



## ARBITRATION AWARD

Panelist/s: ADV. W, BLUNDIN

Case No.: GPBC1776/19

Date of Award: 21 July 2020

**In the Arbitration between:**

**PSA OBO N. RAVHURA**

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(Union / Applicant)

and

**NATIONAL PROSECUTING  
AUTHORITY**

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(Respondent)

### DETAILS OF HEARING AND REPRESENTATION

1. The matter in front of the Council is a dispute about unfair labour practice on benefits in terms of section 186 (2)(a) of the LRA as amended.
2. This arbitration award has been made after hearing the parties during an arbitration hearing on the 3 July 2020 at the offices of the Respondent in Mthatha. The parties agreed that I must consider the evidence of Mr. Tyala and Ms. Brits who testified in case GPBC1777/19 also for case GPBC1776/19.

3. The Applicant was represented by Mr.G. Seakamela an official of the Union and the Respondent was represented by Mr. Bulelani Mnyimba an official of the Respondent. The parties have agreed to file their written heads of arguments on the 8 July 2020.

### **ISSUE TO BE DECIDED**

4. I am required to decide as to whether the Respondent has committed unfair labour practice on benefits when the Respondent failed to pay the Applicant a performance bonus.

### **EVIDENCE AND ARGUMENTS OF PARTIES**

#### **Applicant's evidence**

5. The Applicant called Mr. L. Tyala who was his supervisor during the 2017/2018 assessment year, to testify on his behalf.
6. According to the witness he was the supervisor for the Applicant. He was doing the assessment of the Applicant and has score him in the final quarter 76%. He went further and testify that he scored the Applicant for the various quarters.
7. Further according to him the applicant's duties was to capture SNT, patty cash, cellphone contracts, received pay slips and do monthly pay slips.
8. According to the witness he asses the Applicant in this matter according to his performance for the last quarter and further provide him with a score of 76 percent. According to him the Applicant was a merit candidate and deserve the score of 76 percent.
9. However, the moderation committee did not agree with him that the Applicant was a merit candidate and requested him to discussed it with the Applicant. The Applicant did not agree with him or Mr. Ditshego who then took the revised score to the moderation committee of 60 percent. The reason why the Committee did not agree with him was that they believe that the incidents he referred to was part of the KPA's of the Applicant.

#### **Respondent's evidence**

10. The Respondent called Ms. Margaretta Johanna Brits, who was the chairperson of the Moderation Committee.

11. She testified that the role of the Moderation Committee was to ensure that when a merit candidate is presented enough evidence or incidents be presented by the supervisor to show that the merit candidate performed exceptional.
12. Further as Moderation Committee they must support the candidate as a merit candidate. Further as Moderating Committee they must give feedback to the supervisor with reasons why they support or cannot support the merit candidate. Normally the supervisors will come back to the Committee with additional information. This process was followed in both cases. Unfortunately, the committee did not agree with the percentage given by the supervisor as an assessment score by the supervisors.
13. According to Ms. Brits the Applicant did not perform the function that is an incidence throughout the year. Ms Brits refer to examples that was used by the supervisor to motivate why the Applicant was a merit candidate, which they did not agree with. For example, the collection of IRPS in East London, was done only once a year and not throughout the year. Therefore, this was not seen as an exceptional incidence.
14. Development of a check list of vehicles was considered by the committee and they have concluded that the check list was only done once and that it was in the job description of Mr. Tyala. Further on the matter of training of juniors. She testified that it was expected from a supervisor to train his subordinates. Therefore, the Committee could not find that this was additional work.
15. Further according to her there was no specific dates to show a repetition of occurrences. According to the witness all quarters was available when they have done the moderation as a Committee. According to Ms Brits the Committee inform the supervisor that they will not agree with him about the incidents and that the Committee did not put pressure on the Applicant or the Supervisor to reduce the scores.
16. Subsequently thereafter the supervisor brought the document on page 29 of the bundle without any comments of the Applicant or his supervisor and without the signature of the supervisor of the supervisor. In relation to Ravhura's case she testifies that his KPA's is clear and all that he has done was part of his work. According to her the supervisor of Mr. Ravhura did not provide any incidents that make him a merit candidate. She further testifies that the Committee did not inform the supervisor as to what score must be given.

## **ANALYSIS OF EVIDENCE AND ARGUMENTS**

17. I have been given a copy of the Performance Development Policy approved on the 28 June 2018. I will therefore rely on the principles in the policy to determine if the Respondent has committed any form of unfair labour practice.
18. In terms of clause 18. 2 of the policy the performance assessment and scoring between the employee and the supervisor shall be subjected to two levels of moderation. The first level will be the inter mediate review committee (IRC) of which Ms. Brits was the chairperson. The function and roles of this committee is set out in clauses 18.2 to 18. 9 and will follow hereunder.

- *Business Units must established an IRC for reviewing the performance assessment rating agreed upon by the employee and supervisor.*
- *The IRC receives the performance assessment ratings and scores of all employees in component, to review, compare and validate the ratings.*
- *If the IRC agrees with the ratings and scores, the ratings and scores are submitted to the moderating committee.*
- *Any recommendation on the changing of ratings or scores must be referred back to the employee's supervisor for the supervisor and the employee to try and reach consensus on the changes.*
- *If the supervisor and the employee cannot agree, the unchanged/original ratings and score should be forward to IRC, with the comments from the supervisor and employee indicating such areas of disagreement.*
- *The IRC reserves the right after following due process as a last resort to change the ratings and scores should the employee and/or supervisor unreasonably refuse to re-negotiate the final score and in the same .....*

19. Firstly, it is common cause that Mr. Ditshego the supervisor of Mr. Tyala and the Applicant in this matter agreed to lower the scores from 76 percent to 60%. In accordance with policy the IRC have the right to increase or reduced ratings and scores after following *due process*.
20. Having regard to the evidence of both Ms. Brits and the supervisor of the Applicant, the Committee did follow the due processes when they decided that the supervisor must go back to the Applicant to consider extra incidents and when they allow the supervisor and the Applicant to reconsider the ratings and scores. Further the committee has considered all KPA's of the Applicant, to ensure that they give effect to their functions in terms of clause 18.2. Even though the Committee could have reduced or increase the ratings and scores they instructed the supervisor to discussed it with the Applicant and determine another score.
21. The committee has executed his most important functions as per the policy, namely review, compare, and validate the ratings and scores, when the Applicant's performance assessment was in front of them. The Committee have considered various incidents and it was clear from the minutes that they found the incidents to be part of the normal functions of the Applicant.
22. It is for this reason that I find that the Respondent's IR Committee acted in accordance with the policy and not inconsistent. Further the mere fact that the Moderation Committee allows the supervisor to discuss the assessment of the Committee with the Applicant is to give effect to the due processes that is required in terms of the policy. It is common cause that the supervisor has attempted to discussed the scores and incidents with the Applicant, but could not reach an agreement to lower the scores is neither

here or there and could not impact on the right of the Moderation Committee to either reduced or increase the scores of the Applicant.

23. Even if the IR Committee has reduced the scores it means that it was within their rights to do so and it would not have meant that they have committed unfair labour practice. Further in this case the Applicant did not show that the Moderation Committee has treated him different from any other employee.

24. I therefore make the following appropriate award.

**Award**

25. That the Respondent did not commit any unfair labour practice on benefits and the Applicant is not entitled to any relief.

26. No Order as to cost.

  
**ADV. W. BLUNDIN**

**Adv. W. Blundin**