

SOUTH AFRICA / JUDGMENT

Forbay and Others v University of South Africa (J493819) [2025] ZALCJHB 254 (20 June 2025)

[2025] ZALCJHB 254

COURT

Labour Court Johannesburg

BEFORE

Mahosi

CASE / FILE NUMBER

J493819

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IN THE LABOUR COURT OF
SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case

no: J 493/19

In the matter between

TRUDY

FORBAY

First Applicant

PATRICK

DOYLE

Second Applicant

PETER

STANDER

Third Applicant

CARL

PRETORIUS

Fourth Applicant

and

UNIVERSITY OF SOUTH

AFRICA (UNISA)

Respondent

Delivered: This judgment was handed down electronically by circulation to the parties' representatives through email. The date for hand-down is deemed to be 20 June 2025.

JUDGMENT

Mahosi, J

Introduction

- [1] This is an action for a alleged unfair discrimination, harassment and victimisation brought by applicants in terms of section 10 of the the Employment Equity Act[1] (EEA) against the respondent, the University of South Africa (“UNISA”). All the applicants are classified coloureds and based their claim on race and in addition, the first applicant (Ms Forbay”), based her claim on her gender.
- [2] The applicants sought compensation under section 50(2)(a) of the EEA, damages under section 50(2)(b) of the EEA and an order directing the employer to take steps to prevent the same unfair discrimination or similar practice occurring in the future in respect of other employees under section 50(2)(c) of the EEA[2]. The constitutional damages under section 38 of the Constitution of the Republic of South Africa[3] were not persisted with.
- [3] Although the parties agreed, in terms of the pre-trial minute, that the matter would be heard for 10 days, at the end of the tenth day, the applicants had yet to close their case. Ultimately, the matter was heard for a total of 20 days between November 2022 and September 2024.

The parties

- [4] The applicants, Ms Trudy Forbay (“Forbay), Mr Patric Doyle (“Doyle”), Mr Peter Stander (Mr Stander) and Mr Carl Pretorius (Mr Pretorius) are all employed by UNISA and hold management positions within the Study Material, Production and Delivery division (“SMPD”). SMPD is made up of three directorates, namely: Print Production, Dispatch and the Planning &

Coordination.

- [5] The respondent is the University of South Africa (“UNISA”).

Background

- [6] The dispute between the parties has its genesis at a SMPD meeting of 26 June 2017 (“the June 2017 meeting”) between the applicants and Dr Marcia Socikwa (Socikwa), the then Vice Principal of Operations and Facilities, Mr Maneng (“Maneng”) and Mr Wynand Oberholzer (“Oberholzer”). In this meeting, Socikwa allegedly made a statement that she “has a mandate to get rid of Coloured and Indian” employees (“the impugned statement”).

[7] Following the impugned statement, the applicants were allegedly subjected to a series of acts of bullying, harassment, victimisation,

marginalisation, humiliation, discrimination and denied career progression opportunities and financial benefits because of their

race and gender. This was allegedly at the hands of Socikwa and her subordinates, Dr Lesley Ntswane (“Ntswane”), Mr Azwianewi Maudu (“Maudu”), and Oberholzer. Aggrieved by UNISA’s alleged failure to thoroughly investigate and act upon Socikwa’s and her subordinates’ actions, the applicants brought this action.

Applicants’ case

[8] The applicants pleaded various events that, individually and collectively viewed, gave rise to the alleged unfair discrimination

and victimisation by UNISA’s employees on the basis of their race and gender. Foremost amongst the events was the meeting of 26 June 2017, which was convened by Socikwa after she had received an anonymous email on 20 June 2017 and it was held physically, but Ms Forbay joined it telephonically. Dr Socikwa started the meeting by reading out the email and went around the room asking each attendee if they had knowledge about origin of the email. Thereafter, she allegedly uttered the impugned statement. Different versions of the exact words and meaning thereof became apparent during the trial.

[9] The additional events include Socikwa’s instruction for the applicants to work during the Student Service Delivery Strike of August 2017 and a threat to name and shame them that if they did not work, SMPD strategic session convened by Socikwa with the SMPD management team in November 2017, Socikwa’s instruction for the applicants to work during January 2018 NEHAHWU strike; removal of Mr Bagus, (the then director of Print Production) from his position as acting Executive Director (“ED”) and his resignation, SMPD Emergency meeting; reduction of the applicants’ scope of responsibilities, Socikwa’s fraudster allegations against the applicants, misconduct charges against the applicants, down-rating of the applicants’ performance; and Socikwa’s allegations during her SABC Board interview.

