# JURISDICTION, DETAILS OF THE HEARING AND REPRESENTATION

1. I satisfied myself that the CCMA had jurisdiction to hear this matter.
2. The arbitration hearings were held on 26 March, 28 & 29 May, 22 & 23 July 2014 at the CCMA offices, Embassy Building, 199 Anton Lembede St, Durban. The applicant was represented by Mr ……………….(…………union official) while the respondent was represented by senior case manager Mr ………….. The proceedings were conducted in English and recorded.
3. Mr ………….indicated that he had 8 years of experience in representing parties at arbitration while Mr ………….. indicated that he had 12 years. Having regard to their experience the proceedings were conducted largely in an adversarial manner.
4. Both parties handed in their respective bundle of documents. Since the applicant’s documents were already included in the respondent’s bundle, it was agreed that only the respondent’s bundle would be used during the proceedings. The applicant was given 1.5 hours to examine the bundle. She thereafter indicated that the documents in the bundle were authentic and correct as regards their contents.
5. A pre-arb was conducted on 26 March 2014 and the issues narrowed down. A printed minute thereof was distributed to both parties on 27 March 2014 by fax. After being perused by them, both parties agreed on 28 May 2014 that it reflected correctly the pre-arb proceedings on 26 March 2014. It was then read into the record. The parties were advised that they should keep the minute handy and make regular reference to it during the proceedings to identify the issues. Both parties agreed that the minute contained all the issue, whether agreed to or disputed.
6. When the arbitration commenced, the parties were advised to put their respective version to the opposing witnesses during cross examination. The applicant’s representative was advised furthermore, in the midst of cross-examining the respondent’s first witness, that he must put the applicant’s version to the respondent’s witnesses. The importance of doing so was also emphasised. Having regard to the applicant’s evidence it is clear that the advice was not heeded. It became apparent later why significant parts of her version were not put when Mr …………. gave evidence to say that the applicant had failed to disclose to him her “full and entire” version.
7. For her part the applicant stated that she had not challenged the respondent’s witnesses because she feared that it would jeopardize her prospects of getting her job back alternatively open her up to victimisation if she did indeed was awarded reinstatement.
8. In the circumstances the normal rules for making findings on the probabilities must be employed. In other words where evidence was left unchallenged in cross examination I must make a finding that such evidence is undisputed.
9. Even though this was not a case of constructive dismissal, large parts of the applicant’s evidence consisted of issues that one normally encounters in constructive dismissal disputes. There was however no evidence that the applicant had lodged any grievance with the respondent.

