



**GENERAL PUBLIC SERVICE
SECTOR BARGAINING COUNCIL**



Physical Address:
260 Basden Avenue,
Lyttelton, Centurion,
Pretoria

Postal Address:
PO Box 16663,
Lyttelton, 1040

Tel: 012 644 8132

Web: <http://www.gpsbc.org.za>

IN THE GENERAL PUBLIC SERVICE SECTORAL BARGAINING COUNCIL

Held in Brits

Commissioner: K. Z. Garikue

Case No.: GPBC1257/2022

Date of Award: 18/12/2023

In the Arbitration Hearing between:

PSA obo G. S. Senne

(Union/Applicant)

and

Department of Corporate Governance and Traditional Affairs

(Respondent)

Applicant's representative: Mr A. Ramagoshi

Respondent's representative: Ms N. Bonga



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DETAILS OF PROCEEDINGS AND REPRESENTATION

1. Public Servants Association (“PSA”) referred an alleged unfair labour practice dispute on behalf of its member, Godfrey Sanny Senne (“applicant”) to the General Public Service Sector Bargaining Council (“Council”). The arbitration hearing was held on 04 December 2023 at Brits – Madibeng Municipality.
2. Mr Albert Ramagoshi, a union official from PSA represented the applicant and Ms Nombulelo Bonga, Labour Relations official represented the respondent. Parties submitted bundle of documents and the contents thereof were purported to be what it represented. The applicant's bundle was marked 'A' and the respondent's bundle was marked 'R'.
3. Parties were allowed to call witnesses for their cases. At the end of the hearing, parties requested to submit their closing arguments in writing. These were to be sent simultaneously to the Council on or before 12 December 2023. All parties duly complied, and I have considered them in making this award. I digitally recorded the entire proceedings and the record thereof will be retained by the Council.

THE ISSUE IN DISPUTE

4. I am required to determine whether the respondent committed an unfair labour practice in terms of “benefits” as defined in section 186(2)(a) of the LRA towards the



applicant. I am also required to determine the appropriate remedy in the event that I find in favour of him.

BACKGROUND TO THE DISPUTE

5. In terms of the Performance Management Development System (“PMDS”) policy, every employee will be assessed by his or her supervisor with regard to Key Responsibility Area(s), (“KRAs or KRA”). This assessment will then be sent to the Moderation Committee (“MC”) to be reviewed. There is a performance agreement that both the employee and his or her supervisor will sign, detailing an employee’s performance deliverables and development areas for a given performance cycle. This cycle will be for a 12 month period.
6. The applicant is challenging that his assessment for the period 2021/2022 was unfair because his performance agreement was not submitted within the stipulated time frame as he received his documents back from his supervisor late in 2023. He seeks for his performance agreement for 2021/2022 to be assessed so that he could be paid his pay progression or performance bonus.
7. The respondent contends that there was a cut-off date which the applicant did not comply with in terms of the PMDS policy to submit his performance agreement. The applicant should have submitted or returned his documents on 31 May 2022 whereas the applicant submitted on 24 February 2023.



SUMMARY OF EVIDENCE AND ARGUMENT

The applicant's evidence

8. **Godfrey Senne (" the applicant")** testified under oath and stated that he received his performance agreement this year (2023) in February for corrections. He denied to have received the letter (response) in Bundle R, page 5 (R5). It was for the first time he sees it which stated that:-

Dear G.Senne

SUBJECT: REQUEST TO CONSIDER YOUR PMDS 2021/2022

Your letter dated 09 March 2023 is hereby received and acknowledged with thanks.

Kindly be informed that according to PMDS Units records, your PMDS documents were send back to you on May 2022 for corrections and you submitted them back on the 24th of Feb 2023 after the PMDS Payments were Finalized, so it means you did not Comply with the due dates of PMDS Submission Circle.

Note that based on the above reason, the matter cannot be entertained at this stage, however you are at liberty to lodge a formal grievance with Labour Relations Unit, if you are not satisfied with the content of this "MEMO".

