



GENERAL PUBLIC SERVICE
SECTOR BARGAINING COUNCIL



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ARBITRATION AWARD

Panellist/s: Shiraz Mahomed Osman
Case No.: GPBC 2126/2021
Date of Award: 23 December 2023

In the ARBITRATION between:

PSA obo Mr. Ramofako
(Union / Applicant)

and

The Department of Agriculture ; Land Reform & Rural Development
(Respondent)

Union/Applicant's representative: Mr. H Thomas

Union/Applicant's address:

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Respondent's representative: Mr. E Siyo; Mr. Modubu; Mr. Mabe

Respondent's address:

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DETAILS OF HEARING AND REPRESENTATION

1. The present dispute between PSA obo E M Ramofako (hereinafter referred to as the applicant) and The Department of Agriculture; Land Reform & Rural Development (hereinafter referred to as the 1st respondent) & Department of Public Service & Administration (DPSA) was referred to Arbitration in terms of Section 186 (2) (a) of the Labour Relations Act no. 66 of 1995, as amended (the Act). At the Arbitration hearing which was held at the Boardroom of the respondent, on, 3 February 2023, the applicant was represented by Mr. H Thomas of PSA, and the 1st respondent was represented by Mr. E Siyo, whilst the 2nd respondent was represented by Mr. V Modubu, and Mr. Mabe, on the second occasion.
2. At the Arbitration, and at the conclusion of a lengthy synopsis of the pre-arbitration minute, concluded on the previous virtual meeting, was signed by all parties and handed up. It became clear that there were indeed no factual disputes, and parties agreed that they would submit a joint signed statement of case, by no later than, 10 February 2023. The applicant was afforded the opportunity to submit his founding argument, by no later than, 17 February 2023. Both the respondents are to submit their arguments by no later than, 24 February 2023. Finally, should the applicant wished to reply, such reply is to reach Council, by no later than, 3 March 2023.
3. However, whilst considering the submissions, it became evident that there emerged a dispute of fact. A reconvening of the arbitration ruling, was issued as a result, and the matter in respect of the disputed fact only, was heard on, 6 December 2023. Parties were afforded a further seven days to forward arguments in respect of this testimony by no later than, 13 December 2023. Hence, being the last date of the arbitration.
4. All parties filed stated cases, and arguments, which are considered. Should any of the arguments not be reflected hereunder, then it does not mean that it was not considered.
5. Herewith, brief reasons for my decision in terms of Section 138 (7) of the Act.

STATEMENTS OF CASE

APPLICANT

6. The applicant submitted that with a B. Agriculture (Hons) in Agricultural Economics, he was officially appointed as a Principal in Agriculture Economics. His job description included Project Feasibility Studies, Agricultural Policy Analysis, Drawing Business Plans and Financial

Management. From 1999, till 2003, he represented the respondent at National level, on Agricultural Business matters, with other Provinces

7. Since 2003, he was appointed officially as a Provincial Agricultural Extension Manager. His Key Performance areas were Project Implementations, Managing Extension Services in 5 Districts, and Managing the Extension Budget, the training of officials and farmers. Again, he had represented the Department at National Level, at Conferences, Workshops, Conventions and other forums.
- 3 The province was split for operational reasons. He managed the Eastern Region (Francis Baard, Pixley ka Seme and John Taolo Gaetsewe) districts. The Western Region, (Namakwaland & Z F Mgcawu) districts, were managed by another Manager.
- 4 When the Deputy Director of Training resigned, he was verbally requested by the Head of Department (the HOD) to take care of training, as Deputy Director. It was a verbal agreement, and not an official appointment. No contract or legal agreement was signed between himself, and the 1st respondent. The post was not advertised, nor was there a selection of candidates or interviews, conducted. The challenging part, according to him, is that he had to develop his Job Descriptions, and Key Performance Areas (KPAs) and, other matters pertaining to training. He had to consult with all 8 of the other Provinces, to assist him with KPAs and Job Description of Training and Capacity Building. His post as Deputy Director- Extension was made vacant, and to date, is still vacant. The applicant listed his qualifications:
 - Diploma in Animal Health
 - B. Agriculture Management
 - B. Agricultural Hons (Agric Economics)
 - University Education Diploma
 - Post Graduate Diploma in Disaster Management
 - MBA (Masters in Business Management and Public Management)
- 5 He was surprised that the 1st Respondent recognised his Disaster Management Qualification whilst he was on Pension. He was not given any formal recognition for having achieved this scarce qualification. No remuneration was awarded to him for the acquisition of the qualification. He viewed this as an unfair labour practice, for failing to recognize the achievement of the scarce qualification. He argued that he was the only one with this qualification, in the whole Northern Cape Department of Agriculture. Recently, he had learnt that there was an official who had achieved this Post Graduate Diploma. Now that he is a pensioner, the official was the only one with the Disaster Management Diploma.

