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ARBITRATION AWARD

Panellist/s: Selolong Mosoma
Case No.: GPBC1893/2019
Date of Award: 25 May 2021

In the ARBITRATION between:

PSA obo Moji N

(Union / Applicant)

and

Department of Education Free State Provincial Government

(Respondent)

Union/Applicant's representative: Clement Fandie
Union/Applicant's address: Public Servant Association
Telephone: 00514031300/0828808933
Telefax: clement.fandie@psa.co.za

Respondent's representative: Thulo Tsunke
Respondent's address: Department of Education
Telephone: 0733033879
Telefax: t.tsunke@fseducation.gov.za

ARBITRATION AWARD

DETAILS OF HEARING AND REPRESENTATION:

1. The arbitration into the alleged unfair labour practice dispute was referred to the Council in terms of section 191 of Labour Relations Act 66 of 1995 (the Act) was conducted on the 19 March 2021 and 07 April 2021, at the offices of the Respondent in Bethlehem and Qwa Qwa.
2. The employee party, Ms. N Moji (hereinafter referred to as Applicant), was represented by her PSA official, Mr. Clement. The employer party, Department of Education(hereinafter referred as the Respondent), was represented by its employee Mr. Thulo Tsunke.
3. The Applicant submitted a bundle of document i.e bundle "A". The Respondent submitted a bundle of documents i.e bundle "R". These bundles of documents were introduced and accepted as evidence by both parties and were deemed to be what they purported to be.
4. The proceedings were digitally recorded.

ISSUE TO BE DECIDED:

5. The issue to be decided is whether or not the conduct of the Applicant qualify for payment of annual pay progression for the financial year 2017/218.
6. The Respondent dispute that the Applicant qualified for payment of pay progression.

BACKGROUND TO THE MATTER:

7. The Applicant was employed by the Respondent as Administrative Clerk since the 16 May 1994, and she was on salary level 06.
8. The Applicant was assessed and performance assessment documents were signed on the 11 April 2018.
9. The Applicant contended that she submitted her documents, therefore she should not be prejudiced because of this.
10. The Respondent on the other hand contended that the Applicant failed to submit her documents within the stipulated time frame, therefore she does not qualify to receive pay progression.
11. The Applicant believed that she qualified for the pay progression for the financial year 2017/2018.

SURVEY OF EVIDENCE AND ARGUMENT:

12. The provisions of section 138 of Labour Relations Act 66 of 1995 as amended, enjoins me to issue the arbitration award with brief reasons. I intend in this award to focus only on the issues that I perceive to be pertinent to the issues that were disputed by the parties.

APPLICANT'S SUBMISSION

13. **Ms. Nomthandazo Marry-Jane Zim-Moji** testified that she was employed as Administrative Clerk based in Bethlehem satellite office .
14. She testified that she was reporting to the circuit manager Mr. Clint.
15. She indicated that one of her duties was to dispatch and posting of documents.
16. She stated that she gave her final assessment document to Mr. Mokone who used to assist them with the delivery and postage of documents.
17. She further indicated that Mr. Mokone delivered her documents and it was acknowledged by Mr. Maloka.
18. She indicated that her documents were received by Mr. Maloka on the 04 May 2018.
19. She stated that Mr. Maloka was working in the office of chief Education Specialist.
20. She stated that she requested a copy of documents register after not receiving pay progression.
21. The applicant indicated that she qualified to receive pay progression like any other government employees because she completed and submitted her documents timeously.
22. She stated that she was requested by the Respondent to resubmit er documents which she did submit as requested.
23. Lastly, she stated that she resubmitted her documents after receiving correspondence from the Respondent requesting her to resubmit her assessment documents.
24. Under cross-examination the Applicant denied all the facts put through by the representative of the Respondent. she only conceded receiving reminders from the Respondent to resubmit her assessment documents and their incompleteness.

2nd witness of the Applicant

Mr. Alfred Maloka testified under oath as follows:

25. He stated that he was employed by the Respondent as Administrative Clerk. He indicated that he used to assist with the delivery of documents.
26. He indicated that he was the one who delivered the Applicant's assessment documents to performance management office during 2017/18 financial year.
27. He stated that he used to receive lots of documents either from Bethlehem or any other offices but he cannot remember the exact date and person who delivered the documents.

28. He stated that the documents register (bundle "A1") was an extraction from his office submission book and he was the one who made a copy for the Applicant.
29. He further stated that the Applicant documents were submitted on the 04 May 2018 as per the documents submission register.
30. Mr. Maloka stated that the purpose of documents attendance register was for record keeping of all documents delivered to his office.
31. He indicated that he captured the Applicant assessment documents in the documents register the same day he received them.
32. Mr. Maloka confirmed that the Applicant documents were received on the 04 May 2018.
33. He indicated that the Applicant documents were delivered to performance management development office even though he cannot recall the exact office because they had two offices.
34. He stated an official from the performance management development office acknowledged receipt of the Applicant assessment documents.
35. Under **cross-examination** he denied all the facts put through by the representative of the Respondent. He confirmed that he cannot recall the person who acknowledged the Applicant assessment documents in the office of performance management and development.

RESPONDENT'S SUBMISSION

36. **Mr. Tshepang Joseph Dlamini** testified on behalf of the Respondent under oath as follows:
37. He testified that he was employed by the Respondent as Senior Human Resources Officer and he dealt mainly with PMDS matters.
38. He stated that he does not recognise the signature of the person who acknowledged the Applicant's assessment documents.
39. He indicated that they only received the Applicant's assessment documents in October 2018.
40. He testified that the Applicant did not qualify for pay progression as the documents were not received by Human Resources Office after the deadline date.
41. He indicated that a reminder was sent to the Applicant to submit her assessment documents on the 06 and 13 June 2018.
42. He stated that another reminder for submission of the outstanding performance management for cycle 2017/18 was sent to the District Director on the 07 May 2018.
43. He indicated that another reminder for submission of assessment documents was sent to the Applicant on the 04 September 2018.
44. He further stated that after numerous reminders the Applicant failed to submit the requested assessment document.

