

**MINISTRY:**

**HUMAN SETTLEMENTS, WATER AND SANITATION**

**REPUBLIC OF SOUTH AFRICA**

**NATIONAL ASSEMBLY**

**QUESTION FOR WRITTEN REPLY**

**QUESTION NO.: 44**

**DATE OF PUBLICATION: 20 JUNE 2019**

**Mrs M R Mohlala (EFF) to ask the Minister of Human Settlements, Water and Sanitation:**

(1) (a) What number of labour disputes are currently faced by (i) her department and (ii) each entity reporting to her, (b) what is the (i) cause and (ii) nature of each dispute and (c) on what date was each dispute (i) reported and (ii) resolved;

(2) (a)(i) what number of employees have been dismissed by her department in the past five years and (ii) for what reason was each employee dismissed and (b) what (i) number of the specified employees were paid severance packages and (ii) was the monetary value of each severance package? NW1001E

**REPLY:**

Honourable Member, please find information provided to me by the Department of Human Settlements, of Water and Sanitation and the entities reporting to me.

**A. HUMAN SETTLEMENTS:**

(1)(a)(i)The Department is currently faced with three (3) disputes, with two of these (2) at conciliation stage and one (1) at arbitration stage.

(b)(i) **The Causes of the two (2) disputes at Conciliation** are as follows:

* The 1st dispute arose from an employee who lodged a formal grievance on 22 October 2018 alleging wrongful conduct by the employer in a disciplinary hearing which impaired her dignity resulting in suffering and humiliation. The employee further sought compensation for her suffering and humiliation*:*
* The grievance was investigated with recommendations on findings thereof supported and approved by the Head of Department.
* The aggrieved employee was however dissatisfied with the outcome and opted to refer a dispute to the CCMA.
* The CCMA considered that it did not have jurisdiction to hear the matter and advised the employee to refer the dispute to the General Public Service Sectoral Bargaining Council (GPSSBC).
* The 2nd dispute arose after an employee was placed on pre-cautionary suspension on 29 April 2019 pending conclusion of investigations into possible acts of misconduct, including incidents of gross financial misconduct, gross insubordination, gross dishonesty, gross misrepresentation, gross violation of prescripts and gross negligence that occurred between July 2018 to March 2019.

**The Cause of the one (1) dispute at Arbitration** is as follows:

* The dispute arose from an employee who lodged a formal grievance on 4 December 2017 regarding the department’s failure to pay acting allowance in that the DDG: CS granted approval for the payment of an acting allowance, however, the Director-General advised that the post the employee was acting against did not exist and the employee must move back to her original post*:*
* The grievance was investigated and recommendations on findings thereof supported and approved by the Head of Department.
* The aggrieved employee was however dissatisfied with the outcome and opted to refer the dispute to the General Public Service Sectoral Bargaining Council (GPSSBC).

(ii) **The Nature of the two (2) disputes at Conciliation** are as follows:

* The 1st dispute is regarding an unfair labour practice relating to an occupational detriment and contravention of the Protected Disclosure Act;
* The 2nd dispute is regarding an unfair labour practice relating to suspension.

**The Nature of the dispute at Arbitration** is as follows:

* The dispute is regarding an unfair labour practice relating to the payment of benefits, i.e. the non-payment of an acting allowance.

(c) (i) **The dates the two (2) disputes at Conciliation** were reported:

* One (1) dispute was reported to the GPSSBC on 11 April 2019.
* One (1) dispute was reported to the GPSSBC on 20 May 2019.

**The dates the dispute at Arbitration** was reported:

* One (1) dispute was reported to the GPSSBC on 6 June 2018.

(ii) **Status on Resolution of the disputes**

* None of the disputes have been resolved.
* The Department is awaiting notices of sit-down for the two (2) disputes referred for conciliation.
* The dispute at arbitration is continuing in that parties are leading evidence and cross-examination.

(2) (a)(i) The Department dismissed four (4) employees in the past five years.

(ii)The four (4) dismissal by the Department were as follows:

* One (1) employee was dismissed on 27 August 2014 after being charged and found guilty for the following:
  + Negligently mismanaging the finances of the state
  + False statements
  + Gross dereliction of duty
  + Prejudicing the administration of the Department
  + Fruitless expenditure of R114 100
* Three (3) employees were dismissed on 23 May 2018, 1 June 2018 and 31 January 2019 respectively for absconding from the Public Service, in terms of Section 17(3)(a)(i) of the Public Service Act, 103 of 1994 .
* A termination by virtue of the said provision is regarded, not as a dismissal, but a termination “by operation of law” and hence not arbitrable under the Labour Relations Act.

(b)(i) No employees were paid severance packages;

(ii)Therefore a nil monetary value.

**DHS Entities**

**Community Scheme Ombud Service**

(1) (a)(ii) There is only one dispute being currently faced by the Community Scheme Ombud Service.