- 6 He contended that the 1st respondent should look at his file in respect of his application, and the motivations he presented, as to why he wanted to study for the MBA. His motivations and reasons were clear. Firstly, as a manager, he desperately needed a superior Management Science degree (which is internationally recognized). Some managers unfortunately did not have MBA qualifications. The HOD encouraged all managers to improve their qualifications, especially in the Management Science Degree like the MBA. The 1st respondent, he argued, ought to recall that, there is one MBA graduate, whom the 1st respondent assisted, until she finalized her MBA studies. This was no secret. He insisted that why was it, that the HOD disapproved his application to study, for the MBA degree? The 1st respondent he argued, must have known that there was only one official with an MBA degree, in the Department, since he left the 1st respondent's employment due to pension. Under no circumstances, he argued can an HOD or an MEC of any Department refuse to approve the study of an MBA application. He insisted that the 1st respondent must state the reasons as to why the HOD had not approved his MBA study. Without doubt, this could be regarded as an unfair labour practice, he reiterated.
- 7 The HOD had never complained about the applicant's attendance at his MBA lectures, at university. The three years study timetable was submitted to the HOD; Chief Director; the Director; and the ERP Deputy Director were aware about his studies. He commenced his MBA degree, with the full knowledge of the Human Resource Unit, and had used his leave credits and study leave to the best of his ability. He requested that the copy of HOD's disapproval of his MBA study be given to the Human Resource, Commissioner, the current Director; the Chief Director, the HOD; the Member of the Executive Committee (MEC); the DPSA, and the PSA, his union. The HOD had given him permission to interview over 500 farmers, and officials of the Department of Agriculture, during his research.
- 8 Furthermore, he submitted that his MBA research project was given to the HOD, the title being, "Quantifying vulnerability of emerging farmers in Northern Cape" His study was confined to farmers in the John Taolo Gaetsewe district. His study focused on climate change, the economical; social, and environmental drought impact in the Northern Cape. He also looked at the current mitigation strategy. Proposed mitigation strategies were also given to the 1st respondent. His thesis was available on the internet, and suggested that it be searched for, for more information and enlightenment. The data was collected using, quantitative and qualitative questionnaires. After completion of his MBA study, his results and certificate were submitted to the HOD, who in his opinion was impressed, with the applicant. The applicant's director was also impressed with his performance and achievement. Unfortunately, until now, the 1st respondent had not yet recognised his achievement.

- 9 The HOD appointed him on the following committees: Project Management; Drought Management; Female Entrepreneur Committee; Transport Committee; CASP, Land Care, Livestock Management Programme; Agricultural Training and Capacity Building.
- The above activities also motivated him to study for his MBA. The courses which he did, were relevant to his duties which were Financial Management, Project Management, Material Management, HRM; Supply Chain; Labour Relations, Management; Accounting; Change Management; Marketing Management; Managerial Economics; Leadership and Negotiation Strategies, and Operation Management. He belonged to the following bodies: Member of Accredited MBA; Agricultural Science Society; Agricultural Education and Training; Agricultural Economics Association of South Africa; Member of Agricultural Scientists of South Africa; Member of Disaster Management of South Africa (DIMSA) and the Agricultural Extension Forum.
10. The National and Provincial Government sent the applicant to the following countries, as a representative, in matters related to agriculture; Canada, France, Netherlands and Kenya.
11. In conclusion, and based on his above statement, he sought that the 1st respondent pay R 31 000.00, which he insisted that the 1st respondent had owed him, with immediate effect, and without further delay. Secondly, he sought that the 1st respondent pay him travelling claims in the amount of, R 78 000.00. He suggested that his union, and the 1st respondent had had copies of his claim. He insisted that the MEC's office had been given copies of his claims in, March 2022, for his unpaid travelling, and subsistence allowance. He insisted that his service was delivered, and that there were no reasons given to him, for withholding his claims.
12. He contended that the culture of unfair labour practices was rife at the 1st respondent. He was not paid for acquiring the Disaster Management diploma, nor was he given any incentive or recognition of any kind,
13. The Disaster Management Postgraduate Diploma, and the Diploma in Animal Health are regarded as scarce skills. For Occupational Health and Safety qualifications, officials were paid for those qualifications. Without recognition in the work place, one stood no chance to be remunerated according to their qualification. He was given no promotion after having worked for 41 years, and received no payment for all occupational relevant qualifications.
14. He was most aggrieved as a pensioner because of the unfair labour practice metered out to him, by the 1st respondent. He had suffered financially, morally and emotionally. He was one of the officials who contributed to the building of the 1st respondent, to what it is now, since 1994, especially at the Northern Cape Department of Agriculture.