# ISSUE TO BE DECIDED

1. Whether the applicant was unfairly dismissed. She sought reinstatement with back pay.

# BACKGROUND TO THE DISPUTE

1. The applicant is ……………., a trainee manager. She commenced employment with the respondent on 1 September 2012 and was dismissed on 13 December 2013. She earned R10 400 per month for working a 6 day / 45 hour week. She remains unemployed despite making attempts at finding alternative employment. She has not earned anything from any type of casual work.
2. The respondent is ………………..(PTY) LTD, a retail group that has 29 stores in KZN and 55 000 employees countrywide.
3. The applicant was given a notice to attend a hearing on 3 October 2013. It contained two “charges”: “*1. Dereliction of duties in that you failed to send overs and unders to demand planners correctly. 2. Failed to follow admin procedures*”. Even though the “charges” appear to be couched as misconduct, it was agreed that this case essentially turned on the applicant’s alleged poor performance.
4. The respondent held a hearing on 27 November 2013. The applicant pleaded guilty to both charges and was dismissed. She referred an unfair dismissal dispute with the CCMA on 16 January 2014. The matter was set down for conciliation on 17 February 2014 but remained unresolved. Hence the referral to arbitration.
5. The following issues were dealt with in the pre-arb minute and were either agreed to or disputed as the case may be:
	1. It was agreed that the applicant was required to perform the following functions and tasks on a routine basis:
		1. To examine stock on its arrival at the store;
		2. To ensure that the stock is displayed in the prescribed manner on the shelves;
		3. Ensure that no expired or degraded stock remains on the shelves;
		4. Ensure that the fruit and vegetable (F&V) department is clean and hygienic at all times;
		5. Check the fridge temperatures and complete a checklist in that regard in the morning and afternoon;
		6. Prepare a report of over-stocked items, under-stocked items, and out of stock items and to send that report to the demand planning department;
		7. Record the quantities and types of expired or degraded stock by scanning them;
		8. Perform general managerial functions such as scheduling of staff in the F&V department and to supervise them in the performance of their duties;
		9. Perform additional functions as identified by the store manager on an ad hoc basis;
	2. It was agreed that the applicant reports to and is accountable to the store manager;
	3. It was agreed that the only qualification required – a matric – was possessed by the applicant. She also had a driver’s licence;
	4. It was agreed that the applicant was hired externally and not promoted to this position;
	5. It was agreed that the job in question was not complex;
	6. It was disputed whether the volume of work is too high;
	7. It was agreed that the applicant was not required to show any special initiative as all processes and procedures were centrally planned by the respondent;
	8. As regards training, instruction and guidance –
		1. It was agreed that the applicant was given on the job training, instruction and guidance by the store, assistant, floor and perishables managers. However the applicant stated that on some occasions she received conflicting instructions that caused confusion in her mind. This was disputed;
		2. The applicant further agreed that for the most part the guidance and instruction was useful and meaningful. She also agreed that she received useful and meaningful guidance and instruction from outside the store by the regional manager and the co-ordinators. The latter visited the store approximately twice a month;
		3. The applicant agreed that she had received once off training on *receiving* on the SAP system. However she had been denied the opportunity of attending the training on *procedure* on the SAP system. She submitted that this had hampered her in the performance of her functions. For example she did not have her own password to access the system in order to place orders. Other staff members reluctantly shared their passwords with her. They were reluctant because while the applicant was using their password, they could not perform any relevant function on the system themselves;
		4. It was agreed that there is a daily cut-off time for the ordering to be done;
	9. The applicant agreed that she was aware of what was expected of her in terms of her performance. In this regard the applicant agreed that the store, assistant and floor managers interacted with her on a daily ongoing basis for purposes of imparting instruction and guidance. It was agreed further that the applicant could approach them if she felt the need for further guidance and instruction. The applicant submitted however that she was humiliated and insulted by these managers on a daily basis. For example they would make remarks such that she was not cut out for the job. This was disputed by the respondent;
	10. It was disputed whether the applicant’s performance was below the required standard;
	11. It was agreed that the applicant was informed over a period of time that her performance was below standard;
	12. It was agreed that the standard that is required is achievable, reasonable and realistic. It was agreed further that the respondent applies uniform national standards in all its stores as regards standards and that these are achieved by other trainee managers;
	13. It was disputed whether the applicant was given a fair opportunity of meeting the performance standard. She submitted that the store in question did not have a F&V manager and hence she did not get the best training. The respondent disagreed and submitted that not all its stores have F&V managers. Whether such a position exists in a store depends on the demands of the business. it submitted further that the store, assistant and floor managers were quite capable and would have had the skills and knowledge necessary to guide and instruct the applicant in all areas of her work;
	14. It was agreed that the applicant’s alleged poor performance had occurred over a period of time and was not based on a single incident. From time to time matters came to a head and were escalated and followed up by a warning or counselling session. The applicant agreed;
	15. It was agreed that there were mechanisms for the monitoring and measuring of performance. These consisted of the daily interactions between the applicant and the store, assistant and floor managers. A further mechanism related to the completion of check lists. While the applicant agreed that these mechanisms existed, she submitted that once she had started receiving warnings about her poor performance, her levels of stress became elevated. It was agreed that the applicant had brought to the attention of the respondent in or about June 2013 that she was suffering from stress. The applicant further stated that the stress impacted on her ability to perform. In or about October 2013 the applicant stated that she had been diagnosed with anxiety. The parties agreed to lead evidence on these issues;
	16. It was agreed that the applicant had received her first counselling session in or about April 2013. She agreed that she had received 3 further counselling sessions. The respondent indicated that the number and content of the sessions should be left for evidence;
	17. The applicant stated that her representations to the store, assistant and floor manager of the difficulties she was facing fell on deaf ears. Hence she had had a meeting with the regional manager. That the applicant’s representations were ignored was disputed by the respondent. it was agreed to leave for evidence whether the applicant had good reasons for her alleged poor performance;
	18. The applicant submitted that not having a password to access the system placed a huge obstacle in the effective performance of her functions. This issue was beyond her control. The respondent stated that it would deal with this issue by way of evidence;
	19. It was disputed whether the applicant was given a reasonable period of time to improve her performance;
	20. It was agreed that mule training was a system put in place to assist with performance. However the applicant stated that such training did not occur every day. The applicant agreed that on many occasions she had failed to complete the mule training because there were too many points to rectify on a daily basis and problems had accumulated over a period of time. The applicant submitted that she was alone and could not rely on anyone else for assistance. The respondent submitted that this issue should be dealt with in evidence;
	21. Whether the applicant’s performance improved, whether she was given effective feedback, whether she was given effective support, whether she was advised of the consequences of her alleged lack of performance were left for evidence;
	22. It was agreed that the applicant had written a letter to the respondent asking to be redeployed. The respondent submitted that it would lead evidence on this issue;
	23. It was agreed that the applicant’s alleged poor performance had impacted negatively on the F&V department. The parties agreed to lead evidence on this issue.

