

LRA Form 7.11
Labour Relations Act 1995
Sections 133, 135, 191(1) and
191(5A)

PART A
REFERRING A DISPUTE TO
THE CCMA FOR CONCILIATION
(INCLUDING CON-ARB)



READ THIS FIRST



WHAT IS THE PURPOSE OF THIS FORM?

This form enables a person or organisation to refer a dispute to the CCMA for conciliation and con-arb.

WHO FILLS IN THIS FORM?

Employer, employee, union or employers' organisation.

WHERE DOES THIS FORM GO?

The Registrar, Provincial Office of the CCMA in the province where the dispute arose. See details on this page.

WHAT WILL HAPPEN WHEN THIS FORM IS SUBMITTED?

When you refer the dispute to the CCMA, it will appoint a commissioner who must attempt to resolve the dispute within 30 days.

OTHER INSTITUTIONS

Please note that if you are covered by a bargaining council, a statutory council or an accredited agency you may have to take the dispute to that council or agency.

You may also need to deal with the dispute in terms of a private procedure if one applies.

If in doubt contact the CCMA for assistance.

FURTHER INSTRUCTIONS

A copy of this form must be served on the other party.

Proof that a copy of this form has been served on the other party must be supplied by attaching:

- A copy of a registered slip from the Post Office;
- A copy of a signed receipt if hand delivered;
- A signed statement confirming service by the person delivering the form;
- A copy of a fax confirmation slip; or
- Any other satisfactory proof of service.

PROVINCIAL OFFICES OF THE CCMA

CCMA EASTERN CAPE – East London

6 Oxford Street
EAST LONDON
Private Bag X9068, EAST LONDON, 5200
Tel: (043) 743-0826
Fax: (043) 743-0810
Email: PE@ccma.org.za

CCMA EASTERN CAPE – Port Elizabeth

CCMA House, 107 Govan Mbeki Avenue
PORT ELIZABETH
Private Bag X22500, PORT ELIZABETH, 6000
Tel: (041) 505-4300
Fax: (041) 586-4585
Email: PE@ccma.org.za

CCMA FREE STATE

CCMA House, Cnr Elizabeth & Westburger Streets
BLOEMFONTEIN
Private Bag X20705, BLOEMFONTEIN, 9300
Tel: (051) 505-4400
Fax: (051) 448-4468/9
Email: BLM@ccma.org.za

CCMA GAUTENG – Johannesburg Regional Office

127 Fox Street
JOHANNESBURG
Private Bag X94, MARSHALLTOWN, 2107
Tel: (011) 220-5000
Fax: (011) 220-5101 / 02/03/04/05 / 0861 392 262
Email: Johannesburg@ccma.org.za

CCMA GAUTENG – Tshwane (Pretoria)

Metro Park Building, 351 Schoeman Street
PRETORIA
Private Bag X176, PRETORIA, 0001
Tel: (012) 392-9700
Fax: (012) 320 4633/ 4604 / (012) 392-9701/2
Email: Pretoria@ccma.org.za

CCMA KWAZULU-NATAL – Durban

Embassy Building, 199 Smith Street
DURBAN
Private Bag X54363, DURBAN, 4000
Tel: (031) 362-2300
Fax: (031) 368-7387 / 7407
Email: KZN@ccma.org.za

CCMA KWAZULU-NATAL – Pietermaritzburg

Gallwey House, Gallwey Lane
PIETERMARITZBURG
PO Box 72, PIETERMARITZBURG, 3200
Tel: (033) 345-9249 / 9271
Fax: (033) 345-9790
Email: KZN@ccma.org.za

CCMA KWAZULU-NATAL – Richards Bay

First Floor, Promenade Building, Cnr Tassel Berry & Lira Link Streets
RICHARDS BAY
Private Bag X1026, RICHARDS BAY, 3900
Tel: (035) 789-0357
Fax: (035) 789-7148
Email: KZN@ccma.org.za

CCMA LIMPOPO

CCMA House, 104 Hans van Rensburg Street
POLOKWANE
Private Bag X9512, POLOKWANE, 0700
Tel: (015) 297-5010
Fax: (015) 297-1649
Email: PTB@ccma.org.za

CCMA MPUMALANGA

CCMA House, Diedericks Street
WITBANK
Private Bag X7290, WITBANK, 1035
Tel: (013) 656-2800
Fax: (013) 656-2885/6
Email: WTB@ccma.org.za

CCMA NORTHERN CAPE

CCMA House, 5-13 Compound Street
KIMBERLEY
Private Bag X6100, KIMBERLEY, 8300
Tel: (053) 831-6780
Fax: (053) 831-5948
Email: KMB@ccma.org.za

CCMA NORTH WEST - Klerksdorp

CCMA House, 47 Siddle Street
KLERKSDORP
Private Bag X5004, KLERKSDORP, 2570
Tel: (018) 464-0700
Fax: (018) 462-4126
Email: KDP@ccma.org.za

CCMA NORTH WEST - Rustenburg

Shop SG7 11B, 43-45 Boom Street
RUSTENBURG
Private Bag X82104, RUSTENBURG, 0300
Tel: To be confirmed
Fax: (014) 538-1267
Email: To be confirmed

CCMA WESTERN CAPE

CCMA House, 78 Darling Street
CAPE TOWN
Private Bag X9167, CAPE TOWN, 8000
Tel: (021) 469-0111
Fax: (021) 465-7193/7
Email: CTN@ccma.org.za

READ THIS FIRST



Tick the correct box ☒

The name of the employee or an employer that is referring the dispute must be filled in (a). If there is more than one employee to the dispute and the referring party is not a trade union, then each employee must supply their personal details and signature on a separate page, which must be attached to this form.

These alternate contact details should be of a union official or representative, a relative or a friend.

The name of the trade union or employers organisation that is referring the dispute or assisting a member to refer a dispute must be filled in (b).

OTHER PARTIES

If more than one party is referring the dispute or if the dispute is referred against more than one party, write down the additional names and particulars on a separate page and attach to this form.