[10] The applicants’ case is that UNISA breached section 6(1) and 6(3) of the EEA by failing to thoroughly investigate, consider, act upon and censure the above acts.

Respondent’s defence

[11] UNISA denied that it, or any of its employees, engaged in any form of harassment, victimisation or gender and racial discrimination. It led its evidence through Dr Ntswane (“Ntswane”), Mr Maudu (“Mudau”), Socikwa and Oberholzer and contended that the applicants had no valid grounds for their claim in terms of the provisions of the EEA.

Issues for

determination

[12] Whether the applicants were discrimination against by UNISA's employees and if so, whether it was unfair.

Legal framework

[13] The Employment Equity Act was created to address job and income inequalities caused by apartheid and discrimination. Its goals are to promote equality and democracy, eliminate unfair discrimination in employment, achieve a diverse workforce, enhance economic

development, and fulfill the Republic's obligations as a member of the International Labour Organisation. Section 5 requires every

employer to take steps to promote equal opportunity in the workplace by eliminating unfair discrimination in any employment policy or practice. Section 6(1) prohibits unfair discrimination and it reads:

“No person may unfairly discriminate, directly or indirectly, against an employee, in any employment policy or practice, on one or more grounds, including race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual

orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language, birth or on any other

arbitrary ground.”

[14] Section 6(3) provides that “harassment of an employee is a form of unfair discrimination and is prohibited on any one, or a combination of grounds of unfair discrimination listed in subsection (1).” Regarding the burden of proof, section 11 of EEA provides that:

“(1) If unfair discrimination is alleged on a ground listed in section 6(1), the employer against whom the allegation is made must prove, on a balance of probabilities, that such discrimination-

- (a) did not take place as alleged; or
 - (b) is rational and not unfair, or is otherwise justifiable.
- (2) If unfair discrimination is alleged on an arbitrary ground, the complainant must prove, on a balance of probabilities, that-
- (a) the conduct complained of is not rational;
 - (b) the conduct complained of amounts to discrimination; and
 - (c) the discrimination is unfair.”

- [15] To the extent that the applicants claim unfair discrimination on race and gender, section 11(1)(a) and (b) requires the UNISA to prove that the alleged discrimination did not occur or that such discrimination was rational, not unfair, or otherwise justifiable.
- [16] The test for determining whether differentiation between people or categories of people amounted to unfair discrimination was set out by the Constitutional Court in *Harksen v Lane N.O. and others*[4] as follows:

“The determination as to whether differentiation amounts to unfair discrimination under section 8(2) requires a two stage analysis. Firstly, the question arises whether the differentiation amounts to “discrimination” and, if it does, whether, secondly, it amounts to “unfair discrimination”. It is as well to keep these two stages of the enquiry separate. That there can be instances of discrimination which do not amount to unfair discrimination is evident from the fact that even in cases of discrimination on the grounds specified in section 8(2), which by virtue of section 8(4) are presumed to constitute unfair discrimination, it is possible to rebut the presumption and establish that the discrimination is not unfair.” [Footnotes omitted]

Evidence

- [17] All four applicants testified in support of their claim and UNISA led its evidence through Socikwa, Ntswane, Maudu, Socikwa and Oberholzer.

The meeting of 26 June 2017

- [18] The meeting of 26 June 2017 between all the applicants, Oberholzer and Maneng was common cause. The dispute is on the exact words used by Socikwa and meaning thereof.
- [19] Forbay testified that Socikwa claimed she had a mandate to eliminate Coloureds and Indians. Stander and Mr. Doyle supported this, stating that Socikwa said she found her job challenging due to the applicants. Pretorius and Oberholzer confirmed that Socikwa said she knew her mandate and faced difficulties from the managers regarding this task.
- [20] Socikwa testified that she had a meeting with two upset African shop-stewards who felt mistreated by Print Production managers, whom they described as coloured. They wanted these managers disciplined but Socikwa viewed their complaints as a reflections of their experiences and not racist. On 20 June 2017, she received an aggressive email about industrial relations and called a meeting with Print Production managers to discuss it. She stated that she did not remember using the word “Indians,” but if she did, it would have been to convey being told to remove Coloureds and Indians, which was not her approach. She aimed to improve relationships with staff as tensions rose and emphasized that her focus was on equal treatment and positive industrial relations. She clarified that her “mandate” was about her job performance, not discrimination and to illustrate this, she stated that the only employee who left during her time did so voluntarily.

