



- (1) Reportable: No
(2) Of interest to other Judges: No
(3) Revised

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case no: JS204/21

In the matter between:

OOSTHUIZEN S M

Plaintiff

and

THE MEC: DEPARTMENT OF EDUCATION

NORTHWEST PROVINCE

First Defendant

THE HOD: DEPARTMENT OF EDUCATION

NORTHWEST PROVINCE

Second Respondent

THE SCHOOL GOVERNING BODY OF

POTCHEFSTROOM HIGH SCHOOL FOR BOYS

Third Respondent

POTCHEFSTROOM HIGH SCHOOL FOR BOYS

Fourth Respondent

MEYER, C. H.

Fifth Respondent

Heard: 29 January 2026

Delivered: 07 May 2026

JUDGMENT

PHAKEDI, AJ

Introduction

[1] This is an unopposed application in terms of section 6 of the Employment Equity Act¹ (EEA) pertaining to alleged unfair discrimination.

[2] The Applicant alleges that she was discriminated in the workplace due to her sex and/or age. Furthermore, the first, second and fourth respondents failed to take appropriate steps to ensure that she was protected and treated fairly in the workplace. She is seeking an order:

- ‘1. Declaring the discriminatory actions mentioned *supra* of the Fifth Respondent as the Applicant’s immediate employer, as arbitrary and unfair discrimination.
2. Directing the First, Second and Fourth Respondents to pay damages equivalent to an amount to be determined by the Honourable Court as just and equitable to the Applicant, jointly and severally the one paying the other to be absolved;
3. Directing the First, Second and Fourth Respondents to pay maximum compensation, in an amount to be determined by the Honourable Court as just and equitable to the Applicant, jointly and severally the one paying the other to be absolved;
4. ...
5. ...’

¹ Act 55 of 1998, as amended.

- [3] Despite being properly served with the statement of claim, the Respondents filed their statement of response outside the prescribed timeframes and their application for condonation for the late filing thereof was unsuccessful. The Respondents then elected not to participate in a pre-trial conference nor attend court on the trial date. Submissions were made from the bar that their legal representations sought a postponement of the matter in order to file opposing papers and the trial proceeded as scheduled.
- [4] The Applicant abandoned reliance on the supplementary statement of claim as it was not filed in compliance with the Rules for the Conduct of Proceedings in the Labour Court².

Brief background facts

- [5] The Applicant testified and stated that she possesses a Bachelor's degree in Further Education and Training (FET) General and she is qualified to teach learners from grade 10 and upwards. She was employed by the third respondent as an Educator based at Potchefstroom High School for Boys on or about 01 March 2018. When she joined the school, she was appointed to teach First Additional Language and Economic Management Sciences for grade 10 and 11 pupils. She also taught grade 8 and 9 learners in the same school. She earned a monthly salary of R23 336.50 which excluded an amount of R1500.00 which was paid to her by virtue of being the Gym and Conditioning Instructor. She was also entitled to an amount of R150.00 which was paid to the Coaches for attending competitions outside the school or out of town.
- [6] She was later transferred from an SGB post to a Departmental post when Mrs Myburgh retired in 2019. When Mr Van Vuuren retired in 2019, he was succeeded by the fifth respondent, Mr Meyer as the Acting Principal. Mr Meyer then started making her life at the school very difficult. He, without any consultation removed her from her position as Gym and Conditioning Instructor and gave this responsibility to a male educator who was not even a

² Repealed and replaced with the Rules Regulating the Conduct of the Proceedings of the Labour Court. Published 3 May 2024 (GN 50608). Effective 17 July 2024.

qualified Gym instructor as opposed to her. When she enquired about his decision he informed her that she had stolen some gym equipment and this seriously damaged her reputation and her earnings as she was now only earning a monthly salary without additional benefits.

- [7] Although the school had a rugby team and she was qualified to coach players under the age of 14 years, she was not given an opportunity to coach the players. Mr Meyer gave opportunities to only male teachers and this included teaching grade 12 learners. He refused to allow her to teach grade 12 learners in favour of Mr Havenga. When she enquired about this, she was told that she needed to have three years' experience.
- [8] In support of her application, Ms Oosthuizen submitted documentary evidence in the form of WhatsApp texts, emails and letters. She testified that the working relationship was strained due to Mr Meyer's unprofessionalism. They had a staff WhatsApp group and her opinions were always silenced and dismissed by Mr Meyer who always ignored her inputs while other educators received positive and professional feedback. In one of chats, he shot down her opinions by responding *'Please ladies and gentlemen the SMT will discuss this matter this afternoon. No use discussing your problems in a smokers corner or wherever. Mr Eksteen raised a legitimate problem...'*
- [9] She lodged a formal grievance and complained about not being given a chance to teach grade 12 classes, and to be considered for a Head of Department temporary position, and for her work to be moderated externally as opposed to Mr Havenga moderating it, and for an apology due to unfair treatment she received. In order to address her grievance a meeting was called with Mr Meyer who was invited to respond to the allegations and he did. His response is contained in a letter dated 8 October 2020 and reads as follows:

