



ARBITRATION AWARD

Case Number: GATW 4804-23
Commissioner: John M. Siavhe
Date of Award: 17 September 2023

In the **ARBITRATION** between

PSA obo Maffodi, Phuti and others

(Employee)

And

South African National Biodiversity Institute (SANBI)

(Employer)

Employee's representative: _____

Employee's address: _____

Telephone: _____

Telefax: _____

Respondent's representative: _____

Respondent's address: _____

Telephone: _____

Telefax: _____

DETAILS OF HEARING AND REPRESENTATION

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- [1] This is the award in the arbitration between PSA obo Maffodi, Phuti and others (the Applicants) and South African National Biodiversity Institute, SANBI (the Respondent).
- [2] The arbitration was held under the auspices of the CCMA in terms of section 186(2)(a) of the Labour Relations Act 66 of 1995, as amended (the Act), and the award is issued in terms of section 138 (7) of the Act.
- [3] The arbitration hearing was heard and finalised on 07 September 2023, at the CCMA Tshwane Region in Pretoria.
- [4] Martin Mashaba, PSA official appeared for the Applicants whereas John Sihlangu and Brendan Guy of Brendan Guy & Associate legally represented the Respondent.
- [5] Both parties entered bundles of documents into the proceedings which I respectively marked ER1, ER2 and ER3 for the Respondent and EE1 and EE2 for the Applicants.
- [6] The proceedings were recorded digitally.

ISSUE TO BE DECIDED

- [7] This is unfair labour practice dispute, relating to benefits.
- [8] I am called upon to determine whether or not the Respondent's conduct or action in the payment or calculation of 3% COLA to some of the Applicants in the implementation of DPSA Circular 50 of 2022. In the event I find in the affirmative, that indeed the Respondent committed unfair labour practice, I would then have to order appropriate remedy.

BACKGROUND TO THE DISPUTE

- [9] Parties did not hold Pre-Arbitration meeting prior to appearing for the scheduled arbitration proceedings for the 7th of September 2023. I, as a result engaged parties in the narrowing down of issues in dispute. The following became common cause:

- 1) that National Zoological Gardens fell under National Research Foundation (NRF) until the minister of the Department of Environmental Affairs (DEA) agreed with the minister of Science and Technology that NZG be transferred to SANBI.
- 2) that the transfer took place under section 197 of the Act.
- 3) that NZG remuneration structure was different with SANBI. NZG were on Peromines remuneration structure which is total cost to company whereas SANBI was on Equate remuneration structure in terms of which employees are paid basic salary plus benefits for levels 2 to 10 and levels 12 to 16 got total package of cost to company. Equate remuneration structure is similar with DPSA structure in government.
- 4) that SANBI is a governmental entity under Department of Environmental Affairs and is regulated by National Environmental Management and Biodiversity Act. It has a Board which adopted the DPSA remuneration structure.
- 5) that at the time of transfers it was easy to bring NZG employees on board because it was total cost to company; there were some discrepancies some earned more and others less. SANBI Board then decided to fix the inequalities or disparities as from the 1st of March 2022
- 6) that those employees already at DPSA scale at the time SANBI decided to adjust the scales benefited, particularly those at lower scale. SANBI decided to retain those that at the higher scale at their personal notches(not those at DPSA pay scale) because they could not be matched.
- 7) it further became common cause that there are employees that qualified to be paid the 3% cost of living adjustment (COLA) in November 2022; this is in the Applicants' referral form.

[10] It is the Applicants' prayer that they be paid COLA as per DPSA Circular 50 of 2022 paragraph 13; whereas the Respondent prayed that unfair labour practice application be dismissed.

SURVEY OF THE SUBMISSIONS

A summary of the Applicants' submissions by Martin Mashaba:

[11] The Applicants' case is that it was unfair for the Respondent not to pay 3% of the personal salary notches, for example R506 000-00 less 7% of Maffodi Phuthi which was R471 731-00. It was unfair to first take 7% of the notch and pay the maximum notch of DPSA salary scale level 9. In essence their case is that even though there are some that have been paid the 3% of COLA there are some that did not get it. They prayed that the Respondent should comply with DPSA Circular 50 of 2022.

A summary of the Respondent's submissions is as follows:

[12] The Respondent's submissions are that all the employees that qualified to be paid the 3% COLA as per DPSA Circular 50 of 2022 were paid the benefit in compliance with the circular, though in terms of DPSA salary structure scales. After realising the disparities of the salaries between NZG employees and SANBI employees those that were earning less benefitted, and received the 3% in November 2022; but those that had higher notches from NZG like Maffodi Phuti who was at R506 000-00 if paid the 3% of that amount it would have kept him far above the R450 000-00 maximum notch of the DPSA pay scales. He was instead made to retain a personal notch of R471 731-00 after taking the 7% of the pension. Maffodi then contributes 7.5% to his pension and the employer also contributes 7.5% in total he has 13% on pension.

[13] The reason why SANBI Board decided on the above was to address potential dispute on equal pay for job of equal value dispute to be lodged by the union on behalf of its members. In other words it was addressing salary disparities. The SANBI Board had initially decided not to pay the 3% to a category of employee like Maffodi Phuti, but later changed its decision and paid 3% of R450 000-00 which equals to R463 764-00 less R450 255-00. Phuti was then paid once off payment of R13 509-00. According to the employer, it would have been unfair to pay 3% COLA of R471 731-13. Therefore unfair labour practice dispute application should fail.

ARGUMENTS

[14] Both parties were afforded opportunity to argue their cases in closing, which they all complied with. Copies of the same arguments are in the file. I considered the arguments in my determination.

ANALYSIS OF SUBMISSIONS AND ARGUMENTS

[15] Section 186(2)(a) of the Act defines unfair labour practice to mean any unfair act or omission that arises between an employer and an employee involving-

- (a) unfair conduct by the employer relating to the promotion, demotion, probation (excluding disputes about dismissals for a reason relating to probation) or training of an employee or relating to the provision of benefits to an employee;
- (b)
- (c)
- (d)

[20] In unfair labour practice dispute onus to prove the claim rests with the Applicant. It is common cause that that the Respondent paid 3% COLA to all employees properly placed in the DPSA payment structure. It is further common cause that Maffodi Phuti too was paid once off payment of 3% COLA in terms of DPSA Circular 50 of 2022.

[21] I find the Respondent's explanation for calculating the 3% COLA of Maffodi Phuti at R471 731-13, his personal notch to be fair and understandable, because if it was paid at that notch it would have unfairly disparity gap that was already above the Level 9 notch of the DPSA payment structure. It is further my finding that the Respondent was pro-active or progressive enough to avoid any likelihood of referring equal pay for jobs of equal value dispute.

[22] In the circumstances I find it appropriate to award as follows:

AWARD

[23] The Applicants' unfair labour practice: benefits application FAILS, it is therefore hereby dismissed.

Thus done and signed at Tshwane CCMA Region.



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CCMA Commissioner: John M. Sieve