Tick the correct box ☒

1. DETAILS OF PARTY REFERRING THE DISPUTE

As the referring party, are you:

- ☐ An employee ☒ A trade union
☐ An employer ☐ An employer's organization

(a) Name of the party if the referring party is an employee or employer

Name:

ID Number:

Postal Address:

..... Postal Code:

Tel: Cell:

Fax: Email:

Alternate contact details of employee:

Name:

Postal Address:

..... Postal Code:

Tel: Cell:

Fax: Email:

(b) Name of the referring party if the referring party is an employer's organisation or trade union, or if the employer's organisation is assisting a member to the dispute

Name: SOLIDARITY OBO VIVIERS & OTHERS

Postal Address: PO BOX 11760

CENTURION Postal Code: 0046

Tel: 012 644 4300 Cell: 071 871 5981

Fax: 012 664 1101 Email: annika@solidariteit.co.za

2. DETAILS OF THE OTHER PARTY (PARTY WITH WHOM YOU ARE IN DISPUTE)

The other party is:

- ☐ An employee ☐ A trade union
☒ An employer ☐ An employer's organisation

Name: SOUTH AFRICAN POLICE SERVICE

Postal Address: P/Bay X 94

PRETORIA Postal Code: 0001

Tel: (012) 393 7530 Cell: 082 449 7478

Fax: (012) 393-7159/7160 Email: dekok.p.f.p.e.sqs.gov.za

→ See annexure "A" with Respondents

Please turn over →

Tick the correct box ☒

If the dispute concerns dismissals, also complete Part B (See Page 5)

 This section must be completed!

If necessary write the details on a separate page and attach to this form

UNFAIR LABOUR PRACTICE

If the dispute(s) concerns an unfair labour practice the dispute must be referred (ie received by the CCMA) within 90 days of the act or omission which gave rise to the unfair labour practice. If more than 90 days has elapsed you are required to apply for condonation.

3. NATURE OF THE DISPUTE

What is the dispute about (tick only one box)?

- | | | |
|--|---|---|
| ☐ Unfair dismissal | ☐ Unfair Labour Practice
(Give details) | ☐ Refusal to Bargain |
| ☐ Organisational Rights | ☐ Mutual Interest | ☐ S80 BCEA |
| ☐ Unilateral change to terms and conditions of employment | ☐ Severance pay
S41 BCEA | ☒ Unfair Discrimination
S10 of the Employment
Equity Act (Give details) |
| ☐ Interpretation/ Application of
Collective Agreement | ☐ Disclosure of Information | ☐ S19 Skills Development
Act |
| ☐ Freedom of Association | ☐ Unfair Labour Practice
(probation) | |
| ☐ Other (please describe) | | |

Summarise the facts of the dispute you are referring: The members were discriminated against based on their race, & the employer, SAPS, failed to take steps in terms of their internal policy.

4. DATE DISPUTE AROSE

The dispute arose on: 20 JANUARY 2017
(give the date, day, month and year)

The dispute arose where: PRETORIA
(give the city/town in which the dispute)

If the dispute concerns a dismissal the date inserted here must be the same as that set out in Item 2 of Part B.

5. DETAILS OF DISPUTE PROCEDURES FOLLOWED

Have you followed all internal grievance / disciplinary procedures before coming to the CCMA? ☒ YES ☐ NO

Describe the procedures followed: The members lodged an internal grievance to the SAPS grievance procedure. The dispute was not dealt with in the prescribed time frames & was not resolved. See annexure "B"

6. RESULT OF CONCILIATION

What outcome do you require? That the necessary steps be (disciplinary steps) be taken against the member and that SAPS be held liable again to sec 60 of the EEA.

Please turn over 

Tick the correct box ☒

Parties may, at their own cost, bring interpreters for languages other than the official South African languages. Please indicate this under 'other'.

Special features might be the urgency of the matter, the large number of people involved, important legal or labour issues etc.

Only fill this in if this is a dispute about unilateral change to terms and conditions of employment.

The con-arb process involves arbitration being held immediately after the conciliation if the dispute remains unresolved.

Only fill this in if you object to the arbitration commencing immediately after conciliation. An objection cannot be made in disputes relating to probation.

7. SECTOR

Indicate the sector or service in which the dispute arose.

- | | | |
|--|---|--|
| ☐ Retail sector | ☐ Private Security | ☐ Public Service |
| ☐ Mining | ☐ Paper & Printing | ☐ Health |
| ☐ Motor | ☐ Services | ☐ Chemical |
| ☐ Distribution | ☐ Food & Beverage | ☐ Agriculture |
| ☐ Wholesale | ☐ Building & Construction | ☐ Contract Cleaning |
| ☐ Domestic | ☒ Other (please describe) <u>Public Service</u> | |

8. INTERPRETATION SERVICES

Do you require an interpreter at the conciliation / con-arb?

☐ YES

☒ NO

If yes, please indicate for what language:

- | | | | |
|------------------------------------|-------------------------------------|--|-----------------------------------|
| ☐ Afrikaans | ☐ isiNdebele | ☐ isiZulu | ☐ isiXhosa |
| ☐ Sepedi | ☐ Sesotho | ☐ Setswana | ☐ siSwati |
| ☐ Tshivenda | ☐ Xitsonga | ☐ Other (please indicate) | |

9. SPECIAL FEATURES / ADDITIONAL INFORMATION

Briefly outline any special features / additional information the CCMA needs to note:

N/A

10. Dispute about unilateral change to terms and conditions of employment (s64 (4))

I/we require that the employer party not implement unilaterally the proposed changes that led to this dispute for 30 days, or that it restore the terms and conditions of employment that applied before the change.

Signed: N/A (Employee party referring the dispute)

11. OBJECTION TO CON-ARB PROCESS

I/we object to the arbitration commencing immediately after the conciliation in terms of Section 191(5A)(c).

Signed: [Signature]

If the employer objects to the arbitration commencing immediately after the conciliation the employer must submit a written notice in terms of CCMA Rule 17(2) at least 7 days prior to the scheduled date of the conciliation. The employer must attend the conciliation regardless of whether it makes this objection.

