



ARBITRATION AWARD

Panelist: Dr GMP Pholo
Case No.: GPBC918/2023
Award Date: 10 January 2024

In the ARBITRATION between:

PSA obo WESI
(Applicant)

and

DEPARTMENT of TRANSPORT, SAFETY & LIAISON
(Respondent)

Applicant's representative: Mr Eugene Louw (PSA - Labour Relations Officer)
Applicant's e-mail address:

Respondent's representative: Mr Thembekile Aaron
Respondent's e-mail address:

ARBITRATION AWARD

DETAILS OF HEARING AND REPRESENTATION

1. This is the arbitration award in the matter between Mr Lentikile Wesi (**the applicant**) and the Department of Transport, Safety & Liaison (**the respondent**)
2. The referral was made in terms of section 186(2) of the Labour Relations Act, 66 of 1995 as amended from time to time (herein referred to as "**the Act**").
3. The applicant was represented by Mr Eugene Louw (PSA - Labour Relations Officer), and the respondent was represented by Mr Thembekile Aaron (Manager - Labour Relations).
4. Each party handed in its set of documents. The applicant's set was marked "bundle A" and the respondent's set was marked "bundle B".
5. The arbitration took place over two (2) days, i.e., on the 4 September and 11 December 2023. On the second day of the sitting, the parties jointly handed in single page document (i.e., the Persal printout of the applicant), the document was then marked bundle "C".
6. The arbitration was held in English. The proceedings were electronically recorded, and the recordings are filed with the General Public Service Services Bargaining Council ("**the Council**").

ISSUE TO BE DECIDED

7. I am called to decide whether the respondent acted fairly or unfairly in their failure to pay the "**benefits**" (cash bonus and pay progression) in terms of section 186(2)(a) of "**the Act**".

BACKGROUND OF THE DISPUTE

8. In terms of Employee Performance Management Development System (EPMDS), "**the policy**" that governs the performance of the government officials, the applicant, and his supervisor (Mr Crouch) needed to have one-to-one session to discuss the performance.
9. The meeting was held to discuss, rate and score, agree, and sign the performance management documentation (POE) of the applicant for the 2021/2022 financial year.
10. The applicant handed the completed performance documentation (POE) as listed above to the supervisor for the presentation to the Intermediate Review Committee (IRC) in accordance with "**the policy**".

11. The supervisor (Mr Crouch) in possession of the performance documentation (POE) of the applicant was expected to attend the Intermediate Review Committee (IRC), to represent and to further make presentation of the agreed “**performance management outcomes**” between himself and applicant.
12. As expected, the supervisor attended the Intermediate Review Committee (IRC) on behalf of the applicant and made the presentation. However, the supervisor was not in possession of the supporting documents (POE) for the scores above 4s. As the result, the rating scores of the applicant were reduced from 4s to 3s.
13. The Intermediate Review Committee (IRC) mandated the supervisor to consult with the applicant on the revised score, and/or if possible, to re-submit the supporting documents (POE) for the score above 4. However, the consultation between the supervisor and the applicant did not materialise. Therefore, the applicant was not made aware of the revised and/or changed rating score for his “**annual performance assessment**” for the 2021/2022 financial year.
14. Given the agreed rating score between himself and his supervisor, the applicant was of the view that he qualified for both “**cash bonus and pay progression**”, and for the reasons unknown to the applicant then, he did not qualify for the “**cash bonus**” and as such, it was not paid to him.
15. The applicant did not notice he his 1,5 % for the “pay progression” was paid, and at the time of referring the dispute to “**the Council**”, he was under the impression that both the “**pay progression**” and the “**cash bonus**” were not paid.
16. The applicant felt aggrieved by this omission by the respondent, as such, he “**appealed**” the decision of the Intermediate Review Committee (IRC) to no success. He further filed for the internal “**grievance procedure**” and the outcome could not satisfy him as well. Hence, he referred the matter to “**the Council**” for the conciliation and arbitration.