# SURVEY AND ANALYSIS OF THE EVIDENCE AND ARGUMENT

1. The following witnesses gave evidence for the respondent: ………….(currently case manager in HR and previously store manager at Linkhills being the store in question. He left Linkhills on 30 September 2013); …………… (floor manager at Linkhills until 31 October 2013); …………… (store manager at Linkhills from 5 November 2013).
2. The following witnesses gave evidence for the applicant: the applicant herself, ……………(the union official representing the applicant), ……………(bakery manager at Pinetown store with 7 years of experience), ……………(F&V manager for 1 month but having been employed by the respondent for 5 years).
3. Both parties submitted written closing statements in support of their respective positions.
4. The following observations are made in relation to the manner in which the applicant conducted her case:
5. Significant portions of her version were not put to the respondent’ witnesses. This must be understood in the light of her representative’s evidence that the applicant had not disclosed to him her “full and entire” version;
6. The applicant’s case was seriously damaged in cross examination. Despite that no meaningful re-examination was conducted of the applicant;
7. Large parts of the respondent’s evidence was left unchallenged in cross examination.
8. It is necessary to make a few preliminary comments before the evidence is surveyed and analysed. Claassen J said in Small v Smith 1954 3 SA 434 (SWA) at 438:

*‘It is, in my opinion, elementary and standard practice for a party to put to each opposing witness so much of his own case or defence as concerns that witness and if need be to inform him, if he has not been given notice thereof, that other witnesses will contradict him, so as to give him fair warning and an opportunity of explaining the contradiction and defending his own character. It is grossly unfair and improper to let a witness' evidence go unchallenged in cross-examination and afterwards argue that he must be disbelieved. Once a witness' evidence on a point in dispute has been deliberately left unchallenged in cross-examination and particularly by a legal practitioner, the party calling that witness is normally entitled to assume in the absence of notice to the contrary that the witness' testimony is accepted as correct.'*