12. CONFIRMATION OF ABOVE DETAILS

Signature of party referring the dispute: [Signature]

Signed at CENTURION on this 27th JANUARY 2017
(place) (date)

LRA Form 7.11
Section 135
Labour Relations Act 1995
Section 191(5A)

PART B

ADDITIONAL FORM FOR DISMISSAL DISPUTES ONLY



DATE OF REFERRAL

Dismissal disputes must be referred (i.e. received by the CCMA) within **30 days** of dismissal or, if it is a later date, within 30 days of the employer making a final decision to dismiss or to uphold the dismissal. If more than 30 days has elapsed since the date of your dismissal, you are required to apply for condonation.

Tick the correct box ☒

Tick the correct box ☒

If necessary write the details on a separate page and attach to this form.

1. COMMENCEMENT OF EMPLOYMENT

When did you start working at the company?

2. NOTICE OF DISMISSAL

When were you dismissed (date)?

How were you informed of your dismissal?

☐ In writing

☐ Orally

☐ Other (*please describe*)

3. REASON FOR DISMISSAL

Why were you dismissed?

☐ Misconduct

☐ Incapacity

☐ Operational Requirements
(Retrenchment)

☐ Unknown

☐ Constructive

☐ Other (*please describe*)

4. WAS THE DISMISSAL RELATED TO PROBATION ☐ Yes ☐ NO

5. FAIRNESS/UNFAIRNESS OF DISMISSAL

a. Procedural Issues

Was the dismissal procedurally unfair?

☐ YES

☐ NO

If yes, why?

.....

.....

.....

b. Substantive Issues

Was the reason for the dismissal unfair?

☐ YES

☐ NO

If yes, why

.....

.....

.....

Annika Labuschagne

Tel: (012) 644 3000

Faks: (012) 664 1101

marietjie@solidariteit.co.za



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**Solidariteit
Solidarity**

22 NOVEMBER 2016

THE COMMISSION FOR CONCILIATION, MEDIATION AND ARBITRATION

RE: SOLIDARITY obo VIVIERS AND OTHERS//SAPS

2nd Respondent: S MALEBE-TEMA

Tel: 012 549 3360

Email:MALEBES@SAPS.GOV.ZA

3rd Respondent: N MKHWANAZI

Tel: 082 782 6384

Email:MASEMOLAG2@SAPS.GOV.ZA

Tel: 012 644 4300 • Faks: 012 664 1101 • Posadres: Posbus 11760, Centurion, 0046
Hoofkantoor: Hs. DE Malanvylaan en Eendrachtstraat, Kloofsig, Centurion



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GRIEVANCE FORM

IN TERMS OF THE

NEW GRIEVANCE

PROCEDURE

AGREEMENT 3/2005

2016/11/30
Open name list,
on b.

SOUTH AFRICAN POLICE SERVICE



SUID-AFRIKAANSE POLISIEDIENS

1. DETAILS OF THE GRIEVANT

Surname: Viviers **Initials:** R **Rank / Title:** Captain
Race: White **Gender:** Female
Persal No: 0430995-2 **Station/Unit/Component:** SAPS Training Academy, Oudtshoorn
Area: Head Office **Province / Division:** Division: Human Resource Development
Telephone: (044) 203 2237 **Cell:** 079 232 0057 **Fax:** (044) 272 7527
E-mail: vlamvuuren@yahoo.com **Residential address:** House nr 521, SAPS Training Academy, Oudtshoorn, 6625
Date: 2016-11-28

THIS IS A CLASS ACTION GRIEVANCE – SEE ATTACHED LIST WITH THE DETAILS OF THE OTHER GRIEVANTS

2. (a) DETAILS OF THE REPRESENTATIVE:

Surname and Initials: **Telephone no:**
As the representative, are you: ☐ An union official ☐ Co-employee

(b) FACTS OF THE GRIEVANCE:

Date and Place the employee became aware of the grievance: 2016-11-07 Oudtshoorn

3. PARTICULARS OF THE GRIEVANCE:

The following is only a brief summary of the events that occurred on 7 November 2016. All the witness statements attached hereto will reflect the whole sequence of events.

The grievants are all employed at the SAPS Training Academy in Oudtshoorn.

On Monday 7 November 2016, Major General Malebe-Thema (the Head of Basic Police Development) stationed at the Division Human Resource Development in Pretoria entered the Academy on an official visit.

She firstly interviewed all personnel attached to the Academy (including both academic personnel, operational trainers and administrative personnel). The rank level of the personnel ranged from Level 1 to Level 10, both Police Act Members, as well as Public Service Act personnel.

During the first interview General Malebe-Thema requested the personnel employed at all the different sections/sub-sections to stand up sequentially.

The first group of personnel who were called to stand were the trainers, whereby the general asked the rest of the personnel "what is wrong with this picture?". She continued to ask "do you think what you see is right?"

The personnel could not provide an answer as they were confused as to what is happening. The general then mentioned that the problem is "I will tell you, you are too white".

The same procedure was followed with all the other sections and sub-sections within the Academy. Each time white personnel were pointed out to be "the corrupt part" of the Academy and that they are "damaging to the view (sic) of the Academy". She also referred to the Admin Offices as the "white place down below".

The grievants felt victimized and oppressed by the racial anger propagated by a very senior officer (General Malebe-Thema) and are of the opinion that she were misusing the powers vested in her on the basis of her rank.

General Malebe-Thema stated on numerous occasions that the white personnel is corrupt and an obstacle for lower level members. She also specifically stated that "whites think they are too good to work in lower level posts" – referring to the most junior level posts.

She said that the white personnel will be transferred to conduct duties in the gardens and in the mess and that they will be replaced by members currently occupying the lower levels – only based on the colour of their skin.

The general also stated that "things will change for the white people". She gave an instruction to one of the African guardsmen to report for duty the next day at "the white place" thereby referring to the administration office.

The general also falsely accused the white personnel attached to Supply Chain Management that they are "enriching" themselves.

A second meeting was held in the hall whereby all the training personnel as well as all the recruits (approximately 450 students) had to attend.

The general introduced herself to the students and again started accusing the white personnel (in front of the students) to be corrupt and ill-disciplined. She told the trainees that the purpose of her visit was to "*correct unfair/unjust/discriminative actions, the physical /verbal abuse of trainers and the general abuse of powers*". This statement was made without any proof or substance. The trainees applauded her and cheered loudly.

