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10 June 2015

To: **Janssen H**  
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**elrc**

EDUCATION LABOUR  
RELATIONS COUNCIL

Dear Sir/ Madam

**RE: ARBITRATION AWARD**

**CASE NAME: Janssen H.vs DEPARTMENT OF EDUCATION  
KZN**

**CASE NUMBER: PSES627-09/10 KZN**

**OFFICE OF THE GENERAL  
SECRETARY**

I transmit herewith a copy of the Arbitration Award for the above-mentioned matter for your attention and information.

The matter is now closed.

We thank you for your co-operation in this regard.

Kind regards.

*All correspondence should be  
addressed to:*

The General Secretary  
ELRC  
Private Bag X126  
Centurion  
0046  
Gauteng  
RSA

*Enquiries:*

Foca N.O

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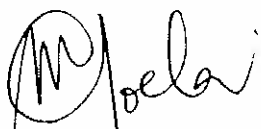
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**N.O. FOCA  
GENERAL SECRETARY**



**ARBITRATION  
AWARD**

**Panelist: A. DEYZEL**

**Case No: PSES627-09/10KZN**

**Date: 9 June 2015**

In the matter between

**MR H. O. JANSSEN**

**Applicant**

and

**DEPARTMENT OF EDUCATION KZN**

**Respondent**

Applicant's representative: In person

Applicant's address:

Telephone: 084 764 0794

Respondent representative: Mr D.Dube

Respondent's address: Department of Education KZN

Private Bag X9137

Pietermaritzburg

Telephone: 082 339 1166

Fax: 033 846 5219



## **DETAILS OF HEARING AND REPRESENTATION**

1. The applicant's employment with the respondent terminated at the end of 2009 and he thereafter referred a dispute to the ELRC alleging that he was unfairly dismissed.
2. Following an arbitration hearing that was held on 14 May 2010 two conflicting awards were issued.
3. The applicant applied to the Labour Court for the awards to be reviewed. The awards were set aside on review and the matter was remitted to the ELRC for a de novo arbitration hearing.
4. The arbitration hearing before me took place on 13 March 2015 and 25 May 2015. The parties were allowed to supplement their oral closing statements with written closing argument. The applicant's written closing argument was received on 30 May 2015. No written argument was received from the respondent.
5. The applicant appeared in person and the respondent was represented by Mr D.N. Dube, an official in its employ.

## **ISSUE TO BE DECIDED**

6. The issue for decision was whether the applicant was unfairly dismissed and, if so, what relief is to be awarded. It was particularly in dispute whether a dismissal occurred. The respondent contended that the applicant's employment was governed by a fixed term employment contract and that his employment terminated at the end of the fixed term as agreed between the parties. The applicant contended that he was employed for an indefinite period and that his employment was not limited by any fixed term employment contract.

## **BACKGROUND**

7. The facts set out hereunder were common cause unless otherwise indicated.
8. The applicant worked for the respondent as a level 1 educator for various periods of time and at various schools. The applicant also worked for various governing bodies. During the beginning of 2009 the applicant was employed at Fulton School for the Deaf in a governing body post. He was in that post for three and a half years and his employment was governed by a contract that was renewed every year.
9. The deputy principal of Brettonwood High School ("the school"), Mr Barkhuizen, retired at the end of 2007 and the post became vacant. The post was a departmental post and a procedure was followed in an attempt to fill the post. A dispute arose and the post was still vacant in 2009.
10. During March 2009 the governing body of the school advertised a governing body post of a life science level 1 educator for grades 10 to 12 at the school.
11. The applicant applied for the advertised post and was interviewed by the principal of the school, Mr Dlamini. Ms Zizhou, a head of department at the school, was present during the interview. The details of the discussion were in dispute. It was however common cause that the applicant accepted an offer of employment made to him by Mr Dlamini during this interview.
12. The applicant resigned from his employment with the governing body of Fulton School for the Deaf and commenced working at Brettonwood High School on 18 May 2009.
13. Prior to commencing employment at the school and on 21 April 2009 the applicant signed a form ER1 which reflected that it was an "APPLICATION FOR APPOINTMENT OF A TEMPORARY/SUBSTITUTE EDUCATOR" with the Department of Education and Culture, KwaZulu-Natal. It was the applicant's case that certain spaces on the form including the space for