Student service delivery strike

[21] In August 2017, some UNISA students went on strike due to poor service delivery. The applicants' evidence was Socikwa issued

an instruction to "SMPD management" to work during this period and threatened them with public shaming if they refused. The applicants created a plan to recover lost time, but Socikwa rejected it and instructed them to work. When they tried to report for duty on a Saturday, they were blocked by members of NEHAWU. They reported this to Socikwa, who told them to file charges against the intimidators. As such, they claim that Socikwa endangered their lives, alleging harassment based on race and gender.

SMPD strategic session

[22] In November 2017, Socikwa met with SMPD management to improve senior manager relationships. The applicants complained that the meeting reinforced victimization and discrimination based on race and gender in that Socikwa expressed distrust towards them, pointed at some of them with an instruction moved from their seats, humiliated and forced them into a humiliating song and dance routine, and publicly criticized Pretorius by accusing him of not following instructions and refusing to work at the Florida campus.

[23] Socikwa denied pointing only at the applicants, explaining her gesture was inclusive of all management. She observed that management

sat in cliques and sought to promote interaction. As such, she randomly asked two managers to switch seats for team building, with

no racial implications. She clarified that her comments about mistrust were made in jest for everyone, not just the applicants.

Oberholzer testified that he understood Socikwa's statement and conduct in the same way Socikwa explained. Socikwa stated that she asked the managers for a team-building exercise, and they chose a song and dance routine. A video of the exercise, featuring Stander, Pretorius, and colleagues, was shown in Court.

NEHAWU strike

[24] In January 2018, NEHAWU members at UNISA went on strike. Socikwa instructed SMPD management to work during this time. The applicants claim unfair treatment, harassment, and risk to their safety due to lack of security and counseling support.

[25] Sociwa testified that she arranged with the Head of Security, Robbie Arnolds, for the managers' safety and emailed HR to organize

counselling for affected employees, which HR agreed to. Further, she said the applicants knew that UNISA offered free counselling

services, which Forbay had used before.

Resignation of Bogus

[26] Bagus, the then director of Print Production, briefly served as acting Executive Director for SMPD before resigning from UNISA in early 2018. The applicants alleged that he was unfairly removed by Socikwa, leading to increased victimization against them. They claimed that following Bagus's resignation, Maudu appointed Pretorius and Oberholzer to act in his role for three months. However, only Oberholzer acted and Pretorius was informed that the position would be eliminated.

[27] The applicants allege that Maudu played a role in this by removing Forbay from her position as Chairperson of the Quality Committee

without any discussion. Maudu created a new committee to perform the responsibilities of Forbay's section, leaving Forbay and her team out of work. Forbay informed Professor Nengwekhulu through email about this on 26 March 2018, but this only escalated the bullying and harassment. On 03 April 2018, Socikwa held a meeting in which he made derogatory comments about Coloureds and Indians. On 04 April 2018, she announced the removal of the Director position, limiting reporting lines without consultation.

[28] Maudu testified that there was no SMPD Quality Committee and he did not remove Ms Forbay as a chairperson. He stated that UNISA has a Quality Committee made up of Executive Directors. He suggested that Ms Forbay's belief about chairing SMPD Quality might stem from an informal agreement with the former acting Executive Director, Bagus. He learned about Ms Forbay's role when Professor Nengwekhulu asked him about an email complaint regarding her removal. Maudu explained that his plan was to set up a structure for overall SMPD quality, while Ms Forbay's focus was limited to Print Production. However, this committee never formed. He also denied making a derogatory reference to "Peets" and clarified it referred to a colleague, Peet Viljoen, not the applicants.

[29] Maudu testified about the acting Director position, stating that he proposed to Pretorius and Oberholzer that they alternate as Acting Directors of Print Production for three months each. Pretorius agreed to let Oberholzer to act first from March to May 2018, which was confirmed by Oberholzer. Following this period, Ntswane became ED in May 2018 and decided that two Deputy Directors positions would suffice, eliminating the need for an acting director. Maudu refuted claims that Pretorius was denied another opportunity to act in favour of Oberholzer in January 2020, explaining that financial constraints prevented any acting appointments during that second period. Both Pretorius and Oberholzer acknowledged that the failure to act was due to finances, not race and no acting appointments occurred during this time.

