



Arbitration Award Rendered

Case Number: GAJB2029-23

Commissioner: Nathalie Willemse

Date of Award: 23-May-2023

In the **ARBITRATION** between

Patience Linah Taylor

(Union/Applicant)

and

Sassa

(Respondent)

Details of hearing and representation

1. This is the arbitration award between employees, PSA obo PATIENCE TAYLOR and GILA MOHLOUA (hereinafter referred to as “the Applicants”) and employer, SASSA, (hereinafter referred to as “the Respondent”).

2. The dispute was referred in terms of **section 186(2) (a) of the Labour Relations Act 66 of 1995 (as amended) (hereinafter referred to as "the LRA)** as an unfair labour practice relating to the provision of benefits specifically performance bonus.
3. The proceedings were held over 3 days respectively, being 28 March 2023 and 3 & 4 May 2023 at the CCMA Offices Vereeniging corner Kruger Avenue and Edwards Street, Vereeniging.
4. The proceedings were recorded electronically, including detailed typed notes captured.
5. The Applicants were represented by Mr. B. Quankase an official from PSA. The Respondent was represented by Mr. S. Rangantsho the Manager: Labour Relations of the Respondent.
6. Both parties prepared paginated and indexed bundles of documents marked Bundle A pages "AA to AD" for the Applicant party. Bundle T: "pages 1-60 and Bundle M: pages 1-66" for the Respondent party. As regards the status of the documents, the parties agreed that the documents were what they purport to be, however, they reserved the right to challenge its contents.
7. At the start of the sitting, parties were assisted in respect of narrowing the issues. Parties were also cautioned in respect of their respective evidentiary burden and onus in line with the narrowed issues and provisions of the Act.
8. The parties were directed to submit written closing arguments for my consideration, at the end of the arbitration. The Respondent timeously complied and the respective argument was considered for purposes of this award.

Issue to be decided

9. Whether the Respondent had committed an act of unfair labour practice in relation to a benefit set out as the performance bonus of the Applicants.

Background to the issue

10. The Respondent is the South African Social Security Agency established in April 2005, it is a national agency of the government in order to distribute social grants on behalf of the Department of Social Development. It was established in terms of the Social Assistance Act of 2004. It is a public entity.
11. The Applicants commenced employment with the Respondent on 12 March 2012 and 1 April 2007; they are employed as a Grant Administrators.

Common cause facts leading up to the dispute:

12. The Respondent has an established performance management system at the workplace also known as PMDS (Performance Management and Development System). The PMDS is managed under the PMDP (Performance Management Development Policy) which is a framework for performance management.
13. PMDS is a systematic, shared and continuous process to direct and improve the performance of individual employees to achieve SASSA objectives. towards realization of the strategic objectives of SASSA in order to provide world class social security services¹.
14. It was common cause that the Applicants were based in the Vereeniging Local Office, which falls under the Sedibeng District in the Gauteng Region. The PM (performance management) cycle, in dispute, was for the financial year 2020/2021. The Region is headed by the Regional Executive Manager and General Manager. The District Managers oversee the day-to-day activities of the district. The Gauteng region has 5 districts: Ekurhuleni; North Rand; JHB; West Rand and Sedibeng.
15. The District Manager oversees 5 Local offices: Meyerton, Vereeniging, Sebokeng; Evaton and Heidelberg.
16. The PM process was common cause by the parties. The employee and his supervisor complete a performance contract. Certain KRA (key responsible areas) and GAF (generic assessment factors) are set out and agreed to in the workplan for the employees, in line with the strategic goals of the Respondent. Thereafter a PA (performance agreement) is developed and signed by the employee; supervisor and next-in-line supervisor.

