# ARBITRATION AWARD

Commissioner: Elridge Edwards
Case No.: WECT 10980 - 19
Date of Ruling: 6 November 2019

**In the Arbitration between:**

Ernest Hendricks
(Union / Applicant)

And

**PRASA – Metrorail Western Cape**
(Respondent)



**Union/Applicant's representative:** Advocate. L. Myburg
Union/Applicant's address: 32 Albertyn Road
Muizenberg
7945
Telephone: (021) 449 2282 / 083 556 2725
Telefax / Email: ernesthendricks01@gmail.com / lmyburg@africa.com

**Respondent's representative:** Ms. V. Cairncross, Acting ER Manager
Respondent's address: PO Box 5446
Cape Town
8000
Telephone: (021) 449 3096 / (021) 449 4318 / 072 869 5496
Telefax/Email: vcairncross@metrorail.co.za / cnicholas@prasa.com

## Particulars of proceedings and representation

1. The matter was set down as a conciliation and arbitration ("con/arb") hearing at 09h00 on 21 August 2019 at the CCMA offices in Cape Town. Advocate Lynette Myburg appeared for the applicant, Mr. Ernest Hendricks whereas Ms. Vicky Cairncross, the Acting ER Manager appeared for the respondent PRASA Metrorail Western Cape. The matter was adjourned. It resumed on 22 October 2019 and concluded on 23 October 2019.

## The issue in dispute

2. I am required to determine whether the respondent's suspension of the applicant constitutes an unfair labour practice in terms of section 186 (2) (b) of the LRA. I am also required to determine an appropriate remedy if I determine that the applicant's suspension was unfair.

## Background

3. A train was set alight at Cape Town Station on 21 April 2019. The applicant apprehended the suspect within two days. The respondent suspended the applicant on 25 April 2019 pending the outcome of a forensic investigation into estimated losses of 33 million rand of its assets and poor and inadequate security deployment at Cape Town station, which enabled the burning of two trains on 21 April 2019. The applicant contends that his suspension was procedurally unfair because he was not afforded an opportunity to make representations as to why he should not have been suspended. The respondent's rules also require that an employee's suspension should not exceed 30 days unless it is a complex matter. The applicant's had been suspended for longer that the prescribed 30 days, without the requisite permission from the respondent's CEO. He contends that his suspension was substantively unfair because he apprehended the person who set the train alight. The respondent did not explain the specific reason it was necessary for him to be removed from the workplace. He contends further that the respondent has an ulterior motive for keeping him on suspension. The background is that the applicant was previously suspended in 2014. The respondent failed to comply with the ruling of a senior manager, Mr. Enos Ngucshane who chaired that hearing and found that the applicant's suspension was unlawful and order that the applicant had to be reinstated.

4. The respondent emphasizes that the applicant was notified that he was being suspended pending the outcome of a forensic investigation into the burning of the two trains. He was also informed that he would retain all his benefits while he was suspended. A forensic investigation was necessary to establish and assess the exact responsibilities and accountabilities relating to the incidents because the respondent suffered such considerable financial losses. The respondent followed its supply chain management processes to procure the services of a private security company, Fuse Security (Pty) Ltd

to do the forensic investigation. It had to follow due process in finalizing that appointment, which contributed to the delay in concluding the investigation. The respondent was not required to give the applicant an opportunity to make representations pertaining to why he should not have been suspended as it was a precautionary suspension and not a disciplinary suspension. The applicant was suspended with full pay. He has thus not suffered any material prejudice.

5. Both parties made opening statements and handed up bundles of evidence. The applicant testified, presented audio recordings of telephonic discussions that he had with senior managers who allegedly confirmed that his suspension was unlawful. He did not call any other witnesses. The respondent called two witnesses, Ms. Chantel Nicholas, an ER specialist and Mr. Mark Horn, the Human Resources Manager. The arbitration hearing was digitally recorded. Only the salient aspects of the evidence and argument are referred to herein.