1st Respondent

15. The 1st respondent submitted that it was common cause, that the applicant started work in the Department of Agriculture in the North West in, 1981, and moved to the Northern Cape in, 1998. He was employed by the Department of Agriculture Northern Cape as a Deputy Director: Training and Capacity Building. The applicant has been employed in the Public Service, for 41 years.
16. In 2011, he was awarded a bursary to study, and obtained an advanced diploma in Disaster Management.
8. The applicant further went on to improve his qualifications, and studied for a degree in Masters of Business Administration (MBA) from, 2013 and completed the qualification in, 2019. He did not obtain approval from the Head of Department to study towards the degree.
9. The applicant did not follow Resolution 5 of 2014 read together with the DPSA circular No.: HRD 3 of 2015, clause (6) paragraph (6.4) which states “qualifications for which no prior approval was granted, shall not be eligible for the payment of the cash bonus” therefore, the employer did not pay the once off cash bonus.
10. He submitted that the issue in dispute was whether the applicant was entitled to receive the once off cash bonus, or not, in terms of Clause 6 of GPSSBC Resolution 5 of 2014.
11. The employer did not pay the applicant the once off cash bonus, because, that, would have been in breach of Resolution 5 of 2014, as outlined.

2nd RESPONDENT

12. The 2nd respondent submitted that this was a case, where the Department of Public Service and Administration, as a policy developer was invited to give advice in terms of “Resolution 1 of 2012, of the Public Service Coordinating Bargaining Council”
13. In terms of the Public Service Act (PSA) of 1994, as amended, the Minister for the Public Service and Administration, is responsible for establishing norms, and standards for the Public Service.
14. In terms of section 3 (5) (6) of the Public Service Act, 1994 (proclamation 103 of 1994), hereinafter referred to as “the PSA”, the above-mentioned Collective Agreement, is deemed to be determinations by the Minister for Public Service and Administration.

15. The implementation of the above-mentioned Resolution was with effect from, 1 January 2013, and the employee improved his qualification in the Masters of Business Administration, which is regarded as related to applicant's scope of work. The employee is therefore entitled to receive the once off cash bonus, as he could not be subjected to the failure of the department to develop the qualification criteria, for implementation of the Resolution.

SURVEY OF ARGUMENTS

APPLICANT'S ARGUMENT

16. The applicant argued that, he had requested permission from the employer to study for his degree in, Masters in Public Administration (MBA) in 2013, as he completed the improved qualification in, 2019 that was in line with his scope of work, as the qualification enhanced service delivery, in his field. He argued that he qualified for the incentive, (10% R 31 679-00), according to PSCBC Resolution 1/2012. He referred to paragraph 7 and, GPSSBC Resolution 5/2014 at paragraph 5, the criteria and, he applied for it, but the employer failed to comply.
17. The applicant insisted that he requested permission on, 20 October 2014, when he wrote a communication to the Head of Department, Mr. W V D Mothibi, that was subsequently approved (page 14-17 applicants' bundle). He suggested that at no stage did the employer engage with him, indicating the provisions of GPSSBC Resolution 5/ 2014, Paragraph 6, was in dispute as, there was no approval from the HOD, or concurrence from DPSA. The applicant was not informed, nor privy to the process that had to unfold between the employer, and organised Labour, in the Bargaining Chamber.
18. The applicant completed his qualification on, 13 November 2019, as is indicated in (page 13 applicant's bundle) and, his qualification was in line with his scope of work, as the Degree obtained, added value to his performance, as outlined in his Performance Assessment (page 60-64 applicant's bundle).
19. The applicant compiled and submitted a Business Plan, in the year, 2020, (page 65 –68 applicant's bundle), as his qualification was adding value to the service delivery, which he argued was undeniable, and was the main aim, of his studies.
20. The applicant requested permission from the employer, to conduct research, on, 8 December 2015 (page 18 applicant's bundle), which was approved, as he submitted special leave, that was not just approved, for this purpose, but also approved for all the days he was away from work, to

write examinations, (page 22-23 applicants' bundle) to complete all these different models, that was required, to complete his qualification.