'To whom it may concern

Me Oosthuizen came to see me about teaching grade 12's next year. The request was a bit premature, but I told her that my plan is to let Mr Havenga teach the grade 12's. She made objection and came to see me with the

SAOU union representative at school to object and made allegations of sexism. She asked for answers on the following questions:

1. Why she was not re-appointed as gym manager?

When we had the meeting to organise the work distribution, Me Oosthuizen was not present and have not received any excuse from her. So it was decided to give the task to one of the students who was a coach at the NWU and also studied Human moment sciences.

2. Why she was not utilized as an u/14 rugby coach?

At first, Me Oosthuizen asked to coach u/14 rugby. We are working on a rotation system with the coaches. Mr Smith and Mr Havenga coached the 1st team in 2019, so they moved down to the u/14's for 2020. Me Oosthuizen was given the opportunity to coach the u/15's, but she decide to help with the 15' team warm-ups and conditioning. At the same time Me Oosthuizen started working as a qualified X-training instructor in town. I was not aware that she had a problem with not coaching rugby. In fact, I was under the impression that she was coaching.

3. Why she is not considered to teach grade 12 Afrikaans in 2021?

At the end of last year, I wanted to give Me Oosthuizen the Grade 10 learners for 2020 so she could teach them and move up with them to grade 12. I told her that I wanted to give Mr Havenga the grade 12 learners for 3 years. Mr Havenga is at Potchefstroom High School for boys for much longer and never had the opportunity to teach the grade 12's. For him to mark grades 12 papers and start getting into setting departmental papers, he must have three year experience teaching grade 12's. I told Me Oosthuizen that she and Mrs Faul will get their opportunity to teach the grade 12's. It is important for the school to give Mr Havenga the opportunity to build up the necessary experience to head the Afrikaans department.

Another point of consideration will be to give her the opportunity to share the grade 12's with Mr Havenga, but last year she was caught giving her learners the questions that were asked during the formal

assessments. So no other teacher in the Afrikaans department wants to share a grade with her.

Me Oosthuizen is also often sick and she has used up the almost all her sick leave in the first two years of the three year cycle. A person teaching grade 12 learners must be at school every day and even afternoons.

Me Oosthuizen is well liked amongst the learners and she is good for them. I do not wish her harm and I do not doubt her commitment to the learners. I will give her the opportunity to teach grade 12. I am sure, when she gets the opportunity, she will be a competent educator.

Yours faithfully

C H Meyer

Acting Principal'

[10] She then sent a formal email detailing her grievance against Mr Meyer and other senior male educators because as a grade 11 educator she ought to have been given an opportunity to move with them to grade 12 as this was good for her development as an educator. Her grievance was about not being allowed to teach grade 12 learners and the ill-treatment by Mr Meyer. She later requested her trade union, Suid-Afrikaanse Onderwysersunie (SAOU) to get involved and the union official discouraged her from proceeding with the grievance because he was informed that she had stolen gym equipment and she was involved in a love relationship with the learners. Her grievance was never referred to the School District nor brought to the attention of the first and second respondents.

[11] She testified that Mr Meyer later threatened in the presence of a certain Mrs De Vos and stated that they will make life very difficult for her. The other male colleagues also threatened her. On one occasion, a certain Tiaan Koug called her late at night and threatened to find her and chain her. She immediately left her place of residence to visit a friend who later committed suicide. She was victimized while staying on the school premises in that her vehicle was vandalised but nothing was stolen. Mr Meyer also made her pay R3000.00

per month for residing on the school premises and this included arrear amounts from when she was exempted from paying rent during the leadership of Mr Van Vuuren. She was later diagnosed with depression due to being ill-treated and the hostile working environment she was subjected to.

- [12] Her position as Head of Department (HOD) was later advertised in 2021 but the male educator occupying another HOD position was not advertised. She was denied growth opportunities, but male counterparts were given such opportunities by Mr Meyer. Her salary for April 2021 was withheld and she was later informed that her contract of employment had expired on 31 March 2021 this was despite having been allowed to work for the month of April. Mr Meyer then tried to coerce her to take up an SGB position with a lower salary but she refused. The school had created a WhatsApp group for educators and she was the only one not allowed to post in the group. Other employees had bad attitude towards her and did not wish to work with her nor have her on the school premises.
- [13] She later lodged another grievance and the matter was brought to the attention of the third respondent and Mr Mogaki. However, nothing was done to Mr Meyer and no investigations were ever done on her grievance and complaints. Instead, she was informed that she was doing a great job with the learners and they persuaded her to stay at the school. She was always stressed and felt suicidal due to bullying and persistent gossip.
- [14] She then resigned in 2022 without any alternative employment. She stayed at home for three months without any income. Mr Mogaki and Mrs Tshabalala called her trying to dissuade her from resigning but she left because nothing was done to Mr Meyer. She later got a job at Port Shepston in KwaZulu- Natal province but she could not cope with the job due to depression. She resigned on 30 June 2023 as she would sometimes find herself in conflict with the staff and the management. When she left the school, the principal advised her to seek medical help and she went back to Carletonville to stay with her parents. Although the incidents took place in 2021, she still cries about the pain and humiliation she endured as a result of victimization, bullying and discrimination by fifth respondent. The experience left her with serious trust