1. To the extent that evidence was left unchallenged, it will be treated as being correct.
2. Issues that were agreed to by the applicant during the pre-arb but disputed when she gave evidence*:*
3. The pre-arb minute records that the job was not complex. However during cross examination the applicant stated that the job was complex;
4. The pre-arb minute records that the training and guidance given to the applicant was useful and meaningful. However when giving evidence and in cross examination the applicant stated that the training was not sufficient. She could not however say in what respect it was lacking and why this issue was not put to any of the respondent’s witnesses. She complained that she was dismissed because the store manager (Ebrahim) was “*trying to save his back and was facing an inquiry*”. That Eddles had also tried to “*cover his back*” and was afraid of losing of his job . She conceded that this was not put to them during cross examination.
5. The pre-arb minute recorded that the there were daily interactions between the applicant and her managers. In cross examination she stated that this did not occur daily and that this issue was not put to them when they were being cross examined.
6. No explanation was given why the applicant had agreed to the above issues during the pre-arb but later disputed them. Both she and her representative were observed perusing the pre-arb minute before agreeing that it recorded correctly the relevant issues. This calls into question the credibility of the applicant’s evidence.
7. Having regard to the issues on which there was agreement during the pre-arb, I find as follows:
8. That the job was not complex;
9. That the applicant was not required to show any special initiative in her work;
10. That the applicant was given on the job training, instruction and guidance by the store manager, assistant manager, floor manager and perishables manager and regional manager;
11. That the training and guidance for the most part was useful and meaningful;
12. That the applicant was aware of what was expected of her in terms of her performance. In this regard the applicant agreed that the store manager, assistant manager and the floor manager interacted with her on a daily ongoing basis for purporses of imparting instruction and guidance. She further agreed that she could approach them if she felt the need for further guidance and instruction;
13. The applicant agreed that she was informed over a period of time that her performance was below the required standard;
14. It was agreed that the required standard is achievable, reasonable and realistic. It was further agreed that the respondent applies uniform national standards in all its stores and that these are achieved by other trainee managers;
15. It was agreed that the applicant’s alleged poor performance has occurred over a period of time and not based on a single incident. It was agreed that from time to time matters came to a head and were escalated and followed by a warning or counselling session;
16. It was agreed that there were mechanisms for the monitoring and measuring of performance. These consisted of daily interactions between the applicant and the various manager. The completion of checklists was a further mechanism;
17. The applicant agreed that she had received her first counselling session in or about April 2013 and that she had received 3 further such sessions;
18. It was agreed that mule training was put in place to assist with performance;
19. It was agreed that the applicant’s alleged poor performance had impacted negatively on the F&V department.
20. The evidence will now be surveyed and analysed having regard to the disputed issues as identified in the pre-arb minute. For the convenience of the reader the evidence of both parties will be surveyed one after the other and an analysis conducted immediately thereof.
21. Whether the volume of work was too high:
22. Respondent’s version: It submitted that the volume was not too high. Its evidence was that the volume of work may appear to be high when a trainee commences training but as one settles down it is expected of one to get used to the daily functions and routines and plan accordingly. It submitted that the volumes of work were manageable and that other trainee managers coped with the volume of work. Furthermore that the person who had replaced the applicant as a trainee manager was not having any problems in the F&V department even though there was no F&V manager to give supervision;
23. Applicant’s version: The applicant stated that she was always very busy and “running around like a headless chicken”. She did not say why other trainees coped with the volume of work whereas she did not.
24. In cross examination the applicant stated that there were so many tasks to be performed but could not give examples of any.
25. With the respondent’s version remaining undisputed, I find that the volume of work was not too high. It is significant that other trainees coped without any difficulty.
26. Whether the applicant received conflicting instructions from her managers thereby causing confusion in her mind:
27. Respondent’s version: it disputed that the applicant was given conflicting instructions. It submitted that if conflicting instructions were given to the applicant, then it had an “open door” policy whereby the applicant could come in and speak to any of the managers to resolve any such conflicts. Furthermore it submitted that the applicant had not approached any manager to resolve any conflicting instructions, if any;
28. Applicant’s version: That she was being trained by 5 different individuals who had their own method of working. She found it confusing and did not know who to please. She gave an example of how a manager advised her to display tomatoes in one way and another manager came along and advised her to display them differently;
29. The respondent’s version was not challenged in cross examination. The applicant conceded in cross examination that she had not put this issue to the respondent’s witnesses.
30. I find that the applicant did not receive any conflicting instructions, but even if she, she could have approached one or other of the manager to resolve such conflict. There is no evidence that she did so.
31. Whether humiliating and insulting remarks were made by the applicant’s managers to her:
32. Respondent’s version: This was disputed by the respondent. It conceded that the applicant was advised that she was not making the grade and may possibly not be cut out for the job. This was not intended to insult the applicant. Furthermore the counselling had been done behind closed doors and not on the shop floor, and that she was not shouted at. Ebrahim stated that if the applicant had advised him of any insult, he would have advised her to lodge a grievance. No grievance was lodged;
33. Applicant’s version: That she was shouted at behind closed doors. That her managers had advised that she was not obeying instructions and that they could not continuously show her how to perform her duties. That she was reprimanded continuously causing her spirit to break. That her authority was being undermined in relation to her own staff because they did not carry out her instructions and told her instead that they knew their jobs because they had been there for years. That she was told that she is incompetent. That Eddles had banged his head on a table 8 times in her presence saying that she was not obeying instructions. That she had burst into tears on a number of occasions. That Eddles had advised her that she was wasting time at the respondent. That Ebrahim had advised her to “shut-up”. That she was very stressed and visited her psychiatrist and hospitalised for depression;
34. In cross examination the applicant conceded that she did not tell anyone in authority about her difficulties because she felt that it would jeopardise her job. She also could not explain why examples of the humiliating remarks or insults were not put to any of the respondent’s witnesses in cross examination. She also could not explain why it was not put to Eddles that he had banged his head on the table in her presence. She conceded that issues relating to her performance could not be discussed on the shop floor and had to be discussed in the office. The applicant failed to explain why it was not put to Ebrahim that he had told her to shut up. She conceded that it was incumbent on the managers to point out to her what her shortcomings were and that it was part and parcel of their duty to do so.
35. Humiliating or insulting an employee is unacceptable in the workplace. Where it does occur it would give rise to a grievance. It was common cause that the applicant had not lodged a grievance on this, or indeed any other issue. This is despite having had the benefit of access to a shop steward and trade union.
36. I cannot attach any significant weight to the applicant’s version on this issue because her version was not put to the respondent’s witnesses for comment. The respondent conceded that she was advised that she was not making the grade and may not be cut out for the job. In the hurly-burly and robust world of the retail sector I cannot find that such remarks can be interpreted as being humiliating or insulting.
37. Whether the applicant was given a fair opportunity of meeting the performance standard; and whether the applicant was given a reasonable period of time to improve her performance:
38. It was common cause that the applicant’s deficient performance was brought to her attention on numerous occasions and that the following formal steps were taken to address the issue:
	* 1. That the store manager had written a letter to the applicant on 8 June 2013 that read as follows: *Dear Theresa: It is out of concern for the business that I write this letter to you. You have been on the produce department for more than 3 months now and I have been monitoring your performance which has not been up to the standards expected by the company.*