specifying the details of the educator in respect of whom a substitute was required and the period of employment were blank at the time when he signed the document and that someone subsequently filled in the spaces to reflect that the educator in respect of whom a substitute was required, was Mr Barkhuizen and that the period of employment was "18 May 2009 to indefinite." The respondent did not admit the applicant's contentions in this regard.

14. It appeared from a document in the personnel file kept by the respondent in respect of the applicant that on 21 April 2009 the applicant also signed an application for employment in a government post. The form was generally used to assist a government department in selecting a person for appointment to an advertised post and only had to be completed by a person wishing to apply for an advertised position in a government department.
15. It appeared from documents in the personnel file kept by the respondent in respect of the applicant, that Mr Dlamini signed certain forms relating to the applicant's employment. One of these forms was a form ER2 that was normally completed in instances where a temporary educator was appointed against a vacant promotion post. The signed form reflected that Mr Dlamini notified the respondent that "*a temporary educator has been appointed against a vacant promotion post, which is within the post establishment of the school.*" The reference to a temporary educator was a reference to the applicant and the reference to the vacant promotion post was a reference to the vacant deputy principal post. The ER2 form contained a request that the respondent should "*create a level one (60101) post on PERSAL for the purposes of processing salary to the temporary educator.*" Another form was an assumption of duty form which was in the face of it signed by Mr Dlamini on 26 May 2009. This document on the face of it notified the respondent that the applicant (a level 1 educator) had assumed duty on 18 May 20109 as a replacement for Mr Barkhuizen and that the period of employment was "*18 May 2009 to indefinite.*" The applicant did not admit the facts referred in this paragraph even though he

relied on the indications in the documents that he was employed for an "indefinite" period.

16. On 11 June 2009 the applicant addressed a letter to Mr Dlamini the first paragraph of which read as follows:

"Due to an overwhelming lack of respect for discipline from pupils in the school, I hereby tender my resignation as Life Science Educator at Brettonwood High School to take immediate effect."

17. In the letter the applicant referred to numerous incidents involving the learners that he had to teach, which he regarded as a disturbing onslaught on him. The letter ended with the following:

"The onslaught amounts to psychological abuse and I consider these experiences outside the scope of normal learner disobedience.

The fact remains that as an educator I have right to:

- be respected
- encounter a learning environment
- have access to effective discipline
- a right to teach

In short I find conditions of service untenable."

18. On 13 June 2009 Mr Dlamini had a meeting with parents at the school. The applicant went to the meeting and had a conversation with Mr Dlamini. During the conversation the applicant withdrew the resignation reinstating the original employment agreement and indicating that he was going to apply for a transfer.

19. On 17 June 2009 the applicant addressed a letter to Mr Dlamini the first paragraph of which read as follows:

"Due to an overwhelming lack of respect for discipline from pupils in the school, I hereby request a transfer as Life Science Educator at Brettonwood High School to be effected at the soonest possibility."

20. In the letter the applicant again referred to numerous incidents involving the learners that he had to teach, which he regarded as disturbing. The letter ended with the following:

"Under these circumstances I feel I have been offered a post at this school under false pretences as I have a right to:

- be respected
- to encounter a learning environment
- to have access to effective discipline
- to teach learners who are willing to be taught
- a right to teach

In short I find conditions of service untenable."

21. On or about 15 October 2009 the applicant drafted a letter which was e-mailed to Mr Gavin Kedian, the Superintendent for Education Management in whose area the school fell. The letter read as follows:

"This is to inform you that I Helge Olle Janssen, persal number 61696773 find the situation at Brettonwood High School untenable and cannot continue to teach there in any normal manner. I was already at the end of my tether when Mr Dalmini returned and sadly cannot say there has been any improvement.