¹ PM Procedure Manuel pgAC5 paragraph 1.2

17. There are 2 performance assessments per financial year. The assessment comprises of discussions and scoring between employee and supervisor. The employee would score themselves thereafter the supervisor scores the employee. The two parties meet and discuss performance and an agreed score is inserted on the Performance Assessment/Review.
18. This final score will be moderated by LMC (local moderation committee). LMC may approve the scores or downgrade the scores. This will determine if the employees receive a performance bonus or not.
19. It was common cause that the Applicants scores were moderated by LMC. Following the moderation, the Applicants scores were downgraded by LMC which disqualified them from receiving a performance bonus. The reason proffered by the Respondent for the downgrading the scores was that the Applicants failed to attach evidence to their performance assessment to justify their scores.
20. It was the case of the Applicants that the Respondent treated them unfairly. The Applicants argued that they were entitled to a performance bonus. The Applicants case was that they did not know that they were supposed to attach a portfolio of evidence to their performance assessments. The Policy does not stipulate that evidence must be attached to the performance assessments.
21. The Respondent emphasized the importance of the moderation process, which requires evidence of the work performed. The Respondent argued that the performance contract has agreed indicators which must be used as evidence attached to the performance review.
22. The Applicants referred their disputes separately. Both referred an unfair labour practice: benefits dispute to the Commission in terms of **section 186(2)(a) of the LRA** on 25 January 2023, claiming unfair conduct on the part of the Respondent with regards to the performance bonus. The matter was subsequently set down for Con/Arb hearing on 14 February 2023 a certificate of non-resolution was issued. Thereafter a Joinder Ruling was issued by the Commissioner dated 23 February 2023. Thereafter the matter came before me, which was arbitrated over 3 respective days.

Survey of evidence and argument

I do not intend to deal with every aspect of the evidence and arguments and will only record the part of the evidence that I deem necessary for purposes of this determination.

Applicants case:

Both the Applicants testified on behalf of their respective case after being sworn in, I will now summarise their evidence:

APPLICANT: MRS. PATIENCE LENA SARAH TAYLOR:

23. **Taylor** testified that she commenced her employment with the Respondent on 12 March 2012. She is a Grant Administrator. She immediately led evidence of a checklist which is attached to the performance agreement (PA) at the start of the financial year which she signed on 4 May 2020.
24. She led evidence of the PA between herself and her supervisor which they signed on 4 May 2020 including the next level supervisor. The PA has a Workplan in which sets out KRAs the key responsible areas and GAFs. The KRAs were: *Provide Customer Care; Screen & Attest Grant applications; Maintenance function BMU*. She stated that there are 3 initials on the document, herself; supervisor and next level supervisor. The GAFs were: generic assessment factors. There are 5 which weights differently.
25. Taylor testified of the Performance Assessment which takes place twice. A Performance Review is the instrument used. Half year performance assessment takes place from 1 April 2020 to September 2020. The form would motivate her performance for the first half of the year based on the workplan. The review form is signed by her supervisor and the next level supervisor. She confirmed that scoring and the discussions between herself and supervisor and the agreed scores averaging between 4 and 5 for all her KRAs. The review was signed on 26 October 2020 which confirmed what was attached.
26. She stated that it was this performance review where the LMC downgraded her scores on all her KRAs to a 3. The GAFs ratings were not altered or downgraded by the LMC, they merely agreed with her and the Supervisors ratings. She described the LMC consist of District Manager; Admin Manager; HR and two trade unions and Supervisor. The performance review was signed by the LMC dated 17 January 2022.

27. Taylor led evidence of the Assessment Rating Calculator. She described it as a determination of the scores weight collectively which gives a final rating for the assessment period 1 April 2020 to 30 September 2020. She explained that her final score was 149%. Following the downgrade by the LMC her overall score was reduced to 107%.
28. It was her evidence that she was disgruntled with the downgrading. She provided written motivation on her performance review to describe her score. The supervisor agreed to her score. The next level supervisor also agreed with her score. She stated that the LMC had no justification for the downgrade of the first half assessment.
29. It was her evidence that the commentary by her supervisor to describe her performance was: *"She is a dedicated Official"*.
30. Taylor directed her evidence to the the second half yearly assessment 1 October 2020 to 31 March 2021, which was signed on 6 April 2021. Which was a similar performance review process as per the first half year assessment. She expressed the scores of the second half year assessment on her KRA 1: she scored 4 which the supervisor agreed with however the LCM downgraded her to 3.
KRA 2: she scored 5 which the supervisor agreed with, but the LCM downgraded her to a 3.
KRA 3: she scored 4, which the supervisor agreed with, but the LCM downgraded her to a 3.
31. In relation to the GAF reviews and scores GAF 1: she scored 3, the Supervisor upgraded her to 4 and LCM agreed with the Supervisor 4.
GAF 2: she scored 3, the Supervisor and LCM agreed.
GAF 3: she scored 3, the Supervisor upgraded her to 4 which the LCM accepted and agreed with Supervisor.
GAF 4: she scored 3, the Supervisor upgraded her to 4 which the LCM accepted and agreed with the Supervisor.
GAF 5: she scored 3. The Supervisor and LCM agreed.
32. It was her evidence that the Supervisor comments on the review was that *"the Official is naturally a hard worker"*. The review was signed on 26 April 2021. The next level supervisor signed on the same date. The LMC signed 17 January 2022. Based on the Assessment Rating calculator 1 October 2020 to 31 March 2021 her final score 147% for

that period. After the downgrade the LMC calculator final score was 105% because of the downgraded scores.