**Survey of evidence and argument**

**The applicant' case**

**Ernest Hendricks (the applicant)**

6. As the Regional Security Manager for the Western Cape, the applicant is responsible for the protection of the respondent's assets, the commuters, staff and income. He was at home on 21 April 2019 when he received a call that there was a train burning at Cape Town Station. The fire spread rapidly from the one train to the other. He went to the scene, reviewed the CCTV video footage and identified a possible suspect who jumped out of the coach and ran away along the train tracks moments after it started burning. He spotted the suspect on the platform again the following day. The suspect confirmed that he set the train alight and explained how he did so when the applicant questioned him. He also admitted that he set the train alight when he appeared in Court. The investigating officer thanked the applicant personally for providing such a comprehensive statement he provided. The suspect would have been released without it. The applicant continued his investigation and submitted the report he compiled to respondent's head office. Mr. Richard Walker, the Regional Manager called the applicant in on 25 April 2019 to inform that he was instructed to suspend him. The applicant said it was not a problem. He was expecting something like that. The applicant had to hand in his laptop and his cellphone, sign his letter of suspension and left immediately.

7. The applicant referred to the "Disciplinary Code and Procedure Agreement" ("DCPA") and confirmed that it is used in all disciplinary processes. Clause 1.5 provides that the DCPA shall be applied fairly and consistently to all employees. The applicant argues that the DCPA applies to him because he is an employee. So too does the HR Manual, which provides that the letter of suspension must specify

the length of suspension, the date on which the employee must return to work, the alleged offence, employee's explanation, confirmation of suspension and lifting of suspension. It provides further that suspension should only be long enough to enable the allegations against the employee to be properly investigated. Unless a case is very complicated or special circumstances exist, suspension pending a disciplinary hearing should not exceed 30 days or the period of the disciplinary process. If the period is to be, exceeded permission must be obtained first from the CEO.

8. The applicant referred to the "Notice on the Mandatory 30 days for a disciplinary hearing to be concluded and suspensions exceeding 30 days" that was circulated to Human Capital and ER Managers on 19 May 2016. Ms. Ramatsimele Mothiba, the Acting Senior HR Manager issued the notice after an audit report found that the respondent was not complying with its disciplinary procedures. The document sought to remind managers that clause 4.4 of the DCPA requires disciplinary hearings to be concluded within 30 days and that if an extension is sought, permission shall be sought from the Regional Manager's / Executive Manager's Office upon furnishing substantive and legitimate grounds for the delay. If not obtained, the case has to be withdrawn. Managers were reminded that Clause 11.1 authorized suspensions where, in the opinion of management, an offence by an employee is regarded as serious, and/or that the continued presence of the employee at the company's premises may prejudice the interests of the company, the employee, other employees or hamper an investigation. The suspension period should not exceed a maximum of thirty (30) calendar days or the period of the disciplinary process. If this period is to be exceeded permission therefore must be obtained from the CEO". The notice stated further that all HR Managers are expected to comply and adhere to this agreement with immediate effect to avoid any further adverse audit report findings. It stated further that any HR and/or ER Manager found contravening the agreement, following the directive without proper approval, would face disciplinary action. The applicant testified Paragraph 4.1.2 of South Africa Rail Commuter Corporation disciplinary code and grievance procedure contained in the respondent's bundle, ("the SARCC code"), which authorized the SARCC to suspend employees on conditions that it may determine, does not apply to him. The SARCC no longer exists. PRASA took over its mandate in 2010. He is not aware of any disciplinary code applying to managers only. He has never been informed of such a code. He has been a manager for more than six years. The respondent tried to rely on the SARCC code when he was previously suspended in 2014. The chairperson of that disciplinary hearing, Ngucshane found that code to be invalid and applied DCPA, instead. The applicant referred to the primary objectives set out in clause 14.1.2 of the HR manual and confirmed that it did not apply only to certain employees. It applies to all employees.