The events of the past two weeks in particular left me with no doubt that somebody in the Staff of Governing Body has opposed my appointment to the school for reasons beyond my comprehension.

My right to teach, to employment, to dignity has been violated.

Please advise me on what direction to take."

22. On 19 October 2009 the applicant addressed another letter to the respondent. He described this letter as his fourth request for a transfer. He *inter alia* complained that he had to face constant and incessant waves of organised intimidation and agitation from groups of learners within each class. He further referred to his life being threatened and indicated that this affected him psychologically and caused him to have long bouts of depression. He also referred to a meeting that he had with Mr Govender (the then secretary of the ELRC) and a suggestion made by Mr Govender

that he should lay a charge of intimidation at the police station and thereafter make application to be declared a displaced teacher. In the letter he explained that he decided against following the advice because he felt it would be too confrontational as his life was already in danger and he feared that it would aggravate matters. The letter ended with the applicant requesting *“urgent intervention and a transfer to a suitable post at the earliest convenience.”*

23. From 21 October 2009 onwards the applicant did not work. On 26 October 2009 he applied for sick leave in respect of the period from 21 October 2009 to the end of the quarter i.e. to 11 December 2009. It appeared from a medical certificate that the applicant relied on, that he was suffering from *“major depressive disorder and anxiety neurosis.”* The medical practitioner who issued the certificate recommended that a replacement teacher be employed to the end of the year. The applicant summarised the events leading to his sick leave application as follows in a document that accompanied the sick leave application:

“Ever since joining Brettonwood High School I have been subjected to ongoing agitation and resistance to learning by groups of students in each of my grade 10, 11 and 12 in Life Science. In spite of appeals to the disciplinary management of the school, together with the ongoing strike by learners within the school to have Mr Dlamini reinstated (contentious issues that developed before my arrival at the school) my right to dignity and respect has been violated.

My health had begun to suffer and I was treated by Dr Naidoo at the Glenwood Medical and Dental Centre.

The position taken by the Governing Body has divided the staff with the result that the learners have suffered and teaching become extremely problematic within the school. Constant pandemonium in the corridors, particularly between lessons, became more and more and norm. Learners refused to be disciplined and ran away when asked for their name, give a false one or deny flatly that they are doing anything wrong.

Requests to have me transferred through the Education Department fell on deaf ears as I was told that I was an Unprotected Temporary Educator and therefore my request could



not be addressed. This further exacerbated the untenable situation and had a devastating effect on my health.

After further consultation with Dr Naidoo he deemed it necessary to place me on sick leave for the mentioned period.

Now at least I feel I can begin a long and arduous recovery period. I hold the school directly an appropriately to blame for this situation.”

24. On 2 December 2009 the applicant sent an e-mail to Mr Kedian. The-email read as follows:

“It would be most appreciated if you could inform me of what progress has been made in finding me an alternative educator post.

I have a complete copy of all correspondence I have submitted to the Education Department either via Mr Dlamini, Mr Dladla or yourself and they are available on request. I also have records of specific disturbing incidences that I encountered at Brettonwood High School. In this regard I feel an interview is surely forthcoming.

I would like to make it absolutely clear that I have no personal issues to grind but continue to feel outraged at the so-called professional treatment I encountered at this Government School.

I trust this correspondence is in order and I eagerly await your response.

25. Mr Kedian responded in an e-mail that was sent to the applicant on 4 January 2010. This e-mail read as follows:

“As I understand the situation you were appointed as an unprotected temporary educator at Brettonwood High School. That being the case your contract was terminated on 2009/12/31.

The onus is on you to identify a suitable post at a school and negotiate with the Principal of that school for an appointment.”

26. The applicant regarded the last-mentioned letter as a notice that he was dismissed and this led to him referring a dispute to the ELRC.

