**NATIONAL ASSEMBLY**

**WRITTEN REPLY**

**QUESTION 800**

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**INTERNAL QUESTION PAPER: 14/2019**

**800. Mrs N R Mashabela (EFF) to ask the Minister of Basic Education:**

What are the reasons that her department failed to reinstate Mr Obilana Aderemi (details furnished) despite the ruling of the Education Labour Relations Council and the Commission for Conciliation, Mediation and Arbitration, which ordered the reinstatement of the specified person after finding that he was dismissed unfairly? NW1915E

**REPLY**

This is an employer-employee relations issue of which the processes are regulated by the Labour Relations Act, 66 of 1995. In terms of section 3(1)(b) of the Employment of Educators Act, 76 of 1998, the Head of the Provincial Education Department is the Employer of educators employed at the provincial level. Therefore, the responsibility to implement rulings wherein cases were ruled against the Employer lies with the Head of the Provincial Education Department.

The response received from the Mpumalanga Education Department states that the Department/Employer has demonstrated its willingness to comply with the award, but Mr Obilana refused to comply and cooperate. An alternative post was identified for him to occupy effectively from 1 October 2018 and was within the same circuit a few kilometres from the school where he used to teach prior to his dismissal, but he failed to report for duty to date.

The details are as follows:

The Department did not immediately comply with the award because at the time the award was received, the position which Mr Obilana occupied prior to his dismissal was already filled. Mr Obilana was, however, informed through his union on 28 September 2018 that the Department had established a vacant substantive post where he would be placed effectively from 1 October 2018. He was directed to report at the Emalahleni Circuit where the Circuit Manager would take him to the institution he would be serving at. A response was received from his union indicating that he was sick, and insisted that the Department place him in accordance with the award. Mr Obilana never reported for duty, but instead proceeded to take steps to enforce the award by filing an application for the certification of the award with the Commission for Conciliation, Mediation and Arbitration (CCMA).

The award was certified in terms of section 143 of the Labour Relations Act. The CCMA issued a document entitled “Enforcement of the Award” [the CCMA writ] instructing the sheriff to attach and execute the movable goods of the Employer to the value of R 171 952.40 with interest. The sheriff served the document and attached a vehicle belonging to the Employer on several occasions and this culminated in the Employer filing an urgent application with the Labour Court, which was heard on 27 August 2019, wherein the enforcement award was declared invalid and set aside.