45. Under **cross-examination** he conceded that he cannot confirm that all reminders sent were received or reached the Applicant because some were directed to her supervisor. He further conceded that they do not have a register in their office where they register all assessment documents received.
46. Lastly, he denied other versions of Applicant that were put through to him by the representative of the Applicant.

SUBMISSION OF ARGUMENTS:

47. Both parties requested to submit written closing arguments and submission of both parties were carefully considered. I will not repeat what was said by the parties, as the contents basically mirror what was put to the parties during the leading of evidence and cross-examination.

ANALYSIS OF EVIDENCE AND ARGUMENT:

48. I have carefully considered all evidence presented by parties, however, section 138 (7) of Labour Relations Act requires brief reasons for my award, I have only considered evidence that I regard as necessary to substantiate and arrive at my findings and determination of this dispute.
49. Section 186 (2) (a) Labour Relations Act 66 of 1995 as amended (LRA) defines unfair labour practice as “any unfair act or omission that arises between an employee and an employer involving any unfair conduct by the employer relating to the promotion, demotion, probation or training of an employee or relating to the provision of benefits to an employee.
50. Section 23 of the Constitution provides that everyone has the right to fair labour practice.
51. The onus to proof the existence of conduct complained about of unfair labour practice within the meaning of section 186 (2) (a) of LRA rests with the employee, see **City of Cape Town v SA Municipal Workers Union obo Sylvester and Others (2013) 34 ILJ 1156 (LC)**. The employee must therefore be able to lay the evidentiary foundation to substantiate his or her claim of unfair labour practice.
52. It is common cause that the Applicant did not receive pay progression like any other employee of the Respondent.
53. It is further common cause that in order for an employee to qualify for a pay progression, an employee is required to complete and submit his/her performance agreement and assessments on or before specified deadline date.
54. It was argued on behalf of the Applicant that her assessment documents were submitted to the District office on the 04 May 2018. Therefore, she believed she qualified for the pay progression as she had complied with the Performance Management Development Policy.

55. Once the Applicant had completed and signed the documents and submitted to the District Office and then the responsibility to submit the completed documents to Human Resources Management Office shifted to the District Office. The Applicant believed that they she should not be held liable for the failure of the District office internal administration.
56. A perusal of the Applicant's bundle of documents revealed the following;
- a) Mr. Maloka acknowledged receipt of the Applicant's assessment documents on the 04 May 2018.
 - b) The Applicant assessment documents were received by an unknown employee in Human Resources Management office even though the date of receipt was not specified.
57. From this it can be seen that the District office was in possession of the Applicant assessment documents as at 04 May 2018. Once the District office had taken possession of the assessment documents from the Applicant, and then acknowledged receipt thereof, the District office automatically assumed full responsibility and accountability for the submission of the completed documents to the Human Resources department.
58. Evidence on behalf of the Respondent was that the Applicant failed to submit the required documents albeit numerous reminders to do so hence she was excluded from receiving pay progression.
59. I therefore conclude that there was no failure on the part of the Applicant to submit her assessment documents before the deadline date. The Applicant acted responsibly and had done everything that was reasonably expected from her by submitting the assessment documents to the District office on or before the deadline date.
60. The only people to offer a reasonable explanation as to why the Applicant documents could not reach the Human Resources department was Mr. Maloka and the person he gave the Applicant's assessment documents. Mr. Maloka confirmed and acknowledged receipt of the Applicant's assessment documents on the 04 May 2018, unfortunately for the unknown reasons the Respondent persisted with the argument that the Applicant failed to submit her assessment document with the stipulated time frame.
61. Despite the evidence of Mr. Maloka and documents register that the Applicant's documents were submitted to the District office, the Respondent sought to shift the blame to the Applicant which is very unfortunate.
62. From all of the above it is quite clear that it was the District office, not the Applicant, who failed to submit the assessment documents to the Human resources department.
63. In my view, it is grossly unfair to prejudice the Applicant from receiving pay progression for the shortcomings of the District office and its staff.
64. Again, it is my view that the conduct of the Respondent of denying the Applicant the pay progression is grossly unfair. This I say, because the Applicant cannot be prejudice or suffer as a result of other employees' faults.
65. I therefore accept, the version of the Applicant, that she had submitted her assessment documents to the District office within the deadline date.

66. Accordingly, and on a balance of probabilities, I find that the version put forward to me by the Applicant is more probable than the version put forward by the Respondent.
67. It is my findings that the District office was grossly negligent in the performance of their duties in this instance, which ultimately disadvantaged the Applicant from receiving pay progression.
68. Accordingly, I find that the Applicant qualifies for the payment of pay progression for the 2017/18 financial year.

AWARD

69. I make the following award;
70. The Applicant, Ms. Moji, qualifies for a pay progression for the 2017/18 financial year.
71. The Respondent is directed to process and implement a pay progression for the Applicant for the 2017/18 financial year.
72. The Respondent is also directed to recalculate the financial impact on the Applicant's salary notch and benefits to date, and to place her in the same situation that she would have been in, had the pay progression been implemented in 2017/18 financial year.
73. The Respondent is further directed to implement paragraph 72 above by no later than the 30 July 2021.



Name: Selolong Mosoma

(Council name) Arbitrator