



Arbitration Award

Case Number: **FSBF5610-19**
Commissioner: **Timothy Tumelo Baas**
Date of Award: **17-April-2021**

In the **ARBITRATION** between:

PSA obo De Vries Maryke

(Applicant/Union)

And

SASSA

(Respondent/Employer)

Union/Applicant's
representative:

Mr. C Fandie: (Union Official)

Union/Applicant's address:

**P.O.Box 7673
Bloemfontein**

Telephone:

**9300
051 403 1300/082 880 8933/072 796
2160**

Telefax:

051 403 1315

E-mail:

Clement.fandie@psa.co.za

Respondent's representative:

T. Diphoko:(Labour Relations Office)

Respondent's address:

**SASSA
Private Bag X 4244
Bloemfontein
9300**

Telephone:

051 410 8356/051 410 8553

Telefax:

051 409 0857

E-mail:

ThapeloLi@sassa.gov.za

DETAILS OF HEARING AND REPRESENTATION:

- [1] This is arbitration award, in the dispute between PSA obo De Vries Maryke, the Applicant, and SASSA, the Respondent, which proceedings took place at the CCMA House in Bloemfontein, on 13-14 April 2021.
- [2] The Applicant, was known as Scott Maryke at the time of the alleged unfair labour practice but is currently, De Vries Maryke, was in attendance, represented by C. Fandie, Union Official whilst SASSA, the Respondent, was represented by L Liphoko, The Labour Relations Officer.
- [3] Proceedings were digitally recorded and the tape number thereof, is **DM450466/450560**.

ISSUES TO BE DECIDED:

- [4] I am called upon to determine whether The Respondent, committed Unfair Labour Practice, when performance bonus was not paid to the Applicant, in or about 1 November 2019. If found in the affirmative, to order the Respondent, to pay the bonus due.

BACKGROUND:

- [5] The Applicant, was employed in the position of "Manager in the Regional Office of SASSA", having earned a monthly salary of R59 144.48
- [6] On 4 November 2019, she referred the dispute to the CCMA, alleging that in January 2019, the Respondent, deliberately omitted to pay her, a performance related cash bonus, she claimed, she was entitled to in line with Performance Development Management System, PDMS Rewards & Recognition Policy, in the period between 2017 and 2018 financial assessment years.
- [7] It is common cause that the Applicant, was assessed for the Performance Management Development System (P.D.M.S), which according to the policy, if requirements are met, an employee, would be entitled to a cash bonus, subject to approval. Parties further agreed that the score of 131%, qualified an employee, subject to moderation, the payment of cash bonus.
- [8] It is further common cause that her immediate Supervisor (the Regional Executive Manager), jointly agreed with her on a score of 131%, and that the Supervisor, did not get the opportunity to present and motivate before the Moderation Committee. In this dispute, the Applicant, challenged the non payment of cash bonus.

[9] It is common cause, that the internal grievance processes, took place, in or about August 2019. (see C, pages 1-8).

[10] The Applicant, sought relief of the payment of bonus, in the agreed and calculated amount of R92 265.38

SURVEY OF EVIDENCE AND ARGUMENTS:

[11] Devries Maryke, the Applicant, testified under oath whilst the Respondent, led evidence through Phukubyi Matleku, who also testified under oath. I summarised the evidence, relevant in terms of this award. Section 138 of the Labour relations Act 66 of 1995, amended).

Documentary evidence:

12.1 The Applicant, submitted 'bundle A paginated as 1-63, D, paginated as 1-14 and E, paginated as 1-28.

12.2 The Respondent, submitted bundle B, paginated as 1-18, and bundle C, paginated as 1-8.

Oral evidence:

12.3 Both parties, presented oral closing arguments, on tape recordings, DM450564.

THE APPLICANT'S EVIDENCE AND ARGUMENTS:

[13] De Vries Maryke, the Applicant, testified the following under oath:

13.1 She held the position of a Manager in the Office of Regional Executive Manager, which was equals to level 11 salary scale, effective from 1 August 2015.

13.2 In or about 2017/2018, the performance assessment was conducted on her. She qualified for a cash bonus, after she was successfully assessed in line with PDMS, Rewards & Recognition Policy of SASSA, as per Levels 1-12.

13.3 She was assessed by her immediate Supervisor, Ms. Sibongile Setlaba, they both agreed on a rating performance score of 131%. She was surprised and did not understand why she was placed on pay progression only, and not cash bonus, despite that she qualified (A, pages 49 & 63).