She then called on all the trainers that were not dressed in uniform to stand on the stage in front of the students. There were eight people on the stage – seven white persons and one coloured person. She started humiliating the trainers by making cruel comments on their clothing as well as their physical appearance. She requested the students to comment on the appearance of their superiors. The students shouted comments, where laughing and clapping their hands. She further stated that due to the personnel's appearance they would not be able to maintain discipline in the Academy.

One of the aggrieved personnel, Captain Riana Viviers, stepped forward and informed the general that she is able to maintain discipline in her class. The general then lashed out at her scoffing at her weight. Her words were "*Look at you, look at your weight. You are fat - how can you not look after yourself?*" After these comments were made by the general the students again started to laugh and applaud. Captain Viviers then kept quiet.

The general also humiliated the other trainers that were on the stage by referring to their clothing, their weight and general appearance.

She also requested the students to tell her what is wrong with the picture in front of them. She answered her own question by saying that "They are too white". She again accused the white personnel of being ill-disciplined, abusing and victimizing the trainees. These remarks were made without substance and the human rights of the affected personnel were grossly violated.

All the personnel felt extremely humiliated, victimized and traumatized by the events.

Your attention is drawn to the following legislation as well as the internal policies and agreements that governs the SAPS when dealing with cases where unfair discrimination and hate speech is concerned.

A. LEGISLATION:

1. **The Constitution of the Republic of South Africa (Act 108/1996)** contains the Bill of Rights which *inter alia* guarantees the following rights to all inhabitants of the Republic:

Section 9(4) – Equality - “No person may unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth. National legislation must be enacted to prevent or prohibit unfair discrimination.”

Section 10 - Human dignity – “Everyone has inherent dignity and the right to have their dignity respected and protected.”

Section 12 (1)(e) – Freedom and Security – “Everyone has the right to freedom and security of the person, which includes the right - (e)....not to be treated or punished in a cruel, inhuman or degrading way.”

Section 12 (2) - Freedom and Security- “Everyone has the right to bodily and psychological integrity.....”

Section 23(1) - Labour relations – “Everyone has the right to fair labour practices.”

2. **The Promotion of equality and the prevention of unfair discrimination Act, Act 4/2000 (Pepuda)**

Section 10 of Pepuda states the following –

10 Prohibition of hate speech

(1) Subject to the proviso in section 12, no person may publish, propagate, advocate or communicate words based on one or more of the prohibited grounds, against any person, that could reasonably be construed to demonstrate a clear intention to-

- (a) be hurtful;
- (b) be harmful or to incite harm;
- (c) promote or propagate hatred.

(2) Without prejudice to any remedies of a civil nature under this Act, the court may, in accordance with section 21 (2) (n) and where appropriate, refer any case dealing with the publication, advocacy, propagation or communication of hate speech as contemplated in subsection (1), to the Director of Public Prosecutions having jurisdiction for the institution of criminal proceedings in terms of the common law or relevant legislation.

Section 11 of Pepuda -

11 Prohibition of harassment

No person may subject any person to harassment.

3. **Amendment of the South African Police Service Employment Regulations, 1999 –**

Chapter XII deals with the appointment and conducted by officers employed in Senior Management Service (SMS)

Paragraph 71 governs the principles of ethics and conduct by members of the SMS and states as follows:

71(1) Members of the SMS must-

- (a) Display the highest possible standards of ethical conduct;
- (b) Set an example to their subordinates and maintain high levels of professionalism and integrity in their interaction with political office bearers and the public; and

- (c) Ensure that they minimize conflicts of interest and that they put the public interest first in the performance of their functions.

71(2) Promotion of ethical conduct

- (a) The Minister may, on the advice of the Commission, issue directives to promote ethical conduct amongst members of the SMS and to supplement the Code of Conduct contemplated in the South African Police Service Code of Conduct Regulations, 1997, and the financial disclosure framework contemplated in Chapter XI.
- (b) The Minister may provide such guidance and assistance to members of the SMS as she or he may deem necessary to minimize conflict of interest and to promote professional conduct.

l. Employment Equity Act (Act 55/1998)

Section 5 – deals with the elimination of unfair discrimination

“Every employer must take steps to promote equal opportunity in the workplace by eliminating unfair discrimination in any employment policy or practice.”

Section 6 – deals with the Prohibition of unfair discrimination

“(1) No person may unfairly discriminate directly or indirectly against an employee, in any employment policy or practice on one or more grounds, including race....or any other arbitrary ground.....”

(3) Harassment of an employee is a form of unfair discrimination and is prohibited on any one, or a combination of grounds of unfair discrimination listed in subsection (1)”

Section 51 deals with the Protection of employee rights

“(1) No person may discriminate against an employee who exercise any right conferred by this Act.”

(2) Without limiting the general protection conferred by subsection (1), no person may threaten to do, or do any of the following:

- (a) Prevent an employee from exercising any right conferred by this Act or from participating in any proceedings in terms of this Act; or*

- (b) prejudice an employee because of past, present or anticipated –*

- (i) disclosure of information that the employee is lawfully entitled or required to give to another person;*

- (ii) exercise of any right conferred by this Act;*

- (iii) participation in any proceedings in terms of this Act.”*

Section 60 – deals with Liability of employers

“(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 step 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 possible to ensure that the employee would not act in contravention of this Act.”

3. INTERNAL POLICIES OF THE SOUTH AFRICAN POLICE SERVICE:

1. SSSBC Agreement 10/2001 (Promotion of Employment Equity and the elimination of unfair discrimination policy)

This agreement governs the promotion of employment equity and the elimination of unfair discrimination policy of the South African Police Service and came into effect on the 3rd of August 2001.

The agreement binds the parties to the agreement and ALL employees who are not members of a registered trade union admitted to this Sectorial Bargaining Council, as well as all members of registered trade unions admitted to the Sectorial Bargaining Council who are not parties to the agreement.

The agreement further states that representatives of all parties concerned undertake to take every reasonable step necessary to ensure the implementation of the agreement.

The preamble of the policy document states specifically the following:-

"1.1 The foundation of democratic freedom in South Africa lies in the preservation of the values of human dignity, equality, freedom and social justice in a united, non-racial and non-sexist society where all people enjoy equal rights"

1.2

1.3 In contributing to this objective, the SA Police Service must address systemic inequalities and unfair discrimination in practices, processes and attitudes.....The SA Police Service acknowledges its responsibility to promote equality and eliminate unfair discrimination as basic prerequisite to the effective delivery of policing services."

