(1)(h).

[27] The disciplinary hearing was conducted in terms of the Disciplinary Procedure and Code Collective Agreement concluded under the auspices of the South African Local Government Bargaining Council. The parties agree that the Municipality is an organ of state by virtue of section 239 of the Constitution. The chairperson acted as delegate of the Municipal Manager and exercised his powers to discipline as contemplated by s 55(1)(g) of the Local Government: Municipal Systems Act[43]. He was fulfilling his duties in terms of legislation. I hold that this Court does have jurisdiction to review the decision of the chairperson in terms of s 158(1)(h) of the LRA.

The merits: Is the decision open to review?

[28] The employee occupies a senior and trusted position. He is responsible for law enforcement in the Municipality. Contrary to those duties, he broke the law and then tried to defeat the ends of justice by acting dishonestly. He instructed a subordinate, Constable Robyn Samuels, to draft representations for the withdrawal of 13 speeding fines. He signed off on these representations, knowing that they were false, as he did not incur the fines in the course and scope of his official duties.

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[40] *Supra.*

[41] *Supra.*

[42] *Supra*.

[43] Act 32 of 2000.

[29] It beggars belief that the chairperson could consider a sanction of suspension without pay for 10 days, coupled with a final written warning, to be a fair sanction for the misconduct. The second charge[44] was formulated as follows:

> " 1. Dishonesty including fraudulent misrepresentation, alternatively a breach of item 1.2.5 of the SALGBC Disciplinary Procedure Collective Agreement which requires you to conduct yourself with honesty and integrity; and
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> 2. Breaching item 2(b) of the Code of Conduct for Municipal Staff Members contained in Schedule 2 of the Municipal Systems Act No 32 of 2000 which requires you to perform the functions of office in good faith, diligently, honestly and in a transparent manner; and
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> 3. Breaching item 2(d) of the Municipal Systems Act which requires you to act in the best interest of the Municipality and in such a way that the credibility and integrity of the Municipality are not compromised; in that:
>
> As Chief of Law Enforcement and accordingly a Senior Manager of the Municipality, you have no reason to patrol or respond to incidents, and hence would have no reason to submit representations for the withdrawal or reduction of traffic speeding fines related to your official duties at all.
>
> In any event, under no circumstances may you dishonestly and fraudulently place reliance on such representations on purportedly attending to alleged incidents which you did not attend to, and moreover with there being no trace in the Municipality's records with regard to such incidents."

[30] At the disciplinary hearing the employee persisted with his version that he attended to "operational aspects". The chairperson found that this was improbable, given that no proof could be found in the Municipality's extensive records and occurrence books of even one such incident. he found that the employee had committed the dishonest and fraudulent misconduct.

[31] The Municipality submitted that the misconduct was serious; that the employee had shown no remorse; that the trust relationship had been destroyed; and that dismissal would be the appropriate sanction.

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[44] i.e. the more serious charge and the one the Municipality takes issue with.

[32] In mitigation, the chairperson took into account the following factors:

32.1 A clean disciplinary record over 17 years;

32.2 The fact that the employee was appointed as head of legal enforcement ("Hoof van Wetstoepassing") in 2009;

32.3 That his performance was good;

32.4 That the charges were not connected to his duties ("dat die klagtes totaal verwyder is van Hendricks se pligte as Hoof: Wetstoepassing".

[33] The chairperson accepted that the employee had been dishonest and that the misconduct contained an element of deception. Yet he drew an inference that the practice (to make representations to quash speeding fines) was probably common. ("Die manier hoe die aansoek hanteer word en die gemaklikheid waarmee Hendricks die procedure gevolg het laat my tot die afleiding kom dat hierdie praktyk waarskynlik algemeen was").

[34] The chairperson came to the conclusion that the trust relationship had not broken down irretrievably.

[35] It is difficult to fathom how the chairperson could have reached this conclusion on the evidence before him. I fail to understand how the fact that the employee had been appointed as the head of legal enforcement in 2009 could be a mitigating factor. If anything, that should have been aggravating. In that eponymous position, he should have ensured that the law is enforced; instead, he flouted the law and then dishonestly tried to defeat the ends of justice. If that does not signal the destruction of a trust relationship with his employer, a state entity charged with serving the ratepayers of the Overstrand, not much will.

[36] The finding that the charges were not connected to the employee's duties is also entirely irrational and devoid of logic. The employee falsely misrepresented exactly that to be the position, i.e. that he incurred the speeding fines in the execution of his official operational duties. That was a lie. Yet the chairperson accepts the fact that it was not so connected, contrary to the employee's evidence, as a mitigating factor.

[37] The fact that the employee was not sanctioned for poor performance is entirely irrelevant. He was charged with and found guilty of gross misconduct involving dishonesty. That had nothing to with his performance.

[38] Given the seriousness of the misconduct and the position of the employee as chief of law enforcement, the sanction imposed by the chairperson was irrational and unreasonable. He clearly did not apply his mind to the factors outlined above. The mitigating factors that he took into account do not remove the operational need of the municipality to ensure that senior officials in those positions are exemplary in their conduct and can be trusted by the municipality and by the public. There is also a constitutional obligation on the municipality imposed by section 152 of the Constitution to provide accountable government for local communities; to ensure the provision of services to those communities; and to promote a safe and healthy environment. If the employee were to remain in the employ of the municipality, it would be failing in its duties to its ratepayers.

Conclusion

[39] In short, the conclusion reached by the chairperson is one that no reasonable person could reach on the facts of this case. As was the case in *Ntshangase*[45]*,* this court is in a position to substitute its own decision for that of the original functionary. All of the evidence is before me, including a full transcript of the oral evidence at the disciplinary hearing. In the words of Bosielo AJA[46] in *Ntshangase*, to remit this matter to the chairperson of the disciplinary hearing in a situation where the appropriate sanction to be imposed is inevitable, would not be fair to both parties. Given the nature and gravity of the misconduct for which the employee was found guilty, there can be no argument that dismissal was the only appropriate sanction. Remitting the matter to the disciplinary hearing to impose a sanction of dismissal would serve no purpose. It would merely lead to further delays and costs.

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[45] *Supra.*

[46] (as he then was) in *Ntshangase (supra)* para [22] at 211 A-B.

[40] With regard to costs, I take into account that the employee has had to incur legal costs in order to defend the sanction imposed by the chairperson. Even though the municipality has been successful at its costs will be paid by the ratepayers of the Overstrand municipality, I do not consider a costs order to be appropriate in law and fairness.

Order

[41] The first respondent's determination on sanction is reviewed and set aside. It is replaced with a sanction of summary dismissal of the second respondent.

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Steenkamp J

APPEARANCES

APPLICANT:	R G L Stelzner SC Instructed by Fairbridges.
SECOND RESPONDENT:	G A Leslie Instructed by Cheadle Thompson & Haysom.