[30] Ntswane testified regarding Pretorius' claim of redundancy and stated that the proposal new structure was aimed at creating a new Directorate called Enablement and Integration Support, which would lead to the discontinuation of one Deputy Director position while establishing a new role with broader responsibilities. No specific individuals were chosen for removal, and either of the current deputy directors (Oberholzer or Pretorius) could take the new position if they qualified. He stated that UNISA aimed to implement these changes

without job losses, a point not disputed during cross-examination. Socikwa testified that she appointed Bagus and supported his term renewal twice. According to her, Bagus' removal from an acting position was due to his frequent illness, which led to her taking over his responsibilities.

Reduction of responsibilities

- [31] The applicants claim that they faced reduced job responsibilities, which they see as a demotion aimed at targeting coloureds and Forbay as a woman. Forbay specifically states that quality assurance was taken from her and given to a new committee set up by Maudu. She also mentioned losing tasks like proofreading, her removal from the SMPD Succession Plan and Employment Equity chairperson position, and not being listed in the SMPD report despite her contributions. Pretorius complained about being removed from the admin and stores section after his suspension and claimed he was excluded from Budget Committee meetings.

Emergency meeting

- [32] An emergency staff meeting was held by Socikwa to discuss a new SMPD structure, with both staff and management present. Forbay and Doyle complained that they were not allowed to speak, claiming this showed unfair treatment and discrimination. Socikwa stated the meeting was for staff to ask questions and did not want management to speak. Forbay and Doyle repeatedly raised their hands but were ignored, and an African manager faced the same issue. Frustrated, Forbay and Doyle left, with Forbay disputing that they slammed the door, saying it was faulty. Socikwa testified that the request for managers not to speak applied to all managers and the door did not slam when others left the meeting. Maudu supported Socikwa's evidence.

Fraudster allegations

- [33] Concerning the meeting of 04 May 2018, the applicants claimed that Socikwa told them to stop their "cancerous writing" in emails and not to accept management positions if they had issues. She called them "fraudsters" and asked them to leave the meeting. The applicants testified that this term suggested they had committed fraud against UNISA, linking them to a previous

investigation. They alleged this was harassment and discrimination based on race and gender.

- [34] Socikwa explained that she was upset by an email complaint from the applicants to the Vice Chancellor, which misrepresented her words about getting rid of certain groups. She acknowledged using the term "fraudsters" but clarified it was meant informally, related to feeling misrepresented, and had no connection to any alleged financial misconduct.

Mailula threats

[35] Forbay testified about an incident on the factory floor where the four applicants saw Ephraim Mailula cooking, which violated safety

rules. Mailula reacted angrily and recorded the applicants on video. During the incident, Mailula made a call to someone he referred to as "Doctor," implying issues with management, which the applicants believed was directed at either Ntswane or Socikwa, both of whom are doctors. Forbay reported the incident to her superiors, including Oberholzer and Ntswane, but the applicants claim Ntswane did nothing, implying approval of Mailula's actions. They feel that this led to further harassment, victimization, and discrimination based on their race and Forbay's gender. Mailula also stated he would act as an informant for Socikwa.

[36] Ntswane testified that he received a complaint and supported its filing by submitting a grievance to HR. He clarified that he took

action by moving the culprits away from the shopfloor. Oberholzer confirmed Ntswane's account, stating he supported escalating the complaint against Mailula. Ntswane, as the Executive Director, explained that he assessed the complaint's nature and concluded it couldn't be resolved internally, leading him to sign it off. Socikwa stated that she did not condone the conduct and supported action against Mailula. Both Ntswane and Socikwa affirmed that the Doctor called was not either of them.

Misconduct charges

[37] Doyle, Pretorius, Stander, and Oberholzer received notices for suspension related to the Bytes contract with UNISA. Only Doyle and Pretorius were actually suspended. The applicants argue that their suspensions were due to racial discrimination, claiming they were targeted because they are Coloured, while Oberholzer, who is White, was not suspended. Pretorius alleged that Oberholzer was allowed to contest his suspension, unlike Pretorius. Both Doyle and Pretorius expressed frustration over the lengthy suspension and noted that UNISA had not yet conducted a disciplinary hearing regarding the charges against them, blocking their access to necessary documents for preparation.