The purpose of the policy:-

"....The objectives of this policy are:-

- to give effect to the Constitution and related legislation;*
- to prevent and prohibit unfair discrimination and harassment,*
- promote equal opportunity and fair treatment in employment,*
- and prevent and prohibit hate speech."*

Paragraph 5.2 deals with the prevention and general prohibition of unfair discrimination and states that the SAPS shall take all possible measures to promote equality and eliminate unfair discrimination.

The policy specifically states that NO employee may unfairly discriminate directly or indirectly against any person on any one or more grounds, including race, gender, age, culture, language, birth, ect.

Unfair discrimination is extended to include any other grounds which causes or perpetuates systemic disadvantage, undermines human dignity or adversely affects the equal enjoyment of a person's rights and freedoms.

Paragraph 5.3 deals with the prohibition of unfair discrimination on ground of race and states:-

"No employee may unfairly discriminate against any person on the ground of race, including but not limited to –

- the dissemination of any propaganda or idea which propounds the racial superiority or inferiority of any person, including incitement to or participation in any form of racial violence;*
- engagement in any activity that is intended to promote or has the effect of promoting exclusivity based on race;*
- the exclusion of persons of a particular race group aimed at maintaining exclusive control by a particular race group."*

Paragraph 5.6 deals with the prohibition of hate speech and dissemination and publication of information that unfairly discriminates. It states that:-

"No employee may publish, propagate, advocate or communicate words based on one or more of the prohibited grounds against any person that could reasonably be construed to demonstrate a clear intention to-

- be hurtful*
- be harmful or to incite harm, or*
- promote or propagate hatred"*

Paragraph 5.7 deals with the prohibition of harassment and states clearly that:-

"Harassment of an employee is a form of unfair discrimination and is prohibited on any one, or a combination of grounds of unfair discrimination listed in the Constitution and other legislation.

Harassment means, amongst others, unwanted conduct which is persistent or serious and demeans, humiliates or creates a hostile or intimidation environment or is calculated to induce submission by actual or threatened adverse consequences and which is related to-

.....

A person's membership or presumed membership of a group identified by one or more of the prohibited grounds or a characteristic associated with such group."

Paragraph 5.8 deals with Promotion of equality and specifically states that all managers MUST take step to promote equal opportunities and diversity in the workplace by eliminating unfair discrimination in all respects.

It further states that "all commanders and manager must –

- develop awareness of fundamental rights to promote a climate of understanding, mutual respect and equality
- take measures to develop and implement programs and create a supportive environment to promote equity and diversity
- develop action plans, where necessary, to address unfair discrimination, hate speech and harassment
-
- Ensure the effectiveness of mechanisms to deal with complaints of unfair discrimination, hate speech or harassment.

Paragraph 6.2 stipulates that any form of unfair discrimination constitutes misconduct in terms of the Disciplinary Code.

2. THE SOUTH AFRICAN POLICE SERVICE CODE OF CONDUCT

The Code of Conduct is a pledge that each and every member of the SAPS is supposed to undersign and adhere to on a daily basis.

The Code *inter alia* states that members of the SAPS undertake to uphold and protect the fundamental rights of every person; to act impartially, courteously, honestly, respectfully, transparently and in an accountable manner.

3. SAPS NATIONAL INSTRUCTION 18/1998 (VERSION 2) – DEBRIEFING OF EMPLOYEES WHO HAVE EXPERIENCED TRAUMATIC INCIDENTS

It is clear from all the statements obtained from the personnel involved that the employees experienced severe trauma. The prescripts of National Instruction 18/1998 were supposed to be complied with by the commanders of the Training Academy. It is clear that none of the commanders (that were present during both incidents) did anything to prevent the incident from escalating and/or took steps to debrief or arrange for the debriefing of the personnel involved.

SUMMARY:

It is very clear when taking into account all the abovementioned legislation, internal policies and collective agreements that Major General Malebe-Thema, as well as all the other senior officers that were present during the incident on 7 November 2016 and that did nothing to stop the unacceptable behaviour of a senior manager in the SAPS, should be investigated and that the relevant disciplinary investigations should be conducted.

The senior officer, Major General Malebe-Thema contravened several acts and prescripts and her behaviour is unacceptable for a person of her stature.

Should the SAPS as an employer fails to institute the necessary action, they would be in breach of the provisions of Section 60 of the EEA and SAPS will be held liable for the alleged unfair discrimination and misconduct committed by one of its senior employees.

4. SOLUTION REQUIRED:

It is expected that the conduct of General Malebe-Thema and other senior officers involved be impartially investigated in terms of the SAPS Disciplinary Regulations and that the necessary action be taken to bring the officers to an acceptable standard in their conduct towards their subordinates;

That the relevant action be taken against General Malebe-Thema for the gross violation of the grievants' constitutional right to equality (not to be unfairly discriminated against), dignity, freedom and security and fair labour practices;

That General Malebe-Thema involved be investigated (which includes disciplinary action by the SAPS) for her racist attitude towards her sub-ordinates;

That General Malebe-Thema post an unequivocal and unconditional apology to the applicants on a national media forum (in English);

That General Malebe-Thema attend a human right sensitizing program regarding race relations in South Africa.

That SAPS as an employer take steps to prevent a reoccurrence of incidents of this nature.

SIGNATURE OF GRIEVANT: _____

SIGNATURE OF REPRESENTATIVE: _____

SIGNED AT _____ **ON** _____
(Place) (Year, month, day)

INFORMAL PROCEDURE

Employee raise verbal grievance with supervisor in an endeavour to solve the grievance before taking any steps in terms of the formal procedure.