33. Following the LMC moderation she received feedback from the LMC dated 18 January 2022 in writing the LMC stated that she failed to make the SOCPEN Report available in order for them to measure performance, as a reason for the downgraded score.
34. She testified the report gets provided by the district office on the user ID to check what her performance was on the SOCPEN system. The SOCPEN report confirmed whether targets set in the workplan was met.
35. It was her case that she refused to accept the downgrade by the LMC. She wrote a memo dated 31 January 2022, addressed to LMC. The subject was refusal to sign downgraded scores for PMDS 2020/21. She motivated that the SOCPEN Report was not part of the performance agreement.
36. She addressed a second memo to LMC. Dated 27 June 2022. They wanted her to be specific on the KRA. She further explained that *the report was readily available for LMC to peruse. Previous reviews were never attached to the review. Management would compare our motivation with the Report separately during LMC.* She elaborated that she nonetheless downloaded the SOCPEN report and attached it to her memo.
37. She received feedback from the Assessment Appeal Panel dated 12 September 2022. It was summarised that the Appeals Committee found that *the Applicant failed to attached proof of her targets met.*
38. Taylor led evidence of the Performance Management procedure manual *paragraph 6.2.1.2: it sets out the steps on how to complete the Performance Assessment. Set-out the results achieved vs what ought to be achieved. The manual requires a motivation from the employee.*
39. It was her evidence that she completed and complied with all the steps set out in the manual. The manual does not require that the SOCPEN report must be attached. She expressed that there was no requirement on her as an employee to attach a portfolio of evidence or a SOCPEN report to motivate her performance. The requirement was that the employee uses

the agreed indicators such as a SOCPEN report set-out in the performance contract, to capture the performance on the assessment. The employee was never required to attach a report to the performance assessment.

40. In relation to the Reward and Recognition Policy she complied with the request as per her checklist. And all relevant documents were attached to the assessment. She explained that nowhere on the checklist does it require a SOCPEN report. All required documents were provided and submitted for both assessments.
41. She explained that her final score was 149%. If she was to compare it to the Reward policy she would qualify for a 5 score rating consisting of a pay progression of 2 notches and a cash bonus of 13%.
42. In conclusion, Taylor stated that she indeed performed her duties well and qualified for the benefit. The LMC left her score on job knowledge unchanged. The data of the SOCPEN was expressed and motivated in her assessment.
43. It was her evidence that the outcome by the Respondent was unfair. Her performance shows that she achieved what was required of her. She reached her targets. Her supervisor agrees with her scores and reviews. The supervisor knows her ability and knows she qualified for the scores. She seeks that the CCMA rule in her favour, she deserve the upgrade.
44. **During cross-examination** the Applicant confirmed that it was not her first performance assessment which was downgraded by LMC in the 2018/19 FY. She confirmed that other staff had not challenged the LCM decision.
45. Taylor agreed her performance contract has indicators which links in terms of what is required. She confirmed that the SOCPEN report is recorded as an indicator in her contract.
46. She confirmed that she had not included her SOCPEN report to her assessment. She stated that previously she was told to remove the SOCPEN report from her assessment. She did not have any proof of the instruction.
47. It was put to her that the LMC will not be able to assess and moderate her performance without the SOCPEN report. She stated that LMC has access to the report.