SUMMARY OF ARGUMENTS

Applicant’s Arguments

Mr Lentikile Erwin Wesi testified under oath that:

17. He is employed by the department (DTSL) as the “**deputy director: corporate services**”, and he is based at Kimberley (Northern Cape). He reported to the late and the then “**director: corporate services**”, Mr Crouch.

18. As the manager, he is expected to perform his work and he is also expected to go an extra-mile. However, in his “**annual performance documentation**” to the supervisor (Mr Ebrahim Crouch) he recorded both his normal and the extra work he performed.
19. He had two (2) meetings (one-to-one) with his supervisor and out of those meetings, they completed the “**performance assessments**” which included the “**rating scores**” backed by the supporting documents (POE) for in which he handed all the documentation to the supervisor.
20. In 2021, there were strict hard lockdown regulations due to covid 19 and he had to work alone because the two (2) of his colleagues were forced to stay home since they were pregnant. The other two (2) colleagues were also forced to stay home because they had comorbidities. In the meantime, the department employed the new person, whom he was obliged to train and provide the necessary support to this employee.
21. On the 19th of January 2022, the department released an “**internal memo**” to inform the employees of the closing date for the “**appeals**” of the “**cash bonus**” and “**pay progression**” results from the intermediate review (IRC) and departmental moderation committees (DMC). The appeals were to be referred to the committee on or before the 21st of February 2022.
22. He is used to attend the Intermediary Review Committee (IRC) meetings in his capacity as the supervisor to represent his subordinates. As the supervisor, he is expected to convince the Intermediary Review Committee (IRC) panel on his allocated score to his subordinates. Therefore, he knows the processes, he could not have handed the “assessment documents” to the supervisor without the POE.
23. The Intermediary Review Committee (IRC) meetings are attended by the supervisors to make presentations on behalf of their subordinates. The subordinates are not allowed to attend with their supervisors. In his case, the supporting documents, portfolio of evidence (POE) was to be presented by his supervisor (Mr Crouch).
24. According to the allocated rating score as agreed between themselves, he qualified for both “**grade progression**” and the “**cash bonus**” because he was rated 4s in all his KPAs.
25. He was informed that Mr Crouch attended the Intermediary Review Committee (IRC) meeting on his behalf but did not present the POE. He could not establish the reasons for that because the supervisor was in and out the hospital. The supervisor passed on prior to the approval of the payouts. He observed all internal processes to raise his dissatisfaction, but the responses were negative. Hence, the matter was referred to “**the Council**”.

26. He was informed by Mr Sipho Tidikwe with an e-mail that his (applicant) rating scores for the KRAs were reduced from 4s to 3s. Mr Tidikwe's e-mail supplemented the contents of the "**internal memo**" from Mr Aaron (Labour Relations) which was directed to the "**head of department**" (HoD) that "**his rating scores were reduced**". However, if the information of Messrs Tidikwe and Aaron is to be believed, then there should have been at least a "**consultation**" between himself and the supervisor and the same did not materialise.
27. Mr Crouch did not consult him for the revised rating score, nor did he discuss the recommendations of the Intermediary Review Committee (IRC) with him. Therefore, the Intermediary Review Committee (IRC) have no power to adjust his **rating score** without the consultation. Therefore, the Intermediary Review Committee (IRC) have exceeded its mandate as afforded by "**the policy**".
28. There were no efforts from any of the adjudicating committees, i.e., the Intermediary Review Committee (IRC) nor the Departmental Moderation Committee (DMC) to resolve the matter. Hence, they did not appoint the "**mediator**" to the matter as required by "**the policy**".