[38] UNISA disputes Pretorius and Doyle's claims regarding the suspension process. Ntswane stated that he did not allow Oberholzer

to present any representations. This decision was made by Mr. Labuschagne. Mr Oberholzer supported this account. Ntswane said he

did not decide to suspend anyone and the suspensions were based on an external investigation (the Duja report), and no internal personnel at UNISA were involved in selecting individuals for suspension or disciplinary action.

[39] Ntswane mentioned that although a disciplinary enquiry was scheduled, it was disrupted by a union protest during the first meeting, which caused delays. The union subsequently requested that the proceedings be stopped, but the Vice Chancellor did not agree, and the hearing was rescheduled to February 2019. By then, Labuschagne had left UNISA, followed

by Dr Kgaphola's brief tenure. Ntswane highlighted the issue of lengthy disciplinary processes at UNISA, noting his own suspension in April 2022 and the delay in receiving formal charges until a month before his contract ended in May 2023. He emphasized that this issue affected all employees, regardless of race, and Doyle acknowledged that the delays were systematic.

Down rating

[40] UNISA employees undergo performance evaluations where they rate themselves, and supervisors review these ratings. In Forbay's case,

she rated herself 3.7 for "operations and excellence," but her supervisor, Oberholzer, lowered her score to 3.3, causing her overall evaluation to drop to 3.5 and resulting in a smaller bonus. Forbay claimed this downrating was unfair and a form of

victimization, harassment, and discrimination based on her race and gender.

[41] Pretorius and Doyle complained about delays in their 2018 and 2019 performance ratings, claiming it affected their bonuses and was due to harassment and discrimination based on their race. UNISA explained that the 2018 delay was because both were on suspension, complicating the rating process. They acknowledged that others also faced delays for various reasons, including individuals of different races. Doyle testified about a white colleague's delay due to suspension. For 2019, all employees had slight delays in bonus payments due to industrial action, although ratings were completed on time. Pretorius and Doyle admitted their suspensions were the real cause of the delays and were invited to withdraw their complaint, which they chose not to do.

SABC Board Interview March 2019

[42] Socikwa attended a 2019 interview before Parliament's Portfolio Committee on Communications for a position on the SABC board. During the meeting, she was asked about the impugned statement, and response, she claimed that some applicants committed fraud worth millions of rands. The applicants testified that Socikwa embarrassed them and harmed their reputations. They alleged harassment, victimization, and discrimination based on race and gender.

[43] Socikwa stated that she appeared the interview in her personal capacity, not as UNISA's representative. She mentioned that the individuals referred to in connection with fraud claims were part of the Dujia report, none of whom included Forbay. Socikwa stated that she only highlighted that certain individuals could not explain specific expenditures.

Shortlisting – August 2019

[44] This claim relates to the hiring process for the vacant Deputy Director for Planning and Coordination position within the SMPD unit. Forbay applied for the job but was not shortlisted in the first round. After re-advertising the position, she was shortlisted in the second round but did not get the job. Instead, Esther Mahloele (“Mahloele”) was chosen. Forbay claims she met the requirements for the position and argues that Mahloele was given unfair advantages, including tailored application requirements.

[45] Forbay believes her exclusion was due to discrimination based on her race and gender. She was told by HR that she was not an employment

equity target. She argues that an institutional employment equity plan, which would have favored her, should have been used instead of the divisional plan that excluded her. Thus, she claims she faced unfair discrimination related to her race and gender.

[46] Ntswane testified that Forbay was not shortlisted in the first recruitment round because her experience did not meet the job requirements, with panel members marking her application as lacking experience. Ntswane stated that Forbay's exclusion was not due to employment equity targets, despite an HR representative incorrectly suggesting it. Ntswane corrected this mistake and emphasized the importance of clear communication regarding the reasons for shortlisting. In the second recruitment round, Forbay modified her CV, which improved her chances of being shortlisted due to fewer applicants.

[47] Ntswane asserted that both candidates were asked questions in a fair and consistent manner, a point confirmed by Socikwa. Regarding

employment equity, Ntswane clarified that Forbay was not excluded for her race. However, he said African females were notably underrepresented in the specific department. The SMPD plan indicated a significant underrepresentation of African females at the qualified levels, while there were already one colored female and one white female in similar positions. He explained that the divisional plan must be used for recruitment, as it addresses representation concerns at a division level, aligning with the goals of transformation and equity. Socikwa, who only participated in the second round of recruitment, supported Ntswane's statements regarding fair questioning and the application of the employment equity plan, highlighting that applicants cannot dictate the nature of the questions asked in interviews.