48. The Applicant agreed that she was downgraded because of the absence of the SOCPEN report to measure performance. Taylor accepts that the Appeal committee had the same finding and upheld the LMC decision as the Applicant failed to attach a portfolio of evidence (SOCPEN report) in line with the indicator as per the performance contract.
49. It was put to the Applicant that at the time the LMC had to moderate her performance assessment, the LMC did not have the Report present at the time of assessment and that was the reason for the downgrading of score. She agreed that was the reason given however there was no requirement on her to attach a POE or the SOCPEN report.
50. In line with the performance manual the assessment procedure: *point 3, states provide a weighty motivation in relation to each KRA ito areas where performance was significantly above outstanding.*
51. The Applicant stated that her written motivation in her assessment is how she substantiated her performance.
52. The Applicant agreed that her performance contract refers to a SOCPEN report as an indicator, she stated that the SOCPEN report is aimed at perusing it to check my performance.
53. It was put to the Applicant that it was her responsibility to motivate her performance as it was her performance assessment. The Applicant agreed.
54. The Applicant agreed that LMC consist of: District Manager; HR manager, Trade union to observe and check fairness.
55. **During re-examination** the Applicant agreed the performance contract has a list of Indicators which meant that the indicator such as a SOCPEN report assists employees in writing their motivation for the assessment.
56. She confirmed that the performance contract or indicator does not state SOCPEN to be attached.

57. She described her weighty motivation as the written motivation in her assessment. She stated that she used her SOCPEN to collaborate her performance. She agreed it was her responsibility to provide a weighty motivation.

58. Nothing further emerged from cross-examination and re-examination.

APPLICANT 2: MS. NTHONA GILDA MOHLOUOA:

59. **Mohlouoa** led similar evidence to that of Taylor in so far as the procedure for the performance contracting; KRAs; GAFs; assessments and ratings. She was employed by the Respondent on 10 August 2010. She was appointed a Grant Administrator.

60. In relation to her performance, she led evidence of the SOCPEN report that gets download to check the work and performance for the year per employee. In terms of the contract, the SOCPEN report is used to get the production for each office. The report sets targets for each office to achieve. SOCPEN report will explain if performance is met or not.

61. She expressed that the key activity is to enquire and validate correct information on SOCPEN report.

62. In terms of her performance assessment. She testified of the achievements cited on the assessment, she inserts and writes what she has achieved. Her Assessment calculator for April 2020 to September 2020 from her and her supervisor rating the score was 153%. Following LMC, they scored her a total score of 105% she confirmed that she was downgraded by the LMC.

63. The Assessment calculator for October 2020 to March 2021, her score between herself, and her supervisor was 151% following LMC they downgraded her score to 106%.

64. Mohlouoa expressed the feedback from LMC dated 18 January 2022 they indicated that she failed to attach a SOCPEN report to measure performance. She testified that she never attached a SOCPEN report ever during her assessments over all her years of employment. She found the requirement unfair and found the application by the Respondent unfair.

65. Aggrieved by the LMC outcome, she addressed a memo to the LMC to be reviewed dated 7 February 2022. She placed on record that *she was not aware that the report was required*. She attached the report and requested them to review it again.
66. It was her evidence since 2011 she qualified for the bonus benefit. Never was she informed of the SOCPEN requirement.
67. She testified that Appeal committee upheld the LMC outcome that the SOCPEN was not attached. She testified that previously all staff had to attach a POE, but staff were told that they used too much paper, so they advised not to attach the daily production on the reviews. It was an expensive exercise for the Respondent.
68. She testified that there was no requirement in the policy that a POE must be attached or included in the assessment.
69. The Applicant accepted that a weighty motivation for scores which are above outstanding. She referred the seating to her assessment where she stated in her assessment that she was responsible for 217 applications, she completed 519. She over performed by 302. The information was aligned with the SOCPEN data, which she directly captured from SOCPEN. She demonstrates same in line with her SOCPEN report. Instead of attaching the report, she typed it in her assessment as a motivation.
70. She testified that that albeit the exact report was not attach the data and content of the report reflects on her assessment. It was a true reflection of the SOCPEN report. If she knew she would have rather attached than typed the data. She felt the Respondent was unfair.
71. It was her evidence that she would qualify for a 2 notch pay progression and 14% cash bonus if her score was not downgraded. That is what she seeks.
72. **During cross-examination** the Applicant confirmed that she was assessed previously in a similar fashion.
73. She confirmed the LMC function is to verify scores. LMC may reduce scores.
74. The Applicant testified that her score was previously reduced.

75. She accepted that the Respondent consistently advised that the reason for the reduction in the score was because of the absence of the SOCPEN report.

76. At the time of assessment, she did not attach the report. She explained that all the other years there was no requirement to attach SOCPEN to the assessment. She confirmed the content of the SOCPEN is included on her assessment. The physical report was not attached.