Respondent's Argument

Ms Kebuileng Angelina Lekwene testified under oath that:

29. She is employed by the department (DTSL) as the "**assistant director: gender and special programmes**", and she is based at Kimberley (Northern Cape). However, before her appointment to the position, she acted as the "**deputy director: human resources management**" for the period 2017-2020.
30. She was the panel member of the **Employee Performance Management Development System** (EPMDS) **annual performance assessment** for the **2021/2022** financial year.
31. The role of the Intermediary Review Committee (IRC) includes (a) the assessment of the evidence as presented by the presenter, and (b) the analysis of the rating score and the portfolio of evidence (POE) for the appropriate determination of the correct score. The presentation needs to be aligned and equate the allocated rated score.
32. Mr Wesi was represented by his immediate supervisor, the late Mr Crouch. However, Mr Crouch appeared without the documentation (POE) of the applicant. As the result, the Intermediate Review Committee (IRC) recommended that the rating score of the applicant be reduced from 4s to 3s and Mr Crouch agreed to the reduction thereof. However, the supervisor undertook to consult with the applicant to collect the POE for submission.

33. The supervisor did not submit the supporting documentation (POE) as agreed to the Intermediary Review Committee (IRC) meeting. As the result, the “**Departmental Moderation Committee**” (DMC) endorsed the decision of the Intermediary Review Committee (IRC).
34. The 133% qualifies the participant for both **cash bonus** and **pay progression**, the 115% is the borderline between the qualification of the pay progression and the cash bonus, whilst on the other hand, the 100 % qualifies the participant for the pay progression only.
35. If the assessment documentations were presented with the sufficient proof (POE) for the allocated rating scores of 4s as requested by the Intermediary Review Committee (IRC), both the **cash bonus** would have been paid. Given the non-compliance on the submission of the documents, the applicant only qualified only for the “**pay progression**” and not the “**cash bonus**”. Hence, only the pay progression was paid in July 2022.
36. The Intermediary Review Committee (IRC) could not have endorsed the applicant’s rating scores of 4s in the absence of the POE. Accordingly, the rating score of 3 means that the employee did what was expected, and the rating score of 4 means that the employee did what was expected, and furthermore that, such an employee performed some extra work. However, the supporting documents (POE) must be included for the assessment of the extra work performed.
37. The applicant qualified for the “pay progression” and was paid the 1.5% of his annual salary, and if the applicant was not paid the “pay progression”, then it certainly was an oversight on the part of the department.

ANALYSIS OF THE SUBMISSIONS AND ARGUMENTS

38. My analysis to the evidence presented before me in this matter, will adopt the definition of the term “performance management system” as provided for by “**the policy**” and **McDonnel et al (2009)** in that it refers to “**a process that enables employees to perform their role and responsibilities to the best of their abilities with the aim of achieving or exceeding established targets and standards that are directly linked with the organisation’s objectives**”.
39. The determination at the centre of my analysis seeks to unearth whether (a) the supervisor-subordinates assessment was conducted, (b) there was an agreed rating score, (c) the supporting documents (POE) existed, (d) the supervisor had the required documents for presentation, and (e) the supervisor communicated the decisions of the Intermediary Review Committee (IRC) to the applicant.

40. Despite, the applicant having raised the non-payment of the **“pay progression”** as part of his dispute at the beginning of the arbitration process, the introduction of the applicant’s **“persal printout”** (bundle C), on the second sitting (11 December 2023) as detailed in paragraph 5 and 7 was a solid prove that the **“pay progression”** paid to the applicant in July 2022.
41. I have noted that the applicant’s supervisor (Mr Crouch) and the subordinate (the applicant) are both the managers who are conversant with the processes of the performance management system, they both sits in the Intermediary Review Committee (IRC) meetings to represent their respective subordinates. As the result, they were familiar with the **Employee Performance Management Development System (EPMDS)** as **“the policy”**, and as such, are both conversant with the processes of the **“performance management system”**. Given this background, (a) I fail to understand how the supervisor can endorse the rating score of 4 without adequate portfolio of evidence (POE), and for this, I have no doubt that the portfolio of evidence was presented and handed to him as the supervisor, and (b) I also fail to understand why the supervisor could not consult with the applicant for the Intermediary Review Committee (IRC) revised rating score, save to say, he knew that he was given the documents, hence, he could not approach the applicant for the same documents again.
42. It is against the same background as pictured in the paragraph above, that I agree with Mello (2014) that **“performance management processes are often marred by controversies and dissatisfaction. Appraisals are mainly the subject of disputes in the performance management system. If the disputes are suppressed, performance will deteriorate”**. In all fairness, different scenarios demand different approaches and interventions, and this dispute is one of those.
43. The minutes (p.18, bundle B) of the Intermediate Review Committee (IRC) dictates that **“the supervisor availed himself to the IRC and alluded that the official did not provide him with evidence to present to the IRC”**, this minutes confirms that (a) the supervisor represented the applicant at the Intermediate Review Committee (IRC) meeting, and (b) the supervisor failed to produce the POE on behalf of the applicant to the committee. Accordingly, the supervisor should not have been reminded the POE of the applicant by the committee. The competent supervisor (the director) should have known better that the subordinate cannot be rated a 4 without the supporting documentation (POE). Hence, I am of the view that Mr Crouch had the necessary supporting documentation prior to attending the committee meeting. Therefore, the reduction of the score is squarely the wrong of Mr Crouch, and the applicant cannot be blamed for that.