9. The applicant referred to various articles that appeared in die Burger, die Son and other newspapers and in social media in recent months where his suspension had become the focus. He testified that he

is suffering irreparable damage to his reputation as he being portrayed in very negative light in the media. His family is also suffering as they face all kinds of accusations from the community relating to these incidents.

10. Mr. Callie Van Eck, the current Acting Head called the applicant about a week prior to his suspension to inform him that he had to respond to an anonymous letter of complaint. Van Eck dismissed the letter as nonsense and advised the applicant to ignore it. SATAWU put the group executives to suspend him because he was not acting in their interests. They were threatened with suspension if they were not willing to suspend the applicant. Walker received similar threats. The applicant played audio recording of a telephone call that he received from a Senior Security Manager. They allegedly advised him that he was suspended in respect of the union's allegations, which do not related to the burning of the trains.

**The Respondent's Case**

**Mark Horn (first witness)**

11. Horn, the Benefits and Payroll Manager has been fulfilling the role of the Acting HR manager for the Western Cape for the past five years. He testified that the applicant's suspension was necessary because the respondent incurred losses of 33 million rand. There was a risk that the investigation could be compromised with the applicant remaining in the workplace. He could have influenced witnesses or tampered with evidence. He could however not explain how the applicant could specifically influence witnesses or tamper with evidence when the person who burnt the trains was already in jail and his investigative reports was already at the respondent's disposal. The applicant is currently still on suspension because the forensic investigation is still being finalized. Horn referred to a letter dated 13 June 2019, in which the Senior Manager, Mr. Thabo Mashea purportedly appointed Fuse Security (Pty) Ltd as the forensic investigators in the matter. He expressed a view that the investigation was probably taking long, due to its intricate nature. He did not consider that the delay was unreasonably long as Fuse was only appointed in June 2019. The decision to suspend the applicant would have been the result of a consultative process between the Region and Head Office. Horn could not comment on whether Head office instructed Walker to suspend the applicant. Walker would have been party to the process. The HR Department does not suspend employees. Line managers fulfill that function. HR has to ensure that a fair process is conducted. The person would usually receive a notice of suspension, which would inform him or her of the right to make representations within 48 hours as to why he or she should not be suspended. The suspension will be withdrawn or confirmed, after consideration of such representations.

12. The DCPA only applies to junior staff as it is an agreement entered into between the unions, which represent junior staff in the bargaining forum. Horn denied that it applied to the applicant because he is a manager. The SARCC Code applies to the applicant. Horn could however not point to the specific provision in the SARCC Code to substantiate his contention. He argued that PRASA adopted the SARCC policy when it replaced the SARCC. The fact that the SARCC Code was last edited in 2007 did not detract from its relevance. It applies to managers at Level 610 (Assistant Managers) and higher. Myburg challenged Horn to refer to a specific provision in the SARCC code, which substantiates that particular contention. He did not do so. He could not recall who issued the instruction that the SARCC Code had to be applied to managers. He could also not explain the process where it was determined that the SARCC code is applicable to managers as opposed to the DCPA. He agreed that there is no reason why a different disciplinary code should be applied to managers. Horn perused DCPA but could not point out where it confirmed that it does not apply to managers. He maintained that it did not apply to managers because it was an agreement negotiated by the unions in the bargaining forum. Horn was familiar with a memorandum that was circulated to all PRASA employees, HR Managers, and Payroll Managers on 12 May 2016 with "Compliance to the DCPA" as the subject. It emphasized that strict compliance with clause 4.4 and 11.1 of the DCPA was required. So too, did the Notice circulated on 19 May 2016. Neither of these documents stated that it did not apply to Management. Horn confirmed that a pro forma suspension notice is used when notifying junior employees and managers of their suspension. He did not know why such a notice was not issued to the applicant. The applicant was not afforded the right to make representations as to why he should not be suspended within 48 hours, because the respondent decided to conduct a forensic investigation.