77. It was her evidence that the figures in your assessment are verified by the LMC during the moderation the LMC has access to SOCPEN report.

78. Nothing further emerged from cross-examination and re-examination.

79. Thereafter, the Applicants closed their case.

The Respondent's evidence

The Respondent called 2 (two) witnesses who testified after having been duly sworn in, I will now summarise their evidence as follows:

Witness 1: Mr. Siphso Shadrack Kubayi

80. **Kubayi testified** that he is the Local Office Manager for Meyerton and Vereeniging Cluster. During the 2020/21 FY and at the time of the dispute he was the Acting District Manager for Sedibeng.

81. He confirmed that he was part of the LMC at the time of the moderation of the Applicants performance. He was familiar with the Applicants and their performance assessments which was reduced.

82. The performance agreements of the Applicants set out what is expected of employees for the FY.

83. The workplan sets out tasks for the employee to carry out for the FY. The agreement has expectations. Thereafter LMC must evaluate the performance. The agreement has KRAs which is the task the employee must perform, the KRA has certain weighting attach to it which totals 100%. The agreement sets-out the activities the employee must perform.

Indicators on the performance agreement means that the employee must record work done on the SOCPEN report. The indicator guides the employee on the activities done or work done. The SOCPEN printout is required to align with the employee submission as evidence of the performance.

84. He led evidence of the GAF which are individual behaviours which must also be scored during the performance agreement. The employee conduct and behaviour at the workplace. The evaluation on GAF is to describe the employees' job knowledge; skills and attributes.
85. It was his evidence that The Moderating Committee (LMC) scored the Applicants a 3 because of lack of evidence. He was the Chairperson of the LMC at the time. The LMC consist of Local Office manager and labour representation and HR. Labour reps ensure that the process is fair and no prejudice suffered. He confirmed that the Applicants scores were changed by LMC inclusive of labour.
86. Kubayi testified that the evidence that was missing was the SOCPEN report, it is system generated evidence to describe the work done by the employee. Each official receives it, they must attach it to their performance agreement to allow the LMC to make an informed decision. LMC would compare the KRA what the employee was expected to do versus what was done which is retrieved from SOCPEN.
87. It was his evidence that all staff submits SOCPEN as evidence, this is a requirement as it will allow the LMC to do the evaluation. Without the SOCPEN report the LMC cannot quantify or identify the work done by the Applicant.
88. He stated that the Applicants failed to attach evidence for the LMC to verify their scores, therefore their scores were reduced.
89. He was aware that the Applicants lodged grievances in and around February 2022. There was feedback from the grievance by the Respondent dated 16 November 2022, the Respondent stated that the *LMC considered documents before it at the time of assessment.*
90. In addition, the Appeal panel further found that the *incumbent was required to attach a weighty motivation on its KRAs where performance was significantly above and outstanding for the entire performance cycle.*

91. He stated that employees were aware of their responsibilities during performance evaluations. In the absence of the SOCPEN report, the Respondent could not verify targets at the time. Performance assessments documents must be attached. The employee contracted on a SOCPEN report as an indicator in the performance agreement workplan.
92. In terms of the Reward and Recognition Policy. *The roles of LMC is to review agreed ratings and make a final determination. There are no additional motivations will be requested to justify the initial agreed rating.*
93. He advised that all districts operate on the same premise. Targets may differ. He has been a member of LMC for the past 7 years and has been exposed to the same process for all the years.
94. **During cross-examination** the witness confirmed how decisions are arrived at following deliberations amongst panel member. Where there is a need to make a Ruling the chairperson will do so. He agreed that Labour is included, they merely observe and advise on any discrepancies.
95. It was his evidence that during the deliberations labour was involved as they communicate with the panel and participate. He accepts that the policy states differently. *Labour are observers.* He explained many times they would deviate and discuss items inclusive of labour. But policy does not give labour the power to deliberate and discuss, they merely observe. He expressed that Policy is prescript that gives guidance, it does not eliminate you from deviating to achieve a result.
96. In the Reward and Recognition Policy which he was familiar with he accepts that the role of Organised Labour was that they do not form part of discussions and decisions to arrive at a decision.
97. The witness confirmed that LMC only sat once. He accepts that policy states that Moderating Committee, *objectively moderate bi-annual (October and April) for the 2 semesters.*
98. The witness agrees that evidence was contrary to policy and that policy was not entirely complied with.