44. On the other hand, the IRC minutes (p.18, bundle B) further state that, “... **the IRC recommended that the scores should be reduced in the absence of the evidence, Mr Crouch agreed that all scores should be reduced ...**”. This confirms to me that (a) the performance assessment meeting between the applicant and the supervisor took place as expected, (b) there was an agreement on the rating score between the parties, (c) the parties completed the assessment documentation, (d) the supervisor presented the assessment documentation to the IRC, (e) the IRC reduced the applicant’s scores (i.e., reduced from 4 to 3., and (f) the supervisor agreed with the committee on the score reduction. What cannot be confirmed is that (a) the discussion between the applicant and the supervisor on the reduced score were held or that (b) the applicant did not give the supervisor the POE.
45. Furthermore, the minutes (p.18, bundle B) stated that “... **he (Mr Crouch) was further advised that he should not assess officials without evidence in future**”. It appears from the statement that (a) Mr Crouch as the supervisor did not perform his assessment diligently, hence, the provision of the advice by the IRC. The advice to the supervisor by the IRC was an admission that Mr Crouch is likely to have erred in the process of the applicant’s performance assessment for 2021/2022 financial year. The question then remains whether it was fair for the applicant to bear the brunt of the supervisor’s failures. In all fairness, the supervisor in this regard, was not a junior manager nor unfamiliar with the assessment processes because he was employed as the “**director**” within the human resources (HR) directorate.
46. It is also critical, that despite the unfortunate circumstance of the supervisor, he was advised to consult with the applicant to discuss the reduction of the ratings. This is clearly captured in the “**grievance report**” directed to the “**office of the acting head of department**” dated 13 June 2022 (p.22, bundle B) in which it was stated that “... **supervisor was advised to revert back to the official (applicant) and consider the reduction of scores**”, there is no any indication that this meeting occurred, be that as it may, the applicant deny ever been approached by Mr Crouch. This is confirmed by the “**grievance report**” (p.23, bundle B) in that it stated, “**it is evident therefore that this did not happen, considering the discontent raised by the official**”. It must be remembered that the advice by the Intermediary Review Committee (IRC) as quoted in this paragraph, was made to comply with item 9.1 of “**the policy**” (bullet 3) in that “**any on the changing of the rating scores must be referred back to the employee or component level to review, compare and validate to try and reach consensus on the change**”. Surely, this part of “**the policy**” cannot be ignored in this dispute.

47. Accordingly, I am of the view that “the policy” provide a distinctive solution to this dispute in that, **“if the supervisor and the employee cannot agree, the unchanged/original rating is forwarded to the “moderating committee”, with the comments from the IRC, the supervisor and employee”**. The unfortunate part is that this step did not materialise. However, one cannot ignore the health status of the supervisor (he was in and out the hospital at the time). The possibilities are it might not have been possible under the circumstances. Be that as it may, this act cannot stand to prejudice the applicant whilst not implying that the **“cash bonus”** is automatic. In fact, the **“grievance report”** (investigation) could have arrived at different conclusion with its **“findings and recommendations”** in particular.