issues towards male leaders and she will never ever go back to teaching again.

- [15] The Applicant was still very much emotional and broke down during her testimony. The matter had to stand down on two occasions to give her an opportunity to compose herself and wipe her tears.

The legal framework

- [16] 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.³
- [17] Section 6 (2) (b) of the EEA⁴ provides that it is not unfair discrimination to distinguish, exclude or prefer any person on the basis of an inherent requirement of a job.
- [18] A difference in terms and conditions of employment between employees of the same employer performing the same or substantially the same work or work of equal value that is directly or indirectly based on any one or more of the grounds listed in subsection (1) is unfair discrimination.⁵
- [19] Section 11 (1) of the EEA⁶ provides that 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 did not take place as alleged; or is rational and not unfair, or is otherwise justifiable.
- [20] Section 50 (2) (a) to (c) of the EEA provides that if the Labour Court decides that an employee has been unfairly discriminated against, the Court may

³ Section 6(1) of the Act 55 of 1998 as amended.

⁴ Ibid

⁵ Section 6(4) of the EEA.

⁶ ibid

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...’

[21] Section 60 provides for an employer’s vicarious liability in the event of an alleged contravention (by an employee) of the provisions of the EEA and the employer’s failure to take the necessary steps to address the contravention and provides that:

- ‘(1) If it is alleged that an employee, while at work, contravened a provision of this Act, or engaged in any conduct that, if engaged in by that employee’s employer, would constitute a contravention of a provision of this Act, the alleged conduct must immediately be brought to the attention of the employer.
- (2) The employer must consult all relevant parties and must take the necessary steps to eliminate the alleged conduct and comply with the provisions of this Act.
- (3) If the employer fails to take the necessary steps referred to in subsection 2, and it is proved that the employee has contravened the relevant provision, the employer must be deemed also to have contravened that provision.
- (4) Despite subsection (3), an employer is not liable for the conduct of an employee if that employer is able to prove that it did all that was reasonably practicable to ensure that the employee would not act in contravention of this Act.

[22] Section 1, definitions contained in the Promotion of Equality and Prevention of Unfair Discrimination Act⁷ reads:

“ 'prohibited grounds' are -

- (a) race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, birth and HIV/AIDS status; or
- (b) any other ground where discrimination based on that other ground –
 - (i) causes or perpetuates systemic disadvantage;
 - (ii) undermines human dignity; or
 - (iii) adversely affects the equal enjoyment of a person's rights and freedoms in a serious manner that is comparable to discrimination on a ground in paragraph (a);’

The test for unfair discrimination

[23] The Constitutional Court laid down an approach to interpretation and application of section 8 of the Interim Constitution, which section has now been replaced by section 9 of the Constitution for the Republic of South Africa, 1996. The test for unfair discrimination was set out in *Harksen v Lane NO and Others*⁸ as follows:

[54] At the cost of repetition, it may be as well to tabulate the stages of enquiry which become necessary where an attack is made on a provision in reliance on section 8 of the interim Constitution. They are:

- (a) Does the provision differentiate between people or categories of people? If so, does the differentiation bear a rational connection to a legitimate government purpose? If it does not then there is a violation of s 8(1). Even if it does bear a rational connection, it might nevertheless amount to discrimination.

⁷ Act 4 of 2000.

⁸ 1998 (1) SA 300 (CC) at para 54.

- (b) Does the differentiation amount to unfair discrimination? This requires a two stage analysis:
- (i) Firstly, does the differentiation amount to “discrimination”? If it is on a specified ground, then discrimination will have been established. If it is not on a specified ground, then whether or not there is discrimination will depend upon whether, objectively, the ground is based on attributes and characteristics which have the potential to impair the fundamental human dignity of persons as human beings or to affect them adversely in a comparably serious manner.
 - (ii) If the differentiation amounts to “discrimination”, does it amount to “unfair discrimination”? If it has been found to have been on a specified ground, then unfairness will be presumed. If on an unspecified ground, unfairness will have to be established by the complainant. The test of unfairness focuses primarily on the impact of the discrimination on the complainant and others in his or her situation. [If, at the end of this stage of the enquiry, the differentiation is found not to be unfair, then there will be no violation of s 8(2)].
- (c) If the discrimination is found to be unfair then a determination will have to be made as to whether the provision can be justified under the limitations clause (s 33 of the interim Constitution).”