99. The Assessment Procedure (iii): *provide a weighty motivation in relations to each KRA its areas where performance was significantly above and outstanding for the entire performance cycle.* The witness stated that the Applicants failed to comply with the clause as there was no evidence to confirm that they achieved above agreed targets. There was no weighty motivation. The written explanation on the assessment did not have prove that it was correct. It was merely a motivation, but it did not have proof of what she is saying.
100. The Reward and Recognition Policy confirms the documents to be used for Assessment purposes. The witness agreed that the Policy does not make reference to POE, he stated however, that in the workplan the employee contracts in the indicators refer to the SOCPEN report to provide evidence of the work done. The Applicant is a shop steward she sits in the LMC and is aware of this process.
101. The Applicant case was that the POE was always attached but a District Manager changed this process due to wastage = in 2018 the DM retired, there was a Acting DM who had a meeting with all managers and labour there was a decision that the SOCPEN has all the information that will be required for performance the other documents was omitted.
102. He elaborated that it was the first time to see the SOCPEN excluded. The Applicants are aware of this. It was put to the witness that the version was not put to the Applicants. He stated that all staff know about the SOCPEN report requirement.
103. The version of the Applicants was put to the witness in that the Applicants did not know they had to attach the SOCPEN report, nobody informed them. The witness disagreed. They do know. They contracted in the performance agreement to make use of the Report. They have access to the SOCPEN it gets handed and printed for them by the team leader. When they do their assessment, they will have access to it to capture their motivation in line with it. They are presenting the SOCPEN report during the arbitration.
104. The witness agreed that SOCPEN report was not part of the checklist. He explained that there is a requirement that the indicators must be tangible proof of the motivation. As LMC there was no tangible evidence to substantiate the motivation.

105. The witness stated that their decision was in line with policy, LMC has the power to make a determination after moderating employees' review. LMC did not thumb suck a decision, LMC required evidence to establish the performance of the employee.
106. Nothing further emerged from cross-examination and re-examination.

WITNESS 2: Mr. Matimba Sidney Manyange:

107. **Manyange testified** that he is HCM Clerk, Human Capital Manager Clerk at Sedibeng. He confirmed his role is Labour Relations; Recruitment; training and development and service benefits and PMDS. They have about 100 employees in the region.
108. During the PMDS process his role is to collect the performance agreements from supervisors during April and May. When the semester ends in September, he must collect the reviews same as in March for the 2nd semester.
109. They have a checklist when it is contracting period, he would receive the bundle. He must ensure the performance contract is signed by the employee, supervisor and next level supervisor. He must check the period is correctly cited. The contract must have 3 signatures and initials on all pages.
110. The performance contract will always have a KRA which is a function which the employee must perform. The function must have a weighting. The key activities are the functions that the employee must do. Indicators are monitoring tools to prove what has been done on that specific function. The key functions set out the time frame the function must be performed, the quantity, quality and cost of the key function.
111. He explained that each KRA must be a 100% weighting in total. The weight refers to the time spent on the function.
112. In relation to GAFs factors, they are generic functions. Which also has weighting collectively being 100%. The weights total a score which will inform the outcome of the performance.
113. During performance review the checklist is attached to the review. He verifies that all documents are attached and completed correctly. He must ensure that the ratings and
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- Only signed awards that contain the CCMA approved watermark are authorised.

weight was correctly completed, and the totals were correct. Second semester review. He would conduct a similar verification.

114. He explained that at the end of the semester, he must receive the 1st performance review. He would prepare it for LMC, which is the moderating committee they assess the performance. He has an admin role during the LMC.
115. PMDS Policy and PM procedural manual speaks to how PMDS must be conducted and the definitions and process. LMC role and responsibilities are not set-out in the manual, it is mostly the roles and responsibilities of the employee and supervisor and how the performance contract and reviews must be done. He led lengthy evidence of the contracting process which was similar to the Applicants.
116. The Rewards policy sets out the role of the LMC. The responsibility of the LMC *is to read, check performance targets*. They must compare achievements on set targets versus assessment. Lastly *the LMC must indicate if the scores are justified and recommend accordingly*.
117. He confirmed that the correct terminology for the LMC determination was that the LMC did not uphold the rating of 5 of the Applicants. They did not agree with the rating and there must be a reason why.
118. They must look at the set targets set out in the workplan; they must look at the motivation on the review. They also have indicators in the workplan which is monitoring tool which will be used to check and verify if the target was met. The relevant monitoring tool for the KRA in the Applicant case was SOCPEN report. The LMC take the SOCPEN report and benchmark against set target, against the output. The SOCPEN report is relevant to the KRA. This will assist the LMC to make a final determination.
119. He states that the LMC must provide feedback to the employee in writing, in the event that the rating was not agreed with by the LMC they provide feedback. Such letters were given to the Applicants, he recalled the reason that the LMC failed to upheld the score of the Applicants due to unavailability of the SOCPEN report. He explained that if the LMC does not verify the ratings with the POE, all staff can score themselves the higher rating without proving. That would mean everyone would qualify for a Performance bonus. Thus,