21. The applicant insisted that he had submitted a written request to the Head of Department, on, 29 September 2021, (pages 27 -28 applicants' bundle), and the employer responded to his request, for payment, on, 30 September 2021, (page 29 applicant's bundle), as the employer failed to inform the applicant, from the onset of Resolution 5/2014, paragraph 6, that he did not qualify, according to the provisions, in that collective agreement. From the onset, the employer created a legitimate expectation that the applicant qualified, for the incentive, in dispute, that needed to be considered.
22. The applicant compiled, and submitted a grievance, to air his dissatisfaction on, 10 October 2021, (page 8-12 applicants' bundle), but to no avail, as the respondent, did not adhere to the prescripts of, PSCBC Resolution 14 /2002, F 8, when it came to the time frame, (30 days), as the applicant was never furnished with an outcome, that needed to be taken into consideration. He submitted that the grievance process is so often not taken seriously by employers and that, which is a very crucial process, to ensure that it gives effect to Social Justice, and sound labour relations, at the work place. Resolution 14 /2002, was also designed to afford both, the employer, and the aggrieved employee the opportunity to state their cases to try and find a meaningful way forward, to resolve the employee's dissatisfaction.
23. He suggested that the aim of the said Resolution was also to give effect to Section 196 (4) (f) (ii) of the Constitution of the Republic of South Africa, which empowered a Commission to investigate grievances concerning an official act, or omission, and to make meaningful recommendations, and enforce appropriate remedies. The other main purpose of the set Resolution was to give effect to, Section 11 of the Public Service Commission Act no. 46 of 1997, to make meaningful recommendations, to remedy the situation, after an investigation was launched, and in this instance, it was not expedited.
24. He argued that the fundamental objective of HRD was as follows, that needs be taken into consideration, when dealing with the applicant's dispute, as the Department had parked the four fundamental objectives that were crucial.
25. He contended that the respondent failed him, as the Head of the Department knew, or ought to have known in, 2013, when he requested in writing, permission to improve his qualification, and that he did not have financial aid, that implied, that he would in all reasonableness qualify for the incentive, as outlined in the said Resolution. The respondent, being the Department of Agriculture & Land Reform, received a budget, to ensure that, there were funds available, to ensure that, qualifying members, were paid out, as was required.

26. In the present dispute, it was undisputed that, the applicant obtained a qualification, that is first of all relevant to his scope of work, and that, his MBA degree had added value, to the organisational objective, as a Deputy Director, in the Department of Agriculture and Land Reform. The respondent should have given him credit, for his achievement, and ensured, that the relevant concurrence was in place, for him to obtain the incentive, when he completed his qualification in, 2019.
27. From, 2013, when the applicant started with his qualification, nothing constructive was put in place, to ensure that he received the once off incentive, that was completely unacceptable, as the respondent had, 6 years, to ensure that the concurrence was in place, as no documentation was brought to the arbitration, to substantiate that, indeed efforts were made.
28. The applicant, was a manager on, level 12, as a Deputy Director in the Department and it was HRD's responsibility, to ensure that, they retained and motivated the applicant, to study further, that would improve the efficiency, and service delivery of the organization, but the conduct of the respondent was contrary to their mandate. If the applicant was still in the prime of his life, he argued, he would surely consider leaving the organization, because of this dispute at hand, to seek better employment opportunities, with an employer that would appreciate him more. The conduct of the respondent, he submitted, would surely demotivate any employee, that was in the employ of the respondent, to improve his qualification, if this was the stance of the respondent.
29. The Human Resource Development programme facilitated the organisation, to obtain access to information, on human resources for planning, development, placement, and succession planning, and the applicant, in his capacity, as a manager, expedited those functions in an effective, and efficient manner, in the vast Northern Cape Province, and his Master's in Business Administration Degree, played a crucial role. The respondent should have ensured that, he received the incentive, as outlined in the said Resolution, and ensured that concurrences were, in place.
30. He further argued that the purpose of the Skills Development Act of 1998, indicated that, the short supply of skilled personnel was a serious obstacle to the competitiveness of our industries, and that the Act aimed to expand the knowledge, and competencies of the labour force, in order to improve productivity and employment. He argued that the completion of his degree was to enhance service delivery, in the department, at his age, as he knew that, surely the respondent would not consider him for a promotional position, but still, he wanted to improve himself, which was very costly, as the study material was expensive. He submitted that not many employees

had obtained this qualification, in the department, not even his direct supervisor, who was a director, yet he wanted to advance the objective of the respondent, by doing so.