SAHRC investigations and UNISA's Human Resource failures

[48] The applicants claim that UNISA failed to address the SAHRC findings from November 2022 and its HR Department had failed to address the applicants' numerous complaints related to the above-mentioned events and that such a failure is in line with the mandate to get rid of Coloureds and Indians. While UNISA accepts that there are serious systematic weaknesses within its HR department, it asserted that this was not attributed to an agenda to get rid of Coloured and Indians.

Analysis

[49] Regarding the meeting of 26 June 2017, the main issue in the dispute is whether Socikwa claimed she had a mandate to remove Coloureds and Indians (“version one”)

or if she stated she was told to remove them, with "mandate" used differently in that context (“version two”). UNISA argues that version two should be accepted as it supported by Socikwa's undisputed testimony and corroborated by Pretorius and Oberholzer. According to UNISA, Oberholzer had no reason to favour Socikwa and mentioned experiencing her rebuke. UNISA submitted that it seems unlikely that anyone would give Socikwa a mandate to target specific races, and no witnesses confirmed such a mandate. If version two is accepted, there can be no claim of discrimination.

[50] Under cross-examination, Forbay acknowledged that Socikwa referred to comments about Coloureds and Indians as coming from outside, not as her words. Stander and others agreed that Socikwa wasn't expressing personal racist views. The applicants noted that Socikwa claimed she was there to protect them, although they were unclear about the nature of the threats. The evidence shows that Socikwa's statements were not her own views but were relayed from others. The applicants criticized Socikwa for not acting against those who made the original comments, but I agree with UNISA that their complaint was focused solely on her words and subsequent events. On both versions, there can certainly be no discrimination or communication of an employment policy or practice that was discriminatory in nature.

[51] In relation to the complaints regarding the student delivery strike, the evidence showed that Socikwa's instruction to work during the student strike was meant for all SMPD management, not just the applicants. The email included a diverse group of managers, and the applicants confirmed that Socikwa's actions were not racially motivated. The threat to release names was aimed at all managers, indicating no discrimination or harassment based on race.

[52] On the events of the strategic session, Socikwa explained the recording aimed to capture a joyful moment. Doyle admitted that Socikwa's comments referred to all of Print Production and affected more than just Coloureds. Pretorius conceded that relocating some applicants did not equate to racial discrimination and the video showed a positive atmosphere with laughter, contradicting any feelings of humiliation. Stander appeared engaged despite claiming he felt belittled and Forbay confirmed that she enjoyed the activity. Oberholzer received criticism from Socikwa during a meeting, which suggests he would not falsely support her. It is apparent from the evidence that the participation in the song and dance included diverse races and genders, indicating no basis for discrimination or victimization claims. Thus, the complaint lacked merit.

[53] Socikwa's evidence relating to her instruction to SMPD management to work during the NEHAWU strike was not disputed, making the complaint invalid as it involved managers of various races and genders. The instruction to work during the strike was reasonable, and Socikwa was present at work. Thus, the complaint has no merit.

[54] To the extent that Bagus was not an applicant, I agree with UNISA that complaints about his removal should be ignored. After resigning,

Bogus claimed unfair constructive dismissal, which was not considered automatically unfair. The CCMA dismissed his case, indicating his resignation was voluntary. In addition, Forbay and Doyle conceded that Socikwa's conduct of renewing Bagus' acting terms on two occasions was not consistent with such an alleged mandate. The evidence does not support the applicant's allegation that after his resignation, they suffered victimization.

[55] Regarding the reduction of responsibilities, Forbay acknowledged that the Executive Directors are responsible for preparing Service Level Agreements (SLAs) but have the option to delegate this task. She did not permanently take on the proof-reading role but assisted Bagus at his request, which ended when he left. Ntswane indicated that a delay in proofreading during a specific year led him to temporarily remove the task from Forbay's duties to meet deadlines. This decision did not permanently affect her role, and her performance review did not include proofreading, which did not impact her standing.

[56] Regarding succession planning, Forbay accepted her inclusion in the 2018 plan but later pointed to the 2019 plan, where her name was missing, as were those of Oberholzer and Pretorius. Ntswane clarified that the succession plan is updated yearly. In 2019, Print Production had no director, so no discussions about succession occurred, and it was practical to not plan for a position that might not exist. Forbay admitted it made sense not to plan for a potential elimination of a role. She also confirmed her name appeared in subsequent plans for 2020, 2021, and 2022.