DETAILS OF SUPERVISOR:

Surname: Initials: Rank/Title:
Persal no: Station /Unit/Component:
Area: Province / Division:
Telephone: Cell: Fax:
E-mail: Work address:
Date reported:

OUTCOME OF INFORMAL PROCEDURE:

SIGNATURE OF SUPERVISOR: _____

SIGNATURE OF GRIEVANT: _____

SIGNATURE OF REPRESENTATIVE: _____

SIGNED AT _____ ON _____
(Place) (Year, month, day)

FORMAL PROCEDURE

(STEP- 1) (3 WORKING DAYS)

1. DETAILS OF SUPERVISOR :

Surname:

Initials:

Rank/Title:

Persal no:

Station /Unit/Component:

Area:

Province / Division:

Telephone:

Cell:

Fax:

E mail:

Work address:

2. OUTCOME OF STEP 1:

SIGNATURE OF SUPERVISOR: _____

SIGNATURE OF GRIEVANT: _____

SIGNATURE OF REPRESENTATIVE: _____

SIGNED AT _____ **ON** _____
(Place) (Year, month, day)

FORMAL PROCEDURE

(STEP - 2) (7 WORKING DAYS)

1. DETAILS OF THE GRIEVANCE OFFICER

Surname: _____ Initials: _____ Rank / Title: _____
Persal no: _____ Station / Unit/ Component: _____
Area: _____ Province / Division: _____
Telephone: _____ Cell: _____ Fax: _____
E mail: _____ Work address: _____
Date Grievance Received: _____

2. OUTCOME OF STEP 2 :

SIGNATURE OF SUPERVISOR: _____

SIGNATURE OF GRIEVANT: _____

SIGNATURE OF REPRESENTATIVE: _____

SIGNED AT _____ ON _____
(Place) (Year, month, day)

THE JOINT GRIEVANCE RESOLUTION TEAM

(STEP - 3) (10 WORKING DAYS)

STEP - 3

1. DETAILS OF THE FTSS / SS AND THE LRO **FTSS / SS**

Name and Surname of the FTSS / SS: _____

Rank / Title and Persal nr of the FTSS / SS: _____

Station / Component: _____

Telephone: _____ Cell: _____ Fax: _____

E-mail: _____

LRO

Name and Surname of the LRO: _____

Rank / Title and Persalnr of the LRO: _____

Station / Component: _____

Telephone: _____ Cell: _____ Fax: _____

E-mail: _____

Date grievance received: _____

3. OUTCOME OF STEP 3:

SIGNATURE OF FTSS / SS: _____

SIGNATURE OF LRO: _____

SIGNED AT _____ ON _____
(Place) (Year, month, day)

SIGNATURE OF THE GRIEVANT: _____

FORMAL PROCEDURE

(STEP - 4) (10 WORKING DAYS)

INTERNAL MEDIATION PROCEEDINGS

1. DETAILS OF THE INTERNAL MEDIATOR :

Surname: _____ Initials: _____ Rank / Title: _____
Persal no: _____ Station / Unit/ Component: _____
Area: _____ Province / Division: _____
Telephone: _____ Cell: _____ Fax: _____
E-mail: _____ Work address: _____
Date of referral: _____

2. AGREED UPON TERMS OF REFERENCE :

SIGNATURE OF GRIEVANT: _____

DATE: _____

SIGNATURE OF FTSS / SS: _____

DATE: _____

SIGNATURE OF LRO: _____

DATE: _____

SIGNATURE OF MEDIATOR: _____

DATE: _____

MEDIATION CERTIFICATE

IN THE MATTER BETWEEN _____ (PERSAL NR, RANK, SURNAME)

STATIONED AT _____ REFERRED TO AS THE GRIEVANT, AND

REPRESENTED BY _____ (PERSAL NR, RANK, SURNAME)

STATIONED AT _____ REFERRED TO AS THE FULL TIME

SHOP STEWARD / SHOP STEWARD REPRESENTING THE GRIEVANT

AND
THE SA POLICE SERVICE REPRESENTED BY _____ (PERSAL NR, RANK, SURNAME)

STATIONED AT _____ REFERRED TO AS THE LABOUR RELATIONS

OFFICER REPRESENTING MANAGEMENT, AFTER LISTENING TO BOTH PARTIES CAME TO A CONCLUSION THAT

SIGNATURES OF GRIEVANT / REPRESENTATIVE: _____ DATE: _____

FTTS / SS: _____ DATE: _____

LRO: _____ DATE: _____

INTERNAL MEDIATOR: _____ DATE: _____

REFERRAL TO THE SSSBC: (WITHIN 30 DAYS)

Renate Barnard

From: Renate Barnard
Sent: 13 January 2017 07:48 AM
To: 'masemolag2@saps.gov.za'
Cc: 'Riana Nell'
Subject: COLLECTIVE GRIEVANCE: PERSONNEL ATTACHED TO OUDTSHOORN TRAINING ACADEMY
Attachments: LETTER TO DIV COMM HRD GRIEVANCE OUDTSHOORN ACADEMY JANUARY 2017, RB.pdf
Importance: High

Good Day Lieutenant Colonel Masemola

Attached herewith find correspondence that is self-explanatory for your information and relevant action, please.

Your feedback is urgently required on or before **20 January 2017**.

Regards

Renate Barnard

Sentrum vir Billike Arbeidspraktyke
Centre for Fair Labour Practices
Tel : (012) 644 4300
Faks : (012) 664 1102
Adres : h/v DF Malan- en Eendracht straat, Kloofsig



Tel: 012 644 4300 • Faks: 012 644 6493 • Posadres: Posbus 11760, Centurion, 0046
Hoofkantoor: H.v. DF Malan- en Eendrachtstraat, Kloofsig, Centurion

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Renate Barnard

Tel: (012) 644 4300

Faks: (012) 664 1101

renate@solidariteit.co.za



**Solidariteit
Solidarity**

12 January 2017

**ATTENTION: OFFICE OF THE DIVISIONAL COMMISSIONER
SOUTH AFRICAN POLICE SERVICE
DIVISION: HUMAN RESOURCE DEVELOPMENT
(FOR ATTENTION: LIEUTENANT COLONEL MASEMOLA)**

*Our ref: SBA 150
Your ref:*

PER MAIL: masemolaG2@saps.gov.za

Dear Lieutenant Colonel Masemola,

**RE: COLLECTIVE GRIEVANCE: CAPTAIN R VIVIERS AND 22 OTHERS: SAPS
TRAINING ACADEMY, OUDTSHOORN**

1. The abovementioned matter herein refers.
2. We confirm that we act in terms of Section 200 of the Labour Relations Act on behalf of Captain R Viviers and 22 others, being all paid up members of Solidarity, in writing this letter.
3. It is our instruction that a collective grievance was registered on 2016-12-06 regarding an incident that occurred at the SAPS Training Academy in Oudtshoorn on 2016-11-07 whereby a senior officer from the Division: HRD, Major General S Malebe-Tema allegedly made racist comments and humiliated trainers and instructors in the presence of learners.
4. The grievance was send via courier and e-mail to your office on 2016-12-06. Relevant proof of service was obtained.