*Arran who is the assistant store manager had compiled a daily action plan which was to assist you in managing your daily duties depicting by what time what should be done in order for you to run your dept successfully, but you failed to carry it out. When floor walks are given to you points are not done or not completed correctly.*

*Gareth had shown you on quite a few occasions how to use the order card system which was put in place to assist you to order more accurately and once again you failed to follow the simple instructions which was to do a stock count daily and to place your order on the stock cards as to get a rate of sale which would make ordering more easier for you.*

*Theresa you need to understand that by getting the ordering correct it would help increase turnover and reduce wastage which is a huge problem in your dept. You need to get a balance on the ordering as you go from one extreme of over ordering to the next of under ordering especially when it comes to advertised line and known value item lines.*

*I have personally spoken to you on several occasions regarding the above but you have failed to deliver. You have no control when it comes to the department staff as they do not follow your instructions and do as they please.*

*Theresa the time has come for you to start taking accountability and responsibility for the department just as every other department manager including myself. You have been given counselling and warnings already and you need to see the seriousness of your actions as this is why you were employed by the company and you are not fulfilling your duties towards the company as you are being remunerated to do so.*

*Theresa this is the final time we talk about these issues as disciplinary procedures will be instituted against you. I have arranged for Donna the produce MSM to spend time with you in order for you to improve your performance as well. Please feel free to discuss any points that you are not clear on as this was discussed with between yourself, Elizabeth and myself.* (Signed S Ebrahim.)