[57] On the Employment Equity committee, Ntswane explained that the chairperson is elected, and he was not part of the committee, so

could not influence decisions. Forbay conceded that she chose not to seek re-election, making her complaint regarding this issue

misguided. Forbay did not have a permanent seat on the quality committee, though she had attended temporarily when delegated by

Bagus. Ntswane explained that RC managers are typically invited to budget meetings, and both he and Oberholzer were sometimes excluded.

Oberholzer stated he was excluded from all Selection Committee meetings. Maudu explained that only Nzimande could grant rights on Power BI and that he advised Pretorius to consult Nzimande for access issues. This was not disputed.

- [58] Pretorius complaint about being removed from the admin and stores section after his suspension is meritless. Mr Maudu, Dr Ntswane, and Mr Oberholzer testified that this section manages contracts and invoices, and all of Pretorius' responsibilities were handed to Oberholzer during his suspension. Upon returning, Pretorius asked Oberholzer to keep handling the admin and stores, especially related to the Bytes matter, which Pretorius did not want to be involved in. On the claim that he was excluded from Budget Committee meetings, Mr Maudu stated he did not control access to Oracle, and Pretorius admitted he did not ask Maudu or Ntswane about it.
- [59] Forbay and Doyle complained that they were not allowed to speak during the emergency meeting, but Socikwa's request for managers not to speak applied to all managers, and was, in the circumstances, reasonable. Thus, the complaint lacks merit.
- [60] On the fraudster allegation, the evidence shows that Socikwa called out individuals based on their authorship of an email to the Vice Chancellor, not on their race or Forbay's gender. I agree with UNISA that, while Socikwa could have handled the situation with more restraint, there is no evidence that her actions were directed at Coloureds, Indians or females. The evidence revealed that Doyle and Pretorius acknowledged the conduct was unrelated to race or gender, confirming the complaint had no merit regarding discrimination. The individuals were targeted solely for the email. Thus, Socikwa's actions did not amount to victimization, harassment, or discrimination.
- [61] Regarding Mailula's threats, Stander admitted that it was incorrect to claim that Ntswane did not take action, as he supported the grievance by signing it. Oberholzer also backed escalation of the grievance. The evidence show that any lack of action afterward was due to UNISA's dysfunctional internal disciplinary processes, which Ntswane also faced. The claim that Ntswane or Socikwa received a call from Mailula is speculative, and they both denied it. Socikwa clarified that Mailula's statement about her needing an observer was incorrect, and the applicants presented no evidence to counter this. Therefore, there is no basis for the complaint regarding victimization or discrimination.
- [62] The applicants alleged that after Doyle, Pretorius, Stander, and Oberholzer received notices for suspension related to the Bytes contract with UNISA, only Doyle and Pretorius were suspended and Oberholzer was allowed to contest his suspension. There was no evidence to suggest preferential treatment based on race in the matter of representations made by Oberholzer. The decision to suspend Doyle and Pretorius was not based on race, as Stander also would have been suspended if it were. Both challenged their individual roles in the issues with the Bytes contract but admitted that the suspension was justified and not racially motivated. Stander's assumption that his non-suspension was to rationalize the suspension of others is speculation. Regarding the disciplinary enquiry, Doyle and Pretorius initially failed to mention that it had been convened but was interrupted by a union representing them. They later acknowledged this disruption. It is apparent that the delays in proceeding with the enquiry were unrelated to race and resulted from transfers within UNISA and deficiencies in the disciplinary system affecting all employees equally.

[63] Ntswane's delay in finalizing disciplinary proceedings cannot be linked to race, as both Doyle and Pretorius admitted that the delays were systematic and not racially motivated. Ntswane's suspension lasted over thirteen months, similar to a white male named Kelvin, indicating that race did not influence their suspension experiences. Doyle and Pretorius acknowledged that they failed to request documents through proper channels and admitted this was a breach of suspension conditions. They recognized that asking a subordinate for documents was a problem. Therefore, the complaints regarding misconduct and suspension are unfounded.