- 13.4 It is evident that the minimum score required as per assessment rating calculator, was 131%. This score in the Region, fell within the highest authority. (A,page 48).
- 13.5 Her first half yearly performance cycle, started on 1 April 2017 to 30 September 2017, and Sibongile Setlaba, compiled excellent report, having stated that *'her performance was very efficient in that she performed her duties diligently with professionalism'*.(A, page 47).
- 13.6 Her second half yearly performance, started on 1 October 2017 to 31 March 2018. On 14 June 2018, Sibongile Setlaba, compiled report, having stated that *'she performed outstandingly with a high level of responsibility and diligence'*. (A, page 28).
- 13.7 She further argued that she and Sibongile Setlaba, elevated her scores from rating of 3, when she discovered the following levels of key responsibility areas and their related achievements or competencies on her:
- 13.8 She was meticulous on collecting relevant information, following up on branches, while going beyond her duty; (A, page 13).
- 13.9 She supervised areas outside her scope while managing the business continuity of the office. (A, page 17).
- 13.10 She ensured that the office performed optimally, even when some Officials were on leave. (see proof of agreed rating scores and the agreed total score of 131%. (A page 47-48).
- 13.11 They followed all the steps outlined in the performance management procedures, when they allocated the score of 131%. Moreover, the Supervisor, ranked her in line with key responsibility or KRA's level 5.
- 13.12 Clause 15.4 (vi) of The Reward & Recognition Policy, prescribes that *"the ranking Supervisor has the role to make presentation to the Moderating Committee, on their employee's performance assessments"*. She argued that it was unfair that her Supervisor, was not provided opportunity to present and motivate, on how she arrived at the score.
- 13.13 The Committee, had erroneously, interpreted that the Supervisor, increased the scores to 4 and 5 KRA ratings, although her comments in writing, were not integrated in the motivation and did not justify a

rating higher than 3. She found that the Supervisor, did not attach comments, which the Committee had alluded to.

13.14 The Moderating Committee, omitted to objectively consider her assessment reports as against the performance standards/targets, and did not review the agreed ratings by the the Supervisor.(B, page 14, clause 15.1 (i)).

13.15 The Committee was not objective and fair, because they focused their findings on her scores of 3 , and had disregarded the integrated/agreed scores between her and the Supervisor.

13.16 It was critically important that the Supervisor should have been afforded the opportunity to give feedback, based on relevant motivation provided and on her own observation.(B, page 15,clause15.4 (vi)). She testified that when she left SASSA, Setlaba told the Committee that they were free to reach her, via the skype.

13.17 Performance Management & Development Policy For Employees on Salary Level 1-12, prescribes that *"prolonged absence would not affect satisfactory rating on the condition that the performance agreement and assessment documents, are signed by both parties"*. (D, page 10, clause 6.3.1).

13.19 She stated that she was fully aware, that awarding of bonus, was discretionary by the CEO, based on the recommendations of the Moderating Committee, and that payment of cash bonus, was subject to moderation and the approval of the Authority or the Regional Executive Manager. (B, page 7-8).

13.20 She was aware that the Policy, did not provide deviation if the Supervisor, was not available to present motivation on the score.

13.21 She was entitled to cash bonus payment because she was scored by the REM, and that Setlaba was the approving authority. Moreover, the letter of feedback which denied her payment of bonus, did not come from the REM, the letter was written by Ms L.Swanepoel, who occupied the position of Senior manager, Human Capital Management. (A, page 63).

13.21 She conceded the following under the cross examination:

13.22 Earlier in 2018, she was transferred to position of Manager Development and Transformation, administering employment equity and performance management.

13.23 She was the custodian of performance related policy, having advised other Managers and Moderating Committees.

THE RESPONDENT'S EVIDENCE AND ARGUMENTS:

[14] The Respondent led evidence through Phukyubi Matleku, and he testified as follows:

14.1 He held the position of the Specialist in Performance Management, for a period of four (4) years. His duties involved, administering performance process, while ensuring that entire performance process, was implemented effectively and efficient.

14.2 Moderation Committee, had the right to moderate reports of SASSA Officials who were assessed. (B, clause 15.1)

14.3 The Applicant, was assessed for first yearly half performance, which started on 1 April 2017 and ended on 30 September 2017. The second yearly half performance ended on 31 March 2018.

14.4 Both the Supervisor and the Applicant, signed an agreed performance rating, on 14 June 2018.

14.5 The Applicant, submitted moderation report, on 14 June 2018, when she was expected to have submitted it, by no later than 31 May 2018. However, he conceded under the cross-examination that the fact her performance was moderated, regardless of late submission. Meaning that late submission, was never the issue.