* + 1. That Eddles had written a letter to applicant dated 9 April 2013 as follows: *Theresa i hereby issue you with a correction in counselling session for poor work performance in your produce department. As a produce trainee manager, it is your duty to ensure that you listen and action all points given to you by your seniors and also to follow the procedures put in place by Pick an Pay to ensure that the produce department runs smoothly, the senior manager of the store are there to guide and teach you, but you are failing to listen and do the work timeously. As much as we do understand that you are by yourself and that you are only one month in the department, we can no longer tolerate that as an excuse as all 3 “A” key holders and the perishable manager has spoken to you, guided you, and even worked with you in the department. Theresa, as we have told you before, you need to take responsibility for your department as you have been trusted by ………….to run that department. Hereby below are the points that you have failed to do: 1. No actioning mule train points on the day given to you completely – mule trains are given to guide, coach, train and help you develop as a produce trainee. Theresa, mule train points need to be actioned and if you cannot finish them in one day, it is expected of you to communicate with the senior manager. 2. Stock counts not being done – Theresa, stock counts are very important in the running of the produce department, without stock counts, you don’t know what stock you have and above all, this could increase your wastage, or be out of stock. Stock counts are to be done on a daily basis and signed off by myself or another senior manager. 3. Not following a reasonable management instruction that it has taken you 3 days to phone stores for your overstocks of tomatoes. 4. Not bringing wastage sheets to get checked and signed by myself on a daily basis and also not communicating on a Monday your figures which requested. Theresa i hope you take this seriously because if no improvement is shown further disciplinary action will have to be taken. (Signed Gareth)*
		2. Counselling on numerous occasions;
		3. Verbal warning on 11 April 2013;
		4. Written warning on 7 August 2013;
		5. First inquiry into applicant’s performance 29 August 2013;
		6. Final written warning on 30 August 2013;
		7. Written warning on 9 October 2013;
1. Respondent’s version: That the applicant failed to show any improvement despite the training, advice, instruction, guidance, assistance, warnings, letters, and counselling sessions;
2. Applicant’s version: She stated that she disagreed with large parts of the letters that were written to her but she had not advised her shop steward Ngcobo about the disagreement;
3. In cross examination the applicant conceded that she had not put to any of the respondent’s witnesses that her training was insufficient. Her reason for not doing so was that she felt that it would jeopardise her future or that she would be victimised. She could not say, when asked, in what manner the training was lacking. At the end of the cross examination she was asked what else the respondent could have done to assist her. She did not respond to this question;
4. In cross examination one of the applicant’s own witnesses (Mseleku) conceded that dismissal was the only option once the respondent had counselled an employee, had given her verbal, written and final written warnings.
5. Having regard to the above I find that the applicant was given a fair opportunity of meeting the required standard, and that she was given a reasonable period of time do so. I find further that she was aware of the consequences if she did not improve her performance.
6. Undisputed instances of the applicant’s poor performance as contained in the letters sent to the applicant by her managers:
7. Failure to follow daily action plan as drawn up by the assistant store manager;
8. Floor walks not done or completed correctly;
9. Ordering not done or not done accurately. There were a number of cases of over-ordering or under-ordering;
10. Failure to do a stock count daily;
11. Failure to deal with staff who failed to carry out their duties;
12. Failure to do the work timeously;
13. Not bringing in wastage sheets to be checked and signed by a manager.
14. Whether the respondent has F&V managers in all its stores*:*
15. Respondent’s version: That the store in question (ie Linkhills) was a very small store and that the turnover in the F&V department was small. As such the appointment of a full time F&V manager was not warranted in that store. In any event it was not necessary to have a F&V manager to train a trainee manager. It submitted that the other managers were quite capable of training the applicant in the F&V department. It disagreed with the proposition that training can be provided only by a F&V manager, as contended by the applicant;
