

ARBITRATION AWARD

Commissioner: **Minette van der Merwe**

Case No: **PSHS450-19/20**

Date of award: **4 February 2021**

In the matter between:

PSA obo Anna Maria Magaretha Petronella Hurter

(Union / Applicant)

and

Department of Health – Free State

(Respondent)

DETAILS OF HEARING AND REPRESENTATION

- [1] This is the arbitration award in the matter between PSA obo Anna Maria Magaretha Petronella Hurter (the Applicant) and the Department of Health - Free State (the Respondent), which matter was scheduled for arbitration and finalized on 3 February 2021 at the Respondent's office in Bloemfontein (Bophelo House).
- [2] Parties were present and represented as per the cover page of this award.
- [3] Proceedings were recorded manually and digitally.
- [4] Mr. Lesego Thuntsha was booked as the Interpreter. He offered little assistance, and did not interpret the proceedings in Afrikaans/English for the Applicant, as per her request and as per his obligation. He failed to execute his duties during the arbitration,

and his presence did not assist the Applicant in any way. Despite the gross dereliction of his duties, the Applicant was able to express herself sufficiently in English for the matter to proceed and be finalized.

BACKGROUND TO THE DISPUTE

- [5] The matter was postponed several times since its referral in 2019, the majority of such postponements due to no fault of any party, as it coincided with the Covid-19 pandemic, and its associated risks and lockdown restrictions.
- [6] Parties had complied and submitted pre-arbitration minutes¹ which guided my terms of reference in the determination of this dispute.

ISSUE TO BE DECIDED

- [7] The matter was scheduled for arbitration in terms of section 186(2)(a) in respect of a claim of unfair labour practice related to benefits.
- [8] I was called upon to decide whether the Respondent had breached the PDMS (Performance and Development System) Policy by failing to award the Applicant a 5% cash bonus for the 2016/2017 PDMS Period.
- [9] It was common cause that the Applicant had qualified for and was recommended for the 5% cash bonus in terms of the PDMS Policy for the 2016/2017 cycle at the 1st level of Moderation, and that her score was 118%.
- [10] The Applicant sought to be awarded the 5% cash bonus in terms of the PDMS Policy for the 2016/2017 PDMS Cycle. Her salary at the time was R 26 945.25 per month².

¹ Bundle “P”

² Bundle A3

SURVEY OF EVICENCE AND ARGUMENTS

Documentary evidence:

- [11] Bundles were exchanged and submitted into evidence. Bundles A1, A2 and A3 from the Applicant and Bundles R1 and R2 from the Respondent.

Oral evidence:

- [12] The testimony of all witnesses is fully captured on the record of proceedings. I therefore do not deem it necessary to repeat it *verbatim* in this award. Following thus only a brief summary of the thereof.

Evidence from the Applicant:

- [13] The Applicant, **Anna Maria Magaretha Petronalla Hurter**, testified under oath that she was informed by her Supervisor, the Director: Human Resource Development, Ms Kala, that her recommendation was approved and that the Applicant would be entitled to a 5% cash bonus for the 2016/2017 PDMS Cycle as a result of the 1st level of moderation³. She was then informed by Ms Kala that the 3rd level of moderation had also approved the recommendation of 5% cash bonus, as Ms Kala was part of the latter committee meeting⁴, and had presented the Applicant for such recommended 5% cash bonus. She confirmed that she was neither an official from FSSON nor EMS College, as the only two officials expressly having been mentioned in the minutes of the 3rd moderation meeting⁵, but maintained that Ms Kara informed her that the recommendation was approved for her to receive a 5% cash bonus. She confirmed she was not part of the 3rd moderation committee meeting on 22 November 2017.
- [14] The 2nd witness, **Pauline Hillary Kala**, testified under oath that the Applicant was her Personal Assistant, and reported directly to her. The Applicant qualified and was recommended for a 5% cash bonus during the 1st moderation level, during a meeting chaired by herself, on 29 August 2017. The minutes of the meeting was approved and signed by her, as the Chairperson thereof. The minutes of the 3rd moderation meeting

³ “A1” pages 9, 10, 11

⁴ Held on 22 November 2017 – “A1” pages 1 - 8

⁵ “A1” page 2

was not a true reflection of what had transpired during that meeting, as her presentation of the Applicant for a recommended 5% cash bonus in terms of the PDMS Policy, and the subsequent approval thereof, was not recorded. The minutes were also unsigned, and as such could not be accepted as legally binding. The Applicant was recommended and approved for a 5% cash bonus as a result of the 3rd and final level of moderation, and she should have been paid such bonus accordingly. If the moderating committee had disagreed with the score of the Applicant, it should have been referred back to her as the Applicant's Supervisor, for re-evaluation, which was also not done, as such it was approved. There was no reliable evidence that the Applicant's cash bonus was not recommended and approved. She maintained that the Applicant's name was omitted from the minutes of the 3rd level moderation meeting, which supported her version that the minutes were not a true reflection of what transpired during said meeting.