## **SURVEY OF EVIDENCE AND ARGUMENT**

27. The applicant gave evidence in support of his case and his version is summarised in paragraphs 28 to 40 below.
28. The applicant gave evidence about the interview for appointment to the governing body post of a grade 10, 11 and 12 Life Science educator. Mr Dlamini indicated to him what remuneration the governing body was offering. The remuneration on offer was less than what the applicant was earning at the Fulton School for the Deaf. The applicant turned down the offer because he could not accept a lower salary. Mr Dlamini expressed the view that the applicant was the right person for the job and that he was needed at the school.
29. Mr Dlamini and Ms Zizhou had a private discussion and after that Mr Dlamini said the following to the applicant:

“We can offer you a permanent job with the government with pension, medical aid, a housing subsidy and recognition of your 18 years teaching experience and this would make up for the shortfall in salary.”
30. The offer still did not meet the applicant’s salary requirements. The long term prospects looked good and because of that the applicant accepted the offer. There was a discussion as to when the applicant could start and it was agreed that the applicant would commence working at the school as soon as he was released by his employer (Fulton School for the Deaf).
31. No indication was given during the interview that the applicant would have to re-apply for the post at the end of the year. The applicant denied that any fixe term contract of employment was entered into. His case was that he was employed for an indefinite period. He was not told how the post would be funded. Mr Dlamini did not tell him what would happen if the deputy principal post was filled.

32. Mr Dlamini phoned the applicant on a subsequent day and advised him that Fulton School for the Deaf agreed to accept his (the applicant's) resignation. Mr Dlamini further told the applicant that he could start at the school after working a notice period of one month with Fulton School for the Deaf. After working the notice period the applicant commenced working at the school on 18 May 2009.
33. Prior to commencing employment at the school the applicant went to the school where he filled in a form. He was told by a secretary that he had to fill in the form for the purpose of getting a salary and he did not pay much attention to the heading which indicated that it was an "application for appointment of a temporary/substitute educator." When the applicant signed the form the space for indicating the period of employment was not filled in. The space for filling in the "details of the educator in respect of whom a substitute was required" was also not filled in at the time that the applicant signed the form.
34. The applicant's pay slips reflected the respondent as his employer and his salary was paid by the respondent.
35. The applicant resigned on 11 June 2009. After the applicant had resigned Mr Dlamini arranged a parent - teacher meeting on or about 13 June 2009 to discuss issues relating to a strike by learners and an investigation by the department of an allegation that Mr Dlamini had caned a learner. The applicant went to the meeting and had a discussion with Mr Dlamini. The applicant withdrew his resignation during the discussion and indicated that he would apply for a transfer.
36. The applicant commenced working again on Monday 15 June 2009.
37. Some time later the applicant arranged a meeting of HOD's and staff representatives to discuss the untenable situation at the school. Mr Dlamini also attended. About fifteen issues including the caning issue was discussed. The applicant gained the impression that Mr Dlamini thought

that he (the applicant) was against him. He gained this impression because Mr Dlamini said the following to him:

“You are only a UTE. You are not even on the system yet. You cannot ask for a transfer.”

38. The term UTE referred to an unprotected temporary educator and was a term that was no longer in use. This was the first indication that the applicant received that he was considered to be a temporary educator.
39. The applicant continued teaching. On about three occasions the applicant called upon Mr Dlamini to address unruly matric learners. This did not have any effect.
40. The applicant referred in detail to the way learners behaved. He also referred to the sick leave and the advice given to him by Mr Govender that he should apply to be registered as a displaced educator. The applicant explained why he did not follow this advice. He spoke to Mr Samora Nene, a SADTU official who advised him not to do so as he would be seen as a trouble maker. According to the applicant he refused to return to the school as he was not assured that the situation could and would change.
41. The respondent called Ms Zizhou and Ms Collette Nokuthula Luthuli (the deputy manager HR support services) as witnesses. Ms Zizhou's evidence is summarised in paragraphs 42 to 50 below and Ms Luthuli's evidence is summarised in paragraph 51 below. Mr Dlamini was not called as a witness because he was no longer in the employ of the respondent.
42. According to Ms Zizhou it was practice at the school to offer a vacant government post to a governing body educator on a temporary basis until the post was filled. Pending the filling of the government post the educator held against the post was referred to as an unprotected temporary educator.
43. During April 2009 the governing body of the school needed to employ a Level 1 life sciences educator and such a post was advertised. The

Mrs Zizhou was  
COACHED BY ED.  
DEPT. OFFICIAL  
prior to giving  
withness.

applicant was one of the candidates who applied for the governing body post. He was interviewed by Mr Dlamini and Ms Zizhou.