Tel: 012 644 4300 • Faks: 012 664 1101 • Posadres: Posbus 11760, Centurion, 0046
Hoofkantoor: Hw DF Malanstraat en Eendrachtstraat, Kloofsig, Centurion

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5. According to the SSSBC Agreement (Agreement 3/2005 that is governing the grievance process), step 1 of the grievance should have been completed within 3 working days which was supposed to be on Friday 2016-12-09. However up to date no progress was made with the grievance and no feedback was provided to the grievants.
6. The fact that the grievance has not been attended to after more than 30 days is a direct violation of the prescripts of the SSSBC Agreement which is a legally binding document.
7. Your attention is focused on the serious nature of the grievance and the potential damage it can cause the image of HRD in particular and the SAPS in general.
8. We are requesting urgent feedback on the matter as the time frame in dealing with the grievance has already lapsed.
9. It would be highly appreciated if you could please provide this office with progress on the grievance and clarity on the process to follow on or before **20 January 2017**.
10. Your assistance is highly appreciated.

Regards,



RENATE BARNARD
SOLIDARITY



Tel: 012 644 4300 • Faks: 012 664 1101 • Posadres: Postbus 11760, Centurion, 0046
Hoofkantoor: Huis De Malanyslaan en Vriendrachtsstraat, Kloofsig, Centurion

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Renate Barnard

From: Renate Barnard
Sent: 13 January 2017 11:27 AM
To: 'Division HRD HRM - Masemola GM - Lt Col'
Subject: RE: COLLECTIVE GRIEVANCE: PERSONNEL ATTACHED TO OUDTSHOORN TRAINING ACADEMY

Importance: High

You need to take cognisance of the time periods that the SSSBC Agreement regarding Grievances allow – you are already out of time and also did not request time extension from the grievants to finalize the matter.

From: Division HRD HRM - Masemola GM - Lt Col [mailto:MasemolaG2@saps.gov.za]
Sent: 13 January 2017 10:38 AM
To: Renate Barnard <renate@solidariteit.co.za>
Subject: RE: COLLECTIVE GRIEVANCE: PERSONNEL ATTACHED TO OUDTSHOORN TRAINING ACADEMY

Good morning

The Grievance was received and is receiving necessary attention

From: Renate Barnard [mailto:renate@solidariteit.co.za]
Sent: 13 January 2017 07:48 AM
To: Division HRD HRM - Masemola GM - Lt Col
Cc: Riana Nell
Subject: COLLECTIVE GRIEVANCE: PERSONNEL ATTACHED TO OUDTSHOORN TRAINING ACADEMY
Importance: High

Good Day Lieutenant Colonel Masemola

Attached herewith find correspondence that is self-explanatory for your information and relevant action, please.

Your feedback is urgently required on or before **20 January 2017**.

Regards

Renate Barnard

Sentrum vir Billike Arbeidspraktyke
Centre for Fair Labour Practices
Tel : (012) 644 4300
Faks : (012) 664 1102
Adres : h/v DF Malan- en Eendracht straat, Kloofsig

TO: SAPS 1st Respondent

Addressee	Start Time	Time	Prints	Result	Note
0123937159	01-27 14:25	00:04:28	024/024	OK	
0123937160	01-27 14:41	00:00:57	000/024	No Ans	

Note

TMR:Timer TX, POL:Polling, ORG:Original Size Setting, FME:Frame Erase TX;
 DPG:Page Separation TX, MIX:Mixed Original TX, CALL:Manual TX, CSRC:CSRC;
 FWD:Forward, PC:PC-FAX, BND:Double-Sided Binding Direction, SP:Special Original,
 FCODE:F-code, RTX:Re-TX, RV:Relay, MBS:Confidential, SUL:Bulletin, SIP:SIP Fax,
 IPADR:IP Address Fax, I-FAX:Internet Fax

Result OK: Communication OK, S-OK: Stop Communication, PW-OFF: Power Switch OFF,
 TEL: RX from TEL, NG: Other Error, Cont: Continue, No Ans: No Answer,
 Refuse: Receipt Refused, Busy: Busy, M-Full:Memory Full,
 LOVR:Receiving length Over, POVR:Receiving page Over, FIL:File Error,
 DC:Decode Error, MDN:MDN Response Error, DSN:DSN Response Error.