looking at the Applicants case there was no POE, the motivation provided by the employee lacks justification for the rating.

120. He confirmed that labour formed part of LMC, he testified that their role was to oversee the process to ensure fairness. They do not participate. In the event there is unfairness, they may address a letter to the chairperson after the process. He stated that he was not aware of any objection by labour.

121. He confirmed the grievance that the Applicants lodged. He stated that both the Appeal panel and the grievance outcome, upheld the decision of LMC.

122. **During cross-examination** the witness confirmed the Respondent has policies that manage PMDS, Performance Management and Development Policy and Reward and Recommendation Policy. There is also a procedure manual for PMDS. All staff should abide by these policies and manuals.

123. He testified that he is not sure whether any committee within the workplace have a right to override or do contrary the policy. He stated that committees are guided by policy. He impressed that policies are there to manage an organisation in a uniform way. He confirmed that his role is guided by policy.

124. The witness agreed that the checklist does not refer to a POE, however the POE must be received by LMC. He confirmed that he submits a bundle to the LMC. He states there is no separate requirement to submit POE. He agreed that the employee must motivate on the assessment.

125. He testified that the scores by the employee and supervisor are not the final score the LMC makes the final score. During the LMC session there are responsibilities. LMC receive the documents and develop a criteria. They must read, check justify achievements. POE reflects in workplan.

126. It was put to the witness that there is no requirement to submit or attach a POE. The witness disagreed. He stated in order for the LMC to operate effectively, they will be required to check, read and justify on workplan. He agreed that the Reward Policy does not refer to POE. But the policy sets out the roles and responsibilities of LMC. He proceeded to state that the PMDS process requires motivation and proof of achievements by employees

that they performed and achieved their KRA and GAFs. LMC has a duty to moderate and evaluate such performance.

127. Nothing further emerged from cross-examination and re-examination.

128. The Respondent closed its case.

Analysis of submissions and argument

129. When an employee alleges that an unfair labour practice has been committed by an employer, the initial onus of proof is on that employee to show that the employer had committed an act of unfair labour practice. The onus/burden in this case was therefore on the Applicants to show that the conduct of the Respondent was unfair.

130. The alleged unfair labour practice in this case related to the Applicants performance assessment which was downgraded because the Applicants failed to attach proof of their performance and that they indeed met the targets, this failure resulted in the Applicants not receiving a performance bonus benefit payment.

131. The Applicants in this matter therefore had to show on a balance of probabilities that the *performance bonus* amounted to a benefit and that the Respondent's decision to disagree with their ratings, deprived them of their entitlement and constituted an act of unfair labour practice on the part of the Respondent.

132. Thereafter, the Respondent in this matter had to show on a balance of probabilities that the decision to disagree with the Applicants performance assessment, constituted fair labour practice.

133. In **Apollo Tyres South Africa (Pty) Ltd v CCMA and others (DA 1/11) [2013] ZALAC 3; [2013] 5 BLLR 434 (LAC); (2013) 34 ILJ 1120 (LAC) (handed down on 21 February 2013)** the Court held the definition of benefit, as contemplated in section 186(2)(a) of the LRA was not confined to rights arising ex contractu (contract) or ex lege

(law), 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 and that in this instance the early retirement scheme constituted a benefit.