31. The main aim of the Skills Development Act, of 1998, was to improve the quality of life, the prospect of work, and labour mobility, and the respondent failed to support this notion, with their action, to ensure that, concurrence was in place. It was not just for the applicant, but for all members of the respondent, that were currently improving their qualifications.
32. He submitted that the Act sought to improve productivity, in the workplace, and the competitiveness of employers, and the act, omission of the employer failed to ensure, that concurrence was in place, would surely have a negative impact on the above mentioned, if the employees became aware of this.
33. The other aim of the Act was, he argued, was to improve service delivery, and that was exactly what the applicant did, when he obtained the MBA, as he had implemented his knowledge, and skills, in his job, to maximise production, in the vast Province.
34. He further argued that the Department of Public Service and Administration (DPSA) had a template, that they sent to the different Departments, and the Department of Agriculture and Land Reform was no different. The template outlined the different qualifications, that was aligned with the different occupations, in the Bargaining Councils, and the respondent indicated, at the Arbitration, that from 2013, to date, that labour had collapsed the process, as they were not in agreement. He argued that the 1st respondent was unable to substantiate their claim as no documentary evidence was produced, and insisted that, there is no way that organized labour would prejudice their members, for 10 years, by collapsing a crucial process, that would in all reasonableness cause disputes going forward. The 2nd respondent, the DPSA, concurred with him, that it was impossible for the 1st respondent and organised labour, not to conclude this cardinal process, that would add value to social justice, in the department, and that, documentary evidence to that effect, must be produced, and that, the applicant was prejudiced, in this regard.
35. He submitted that the purpose of the Labour Relations Act 66 of 1995, as amended (LRAA) was to advance (1) economic development (2) social justice (3) labour peace and (4) democratisation of the workplace. The very conduct, or omission of the respondent not to commit, to ensure, that there was an agreement in place, between the 1st respondent and organized labour and, with the concurrence with the DPSA, with regard to the provision of paragraph 6, of the GPSSBC (General Public Service Co-ordinating Bargaining Council) was a serious concern.

36. The applicant argued, that the purpose of the said Resolution, 5/2014, on the agreement on recognition of improved qualification, in the Public Service is gave effect to clause 7, of Public Service Co-ordinating Bargaining Council (PSCBC) Resolution 1/2012, which committed the 1st respondent to recognise the attainment of an improved qualification, which was relevant to an employee's scope of work, and enhanced the employee's performance, and the service delivery by the employee, including an employee, whose job did not require any qualification, to choose a qualification, that would offer progression opportunities, or career pathing.
37. The above mentioned suggested it all, he argued, that as the 1st respondent's conduct with regard to the applicant, was not in line with the purpose, or objective of, Resolution 5/2014, and had the power, to correct this imbalance.
38. The interpretation or application of GPSSBC Resolution 5/2014, Clause 6, (Process to be followed to apply to study and payment for cash bonus for improved qualification) whether the applicant was entitled to receive the cash bonus, as outlined, in the said Resolution.

1st RESPONDENT'S ARGUMENT

39. The 1st respondent submitted that, the applicant studied for a degree in Masters of Business Administration (MBA), from, 2013, and completed the qualification in, 2019. The applicant did not obtain approval, from the Head of Department, to study towards the degree.
40. He argued that, neither did the applicant follow Resolution 5 of 2014, read together with, the DPSA circular No.: HRD 3 of 2015, clause (6) at clause (6.4) which, states "qualifications for which no prior approval was granted shall not be eligible for the payment of the cash bonus" therefore, the employer did not pay the once off cash bonus.
41. It was the 1st respondent's view, that the applicant was aware of the process, he needed to follow, in order for him to qualify for the cash bonus. This was so, because of the communication dated, 20 October 2014, in the form of a submission, where he wrote to the Head of Department, requesting approval (page 14-17 applicant's bundle). It should be noted, he insisted, that submissions are signed by different signatories, before they are signed by the Head of Department.
42. He submitted that none of the signatories signed the document, which clearly indicated, according to him, that it did not reach the office of the, Head of Department. The signature was the legal mark, which is used on documents, to indicate the approval of submissions, so the

insinuation that the Head of Department approved the above mentioned, document, was not only misleading, but also not true.