14.6 The quality assurance Officials, subjected the report of the Applicant, because she fell within salary level 11.

14.7 *"All half yearly assessment documents or reports, were subject to the Moderating Committee for moderations, which made recommendations to the delegated authority for approval".*

14.8 The Applicant and the Supervisor's agreed score, was subject to moderation, although he conceded that the policy, 'stated that the Supervisor had role to present her motivation, before the Moderation Committee, while explaining the employee's performance assessments. He conceded that the

Supervisor, was not invited to present, when the Applicant's performance was moderated because she was no longer with SASSA.

14.9 He believed that even if the Supervisor, did not present, Moderation Committee proceeded because it has been a practice in other instances. He further argued that no additional motivation, would have justified the initial agreed scores between the Supervisor and the Employee. (B, clause 15.1 (ii) (iii) & (viii)).

14.10 He believed that even if the Supervisor was called to present, the Moderation Committee's outcome, would have been the same, in that the policy allowed it, to review the agreed ratings by employees and supervisors and make a final determination. (B, clause 15.1 (ii)).

14.11 The policy did not provide that if the Supervisor, did not present, moderation would have not taken place. According to him, no amount of persuasion, would have stopped the Moderating Committee to review the Applicant's performance. He argued that the Applicant, did not invite the Supervisor to come and present.

14.12 In the case of the Applicant, recommendations on whether to approve, should have been dealt with, by the Regional Executive Manager. (B, clause 15.1 (viii)).

14.13 It was in line with the policy, that Mrs Swanepoel, conveyed the outcome of moderation report, to the Applicant.

He conceded the following under the cross-examination:

14.14 He did not assess or moderate the Applicant. Moreover, he was not familiar on recommendations and the merits, the Moderating would have dealt with.

14.15 He did not know the reason why Moderation Committee, did not qualify, the Applicant, to get a cash bonus.

14.16 The Reward & Recognition Policy, took into cognisance, that the Supervisor, must present before Moderation Committee, and that in the case of the Applicant, the Supervisor, did not present. Furthermore, he stated that it was important that the Supervisor should have presented.

14.17 The quality assurance, found that the lateness of submission of the Applicant, would have not prejudice her from being moderated.

ANALYSIS OF EVIDENCE AND ARGUMENTS:

[15] Section 18(2)(a) of the Labour relations Act 66 of 1995, defines unfair labour practice, meaning-

"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 the employee".

15.1 In this dispute, the Applicant, bore onus to prove that by not awarding her, a cash bonus, the Respondent, committed unfair labour practice.

15.2 I found that the Applicant, succeeded in discharging the onus to prove that the Respondent, omitted to follow its own policy, when the following transpired:

15.3 The Supervisor (Regional Executive Manager), who assessed the Applicant, and agreed on score of 131 %, was not afforded the opportunity to present before the Moderation Committee. Her ranked score would have not been reviewable if she did not present, without justifiable reasons.

15.4 It became apparent that no efforts, were made by the Respondent, to follow on her. The Applicant's testimony that she did not want to have undue influence on decision that was going to affect her, was plausible.

15.5 The Respondent, led testimony arguing that in the event, where Regional Executive Manager, was not available, the Acting REM, assumed responsibilities. However, the Applicant's version that Acting Regional Manager, was not called to present at the Moderation Committee, was not rebutted.

15.6 It is common cause that SASSA policy, provided that the Supervisor, had roles to present and motivate the agreed score, before the Moderation Committee.

15.7 It is common cause that the Moderation Committee, was entitled to review an agreed score. However, it is my belief that it would have been unjustifiable to do so, when it is not rebutted that the Applicant, was denied her right of being represented, by her Supervisor. In other words, measuring performance should have been holistic, and in line with the policy.

15.8 The Applicant, testified that Sibongile Setlaba, was the Regional Executive Manager, and more to that she was the approving authority, as per the policy. It is common cause that Setlaba was the Regional Executive Manager, and that at Regional level, the approving authority, was the person holding the same position.

15.9 The Respondent, failed to provide the Applicant, with the answers as to whether the Moderation Committee, ever forwarded its recommendation to the approval delegated authority.

15.10 Based on the above, I found that the conduct of the Respondent was unfair, and that there was no justification to deny her payment of cash bonus, in the circumstances, I determined as follows:

AWARD:

[16] SASSA, the Respondent, committed unfair labour practice.

16.1 De Vries Maryke, the Applicant, is entitled to payment of cash bonus of R92 265.38

16.2 SASSA, is ordered to pay De Vries Maryke, cash bonus, in the amounting of R92 265.38, by no later than 15 May 2021

APPROVED



Commissioner: Timothy Tumelo Baas Signature: _____

Date: Signed at the CCMA House in Bloemfontein, on 17 April 2021.