44. During the interview Mr Dlamini and Ms Zizhou formed the impression that the applicant was the best candidate for the governing body post. The applicant's salary requirements could not be met and because of that they offered to employ the applicant against the deputy principal post left vacant by the retirement of Mr Barkhuizen at the end of 2007. There was a dispute about the filling of that post that needed to be resolved before a permanent appointment could be made.
45. According to Ms Zizhou the applicant "knew he was going to be held against the deputy principal post" and "it was clear that it was a UTE post." She further testified "There was no way that he was told it was a permanent post."
46. Ms Zizhou's understanding was that the UTE post was not controlled by the school. The school had no control over when the deputy principal post would be filled. The department's regulation relating to the UTE posts was that every temporary post ended in December. If it became apparent in January of the following year that the post had not been filled though a permanent appointment, the temporary educator could be employed for another year and to facilitate such appointment a new application had to be submitted to the department.
47. Ms Zizhou could not recall the exact words that were used but according to her it was made clear to the applicant that Mr Dlamini, the principal, had no control over the post. He (Mr Dlamini) had no authority to offer a permanent post. Under cross-examination Ms Zizhou was asked by the applicant whether she remembered what Mr Dlamini told him when he turned down the governing body post. She responded as follows:

"I may not remember what he said but I have a clear understanding of what he offered you. My understanding was that you would be serving in a UTE post against the vacant governing body post."

**This is Mrs. Zizhou's 'understanding' - was I meant to have read her mind?**

48. Under further cross-examination she testified that she could not remember the details but Mr Dlamini told the applicant that the appointment would be against the vacant deputy principal post.
49. Ms Zizhou understanding was that the employment offered to the applicant was on the normal departmental conditions. She could not remember whether a breakdown of such conditions was discussed.
50. The applicant put it to Ms Zizhou that it was not made clear to him that he was offered employment up to December of that year. Ms Zizhou indicated that she could not dispute that but she understood it like that.
51. Ms Luthuli gave evidence about the department's policies and practices in 2009. One policy was to fill vacant posts within a six month period.  
**Huge amount of evidence omitted here!**
52. The applicant submitted that he was unfairly dismissed and he sought compensation. His submissions appear from the written argument filed by him.
53. It was the respondent's case that the applicant's employment expired at the end of a fixed term period that he was employed for and that no dismissal occurred.

#### **ANALYSIS OF EVIDENCE AND ARGUMENT**

54. In terms of section 7 (2) read with section 6 (1) of the Employment of Educators Act, 1998 ("the EEA") a person may be appointed by the head of department in the service of a provincial education department
- in a permanent capacity; **Why has this point been IGNORED?**
  - in a temporary capacity for a fixed period; or
  - on special contract for a fixed period or for a particular assignment.
55. Subject to certain exceptions, not relevant for present purposes, an appointment to any post on the educator establishment of a public school

may in terms of section 6 (3) (a) of the EEA only be made on the recommendation of the governing body of the school.