43. He submitted that all employees who were registered to study, whether self-funded, or through a bursary, were entitled to special leave, to write their exams, and the applicant's, was no different. His request to conduct research being approved did not warrant him, receiving the cash bonus.
44. The 1st respondent, did not dispute the fact that, the applicant had improved his qualification, but rather, he pointed out that, the applicant did not follow procedure for him to qualify for the cash bonus. He insisted that for the 2nd respondent, (DPSA) to suggest that, the applicant improved his qualification, and therefore, was entitled to the cash bonus, was contradicting Resolution 5 of 2014, at clause 6 read together, with the DPSA circular No. HRD 3 of 2015.
45. Clause 6.1 of Resolution 5 of 2015, requires that departments must define the qualifications which are relevant, and or related to their respective areas of work, and which they intend to recognise. Clause 6.2 requires that the qualifications must be consulted with labour, in the respective Chambers. Clause 6.3, in defining these qualifications, departments shall obtain concurrence, with the DPSA, on the definition of those qualifications, before they are published. Clause 6.4 reads that "An employee who intends to register for an improved qualification, upon completion of which he/she wishes to be considered for the cash bonus referred to in this agreement must inform the Department which qualification he/she intends to register. At Clause 6.5, the Head of Department or his/her delegate shall consider the employee's request for approval and provide written feedback within "one month" from the date of submission of the request as to whether the request is approved or not, should the request not be approved, reasons for non-approval must be provided.
46. He submitted that DPSA Circular No. HRD, 3 of 2015, at paragraph 3 reads, as follows: In terms of PSCBC Resolution 1 of 2012 the Implementation date of Clause 7 is 01 January 2013, therefore the implementation of the provisions of this Circular is effective from 01 January 2013, subject to Paragraph 5 hereof. This means that an employee seeking to be recognised for having improved his/her qualification, must have obtained permission from his/her supervisor to undertake that particular qualification either on, or after, 1 January 2013.
47. He cited Section 5 Clause (5.5) reads: An employee who intends to register for a qualification upon completion of which he/she wishes to be considered for the cash bonus shall first request approval from the Head of Department to register for that qualification.
48. He argued that in the submission submitted, by the applicant (page 14-17 applicant's bundle) there was only one person who signed, and that is the Manager, who was on the same level as

that of the applicant, the supervisor did not sign, as per requirement. Therefore, the Head of Department clearly had not received the said document, to enable him to approve, or disapprove.

49. He insisted that he could not determine whether the qualification was relevant, or not, because the Department does not have approved criteria, and there was no concurrence.
50. Nowhere, in the DPSA circular No. 3 of 2015, did it say that, should there be any delays in determining the criteria of qualification, then the employer must pay the cash bonus. Which is why the comments or inputs by the 2nd respondent were contradicting, the very same circular, issued by the DPSA.
51. The critical point he insisted, was approval by the Head of Department, because it allowed him to budget accordingly, prior to commencement of studies.
52. The employer did not pay the applicant the once off cash bonus, because that this would set a wrong precedence, and in breach of Resolution 5 of 2014, as outlined.

2nd RESPONDENT'S ARGUMENT

53. None were submitted.

SUBMISSIONS AND ANALYSIS OF EVIDENCE

54. The applicant, Mr. Ramafako testified that he had indeed filled in the submission and handed the request to Mr. Mtungwana, who had signed the submission and approved it. The request was for the approval to complete phase 2 of his MBA degree for the 2015/2016. He had done same on, 14 October 2014. He insisted that it was Mr. Mtungwana's responsibility to make sure that the submission got to the higher authorities, for further authorization, and I am inclined towards this approach. I do not accept Mr. Jakwe's testimony that it was the applicant's responsibility to make sure that the submission after each approval, should be the applicant's responsibility to take it any further authority. This would be a duplication of a very simple task. I would suggest that once the applicant had handed the submission to the first person in line, then it would be that person's responsibility to take the submission to a higher authority, otherwise little else would get done at the public service, if each employee had to chase a submission all the way to the HOD.

55. Page 29, the applicant's response from the MEC elucidates my theory, as the MEC referred the applicant's grievance back to the then HOD, without having to follow it up. The applicant testified that he had not received any response, besides the encouragement that he had received by word of mouth, from the HOD, thus indicating that the HOD had known of the applicant's studies. It can be a reasonable apprehension of acknowledgement of the applicant's submission, though I am persuaded that the submission itself had probably not reached the HOD for his authorization, again I must reiterate by no fault of the applicant. It is in my opinion that it was not the applicant's duty to follow up the submission at each level of authorization. Nonetheless, the applicant should have at some stage checked the progress of his submission, which at no stage of the arbitration did it appear that he in fact, had done so.
56. Indeed, on the other hand, the applicant had not received anything to indicate that permission was not granted for him to continue with his studies. The applicant's expectations were further enhanced by the fact that he had received leave for research and studies, during his tenure as an MBA student.
57. At cross-examination, the common cause fact that the submission was not approved, or neither disapproved, by way of the HOD's signature is common cause, I might add. It is plausible that the applicant's immediate supervisor had approved all the applicant's study requests in the three years of study. He was never denied the opportunity to attend lectures nor was he informed that his request was not approved by the HOD. The applicant had at all times submitted attendance registers for his attendance at lectures and had also handed to the respondent, his annual performance. Everything continued to remain silent.
58. The issue of why the applicant had not handed the submission to his manager but to the Manager of Extension Recovery Plan, is in my opinion according to the sequence of authority the correct person for the applicant to hand the submission over to. After ERT, it should have been sent to the applicant's manager, Mr. Tawana. After all this is the sequence of authorisations as per the respondent's own document. The 1st respondent had made an issue that the applicant should have followed up to check if the submission was approved. I believe that it is only partially the applicant's duty to follow up the submission, as logic would suggest that the provision made that reasons should be forwarded to an applicant if not approved, lies with the 1st respondent.
59. I find the suggestion that an applicant must make a request on each year of study as espoused by the 1st respondent as ridiculous, as it would be common knowledge from the initial submission, that the length of study would be stated. It cannot be expected of an applicant to make a repeated submission annually for each year of study, when in fact it can be established

