

# RULING

Case Number: GATW16018 - 22

Commissioner: P Mbatsana

Date of Ruling: 25 June 2023

In the *IN LIMINE HEARING* between

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Brigitte Mahlaule & 1 other  
(Employee / Respondent)

And

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SITA SOC Ltd  
(Respondent)

## **DETAILS OF HEARING AND REPRESENTATION**

1. This matter was set down for an arbitration process on 15 June 2023 at the CCMA, Tshwane. Both parties were in attendance and represented. The employees who are the respondents in this application were represented by V Mashao, a union official from PSA, and the employer the applicant was represented by J Morifi, an Employee Relations Consultant of the respondent.
2. Prior to the commencement of the arbitration process, the applicant's representative raised a point in limine that the CCMA lacks the required jurisdiction to entertain the matter.
3. It was agreed that the jurisdictional point will be argued as a stated case and parties to the dispute were to submit their written submissions.
4. The employer submitted the application as agreed, the respondents answered and replying papers were received from the applicant.

## **BACKGROUND TO THE DISPUTE**

5. The dispute stems from the implementation of a Collective Agreement (CA) with regard to the implementation of salary increase signed between the respondents' union and the employer on 08 August 2014.
6. The respondents are employed by the respondent as Consultants Human Capital Business Partners.
7. The following can be regarded as common cause between the parties that the agreements terms in the salary increase were:
  - a. 5.5% across the board (ATB)
  - b. 3% performance increase (PI)
  - c. 1% Merit Increase.
  - d. The respondents were notified in writing about the implementation of the agreement.
  - e. The respondents' ATB was prorated and not paid in terms of the agreement.
8. The respondents lodged individual grievances with the applicant on 23 November 2023 and the applicant declined to condone the late filing of the grievance.

9. The respondent referred the matter to CCMA on 27 October 2022, the matter was couched as a dispute of Interpretation and Application of a collective agreement. The matter remained unresolved during conciliation hence these proceedings.

## **ISSUE TO BE DECIDED**

10. I have to decide whether the CCMA has the requisite jurisdiction to entertain this matter as a dispute of Interpretation and Application of a collective agreement.

## **APPLICANT'S SUBMISSION**

*Summary of submission by J Morifi in his capacity as the applicant's representative.*

11. CCMA lacks jurisdiction to dispose of the matter as the matter relates to salaries (benefits in terms of Section 186(2) of the Act) and not Interpretation or Application of a collective agreement, or in the alternative the respondents claim relates to alleged incorrectly implemented agreement which would translate to monies owed. In this regard, the applicant avers that the claim would have prescribed in terms of the Prescription Act.
12. The respondents termed their dispute as that of Interpretation and Application of a collective agreement to circumvent the process and avoid applying for condonation in their late filing of the Section 186(2) dispute.
13. The respondents were informed about their increase in 2014 and they lodged a grievance in 2021, which was about 8 years later. The respondent further delayed for about year to refer their matter to the CCMA. The unreasonable and unexplained delay defeats the purpose of expeditious resolution of the dispute as envisaged by the Act and would cause serious prejudice to the applicant should it be found that the CCMA has jurisdiction to entertain the dispute.
14. The CCMA should find that the respondents' dispute has prescribed as the true resolution of the dispute is a financial relief.

## **RESPONDENT'S ANSWERING SUBMISSIONS**

*Summary of the submissions / averments in the opposing papers deposed by V Mashao in his capacity as the union official.*

15. The respondents were entitled to a 5.5% increase as per the collective agreement and q12
16. The applicant decided to award the respondent a pro-rated increment without any explanation.
17. The applicant is only willing to prove the lateness in every attempt by the respondents to resolve the dispute than for the respondent to realise and admit that there was an omission.
18. The applicant's grievance procedure provides that a grievance be lodged within 30 days of becoming aware of an act or omission. The respondents have lodged a grievance after they immediately detected an omission by the applicant. The respondents detected the omission on 20 September 2021, hence the grievance on 22 September 2021.
19. The dispute emanates from a collective agreement that was entered into between the respondent and the applicant. The matter should be dealt with as a dispute of Interpretation and Application of a collective agreement.
20. The respondents' debt could not have prescribed as they became aware of the omission on 20 September 2021. The dispute was referred to the CCMA in October 2022, after a grievance process and engagements with the applicant were exhausted. The respondents were hopeful that the matter would be amicably resolved hence they approached the union after exhausting internal avenues (both formal and informal).

## **THE APPLICANT'S REPLYING SUBMISSIONS**

21. The respondents had been informed on 01 September 2014 about their increase that it will be prorated. If they were not happy about such decision, they should have enquired about it then. It is misleading by the respondents to lodge a grievance upon them realising that the act of omission.
22. The grievance policy dictates that employees should lodge a grievance within 30 days upon becoming aware about an act or omission and the respondents are bound by the grievance policy.
23. The CCMA is not bound to accept what litigants are saying the dispute is about, but to determine the true nature of the dispute.

## **ANALYSIS OF SUBMISSIONS RECEIVED**


24. In terms of section 24(1) of the Labour Relations Act 66 of 1995 as amended (the Act) every collective agreement must provide for a procedure to resolve any dispute about the interpretation or application

of the collective agreement and such procedure must provide for conciliation and, if required, arbitration. The CCMA has jurisdiction only if the collective agreement does not provide for a dispute resolution procedure and/or the dispute resolution procedure in the collective agreement is not operative and/or any party to the collective agreement has frustrated the resolution of the dispute in terms of the collective agreement.

25. It follows that the CCMA may in such circumstances conciliate, and if required, arbitrate disputes about the interpretation or application of such collective agreements. The disputes must be about an interpretation and application of a collective agreement and not some other dispute disguised as an interpretation and application dispute. There must have been a real dispute about the interpretation or whether the collective agreement applied to an Employee or a class of Employees and not any other dispute disguised as such. The Labour Appeal Court has held that an unfair labour practice cannot be disguised as an interpretation or application dispute when there is a real dispute in that regard, *Hospersa obo Tshambi v Department of Health Kwazulu Natal* [2016] 7 BLLR 649 (LAC)
26. The words interpretation and application must be read conjunctively. A dispute about the “interpretation” requires at a minimum a difference of opinion about what a provision mean, failing which there cannot be a dispute about the interpretation. In making a finding the principles relating to the interpretation of statutes must be applied. “Application” then refers to how the section – properly interpreted – impacts on the parties’ rights and does not encompass the enforcement of a right.
27. The respondents are *dominus litis* in this matter. The parties’ submissions are more about the enforcement of the respondents’ rights as conferred by the collective agreement and the validity of the claim if it has prescribed. The categorisation of the dispute would be clearer when the merits of the case are argued. The respondents’ desired outcome to compel the applicant to enforce the rights as per the agreement constitute an action which is not envisaged by the dispute of Interpretation and Application of a collective agreement. Despite, that, that does not oust the jurisdiction of the Commission to entertain the dispute as referred, the referral documents do not in a sense constitute pleadings.
28. Given the above authority, I consequently rule as follows:

## **RULING**

29. The Commission has jurisdiction to entertain this dispute concerning the Interpretation and Application of a collective agreement between the parties.
30. The CCMA Case Management is instructed to set the matter down for a hearing.

A handwritten signature in black ink, appearing to be 'P Mbatsana', written in a cursive style.

**Commissioner**  
**P Mbatsana**