56. The terms and conditions of employment of educators determined in terms of section 4 of the EEA i.e. the Personnel Administrative Measures (“PAM”) dealt with the procedure to be followed in making appointments and provided that the appointment of an educator could be in a permanent or a temporary capacity. If the appointment is in a temporary capacity, it is for a fixed period. Appointment in a temporary capacity can either be to a substantive vacant post or as a substitute for another educator who is temporarily not occupying his or her post. See item 2.1 (e) of PAM.
57. All vacancies in public schools had to be advertised in a gazette, bulletin, or circular. Candidates were subjected to a sifting, shortlisting and interview process. In the case of public schools interviews had to be conducted by an interview committee elected by the school governing body. The school governing body had to consider the recommendation of the interview committee and had to submit a recommendation to the provincial education department. The employing department then had to make the final decision. See item 3 of PAM. NO MENTION is made of the utter chaos in the school.
58. The head of department may in terms of section 8 (1)(c) read with sections 8(2) and 8(3) of the EEA transfer an educator in the service of a provincial department of education to any other post in that department provided that that no transfer to any post on the educator establishment of a public school could be made unless the recommendation of the governing body of the school had been obtained. Such recommendation need not be obtained if an educator was transferred temporarily from a post at a public school to a post in another public school. Completely irrelevant point
59. The employment agreement entered into between the parties had to be considered in the light of the legal framework referred to above as it is more probable than not that they would have entered into an agreement permitted by law. Then WHY is there this dispute?

60. In terms of section 192 (1) of the LRA in any proceedings concerning a dismissal, the employee party must establish the existence of a dismissal on a balance of probabilities. In the present case that entailed proving that the employment did not terminate by agreement in terms of a fixed contract of employment. **WHERE is the 'fixed term contract? Hello?**

61. It is significant that the superintendent of education management, Mr Kedian, did not refer to a fixed term contract of employment that the applicant might have entered into. It appears from his letter of 4 January 2010 that the applicant's employment was terminated on 31 December 2009 because he was an unprotected temporary educator. **UTE has no legal jurisdiction**

62. Ms Zizhou, who testified in support of the respondent's case could not remember whether it was specifically agreed that the employment would terminate at the end of the year. According to her she assumed that the contract would be until the end of the year and an application would have to be made for employment the following year as was the practice at the time. If there was a practice to appoint unprotected temporary educators only until the end of the year that would explain the wording of Mr Kedian's letter of 4 January 2010. The letter and the evidence did not exclude the possibility that the applicant's employment was not subject to a fixed term.

Mr. Deyzel is hereby protecting Mr. Kedian.

63. It was improbable that the applicant and the principal, Mr Dlamini agreed that the applicant would be employed to the end of the year i.e. the end of 2009. If that was the case it was improbable that Mr Dlamini would have indicated in the notice of assumption of duty that the appointment of the applicant was from "18 May 2009 to indefinite." The wording of the notice of assumption of duty strongly supported the applicant's version that the parties did not agree to a fixed term. His version that he accepted the offer of employment because of the long term benefits associated with indefinite employment rang true. In all the circumstances I find that the applicant proved on a balance of probabilities that his employment was not subject to a fixed term that ended on 31 December 2009.

**Why thank you! Now, about that small matter of the non existence of a fixed term contract?**

It is perfectly obvious that had the Dept. official not produced these forms, that the commissioner would have ruled against me.



The commissioner completely ignores the fact that the school and the GB was in chaos. It was all basically NON FUNCTIONAL. Why is this MY PROBLEM?

64. It does not follow that the applicant was employed on a permanent basis. The offer of employment with the department was made by the principal of the school immediately after it became apparent that the applicant would not take up employment with the governing body of the school. The post was therefore not advertised, no sifting and shortlisting of candidates were done and no interviews were held. The governing body of the school did not make any recommendation to the department. The applicant could therefore not have been permanently employed. That the applicant knew he was not permanently employed appeared from the fact that he signed an application for temporary employment. His version that he did not pay attention to what he was signing was inherently improbable and is not accented

Complete bias of perception. Here the commissioner is representing the argument of the Ed. Dept.

65. It is more probable than not that the parties agreed that the applicant would be employed for a special assignment i.e. to be a substitute educator held against the vacant deputy principal post as could be done in terms of the EEA. It was unknown when the deputy principal post would be filled and that explains why the parties regarded the appointment as being of indefinite duration. It was obvious that the employment was temporary as it would come to an end when the deputy principal post was filled. Ms Zizhou's evidence that it was discussed that the applicant would held against the deputy principal post was more probable than not. Her evidence was supported by the fact that the applicant signed an application for temporary employment which from some point onwards reflected that he would be a substitute for Mr Barkhuizen, the previous deputy principal who had resigned. That this was also Mr Dlamini's understanding appeared from the wording of the notice of assumption of duty form that he signed.