in the initial submission that the request is for an MBA, which would take up to two years of study. Indeed, Clause 6.5 of the Resolution requires that the HOD must give feedback within 30 days of the submission having being lodged, but with all due respect, nothing happens in time in the public service, unfortunately. The applicant's Supervisor who had authorized all the applicant's study leave did not also indicate to the applicant that his submission was not successful. Which, in my opinion the supervisor bore some responsibility to check on the status of the application of his subordinate. It was agreed that the approval to study would not automatically suggest that the applicant would be entitled to the once off bonus.

60. From the above, it is evidently imperative that the respondent seeks to shift the blame to the applicant for failing to follow up his application. It might have been partially the applicant's responsibility, but not in its entirety, as the 1st respondent would make us believe.
61. The 1st respondent's witness, Mr. Jakwe testified that indeed if there is no signature appended to the submission, which the applicant handed in to Mr. Mothibi. Mr. Mothibi was the only one that had signed the submission amongst various heads of department. He made the plausible suggestion that the applicant should have followed up his application. I agree, but to what point is it the applicant's responsibility and at what point does the 1st respondent take over the responsibility to make sure that documents reach their final destination for approval. The witness further testified that the objective of the document was to make sure that the 1st respondent sets aside the budget to pay an applicant.
62. At cross-examination, nothing new emerged. There is in fact no provision in the Resolution that suggests that the Head of Department must approve, as one of the qualifying criteria. In fact, the witness agreed that in line of the qualifying criteria, the applicant would qualify for the once off bonus. I am indeed inclined towards this approach. Indeed, the applicant's submission should have been filed somewhere, or in fact in my opinion be sent to the next step of the approval process.

ANALYSIS OF SUBMISSIONS & EVIDENCE

63. In *NEHAWU v UCT and others* [2003] ILJ 95 (CC). See also *Sidumo and another v Rustenburg Platinum Mines Ltd and others* (CCT 85/06) [2007] ZACC 22; [2007] 12 BLLR 1097 (CC); 2008 (2) SA 24 (CC); (2007) 28 ILJ 2405 (CC); 2008 (2) BCLR 158 (CC) (handed down on 5 October 2007) it was held that: One of the primary objects of the LRA is to give effect

to, and regulate the fundamental rights conferred by section 23 of the Constitution, including the right to fair labour practices enshrined in section 23(1) of the Constitution. The concept of unfair labour practice must be given content by the legislature, and thereafter left to gather meaning, in the first instance, from the decisions of the specialist tribunals, including the Labour Appeal Court and the Labour Court.

64. The Court held that the definition of benefit, as contemplated in section 186(2)(a) of the LRA, was not confined to rights arising *ex contractu* or *ex lege*, but included rights judicially created, as well as advantage or privileges employees have been offered or granted in terms, of a policy or practice, subject to the employer's discretion. See in this regard ***Apollo Tyres (Pty) Ltd v CCMA and others [2013] 5 BLLR 434 (LAC)***.
65. In the present instance it is the once off bonus, as provided for, in Council Resolution 5 of 2014, which reads at Sections 6.1 to 6.4, which is applicable to the present dispute, as follows:
- 6.1 The Department must define the qualifications which are relevant and or related to their respective areas of work and which they intend to recognise.*
- 6.2 The qualifications must be consulted with Labour in the respective Chamber.*
- 6.3 In defining those qualifications the Department shall obtain concurrence with the Department of Public Service and Administration (DPSA) on the definition of those qualifications before they are published.*
- 6.4 An employee who intends to register for an improved qualification, upon completion of which he/she wishes to be considered for the cash bonus referred to in this agreement must inform the Department which qualification he/she intends to register*
- 6.5 The Head of Department or his/her delegate shall consider the employee's request for approval and provide written feedback within "one month" from the date of submission of the request as to whether the request is approved or not, should the request not be approved, reasons for non-approval must be provided".*
66. From the conspectus of evidence and arguments, I am inclined towards the approach that the applicant had indeed made an application in 2014, for the approval to complete phase 2 of his MBA studies. The application was received by Mr. Mtungwa, the first person in line in the approval process, but did not go any further for approval. I do not believe that it was the applicant's duty to follow his application every stage of the process. If the applicant had then he would not be able to carry out his duties.
67. Once the application was submitted to Mr. Mtungwa, then Mr. Mtungwa should have passed it on for further consideration. Apparently, this did not happen, and the 1st respondent wholly relies on this, as a deficiency on the part of the applicant. I am not persuaded that it in fact is. Once the

application was furnished to the 1st respondent, it was its duty to complete the process and revert to the applicant.