Regards

9. He stated since he submitted, he never received any feedback. He agreed to have submitted his documents in May 2022. He made the follow up about the outcome on



06 February 2023 since December 2022 had passed without receiving anything. He reiterated that he received his documents in 2023 for corrections.

10. **Makhosi Nkosi (“Nkosi”)** testified under oath and stated that the applicant reports to him. He presented the applicant with his assessment documents for corrections sometime in February 2023. The reason for that was because he received them from an intern in Mafikeng in the same February 2023.

11. He confirmed to have received them in February 2023 but not sure of the exact date. The intern reminded him of the applicant’s documents when he was at Mafikeng in February 2023. He did not remember signing for them as he normally does not record the receiving of documents from employees.

12. He agreed that as there are time frames, what is written on R5, meant that the applicant did not comply. He confirmed that when the applicant initially submitted his assessment documents in May 2022, he was well within the time frame. When he called the PMDS office, he was told that they were still busy and it was in 2022. He continued to call them again for several months.

The respondent’s evidence

13. **Lesibana Mabusela (“Mabusela”)** testified under oath and stated that he is a Deputy Director : HR Utilisation and Capacity Development. In terms of the PMDS policy, employees are supposed to submit on or before 31 May of each year. Beyond that, it will be regarded as non-compliant. HR will start capturing in June.



14. He further stated that the letter in R5 was directed to an official where both parties had to sign. When he was asked if the non-compliance is not of the employee's fault, he answered that every situation will be dealt with based on the its merits.

ANALYSIS OF EVIDENCE AND ARGUMENTS

15. This is an arbitration award issued in terms section 138(7) of the LRA with my brief reasons. Therefore, it is not my intention to regurgitate all the evidence that was lead during the proceedings. However, it should not be construed that I only considered some of the evidence.

16. Section 185 of the LRA states that every employee has the right not to be subjected to an unfair labour practice. Section 186(2)(a) of the LRA defines an unfair labour practice as any unfair act or omission that arises between an employer and an employee relating to the provision of benefits to an employee.

17. In *National Home Builders Registration Council v CCMA and others (JR 2026/13) [2016] ZALCJHB 209*, the court held that Commissioner cannot make a determination on an issue that is not before him for determination and was not the subject matter of the dispute. Neither can they argue points on behalf of the parties, which the parties themselves had not relied on or raised in their evidence. Commissioners must act within the confines of the facts and evidence before them. I am therefore, confined to determine this matter based only on evidence lead by parties in the proceedings.



18. It is trite that in an unfair labour practice dispute, the applicant will bear the onus to prove to have been treated unfairly by the respondent. The applicant's challenge is that he felt unfairly treated by the respondent because his assessment documents were late.

19. It is common cause that there was a cut-off date that the applicant did not comply with. Accordingly, he should have submitted on or before 31 May 2022, but he submitted on 24 February 2023. Both the applicant and his direct supervisor, Nkosi testified that the applicant received his documents for corrections sometime in February 2023. This evidence was not rebutted by the respondent.

20. Nkosi further testified that he received the applicant's documents when he was at Mafikeng for other things. He was even reminded of them and it was already late for submission. Based on all of that, I conclude that indeed the applicant's assessment documents were not treated with care by the respondent. Therefore, the applicant has discharged his onus to prove the unfairness by the respondent.

21. The applicant wanted his assessment documents to be finalised so that he can be paid his performance bonus or pay progression. I am reluctant to touch on the last part of the applicant's plea because I am not authorised to deal with assessments. The Moderation Committee is the relevant body to deal with such.

The following is recorded for completeness of this award:

AWARD



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22. The respondent did subject the applicant to an unfair labour practice in handling the applicant's performance assessment for 2021/22

23. The respondent is ordered to finalize the applicant's performance assessment documents for 2021/2022.

GPSSBC Commissioner: K. Z. Garikue

Signature: _____