...and WHAT was the principal going to do with me once the post had been filled? Huh? Oops, sorry you're now in excess?

Obvious? To whom?

When I asked Ms Zizhou to comment on this form, she declined, saying she had no knowledge of these forms that I would have filled in. Here Deyzel SUPPORTS her in a twist of biased logic. He completely fails to mention that the top part of the form was LEFT BLANK at the time I filled it in

Terminating the applicant's employment at a stage when the deputy principal post had not been filled was unfair. There was no justification for the view that the applicant was an unprotected temporary educator whose contract of employment could be terminated at year end. To have terminated his employment for that reason and without giving him a hearing on the matter rendered his dismissal substantively and procedurally unfair.

Well thanks!

67. The applicant sought compensation. In deciding what compensation to award I have considered the factors referred to in paragraphs 68 to 78 hereunder.

Oh really? I knew that, did I? Blatant bias and misrepresentation of evidence

68. The applicant left his previous employment with the governing body of the Fulton School for the Deaf to take up employment at the school (Brettenwood High School) to be held against a department post.

69. The applicant's employment with the governing body of the Fulton School for the Deaf was governed by a fixed term contract of employment which was renewed on an annual basis.

He completely fails to mention that fact that after the first year, employment is deemed PERMANENT.

Deliberate misrepresentation of evidence

70. The applicant knew when he took up employment with Brettenwood High School in a department post that it was temporary in nature and that it would come to an end when the deputy principal post was filled. The applicant accordingly left one insecure employment for another.

Blatant and unacceptable bias.

Deliberate attempt to discredit the pain and suffering, victimization and trauma, and having one's life threatened by a pupil.

71. The applicant worked at Brettonwood High school for less than eight months. He resigned after working for less than a month but was allowed to retract his resignation and to return to work. Towards the end of his employment he was off-sick for <sup>38</sup>50 days suffering from "major depressive disorder and anxiety neurosis."

A completely biased and twisting of facts. Off sick? Really?

72. The learners that the applicant had to teach was ill-disciplined, unruly and disrespectful towards the applicant. The applicant requested intervention by the school management and the superintendent of education management but he did not receive adequate assistance and this led to his medical condition.

A completely biased and unreasonable interpretation of SHOCKING EVENTS in this school. Is the Commissioner in DENIAL?

73. The applicant could not return to teach the learners that he taught before he fell ill. Good heavens!

74. The applicant requested a transfer. A transfer to another school was not possible because governing body recommendation was required. Good heavens!

75. It is unclear for how long the applicant's employment would have continued had he not been dismissed. It was clear that he was not going to return to the

Deliberate misrepresentation of evidence

school. The department would have investigated the matter to determine whether it was impossible for the applicant to teach at the school and whether alternatives to dismissal could be discovered.

Now he is representing the view of the Ed. Dept. What kind of collusion is this?

76. The applicant was advised to take steps to be registered as a displaced educator but he did not follow the advice Deliberate misunderstanding of circumstances
77. The applicant did not have gainful employment after his dismissal. On the evidence he did not take reasonable steps to apply for employment at other schools. Deliberate misrepresentation of evidence
78. The applicant earned R124 134-00 per annum.
79. In all the circumstances an amount equal to four months remuneration would in my view constitute fair compensation. The compensation would accordingly amount to R41 378-00.

#### AWARD

- (a) The respondent, the Department of Education, Kwazulu-Natal is ordered to compensate the applicant, Mr H.O. Janssen, for unfair dismissal by paying him an amount of R41 378-00.
- (b) The amount of R 41 378-00 referred to in paragraph (a) is to be paid to the applicant within fourteen days of the respondent being notified of this award

DATED at DURBAN this 9<sup>th</sup> day of JUNE 2015.



A. DEYZEL  
PANELIST