48. In line with the paragraph above, I differ with the respondent’s arguments as well as his findings of the grievance report, in that the applicant **“... could not provide the investigator with a full complete set of assessment for the performance cycle”**, accordingly, there is no compelling reasons for the applicant to keep the duplicates of the assessment documentation in terms of **“the policy”**. Therefore, the failure to submit copies to the investigating officer cannot disqualify the applicant to earn a deserved **“cash bonus”**. On the other hand, I am of the view that the investigating officer was not given the mandate and/or the powers to replace the Intermediate Review Committee (IRC), in that when the copy of the applicant’s POE was not presented to him/her, then it was the justification of its non-existence of the POE. The question was whether the applicant’s POE was available during the one-to-one meeting between the applicant and the supervisor, and the possible assumption to me is positive the supervisor could not have scored the applicant the 4s in the absence of the POEs. If this really happened, then **Cloete (2019)** becomes relevant in that **“... all too often senior management talk the walk, but do not walk the talk. They know the vision by heart and know all the right cliched phrases, but they fail to support and reward the efforts of departmental line managers”**. Given the loss of life of an active participant (Mr Crouch) as the supervisor, the respondent could have employed a different approach. I am stating this noting the argument by **Mello et al (2014)** that **“performance rewards are monetary rewards for employees whose performance, based on the scores allocated through the formal organizational process of performance management during a particular period of assessment, exceeds expectations”**. Certainly, I agree with this stated quotation because, in all fairness, **“performance”** is an action preceded by a thoroughly thought process.

49. Accordingly, in line with the paragraph above, SABPP, 2013:13 as quoted by **Cloete (2019)**, it is correct that the organisational structure is shaped by, inter alia: the consistency

in how policies are correctly implemented and enacted in the workplace. Surely, there was an inconsistency in the application of the EPMDS as “**the policy**” document.

REMEDY

50. In line with the arguments as presented, I find the act of the respondent by not paying the “cash bonus” to applicant to be unfair because the failure to submit the POE to the Intermediary Review Committee (IRC) is not the error of the applicant’s own making but his immediate supervisor.

51. The supervisor could not have assessed and allocated the applicant with the rating scores of 4s in the absence of the POE. This is argued from the backdrop of the supervisor as the custodian of the HR policies and the position he occupied (**director: corporate services**), and he was located within the directorate of human resources. I find impossible, that the person in the position of Mr Crouch could compromise himself to the level of conducting such flawed performance assessment. I am of the view that at the time of him scoring the applicant the 4s, he had the POE to his possession.

52. I find it appropriate, that the respondent’s supervisor was responsible for the loss of the applicant’s POE, and therefore, it is unfair that the applicant is disadvantaged to qualify for the annual “**cash bonus**” due to the deeds of the supervisor.

53. Accordingly, the applicant is entitled to be paid the “**cash bonus**” to the amount of R52 326,00 (i.e., the 5% (bonus) of the R1 046 520,00 (annual salary) of the applicant).

AWARD

In the circumstances, I make the following award:

54. The assessment process of the applicant by the respondent breached the spirit of the EPMDS policy,

55. The respondent’s non-payment of the cash bonus to the applicant for the 2021/2022 financial year was unfair and unjust,

56. The respondent to pay the applicant the cash bonus which amount to R52 326,00 which is the five percent (5%) of the applicant’s annual salary as of March 2022 (i.e., $R1\ 046\ 520,00 \times 5 / 100$),

57. The respondent to pay the amount as reflected in paragraph 56 above to the applicant on or before the 15th of February 2024, and

58. The amount in paragraph 56 shall earn interest from the date of the award at the same rate as the rate prescribed in respect of a judgment debt in terms of section 2 of the Prescribed Rate of Interest Act, 55 of 1975.



Dr GMP Pholo

(GPSSBC) Arbitrator