(b)(ii) The cause was subsequent to a precautionary suspension, pending an investigation.

(c)(ii) The nature of the labour dispute is: “***Unfair suspension or disciplinary action”***

(d)(i) The matter was reported to the CCMA on the 4th April 2019.

(d)(ii)The last set down for an arbitration was on the 25th June 2019. The matter was postponed to a date to be confirmed.

(2) (a) (i) Only one employee was dismissed in the past five years

(a) (ii) The employee was dismissed for poor performance.

(b) (i) No employees were paid severance packages.

(b) (ii) Therefore a nil monetary value.

**Estate Agency Affairs Board**

The table below summaries the response to question **1(a) (b) (c) (d):**

| **NO (a)** | **NATURE OF DISPUTE (c)** | **DATE REPORTED (d) (i)** | **STATUS OF THE MATTER (b)** | **OUTCOME (d) (ii)** |
| --- | --- | --- | --- | --- |
| 1 | Section 186(2) (a) - Unfair conduct - promotion/ demotion/ probation/ training/ benefits. | 17 August 2018 | The matter was scheduled for 4 September 2018 for *In Limine*/ Conciliation. The matter was not resolved and was scheduled for Con/Arb on 01 October 2018. Subsequently on 05 October 2018 a Jurisdictional Ruling was made for the matter to be heard by the Labour Court.  The matter was scheduled for 04 June 2019 with the Labour court, however on 27 May 2019 the EAAB received communication that the Labour Court removed the matter from the unopposed roll and the matter would not proceed as scheduled as it had been cancelled. This means NEHAWU may apply for a new court date, however no correspondence has been received in this regard thus far. | Pending |
| 2 | Section 186(2) (a) - Unfair conduct - promotion/ demotion/ probation/ training/ benefits. | 20 December 2018 | The matter was scheduled for *In Limine* on 09 January 2019. The matter resumed on 28 January 2019 where it the employee applied for condonation which was denied and the matter dismissed. | Resolved |
| 3 | Section 198B - Alleged unfair termination of contract. | 30 November 2018 | The matter was unresolved at conciliation and was referred for Arbitration on 28 February 2019 the applicants declared their intention to subpoena witnesses in support of their case. The commissioner postponed the matter to a later date in order to allow the witnesses to subpoenaed. The matter was rescheduled for Arbitration on 21 June 2019, however it was postponed due to unforeseen circumstances. | Pending |
| 4 | Section 191(5) (a) (iii) - Reason for dismissal not known. | 22 March 2019 | The matter was scheduled for Arbitration on 24 April 2019 however the HR Department received a postponement notice on 17 April 2019. Details of the new date have not been communicated. | Pending |
| 5 | Section 198B - Alleged unfair termination of contract. | 03 April 2019 | The matter was referred for conciliation on 03 April 2019 remained unresolved. The matter was scheduled for Arbitration on 21 June 2019 where both parties presented. The Commissioner is yet to make a ruling on the matter. | Pending |
| 6 | Section 191(5)(a)(iii) - Reason for dismissal not known | 04 June 2019 | The employee lodged the dispute at the CCMA on 04 June 2019. The matter sat for Con/Arb on 24 June 2019 where the Commissioner recommended a Section 198B application to be aligned to the applicant’s dispute. | Pending |

(2)(a)(i) 1 (One) – Audit Compliance Officer was dismissed on 13 June 2016.

(ii) Reasons for dismissal - *Gross dishonesty* and *unauthorised use of company property*

(b)(i) No employees paid severance packages

(ii) Therefore a nil monetary value.

**Housing Development Agency**

(1) (a)(ii) Number of labour disputes are currently faced by the HDA are as follow:

* Fixed Term Temp employment contract ended (x3)
* Claim of Constructive Dismissal (x3)
* Unfair Dismissal (x1)
* Allegations of Misconduct (Disciplinary enquiry pending) (x3)
* Suspensions (x5) – matters are in progress
* Internal Grievance (x5) – internal matters will be managed as guided by the organisations’ policies and procedures

(b) (i) The Causes of the three (3) disputes are categorised as follows:

* Fixed Term Employment Contracts:
* Both employees were dissatisfied that their Fixed Term Temp Contract of employment was not renewed, and the dispute was referred to the CCMA by the employee on grounds of unfair labour practice in April 2019. The matter is still in progress with the CCMA. This matter is unresolved.
* Claim of Constructive Dismissal matter:
* This is after the employees were placed through the internal Disciplinary process where they were facing gross allegations of misconducts and resigned during the course of the proceedings and later approached CCMA claimed constructive dismissal in June 2019. CCMA dismissed the case and closed the matter.
* Unfair Dismissal matter:
* The employee was seconded to HDA for a specified period with a proviso to return to his primary employer at the end of the secondment period. It appears that the primary employer had backfilled the role permanently while the said employee was on secondment.