Evaluation and conclusions

[24] The Applicant in these proceedings alleges Mr Meyer discriminated against her on the basis of sex and/or age by refusing to give her an opportunity to teach the grade 12 class and refusing to reinstate her as head of the gym and conditioning. Having regard to the evidence tendered and the submissions made by counsel, the court finds it difficult, *albeit* in the absence of a response by the Respondents to come to a conclusion that the Applicant has

proven that the conduct she is complaining about amounts to unfair discrimination.

- [25] It is trite that when dealing with discrimination cases, the conduct complained of must be judged against the core value of human dignity. In *Ndudula and others v Metrorail – PRASA (Western Cape)*⁹ the Labour Court with reference to *Harksen* reaffirmed that:

“the crux of the test for unfair discrimination is the impairment of human dignity or an adverse effect in a comparable, similar manner and not the classification of the ground as listed or unlisted. The distinction between listed and unlisted grounds affects only the burden of proof. Differentiation on both a listed and analogous ground amounts to unfair discrimination only if the differentiation has indeed affected human dignity or has had an adverse effect with a similar serious consequence.”

- [26] The Labour Appeal Court (LAC) in *Naidoo and Others v Parliament of the Republic of South Africa*¹⁰ warned that the EEA is not a limitless remedy for all grievances within the workplace and stated:

[25] ... The EEA is not intended to be a catch all or a panacea. Indeed, the EEA is the instrument of section 9 of the Constitution and therefore its mission is to give teeth to that Constitutional guarantee within the scope of the terms expressed in that section. Section 9 is not an all-encompassing injunction, rather its purpose is to give recognition to the value of our humanity and provide a remedy for aggression against us on the grounds of our intimate attributes, whether inherent or adopted. In other words, section 9 has a specific and concrete focus, intelligible within the context of the historical experience of South Africa’s legacy of oppression. The writers, Garbers and Le Roux, rightly caution against being seduced by the idea that anti-discrimination law can be weaponised to solve all labour market ills. Other vicissitudes of life find remedies elsewhere, not least of all in the panoply of protections in Labour Legislation.

[26] ...

⁹ (2017) 38 ILJ 2565 (LC) at para 73.

¹⁰ (2020) 41 ILJ 1931 (LAC) at para 25 to 27.

[27] *Garbers and Le Roux* offer a critique of the broad compass idea and, in great detail, eviscerate the thesis. It is unnecessary to address all of their reasoning to demonstrate a convincing rejection of the broad compass interpretation. The essential point is that the phrase to which meaning must be attributed is “... any other arbitrary ground” and not the word “arbitrary,” free from its context and function. In this context the word “arbitrary” is not a synonym for the word “capricious.” The injunction in section 6(1) is to outlaw, not “arbitrariness”, but rather to outlaw unfair discrimination that is rooted in “another” arbitrary ground (the syntax of “...any other...” cannot be understood as otherwise than looking back at what has been stipulated in the text that precedes it). Capriciousness, by definition, is bereft of a rationale, but unfair discrimination on a “ground” must have a rationale, albeit one that is proscribed. The glue that holds the listed grounds together is the *grundnorm* of Human Dignity. The authors express this view, with which I agree:

“Discrimination is about infringement of dignity (or a comparably serious harm), about an identifiable and unacceptable ground and about the link directly or indirectly between that ground and the differentiation. Should a ground not be listed, it should meet the well-established test for unlisted grounds: it must have the potential to impair the fundamental human dignity of a person (or have a comparably serious effect) and has to show a relationship with the listed grounds.’

[27] Having considered the evidence tendered in this application, the Court comes to a conclusion that the Applicant has failed to make the minimum sufficient allegations to sustain a claim for unfair discrimination within the meaning of section 6 (1) of the EEA. The bulk of her complaints were already addressed by Mr Meyer in his letter dated 08 October 2020. She also failed to demonstrate how giving Mr Havenga an opportunity to teach the grade 12 class as he had been at the school longer was discriminatory against her on the basis of age and sex? The Court has noted that in his letter, Mr Meyer had

stated that she was a good educator and he wished to give her an opportunity to teach the grade 12 learners as she had a good relationship with them.

[28] The matter was not opposed, as such the issue of costs does not arise. Accordingly, the following order is made:

Order

1. The application is dismissed.
2. There is no order as to costs.

G. C. Phakedi

Acting Judge of the Labour Court of South Africa.

Appearances:

For the Plaintiff: Adv M Coetzee

Instructed by: Susan Greef Attorneys

For the Defendant: No appearance

LABOUR COURT