16. Applicant’s version: The applicant complained that she did not get the best training because she was not trained by a F&V manager. She made reference to other stores but it was undisputed that those stores were significantly larger than Linkhills and that a meaningful comparison could not be made of their respective turnovers. The applicant did not say in what respect her training was deficient;
17. The applicant also called two witnesses to say that the respondent had either failed to follow its own policy and procedure of appointing a F&V manger in the store in question, or had departed from it. In cross examination both witnesses conceded that they had not seen any such policy document nor were they experts on how a small store should be run or managed. They did not dispute – and examples were given – that smaller stores in the group did not have full time F&V managers due to their low F&V turnover. It must also be noted that the existence of such alleged policy and procedure was not put to any of the respondent’s witnesses;
18. In cross examination the applicant conceded that the Linkhills store is a small store, with a small turnover in the F&V department and that it was not financially viable to appoint a F&V manager. She also conceded that this issue was not put to Ebrahim when he was being cross examined.
19. I find that there is no policy or practice on the part of the respondent to appoint F&V managers in all its stores. It was undisputed that one does not necessarily have to be trained in F&V only by a F&V manager. The applicant failed to give any examples of, or deficiency on the part of the managers that deprived her of a proper training. I find on the probabilities that the applicant received proper training from the managers in question.
20. Whether the applicant’s representations to the respondent had fallen on deaf ears*:*
21. Respondent’s version: That the applicant had at no stage advised the store, assistant or floor manager of any difficulties that she was having. Reference has already been made to its undisputed “open door” policy;
22. Applicant’s version: The applicant did not give examples of what representations she had made to the said manager.
23. I cannot find on the probabilities that the said managers failed to act on representations that the applicant may have made, if any.
24. Whether the lack of a password had placed an obstacle in the applicant’s effective performance of her duties*:*
25. Respondent’s version: The SAP is the ordering system for goods in all departments. Generic passwords were given to all departmental managers in order for them to place orders. The 3 senior managers at the branch individual passwords to log onto system. A generic password is a password that can be shared. It submitted that the applicant had not come to the store manager to say that she had a problem with placing orders because she did not have a password. The store manager stated that he would have logged onto the system and allowed her to use his password. He emphasised the importance of placing orders timeously and how the applicant had failed in this regard. The store manager stated that the lack of a password ought not to have hampered the applicant in the performance of her duties;
26. Applicant’s version: That when she worked in the receiving department she had a password that enabled her to perform her functions. That she had received an email requesting that she attend SAP training but Ebharim had not permitted to go because receiving was allegedly extremely busy. That she had to ask other managers to log onto the system. That they were reluctant for her to use their passwords for fear that if she made a mistake and they would be blamed. She disagreed that Ebrahim that shared his password with her;
27. In cross examination the applicant disputed that there were generic passwords but could not say why that version had not been put to Ebrahim. She also failed to explain why it was not put to Ebrahim that he had failed to give her his password as he stated in his evidence. In cross examination she failed to explain why she had not put to Ebrahim that he had refused to let her go for SAP training;
28. It is common cause that the applicant did not have her own password. There is no evidence that any manager refused to allow her to use their passwords and therefore there is no reason why she could not perform effectively. While the possibility exists that her work may have been delayed slightly, I cannot find that the lack of a password posed a significant obstacle to her effective performance.
29. Whether the applicant was alone in the F&V department and whether she could rely on anyone else for assistance*:*
30. Respondent’s version: That the applicant was assisted by staff in the F&V department. These consisted of 2 permanent and 2 variable time employees. It was the applicant’s responsibility to control and schedule her staff. She could also delegate functions to them and follow up whether these functions had been performed. There were times when the store manager had gone to the store room and carried stock to the shop floor. Eddles had assisted her with making order cards and that he had assisted her with placing orders;