(c)(i)The employee has referred the matter to the CCMA as unfair dismissal which is still to be heard in July 2019.

(2) (a) (i) Five (x5) employees dismissed

(a) (ii) The five (5) dismissal by the Entity were as follows:

* Three (x3) on Gross misconduct
* One (x1) Insubordination and Incompatibility
* One (x1) Gross Negligence and Misconduct

(b)(i) No employees were paid severance packages

(ii) Therefore a nil monetary value.

**National Home Builders Registration Council**

The table below summaries the response to question **(1) (a) (b) (c) (d)**

| **CAUSE OF DISPUTE (b)(i)** | **NATURE OF DISPUTE (c)** | **DISPUTE LODGED DATE (d)(i)** | **DISPUTE RESOLVED DATE**  **(d) (ii)** |
| --- | --- | --- | --- |
| Alleged unfair suspension | Unfair labour practice | 25-Apr-18 | Pending |
| Breach of fiduciary duties | Section 188A CCMA Enquiry | 25-Jun-18 | 31-Jul-18 |
| Alleged unfair suspension | Unfair labour practice | 25-Apr-18 | Pending |
| Alleged corruption | Unfair dismissal | 10-Jul-18 | 27-Jul-18 |
| Failure e to work | Disciplinary hearing - | 13-Jul-18 | 27-Aug-18 |
| according to | Misconduct |  |  |
| operating procedures |  |  |  |
| & carry out |  |  |  |
| reasonable and |  |  |  |
| lawful instruction |  |  |  |
| Gross dishonesty | Disciplinary hearing – | 15-Aug-18 | 14-Nov-18 |
| Gross negligence | Disciplinary hearing  - Misconduct | 16-Aug-18 | 14-Nov-18 |
| Failure to adhere to company policies | Disciplinary hearing - Misconduct | 17-Jul-18 | 17-0ct-18 |
| Failure to respond to emails without valid reasons | Disciplinary hearing - Misconduct | 06-Jul-18 | 06-Jul-18 |
| Behaving  unprofessionally | Disciplinary hearing - Misconduct | 06-Jul-18 | 06-Jul-18 |
| Failure to discharge duties and obligations with due diligence and in the best interest of the organization | Disciplinary hearing - Misconduct | 04-Jul-18 | 31-Oct- 18 |
| Failure to carry lawful and reasonable instruction | Disciplinary hearing – Misconduct | 21-Jun-18 | 21-Jun-18 |
| Failure to obey reasonable and lawful instruction | Disciplinary hearing – Misconduct | 16-Apr-18 | 16-Apr-18 |
| Negligence and carelessness of duties | Disciplinary hearing – Misconduct | 25-0ct-18 | 25-0ct-18 |
| Failure to conduct a pre-inspection to confirm status of construction | Disciplinary hearing – Misconduct | 10-Sep-18 | 28-Jan-19 |
| Not attending to work at the mobile office in Umtata | Disciplinary hearing – Misconduct | 07-Dec-18 | 07-Dec-18 |
| Equal pay for work of equal value-discrimination | Unfair labour practice | 18-Dec-18 | 09-Jan-19 |
| Dishonest behavior in capturing a stand number | Disciplinary hearing – Misconduct | 14-Jan-19 | 14-Jan-19 |
| Submission of incorrect information in that construction has commenced on site | Disciplinary hearing – Misconduct | 11-Feb-19 | 12-Feb-19 |
| Misrepresentation and failing to act in the best interest of the organisation | Disciplinary hearing – Misconduct | 26-Apr-18 | 26-Apr-18 |
| Unfair discrimination in recruitment process | Unfair discrimination | 09-Sep-14 | 06-Feb-19 |

(2) (b)(i) No employees were paid severance packages

(ii) Therefore a nil monetary value.

**National Housing Finance Corporation**

(1) (a) (ii) There are **no disputes** that the NHFC currently is facing

(b) (i) Not applicable

(c) (i) Not applicable

(d) (i) Not applicable

(d) (ii) Not applicable

(2) (a)(i) **2 (two**) employees were terminated by the NHFC on issues of ill-health and poor performance , furthermore in and around 2014, the NHFC experienced a high cost to income ratio that would render it financially unsustainable if not addressed, the majority of the costs emanated from labour costs. The NHFC Board embarked on a company-wide restructuring that included recommendations on reducing the high labour cost. As a result, Management began consultation processes with the representatives of the union in terms of section 189 of the Labour Relations Act. The outcome of these consultative processes resulted in **Twenty Eight** **(28)** employees accepting voluntary severance packages.