Evidence from the respondent:

- [15] The only witness, **Motsamai Mokgampanyane**, testified under oath that he was part of the meeting on 22 November 2017, but appeared to be confused as to whether it was the 2nd level or 3rd level moderation meeting. He did not take the minutes of the meeting⁶, and he conceded that it was unsigned minutes. He conceded that the minutes could not be accepted as valid and legal as it was not signed by the Chairperson thereof. His recollection was that only two officials within the Directorate was approved for the 5% cash bonus, and it did not include the Applicant. He initially testified that the Respondent acted fairly towards the Applicant, then conceded during cross-examination that the Respondent did not apply the PDMS Policy fairly towards the Applicant, and finally testified again under re-examination that the Respondent applied the PDMS Policy fairly towards the Applicant.

ANALYSIS OF EVIDENCE AND ARGUMENT

- [16] The onus of proof is on the Applicant to prove the allegation that an unfair labour practice, related to benefits, was committed by the Respondent.

⁶ "A1" pages 1 - 8

- [17] The Applicant and Ms. Kala led consistent, corroborative and concise evidence. Their evidence was found to be credible and reliable. Mr Mokgampanyane contradicted himself on a number of material aspects, appeared perplexed and confused when asked questions, and was found to be an unreliable witness and not credible.
- [18] The minutes of the 3rd level moderation committee, held on 22 November 2017⁷ is rejected as reliable, valid and legal. The minutes are unsigned, and as such cannot be accepted as approved and valid. The author of said minutes was further not called to testify on its veracity.
- [19] In light of the aforementioned, the best available evidence had to be considered in making a determination. The best available evidence was the testimony of the Applicant and especially Ms. Kala. It was Ms. Kala's evidence that she did present the Applicant at the 3rd level moderation meeting on 22 November 2017, and that the inaccuracy of the minutes were further confirmed by the omission of her recommendation and the subsequent non-implementation of the Applicant's 5% cash bonus for the 2016/2017 PDMS cycle.
- [20] The evidence of Ms. Kala was not rebutted by the Respondent with reliable and credible evidence.
- [21] There was no evidence that the score the Applicant received of 118% as a result of moderation, was reverted back to her Supervisor, Ms. Kala, for reconsideration, or that the moderating committee had changed the score of the Applicant and communicated same to her. The evidence before me suggests that the score of 118% was recommended and approved throughout the moderation process, and the implementation thereof unfairly and arbitrarily not done by the Respondent.
- [22] The Respondent was in breach of the PDMS Policy by failing to implement the approved 5% cash bonus for the Applicant for the 2016/2017 PDMS cycle, that she had qualified for, as a result of a performance score of 118%.
- [23] It then follows that the claim for unfair labour practice related to benefits, stands to be upheld.

⁷ "A1" pages 1 - 8

AWARD:

[24] The Respondent, **Department of Health – Free State**, committed an unfair labour practice related to benefits towards the Applicant, **Anna Maria Magaretha Petronella Hurter**, by failing to pay her a 5% cash bonus for the 2016/2017 PDMS cycle, which bonus she qualified for and was approved for.

[25] The Respondent is to pay the Applicant said cash bonus to the amount of **R 16 167.16** (sixteen thousand one hundred and sixty-seven rand, fifteen cents), calculated as follows:

$R\ 26\ 945.25$ (per month for 2016/2017 period) \times 12 months = $R\ 323\ 343.00$

$R\ 323\ 343.00 \times 5\% = R\ 16\ 167.15$

[26] There aforementioned amount must be paid to the Applicant by no later than 15 March 2021.

[27] No order is made as to cost.

Signature:

A handwritten signature in black ink, appearing to read 'M. van der Merwe', is placed on a light yellow rectangular background.

Minette van der Merwe