68. The applicant was under the impression that it was approved though he had not received any written approval, however the conduct of the 1st respondent suggests that it was aware of the applicant's studies.
69. Once the application was signed by Mr. Ntungwa, it became the 1st respondent's liability to conclude the process, which it failed to do, and the 2nd respondent's argument is correct in this approach.
70. Further to the above, there is nothing from the 1st respondent to suggest that it had indeed concluded the process of consulting with labour to list the qualifications that would be approved for a once off cash bonus. The 2nd respondent had issued a circular in regard to the Resolution, yet the 1st respondent failed to complete its side of adhering to the Resolution.
71. Now, it rests the entire blame for its failure to consider the application, on the shoulders of the applicant. Notwithstanding, that the 2nd respondent had "hit the nail on the head" in its submission, so to speak.

REMEDY

72. The applicant sought that, I order the 1st respondent to pay the applicant the cash bonus, as stipulated in GPSSBC Resolution 5/2014, and PSCBC Resolution 1/2012, 10% of his annual income, in the amount of R 31 649-00.
73. That, I order the 1st respondent, to pay the applicant compensation, as per my discretion, in terms of Section 193, of the LRAA.
74. I am indeed inclined to award the applicant the cash bonus, but I am reluctant to order any compensation for the purported unfairness toward the applicant. I am of the opinion that the applicant had suffered no further financial prejudice or prejudice otherwise, that is set out in the case law below.
75. In his argument, the applicant sought a financial remedy for subsistence and travel for his studies. This claim was not included in the signed pre-arbitration minute.
76. In ***ARB Electrical Wholesalers (Pty) Ltd v Hibbert {2015} 11 BLLR 1081 (LAC)*** the Court held that compensatory relief in terms of the LRA is not strictly speaking a payment for the loss of a job, or the unfair labour practice but in fact, a monetary relief for the injured feeling or and humiliation that the employee suffered at the hands of the employer. The monetary relief

constitutes solace to provide satisfaction to an employee, whose, constitutionally protected right to fair labour practice has been violated. It is not a token amount hence the need for it to be just and equitable, and to this end salary is used as one of the tools to determine what is “just and equitable”.

77. And in coming to my decision on compensation, I have considered that the 1st respondent is indeed a public institution, funded mainly by the state, and to burden it with an exorbitant amount of compensation, would not be in the interest in the 1st respondent’s mandate to provide quality service to the public, at the expense of the tax payer.
78. In ***Minister of Justice & Constitutional Development v Tsishonga (2009) 30 ILJ 1899 (LAC)*** the Court suggested that in cases of non-patrimonial loss, just and equitable compensation is determined by a number of relevant factors including but not limited to: the nature of the seriousness of the injuria; the circumstances in which the infringement took place; the behaviour of the defendant (whether the motive was honourable or malicious); the extent of the plaintiff’s humiliation or distress; the abuse of the relationship between the parties; and the attitude of the defendant after the injuria had taken place.
79. I am satisfied that the applicant had suffered an unfair labour practice. There is nothing more before me to suggest humiliation, or any other financial prejudice, or impediment. I am not persuaded to award him the compensation, as stated above. The respondent had indeed abused its relationship with the applicant. The remedy ought not, to punish the respondent in dispensing of its mandate in providing services to the public.
80. The applicant has indeed not suffered any financial prejudice, save for the fact that he was not paid his once off cash bonus. The 1st respondent had failed to accommodate the applicant’s application, to its finality, and least to suggest that the applicant had not done anything to follow up the official outcome of his application
81. I am of the opinion that any other remedy is unreasonable, in the circumstances.

AWARD

82. The 1st respondent had committed an unfair labour practice.
83. The 1st respondent is ordered to pay the applicant the sum of R 31 649.00 (thirty- one thousand six hundred and forty- nine rand), directly into the applicant’s bank account, into which he had ordinarily received his salary, by no later than, 25 January 2024.
84. The above amount is subject to interest of 10.5% pa, if not paid by the above date.

Signed at Kimberley on this 22 day of December 2023

A handwritten signature in cursive script, appearing to read 'Shiraz Mahomed Osman'.

SHIRAZ MAHOMED OSMAN

GPSSBC COMMISSIONER