(b)(i) Twenty **Eight (28)** employees were paid Severance Pay, **the other two (2) employees** were not paid severance packages only the normal notice pay;

(ii) The total cost of the severance packages were **R 22 264 381.80.**

**Social Housing Regulatory Authority**

**(**1) (a)(ii) There is one dispute currently faced by the Social Housing Regulatory Authority.

(b)(i) Allegations of an unfair precautionary suspension.

(c)(i) The nature of the dispute is unfair labour practice.

(d)(i) The case was reported to the Council for Conciliation, Mediation and Arbitration on the 13 November 2018 and second case was reported to the CCMA on the 23rd June 2019 as well as the Labour Court on the 24th June 2019.

(d)(ii) On the first case, a postponement was granted by the Commissioner on the 24th June 2019 due to a change in legal representation, thus case is still pending the arbitration award. With regard to the second case, the CCMA case has not been heard yet but the labour Court has heard the matter on the 28 June 2019 and reserved the judgment to the 3rd of July 2019.

(2) (a)(i)Two (2) employees were dismissed by the department in 2018.

(a)(ii) Both employees were dismissed for absconding from the Public Service, in terms of Public Service Act Section 17(3) (a) (i). A termination by virtue of the said provision is regarded, not as a dismissal, but a termination “by operation of law” and hence not arbitrable under the Labour Relations Act.

(b)(i) No employees were paid severance packages

(b)(ii) Therefore a nil monetary value.

**B. WATER AND SANITATION:**

(1) The information relating to labour diputes provided by entities in the water and sanitation portfolio is attcahed as **Annexure A.**

The information availed by the Deparrment of Water and Sanitation is provided in the table below:

| (a)(i) Number of labour disputes are currently faced by the Department | A total of 229 labour disputes. |
| --- | --- |
| (b)(i) Cause of dispute | * Unfair Dismissal and suspensions: Theft; Mismanagement and embezzlement of state funds; Misuse of state Property; Gross Dishonestly * Unfair Labour Practice: Promotions and Benefits * Interpretation of collective agreement: movement of levels. * Discrimination for equal pay for equal work at equal value |
| (ii) Nature of each dispute | * Total of Unfair Dismissal: 4 * Unfair Dismissal outstanding at bargaining council: 1 * Unfair Dismissal finalised: 3 * Total of Unfair Labour Practice: Promotions and benefits and unfair suspensions: 133 * Unfair Labour Practice outstanding at bargaining council: 94 * Unfair Labour Practice finalised: 39 |
| (c)(i) On what date was each dispute reported | Date reported: Unfair Dismissal   * 28/09/2017 * 26/04/2018 * 25/5/2018 * 18/08/2017   Date reported: Unfair Labour Practice: Promotions and benefits   * 29/03/2019 total of 27 * 18/05/2019 total of 70 * 27/11/2018 total of 14 * 20/04/2016 one case * 27/03/2017 total of 15 * 26/04/2019 one case * 03/10/2017 total of 4 * 07/05/2019 one case   Date reported: Interpretation of collective agreement   * On 22/11/2018 total of 69 * On 15/03/2019 total of 3 * On 13/06/2019 total of 10 * On 27/09/2017 total of 2 * On 18/05/2019 one case * On 30/05/2019 one case * On 06/05/2019 total of 3 * On 15/05/2019 one case   Date reported: Discrimination for equal pay for equal work at equal value   * One 14/05/2019 one case matter still on going |
| (c)(ii) On what date was each dispute resolved | Date resolved: Unfair Dismissal   * On 09/11/2018 * On 07/03/2018 * On 29/04/2019   Date Resolved: Unfair Labour Practice: Promotions and benefits   * On 01/03/2019 total of 14 * On 23/03/2019 one case * On 28/06/2018 a total of 2 * On 09/05/2019 one case * On 23/07/2018 total of 15 * On 07/03/2019 one case * 19/10/2018 total of 4; * 23/10/2018   Date Resolved: Interpretation of collective agreement   * On 02/04/2019 total of 66; * On 11/05/2018 one case * On 21/09/2019 total of 2 |

(2) Information relating dismissal in the Department is provided in the table below:

|  |  |  |
| --- | --- | --- |
| (a)(i) The number of employees have been dismissed by her department in the past five years | | A total of 30 dismissal. |
| (ii) For what reason was each employee dismissed | * Fraud a total of 8 * Theft a total of 6 * Assault a total of 4 * Mismanagement and embezzlement of state funds a total of 3 * Sexual Harassment a total of 1 * Fraudulent qualification a total of 1 * Absenteeism a total of 1 * Irregular appointment in the Recruitment processes a total of 1 * Gross dishonesty a total of 3 * Misuse of state vehicle a total of 1 * Racism a total of 1 | |
| (2)(a)(i) What number of the specified employees were paid severance packages | No severance packages was paid | |
| (ii) was the monetary value of each severance package | No severance packages was paid | |