134. In line with the abovementioned authority, I was satisfied that the PMDS governed by the PM Policy falls within the broad definition of a benefit. The performance bonus was indeed an advantage and a privilege to employees. The benefit in the form of a bonus was subject to the Respondent's discretion. As such, the discretion was open to scrutiny by the CCMA².
135. Thus, the test before me was a single holistic enquiry, with the view to deciding whether the decision taken by the Respondent was fair.
136. It was the Applicants case that the decision to downgrade their scores or to disagree with their scores for a performance bonus was unfair and unjustifiable.
137. From the evidence before me, the PMDS process was common cause and undisputed. In relation to the performance assessments, in line with policy, the employees must rate themselves, thereafter the supervisor gives a rating. Both employee and supervisor must meet and discuss the employee's performance and an agreed rating must be given.
138. It must be stated that all witnesses were found to be credible and reliable witnesses. Therefore, a large amount of weight was placed on their respective versions.
139. The crux of the dispute before me related to the reasons why the LMC disagreed with the Applicants rating. It was common cause that such reason related to the lack of evidence by the Applicants. Thus, the question is whether the Applicants had a duty to attach a 'portfolio of evidence (POE)' to their performance assessments to justify their rating.
140. The Applicants representative did an amazing job to invalidate this unreasonable requirement by the Respondent. The only form of evidence, before me, in an attempt to corroborate this requirement was set out in the Rewards and Recognition Policy where it was expected that the *incumbent was required to attach a weighty motivation on its KRAs where performance was significantly above and outstanding for the entire performance cycle.*

² See *Thiso and others v Moodley NO and others* (JR 2209/13) [2014] ZALCCT 64; [2015] 5 BLLR 543 (LC); (2015) 36 ILJ 1628 (LC)
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141. All witnesses, including that of the Respondent, grudgingly agreed that nowhere in the Policies and Manuals before me, did it explicitly state that the employee must attach a portfolio of evidence to motivate their ratings. Therefore, it was the version of the Applicant's that was preferred in the matter before me. The Applicants provided a weighty motivation in their assessments to justify their rating. This rating was supported by their Supervisor and next in line Supervisor, who are the best persons that can attest to the employees performance.
142. It was my finding that this requirement to attach a portfolio of evidence, was onerous and burdensome on employees. As such, it ought to have been capitulated in a policy or a SOP for employees to know. The Respondent was unable to illustrate that this requirement to attach a portfolio of evidence or a SOCPEN report was mandatory for employees.
143. I could not in its entirety reject the role and responsibilities of the LMC. The Chairperson of the LMC and the HR Clerk of the Respondent collectively testified of the intention surrounding moderation. However, the requirement on the employee must be clearly set out. The standard of evaluation and assessment must be known to parties in an employment relationship, to avoid disputes of this nature.
144. It was undisputed that the Applicants outstandingly performed their duties. This was motivated by their supervisors. The failure to attach a portfolio of evidence does not dispute performance and achievements.
145. In *Apollo Tyres SA (Pty) Ltd v CCMA and Others*³, the Labour Appeal Court quoted from *Du Toit et al*⁴, with approval on the meaning given for the term / word "unfairness" as follows: "unfairness implies a failure to meet an objective standard and may be taken to include arbitrary, capricious or inconsistent conduct, whether negligent or intended".
146. In the matter before me, I struggle to find fairness on the part of the Respondent. From the above authorities, it becomes an unfair (act/omission) labour practice when one can show

³ (DA1/11) [2013] ZALAC 3; [2013] 5 BLLR 434 (LAC); (2013) 34 ILJ 1120 (LAC) (21 February 2013).

⁴ The Labour Relations Act of 1995; 2nd edition at page 443.

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that the discretion exercised by the employer, was without reason or based on a wrong principle or in a biased manner.

147. The decision to disagree with the Applicants rating because they failed to attach a portfolio of evidence which was not a requirement in the workplace, lacked an objective standard; was based on the wrong principles and was unfair. The Respondent was required to moderate the performance assessment of the Applicants based on policy. The requirement placed on the Applicants does not reflect in any policy or standard at the workplace. Consequently, the Applicants should not be prejudiced.

148. I therefore find that the Respondent committed an act of unfair labour practice.

Award

149. I therefore find that the Respondent, SASSA, has committed an act of unfair labour practice: benefits in terms of **section 186(2)(a) of the LRA** against the Applicants, PSA obo P. TAYLOR and G. MOHLOUOA, in relations to the performance bonus for financial year 2020/21.

150. The Respondent, SASSA, must pay the Applicants, PSA obo P. TAYLOR and G. MOHLOUOA their performance bonus, in line with the Rewards and Recognition Policy.

APPROVED

Signature: _____

Commissioner: Nathalie Willemse

Sector: Public Service (General)