13. Horn agreed that an assistant manager, Mr. T. Makapela was suspended in an unrelated matter on 1 February 2019. The respondent did not have to obtain permission from the CEO, to extend his suspension, if it exceeded 30 days in terms of clause 11.1 of the DCPA because he was a manager. Myburg referred Horn to a request for an extension of the applicant's suspension that Quinton Fourie, the Acting Regional Security Manager addressed to Dries Van Der Walt, the Acting CEO on 26 May 2019. She questioned why he did so. The applicant is also a manager. Horn suggested that Fourie might not have known that it was not necessary for him to request such an extension because the applicant is a manager. He agreed that it was his responsibility to guide Fourie on such matters. He did not agree that Fourie requested the extension because clause 11.1 is applicable to managers.

14. Horn recalled that the applicant's suspension was lifted in 2015. He could not recall details relating to whether Ngucshane made a specific finding that the applicant's suspension had to be uplifted because the extension contemplated in clause 11.1 of the DCPA was not obtained or that the applicant had to

institute proceedings in the Labour Court to enforce those findings. He had a vague recollection after Myburg referred him to the applicant's court papers of those proceedings. He initially could not recall that he issued the applicant with a letter notifying him that he was being transferred to another department. He later confirmed that he had a vague recollection of the letter after Myburg pointed out that his signature appeared on the letter. He could not recall why the applicant was transferred.

15. Horn intimated that the forensic investigation was initiated as a broader inquiry into all trains burning. Myburg referred Horn to a list of all trains that were burnt between 2010 and 2018. She put it to him that nearly 100 trains were burnt during that period. He could not comment on whether a forensic investigation was conducted into any of those incidents. He confirmed that forensic investigations have not been conducted in respect of the six trains that were burnt since the applicant was suspended. He did not know why. Nobody else has been suspended in connection with those incidents. Horn contended that those six trains were burnt in transit whereas the trains, in respect of which the applicant was suspended, were stationary. The forensic investigation was necessary to determine whether applicant deployed sufficient resources to protect the respondent's assets. Myburg questioned why Horn testified that the forensic investigation was launched because the burning of trains was not a regular occurrence. The list suggested that it was common occurrence. He agreed that CPI is contracted to the respondent, to do forensic investigations. He did not know why they were not used. Walker informed Horn that the forensic investigation was complete, and that it had been presented to respondent's board on 24 October 2019. Walker did not attend that particular board meeting. Horn did not know when Fuse concluded the forensic report but anticipated that it would be made available soon. He was not interviewed during the investigation. .



**Chantal Nicholas (second witness)**

16. Nicholas has been employed as an ER Specialist for six years. She testified that the DCPA applies to junior employees and not to the applicant. The SARCC code applies to him because he is a manager. The distinguishing factors was that the DCPA was signed by labour and management whereas the SARCC code was only signed by management. The fact that SARCC logo appeared on the code does not detract from its applicability. PRASA adopted all SARCC's policies and codes when it took over. The SARCC code has been applicable to all managers during her employment. The Notices circulated on 16 and 19 May 2016 apply to the junior staff and not to the applicant.

17. Nicholas recalled that Ngucshane issued a ruling confirming that clause 4.4 and 11.1 of the DCPA was applicable to the applicant in 2014. She however maintains that that was the incorrect finding because the respondent has always applied the SARCC code to managers whereas the DCPA has always applied to junior employees. She addressed a letter to Walker to complain that she found

Ngucshane finding unsettling. Nicholas agreed that she might have had a discussion with the applicant regarding the upliftment of Makapela's suspension. She testified that she might have said that it had to be uplifted because 3 months had passed without charges being brought against him. She denied that her advice to uplift the suspension had anything to do with the extension of a 30 - day period. Makapela was also a manager. She could not comment on the applicant's version that he uplifted Makapela suspension as soon he became aware that it had exceeded 30 days. Nicholas referred Fourie's request for an extension of the applicant's suspension period. Two junior employees were also suspended at the same time. It was necessary for him to obtain extensions in respect of those employees. He may have assumed that he needed to request such an extension in respect of the applicant too. Nicholas picked - up on the error and instructed her staff not to process the request for the extension in respect of the applicant, as it was not necessary. She agreed that six months was a long time to be suspended. However, the parties were waiting for the completion of the forensic report in the present matter. Nicholas does not know why the applicant was suspended or why he could continue working while the investigation was being conducted. The other two junior employees are still on suspension. Nicholas confirmed that respondent applied for the extension of their suspensions.