31. Applicant’s version: That Ebrahim (store manager) was not available to assist her because he was either on the shop floor speaking to customers or else speaking to his wife on the phone for long periods of time. That she had not reported her difficulties because she feared being termed (in her words) a “tit-tale”. (She explained that this term referred to someone who carried tales.) That she had not lodged any grievances. That she had asked the regional manager to place a trainee manager in the store but she was advised that that was not possible;
32. The applicant further stated in her evidence that Eddles had dishonestly recorded in her training diary that mule training had been done when it had allegedly not been done. She further stated that it was untrue that Eddles had assisted her with orders but in cross examination she could not say why that was not put to Eddles. The applicant also stated that the order cards made by Eddles had to be thrown away as being incorrect, but she could not say during cross examination why that had not been put to Eddles;
33. In cross examination the applicant conceded that it was Ebrahim’s duty as a store manager to speak to customers. She did not explain why it was not put to him why he allegedly spent so much time on the phone with his wife. The applicant failed to explain why it was not put to Eddles that he had made a false entry in her training diary. The applicant conceded that it was her responsibility to look after the F&V department and deal with her staff;
34. She stated that the store manager (Ebrahim) had not done his job. Later during cross examination she conceded that she had asked Ebrahim for assistance and that he had given it to her. She conceded further that assistance was available to her but that her staff in the F&V department were reluctant to assist her. She had not dealt with them for fear of things becoming worse between her and her staff. She however agreed that it was her job to manage her staff;
35. When asked to give an example, the applicant could not say what further the respondent could have done to support and assist her.
36. Having regard to the undisputed evidence, and the concessions made by the applicant, I find that assistance and support was available to the applicant to assist her in the performance of her duties.
37. Whether the applicant had proposed a demotion:
38. It was common cause that the applicant had written a letter to the respondent proposing that and “alternative placement” be arranged for her. In evidence she referred to this as a proposal to be demoted;
39. The respondent’s version was that she was offered a demotion but that she had not accepted it because doing so would have caused the applicant to see herself as a failure;
40. In her evidence the applicant stated that the respondent had lied about her not accepting a demotion but could not say why this was not put to any of the respondent’s witnesses.
41. On the probabilities I find that the respondent considered the option of a demotion but that the applicant did not want to pursue the option further.
42. Whether the applicant’s performance was poor: The applicant conceded in cross examination that she had accepted responsibility for her poor performance and had therefore pleaded guilty at the hearing thereby admitting her faults. It is not clear why the applicant made an unfair dismissal dispute referral in these circumstances. But having made the referral it was incumbent upon her to explain why she distanced herself from her guilty plea and whether she continued to accept responsibility for what had occurred. There was no such explanation.
43. It is significant that the applicant –
44. Failed to show any motive for the manner in which she was allegedly treated by the respondent;
45. Failed to say why she had not lodged a grievance in respect of all the difficulties that she had encountered;
46. Failed to say why she had not consulted with her shop steward or her trade union;
47. Failed to put to any of the respondent’s witnesses that she had performed well;
48. Failed to give examples of tasks that she had executed well;
49. Failed to show examples of actual improvement.
50. Item 9 of the Code of Good Practice: Dismissal provides guidance on the manner in which cases for alleged poor performance should be dealt with. In summary the following findings are made with reference to the Code:
51. The applicant failed to meet the required performance standard;
52. The applicant was aware of required performance standard;
53. The applicant was given a fair opportunity of meeting the required performance standard;
54. Dismissal was a fair and appropriate sanction for failing to meet the required performance standard.
55. In all the circumstances I propose to dismiss the application.

# AWARD

1. The application is dismissed.

Dated at DURBAN on this the 25th day of JULY 2013.

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R J PURSHOTAM

*Commissioner*