<p>LRA Form 7.11 Labour Relations Act 1995 Sections 133, 135, 191(1) and 191(5A)</p>	<p align="center">PART A REFERRING A DISPUTE TO THE CCMA FOR CONCILIATION (INCLUDING CON-ARB)</p>		 <p align="center">CCMA</p>
<p align="center">READ THIS FIRST</p> <p align="center"></p> <p>WHAT IS THE PURPOSE OF THIS FORM?</p> <p>This form enables a person or organisation to refer a dispute to the CCMA for conciliation and con-arb.</p> <p>WHO FILLS IN THIS FORM?</p> <p>Employer, employee, union or employers' organisation.</p> <p>WHERE DOES THIS FORM GO?</p> <p>The Registrar, Provincial Office of the CCMA, in the province where the dispute arose. See details on this page.</p> <p>WHAT WILL HAPPEN WHEN THIS FORM IS SUBMITTED?</p> <p>When you refer the dispute to the CCMA, it will appoint a commissioner who must attempt to resolve the dispute within 30 days.</p> <p>OTHER INSTITUTIONS</p> <p>Please note that if you are covered by a bargaining council, a statutory council or an accredited agency you may have to take the dispute to that council or agency.</p> <p>You may also need to deal with the dispute in terms of a private procedure if one applies.</p> <p>If in doubt contact the CCMA for assistance.</p> <p>FURTHER INSTRUCTIONS</p> <p>A copy of this form must be served on the other party.</p> <p>Proof that a copy of this form has been served on the other party must be supplied by attaching:</p> <ul style="list-style-type: none"> A copy of a registered slip from the Post Office; A copy of a signed receipt if hand delivered; A signed statement confirming service by the person delivering the form; A copy of a fax confirmation slip; or Any other satisfactory proof of service. 	<p align="center">PROVINCIAL OFFICES OF THE CCMA</p> <div data-bbox="518 1276 981 1803"> <p>CCMA EASTERN CAPE – East London 8 Oxford Street EAST LONDON Private Bag X9063, EAST LONDON, 5200 Tel: (043) 743-0826 Fax: (043) 743-0810 Email: PE@ccma.org.za</p> <p>CCMA EASTERN CAPE – Port Elizabeth CCMA House, 107 Govan Mbeki Avenue PORT ELIZABETH Private Bag X22500, PORT ELIZABETH, 6000 Tel: (041) 505-4300 Fax: (041) 586-4585 Email: PE@ccma.org.za</p> <p>CCMA FREE STATE CCMA House, Cnr Elizabeth & Westburg Streets BLOEMFONTEIN Private Bag X20705, BLOEMFONTEIN, 9300 Tel: (051) 505-4400 Fax: (051) 448-4468/9 Email: BLM@ccma.org.za</p> <p>CCMA GAUTENG – Johannesburg Regional Office 127 Fox Street JOHANNESBURG Private Bag X94, MARSHALLTOWN, 2107 Tel: (011) 220-5000 Fax: (011) 220-5101 / 02/03/04/05 / 0861 392 262 Email: Johannesburg@ccma.org.za</p> <p>CCMA GAUTENG – Tshwane (Pretoria) Metro Park Building, 351 Schoeman Street PRETORIA Private Bag X176, PRETORIA, 0001 Tel: (012) 392-9700 Fax: (012) 320-4633/ 4804 / (012) 392-3701/2 Email: Pretoria@ccma.org.za</p> <p>CCMA KWAZULU-NATAL – Durban Embassy Building, 199 Smith Street DURBAN Private Bag X54383, DURBAN, 4000 Tel: (031) 362-2300 Fax: (031) 368-7387 / 7407 Email: KZN@ccma.org.za</p> </div> <div data-bbox="981 1276 1468 1803"> <p>CCMA KWAZULU-NATAL – Richards Bay First Floor, Promenade Building, Cnr Tassel Berry & Lira Link Streets RICHARDS BAY Private Bag X1026, RICHARDS BAY, 3900 Tel: (035) 789-0357 Fax: (035) 789-7148 Email: KZN@ccma.org.za</p> <p>CCMA LIMPOPO CCMA House, 104 Hans van Rensburg Street POLOKWANE Private Bag X9512, POLOKWANE, 0700 Tel: (015) 297-5010 Fax: (015) 297-1649 Email: PTB@ccma.org.za</p> <p>CCMA MPUMALANGA CCMA House, Diedericks Street WITBANK Private Bag X7290, WITBANK, 1035 Tel: (013) 656-2800 Fax: (013) 656-2856 Email: WTB@ccma.org.za</p> <p>CCMA NORTHERN CAPE CCMA House, 5-13 Compound Street KIMBERLEY Private Bag X8100, KIMBERLEY, 8300 Tel: (053) 831-5780 Fax: (053) 831-5948 Email: KMB@ccma.org.za</p> <p>CCMA NORTH WEST – Klerksdorp CCMA House, 47 Siddle Street KLERKSDORP Private Bag X5004, KLERKSDORP, 2570 Tel: (018) 464-0700 Fax: (018) 462-4126 Email: KDP@ccma.org.za</p> <p>CCMA NORTH WEST – Rustenburg Shop 8Q7 11B, 43-45 Boom Street RUSTENBURG Private Bag X82104, RUSTENBURG, 0300 Tel: To be confirmed Fax: (014) 538-1267 Email: To be confirmed</p> <p>CCMA WESTERN CAPE CCMA House, 78 Darling Street CAPE TOWN Private Bag X9167, CAPE TOWN, 8000 Tel: (021) 469-0111 Fax: (021) 465-7193/7 Email: CTN@ccma.org.za</p> </div>		

Annika Labuschagne

From: Annika Labuschagne
Sent: 27 January 2017 02:28 PM
To: 'MALEBES@SAPS.GOV.ZA'
Cc: Marietjie Potgieter
Subject: SOLIDARITY obo VIVIERS//SAPS
Attachments: SKMBT_22317012714220.pdf

Tracking:	Recipient	Delivery	Read
	'MALEBES@SAPS.GOV.ZA'		
	Marietjie Potgieter	Delivered: 2017/01/27 02:28 PM	Read: 2017/01/27 02:35 PM

Good day,

The abovementioned matter herein refers.

Kindly find annexed hereto the CCMA referral form for the attention of Major General Tema.

Kind regards,

Annika Labuschagne
Sentrum vir Billike Arbeidspraktyke/
Centre for Fair Labour Practices
Tel: (012) 644 3971
Faks: (012) 664 1102



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Hoofkantoor: HLW, DF Malanvillan en Eendrachtstraat, Kloofsig, Centurion

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Annika Labuschagne

From: Annika Labuschagne
Sent: 27 January 2017 02:26 PM
To: 'MASEMOLAG2@SAPS.GOV.ZA'
Cc: Marietjie Potgieter
Subject: SOLIDARITY obo VIVIERS//SAPS
Attachments: SKMBT_22317012714220.pdf

Tracking:	Recipient	Delivery	Read
	'MASEMOLAG2@SAPS.GOV.ZA'		
	Marietjie Potgieter	Delivered: 2017/01/27 02:27 PM	Read: 2017/01/27 02:32 PM

Good day,

The abovementioned matter herein refers.

Kindly find annexed hereto the CCMA referral form for the attention of Lieutenant General Mkhwanazi.

Kind regards,

Annika Labuschagne
Sentrum vir Billike Arbeidspraktyke/
Centre for Fair Labour Practices
Tel: (012) 644 3971
Faks: (012) 664 1102



Tel: 012 644 4300 • Faks: 012 644 6493 • Posadres: Posbus 11760, Centurion, 0046
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