18. Nicholas confirmed that the SARCC does not say that it applies to management only. She maintained that it did apply to the applicant. That is what she was taught when she started working for the respondent. She was reprimanded for not implementing the chairperson's finding in 2015. She had no recourse to appeal the chairperson finding because the respondent withdrew the case. Nicholas did not have a copy of the letter of complaint that she addressed to Walker regarding the chairperson's finding in 2015. She does not know how Walker addressed her complaint. Myburg put it to Nicholas that the respondent accepted the chairperson's ruling that clause 4.4 and 11.1 of the DCPA applied to all employees, including managers in the absence of any evidence to the contrary. Nicholas maintained that there are separate disciplinary codes applicable to managers and junior employees. The rules set out in the notice of suspension issued to the applicant differed from the rules contained in the SARCC code. It corresponded more with the rules in the DCPA. The HR Manual applied to all employees, including the applicant. Nicholas could not confirm whether the applicant was informed of his right to make representations as to why he should not be suspended or of the length of his suspension as set out in clause 14.2 of the manual. She was not present when he was issued with his notice. She also does not know why he did not receive the pro forma notice explaining his right to make such representations.

19. Myburg put it to the Nicholas that Horn had testified that the respondent justified its decision not to observe the applicant's right to make representations as to why he should not be suspended because

it informed him that he was suspended pending the outcome of a forensic investigation. She concurred with that rationale, if that was what he testified. She confirmed that the applicant's notice did not elaborate on those issues. She agreed that the HR manual, which is applicable to all employees, is consistent with clause 11.1 of the DCPA because it also prescribes that the term of suspension should exceed 30 days.

20. Nicholas agreed that the document entitled suspension form that was issued to Makapela on 1 February 2019 was more of an invitation for him to submit his representations as to why should not have been suspended within 48 hours than an actual suspension.

**Analysis of Evidence and Argument**

21. The applicant bears the onus of proving that his suspension constitutes an unfair labour practice in terms of in terms of section 186 (2) (b) of the Labour relations Act 66 of 1995 ("the LRA").

22. I have to determine whether clause 11.1 of the DCPA is applicable to the applicant or whether clause 4.1.2 of the SARCC code, which authorizes the respondent to suspend any employees on such conditions that it may determine, is applicable. The respondent contends that the latter is applicable because the applicant is a manager. That would mean that the respondent did not have to afford the applicant an opportunity to make representations within 48 hours as to why he should not have been suspended and that the applicant could be suspended for longer than 30 days, without the respondent having to obtain permission from the CEO.

23. Horn and Nicholas both testified that the SARCC code is applicable to the applicant because he is a manager. They both maintained that the DCPA could not apply to managers because it was an agreement entered into between the unions who represent junior employees and management at the bargaining forum. They did not provide any evidence to substantiate their contention. Horn testified that when a policy is applicable to a certain group that policy will confirm its scope of applicability. Both Horn and Nicholas conceded that the SARCC code does not specify that it applies to managers. Caincross however argued that clause 3.2 of the constitution of the PRASA Bargaining Forum provides that it is applicable to all junior employees within the bargaining unit. The DCPA's introduction confirms on the other hand that it applies to all employees. Horn and Nicholas both conceded that there is no reference anywhere in the DCPA that it is applicable to junior staff only. The HR Manual, which also recommends that suspensions should not exceed thirty days specifically, states that it is applicable to all employees. Nicholas agreed that the HR manual applies to all employees but argued that it is a guide, which has to be read with other policies. Cairncross made the same argument.

