

**IN THE DISCIPLINARY ENQUIRY
HELD AT SANDTON**

In the matter between:

THE PASSENGER RAIL AGENCY OF SOUTH AFRICA

Employer

and

MTHUTHUZELI SWARTZ

Employee

RULING ON SANCTION

INTRODUCTION

1. After I had found the employee guilty of all charges preferred against him, I requested the parties to provide me with written submissions on aggravation and mitigation. Both parties obliged.

2. It was submitted on behalf of the employee, amongst others, that:
 - 2.1 He is left with seven (7) years of service before retirement;

 - 2.2 He has maintained a good relationship with his colleagues in the company especially with all the CEO's he has ever reported to;

2.3 Charges for which he has been found guilty of, do not necessarily justify a harsh sanction such as a dismissal; and

2.4 He was not given an opportunity to state his case.

3. Having considered the matter and the submissions from both parties, I conclude that an appropriate sanction under the circumstances is that of a dismissal. I conclude so for the following reasons:

3.1. He (Mr Swartz) did not attend proceedings on 17 October 2018 to enable the enquiry to enquire into his capacity to participate in the proceedings. He undermined the disciplinary processes of the employer;

3.2. He blatantly undermined the authority of the Board and PRASA management when he acted contrary to the Board's instruction and moratoriums issued by the CEO;

3.3. He abused the recruitment and disciplinary processes of the employer to victimise, harass and make employment for those who did not agree with him intolerable. By way of example, he engineered Mr Fourie's dismissal which was later overturned on appeal;

3.4. He, on more than one occasion, fraudulently misrepresented facts to the CEO;

- 3.5. He abused his senior position and intimidated employees who did not tow his line. Mr Thembinkosi Nongqongqo was intimidated when refused to give him the test question paper;
- 3.6. The charges for which he is found guilty of are serious enough when considered individually and/or cumulatively;
- 3.7. The misconduct in respect of some of the charges is repetitive, which to me, signifies an employee who is incapable of rehabilitation. There is no chance that the employment relationship between him and PRASA can be restored. It is simply intolerable;
- 3.8. He showed no remorse. This was evident in the way he conducted his case through his counsel. Witnesses for the employer were harassed, taunted and personal attacks were made against them without any basis or foundation being laid during cross examination. No courtesy was accorded to them. What aggravated the situation was the irrelevant questions that were posed in order to embarrass and humiliate witnesses. This was on his instructions;
- 3.9. He sought to derail the proceedings by seeking numerous postponements including misrepresenting to the Board that he made a protected disclosure and was being victimised as a result thereof by means this disciplinary enquiry;
- 3.10. He testified against his employer in an arbitration and made derogatory comments about the employer and worked against his employer's interests in breach of the fiduciary duties he owed the employer; and

- 3.11. He is simply dishonest and a law unto himself. No employer can be expected to keep such an employee in its employ, irrespective of the remaining period towards retirement.
4. Based on the above, I recommend that Mr Mthuthuzeli Swartz be dismissed effective immediately.

Theo Mokhatla
Chairperson
Chambers
7 November 2018