[64] Similarly, the claims relating to downgrading are meritless. Oberholzer admitted to downrating Forbay, but denied acting on her race or gender, stating that the final score was agreed upon after discussion and signed by Forbay, who also chose not to appeal her rating. He noted that if he intended to discriminate, he wouldn't have increased any of her other scores. He mentioned that other managers also received lower ratings based on unmet operational

targets, not just Forbay. During cross-examination, Forbay acknowledged that she agreed with the lower score and the document she presented lacked Oberholzer's signature. She was offered a chance to withdraw her complaint but ultimately did not.

[65] UNISA explained that the delay in the 2018 performance ratings for Doyle and Pretorius was due to both being on suspension, which caused logistical issues. Since Pretorius was supposed to rate Doyle and was suspended, it complicated matters further. Both employees

acknowledged that they were not alone in experiencing delays, as there was a document showing a list of others affected for various

reasons, including individuals of different races. Doyle mentioned knowing a white employee who faced delays due to a suspension. For the 2019 ratings, Maudu stated that all employees had slight delays in bonus payments, due to industrial action, but received their ratings on time. Doyle and Pretorius accepted that their suspensions impacted the timing of both years' ratings and bonuses, not racial discrimination. There is no merit to their complaints.

[66] The transcript of the SABC interview contradicted the applicants' claims, showing that no direct accusations were made against them. Socikwa clarified that she appeared in her personal capacity, not as a representative of the applicants' employer, a point the applicants accepted. She mentioned that the individuals referred to in connection with fraud claims were part of the Dujia report, none of whom included Forbay. Socikwa stated that she only highlighted that certain individuals could not explain specific expenditures.

Moreover, it was acknowledged that Socikwa's actions were unrelated to her role as an employer representative. Thus, UNISA

could not be held responsible for her personal statements.

- [67] Forbay's complaint about not being shortlisted in August 2019 has no valid basis. It is apparent from the evidence that Forbay was excluded in the first round due to her lack of experience compared to other applicants. Besides, no appointment was made in this round. Forbay admitted to changing her CV for the second application but did not disclose this in court. In any event, there is no evidence to suggest that employment equity influenced the appointment of Mahloele. Even if it did, favouring an African female from levels 4 to 6 was not proven to be unfair. Ms Forbay admitted that she did not know the questions asked to other candidates and could only guess that they were favorable. In addition, the appointed candidate was female, showing no gender discrimination.
- [68] The SAHRC investigated racism at UNISA, and its findings were accepted, though their accuracy was disputed. UNISA entered into a memorandum of agreement with the SAHRC to implement outcomes. Forbay acknowledged that she was aware about this memorandum. Thus the complaints about UNISA's inaction are unfounded. Besides, this Court cannot enforce the SAHRC report and must make independent findings on discrimination claims.
- [69] UNISA submitted that the HR's failures and prolonged disciplinary proceedings were because of its systematic challenges and not due to any agenda to discriminate or victimise anyone. Doyle accepted that even Ntswane has been a victim of these failures.

Considering the evidence, UNISA's proposition is reasonable. In any event, to the extent that there is no merit to each of the complaints pertaining to alleged unfair discrimination, this Court will not have jurisdiction to deal with these alleged failures.

Conclusion

- [70] The applicants failed to adduce evidence, which was sufficient to raise a credible possibility that UNISA and its employees subjected them to discrimination, harassment, or victimization based on race and gender. Accordingly, their claim stand to fail.

Costs

- [71] This Court has a wide discretion in awarding costs. The guiding principle is that of equity and fairness. In casu, I am of the view that the principles of equity and fairness dictate that there should be no order as to costs.

- [72] In the premise, the following order is made:

Order

1. The applicants' claim is dismissed.
2. There is no order as to costs.

D. Mahosi

Judge of the Labour Court of South Africa

Appearances

For the applicants: Advocate Franscois Le Roux

Instructed by:

Douglas Bennett Incorporated Attorneys

For the third respondent: Advocates Yusuf Peer and Neo Ntingane

Instructed by: Pule Maserumule Attorneys

[1] Act 55 of 1998, as amended.

[2] Section 50(2) reads: “If the Labour Court decides that an employee has been unfairly discriminated against, the Court may make any appropriate order that is just and equitable in the circumstances, including- (a) payment of compensation by the employer to that employee; (b) payment of damages by the employer to that employee; (c) an order directing the employer to take steps to prevent the same unfair discrimination or a similar practice occurring in the future in respect of other employees;”

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[4]

[1997] ZACC 12; 1998

(1) SA 300 (CC), at para 45

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