24. It is common cause that Ngucshane, a senior manager who presided over the applicant's disciplinary hearing in 2014 found that the SARCC code did not apply to the applicant just because he was a manager. He found further that the DCPA applied to the applicant in that instance and ordered the respondent to uplift the applicant's suspension immediately. There was evidence of three senior managers, namely the applicant, Ngucshane and Fourie who all believed that the DCPA was applicable. Myburg's argument that their view should preferred over Nicholas' view was compelling. Nicholas is a junior manager whose main justification for contending that the SARCC code was applicable to the applicant because he is a manager was that she was taught when joined the organisation. Nicholas claims that she complained to Walker about Nguchane's findings in 2015. Myburg's argument that no action was taken to address or to clarify the respondent's position that the DCPA does not apply to is also compelling. The most reasonable inference that one can draw is that the respondent accepted Ngushane's finding that clause 11.1 of the DCPA is applicable to all employees. I find that the memoranda that were circulated on 16 and 19 May 2019 constitute clear and unequivocal confirmation that clause 4.4 and clause 11.1 applies to all employees, including managers. I noted that those memoranda were circulated because there were a series of adverse audit findings that the respondent was not complying with its own disciplinary procedures. The memoranda did not specify that they were not applicable to managers. Myburg argued that in the absence of such a distinction, one could only accept that it applied to all employees. I agree. The tone of those memorandums was emphatic. HR managers were warned that they would face disciplinary action if they did not comply strictly.

25. Horn did not come across as a compelling witness. His knowledge on the respondent's policies, which one would expect him to know, was very limited. He appeared not to have any firsthand knowledge on the forensic investigation. He was never interviewed. Myburg had to jog his memory about Ngucshane findings and the fact that the applicant had to go to court to enforce Ngucshane's findings and that he signed the letter notifying the applicant that he was going to be transferred to another Department. I find that the applicant has placed sufficient evidence before me to persuade me on a balance of probabilities that the provisions of the DCPA also applies to him.



26. Clause 4.4, which provides that a disciplinary hearing should have been conducted within 30 calendar days after the incident, was brought to management's attention. The respondent should have asked the Regional Manager / Executive Manager for permission to extend that period and furnished reasons for that request. The respondent should in addition also have obtained permission form the CEO to extend the applicant's suspension period beyond thirty days in terms of clause 11.1 of the DCPA. Myburg argued that Fourie, who was acting in the applicant's position, understood that requirement and drafted such a letter to the CEO. Having found that the DCPA is applicable to the

applicant, I also find that Nicholas did not have authority to instruct her staff not to process Fourie's request.

27. I find that the applicant's continued suspension is procedurally unfair because the respondent has not obtained the permission from the CEO to extend his suspension beyond thirty days as is required by clause 11.1.

28. It is common cause that the applicant was not afforded an opportunity to make representations as to why he should not have been suspended. Although Nicholas maintained throughout her testimony that the provisions of the DCPA did not apply to the applicant, she confirmed that the failure to comply with that rule allowing employees to make representations as to why such an employee should not be suspended when an employee is entitled to do so, would render such an employee's suspension unfair. Cairncross relied on the decision in Long v South African Breweries (Pty) Ltd and others [2019] 6 BLLR 515 CC (19 February 2019), where the Constitutional Court found that there was no obligation on the employer to afford an employee an opportunity to make representations as to why he or she should not be placed on suspension, if such suspension was precautionary and not punitive. Myburg argued that there was no evidence to prove that the applicant's suspension was precautionary. She also argued that even if I were to find that the applicant's suspension was precautionary, the respondent still had an obligation to apply its rules consistently. Makapela's notice of suspension did not informe him of his right to make representations within 48 hours as to why he should not be suspended even though he was a manager. Myburg argued that the respondent's decision not afford the applicant this right was unfair because the respondent was not consistent in the application of the rule to managers.



29. Horn contended that the respondent's decision not to afford the applicant that right was justified because a forensic investigation was going to be conducted. His contention is not compelling in my view. I fail to see how the forensic nature of the investigation detracted from an employee's right to make representations as to why he should not be suspended. Myburg argued that no evidence was presented under oath that a forensic investigation was ever instituted. The respondent referred to two documents. The first document was a request for a quotation for investigation services dated 2 May 2019. There was no proof that the request was for a forensic investigation into the applicant's matter or anything related to the burning of trains. The letter, which purportedly appointed Fuse to do the forensic investigation, similarly did not refer to the applicant's case or burning of the trains. Horn's evidence that Walker told him that the investigation was completed and that the report was presented at a board meeting on 24 October 2019 was hearsay evidence. I agree with Myburg that the contention that the respondent did not have to comply with its rules because it was conducting

forensic investigation cannot be accepted because the respondent did not even prove that such an investigation was in process. I am thus not satisfied that there were grounds to institute a precautionary suspension against the applicant.

30. The applicant's suspension was also procedurally unfair, as it has continued for more than six months without any indication that it will be uplifted. The respondent has not provided any tangible explanation as to why it taking so long even if it was accepted that such an investigation was happening. The reasons that Horn provided were speculative. The applicant led evidence to substantiate his claim that he was suffering reputational damage for as long as his suspension continued because it was so widely publicized in the media. It has also taken its toll on his health. He confirmed that he was not involved in the investigation. The respondent did not adduce any evidence to prove that it obtained permission contemplated in clause 4.4 of the DCPA.

31. The Court in Lebu v Maquassi Hills Local Municipality and others (2) [2012] 33 ILJ 653 LC has also set out the circumstances, which justify suspension. Firstly, there has to be prima facie evidence of serious misconduct. The applicant was not suspected of burning the train or assisting the perpetrator. Secondly, the employer must believe that the applicant's continued presence at work would jepoardise an investigation or that the employee might commit further misconduct. Horn did not have firsthand knowledge, as he was not involved in the investigation. He speculated that that the applicant could have interfered with the investigation. He could not substantiate his contention. He agreed that the applicant's report, which was submitted prior to him being suspended, was comprehensive. Myburg argued that there was nothing further to investigate. The person who started the fires had already been arrested and appeared in court. No evidence was presented to persuade me that the applicant's continued presence at work would have compromised any investigation. Thirdly, the respondent should have furnished the applicant with sufficient details to allow the applicant to respond. It is common cause that the applicant was not afforded an opportunity to respond. The respondent would thus also not have complied with the requirement that it had to consider the applicant's representations as to why he should not have been suspended.



32. The respondent did not provide a reasonable explanation as to why the applicant is the only person who was suspended in relation to trains burning. Six trains have burnt in the Western Cape since the applicant was suspended. I find that the respondent has not been consistent when deciding to implement suspension in the applicant's case. I find that the applicant's suspension was both substantively and procedurally unfair. In the absence of any credible proof, that a forensic investigation was under way or that there was any other justifiable reason for such a protracted suspension I find the applicant's suspension was unfair.

33. The respondent, PRASA Metrorail Western Cape is thus hereby ordered to lift the applicant's suspension and to reinstate him with effect from 20 November 2019.

34. It is common cause that the applicant received his full remuneration and benefits while he was on suspension. The applicant's argument that had it not been for his protracted unfair suspension it would not have been necessary for him to incur legal costs to restore his reputation and his dignity is compelling. I am of the view that compensation should not be awarded in addition to reinstatement in the present matter. The applicant is essentially claiming damages, which should not be determined as part of unfair labour practice dispute.

**AWARD**

35. The applicant's suspension was both substantively and procedurally unfair.

36. The respondent, PRASA Metrorail Western Cape is hereby ordered to uplift the applicant's suspension and allow him to resume duty by no later than 20 November 2019



**Commissioner: ELRIDGE EDWARDS**