



ARBITRATION AWARD

Case Number: **GPBC938/ 2022**
Commissioner: **Vusi Moyo**
Date of Award: **08 November 2022**

In the **ARBITRATION** between

PSA obo Jabulisile Sukazi

APPLICANT

And

Gauteng Department of Education

RESPONDENT

DETAILS OF HEARING AND REPRESENTATION

1. This is a ruling rendered in the course of an ongoing arbitration process. The arbitration hearing was held under the auspices of the GPSSBC on the 07th of October 2022.
2. The Applicant appeared in person and was represented by Ms Yolanda Ralawe, Labour Relations Officer of the PSA. The Respondent was represented by Mr Mvandaba Zethu, the Labour Relations Officer of the Gauteng Department of Education. These proceedings were conducted in English. Submissions were both digitally and manually recorded.

BACKGROUND TO THE ISSUE

3. At commencement of proceedings, two preliminary issues were raised by the parties. Both parties made oral submissions but also agreed to make supplementary submissions in writing in order for the Commissioner to render two rulings. Parties agreed that documents will be filed on the following dates:
 - Initial applications from both sides due: 14 October 2022
 - Opposing submissions due: 21 October 2022
 - Reply submissions due: 26 October 2022



4. Unfortunately, these written submissions were not duly forwarded as agreed. At the last enquiry with the Council's Case Management Officer on the 04th of November 2022, she could only find documents entitled "Applicants Head of Arguments" from the Applicant's representative dated 17 October 2022. These documents served to supplement the Applicant's oral submissions on the Respondent's point *in limine*. No other documents were submitted to the Council. The other point *in limine* was raised by the Respondent and I will only rely on the oral submissions made in person at arbitration.

FIRST PRELIMINARY ISSUE: CLAIMS RELATED TO POPIA

5. This is a preliminary point raised by the Applicant party. Ms Ralawe, on behalf of the Applicant, alleged that the Respondent has contravened provisions of the Protection Of Personal Information Act (POPIA) in that they divulged personal information of the Applicant without consent. This personal information was in the form of personal records of the Applicant's illness included in the Respondent's bundle of documents.
6. The Respondent's representative responded that the Applicant's long leave application is included in the bundle as it has bearing on the matter before the Council. Moreover, these were documents submitted to the Respondent and can thus be used and no longer declared as personal.
7. The Applicant's representative responded that the documents are personal in nature and no written consent was sought. They therefore bear a confidentiality clause and should be disregarded in this arbitration.
8. The Respondent's representative maintained that it is the Department's prerogative to use such documentation.

SECOND PRELIMINARY ISSUE: ALLEGED LATENESS OF REFERRAL

9. This is a preliminary point raised by the Respondent. Mr Mvandaba stated that the Council lacks jurisdiction to deal with the matter due to lateness of referral. He specified that the referral was made on the 30th of May 2022 whereas it should have been referred before the 31st of March 2021. He stated that this was because the Applicant is challenging the failure to enter into a performance agreement from the 2018/2019, 2019/2020 and 2021/ 2022 financial years when in fact the Applicant has not been at work since 2021 financial year. He submitted that the referral is therefore one year late but there is no condonation application and to date there is no condonation ruling.



10. The Applicant party opposed the alleged lateness of the referral. The claim for 2018/ 2019 financial year was eliminated from the dispute as the Applicant was duly paid her bonus. It was denied that the Applicant has been away from work for more than a year. In opposing the claim, it was submitted that the referral is not late because the matter originated from a grievance lodged on the 15th of December 2020. The Respondent was accused of failing to deal with it and the matter was escalated to the MEC. Subsequently, a grievance meeting was held on the 22nd of October 2021. No outcome was issued from this meeting. The grievance was further escalated to the PSCBC whereby a ruling dated 25 April 2022 was issued. The ruling directed the Applicant to refer an unfair labour practice dispute to the GPSSBC. The referral was then made within the legislated 90 days on the 22nd of June 2022. Subsequent to the referral, the Respondent issued an outcome of the grievance on the 13th of July 2022. This was more than a year and a half after the grievance was lodged. The relevant documents were attached to these submissions. It was thus ardently argued that there is no need for a condonation application.

11. There was no reply from the Respondent's representative.

ANALYSIS OF SUBMISSIONS

12. On the claim related to POPIA, the Applicant has indeed submitted the medical certificates to the Respondent. These documents are said to be relevant for purposes of determining whether the Respondent committed an unfair labour practice or not. This is the nature of the dispute. The relevance thereof can therefore be properly determined when evidence is led at arbitration. However, the documents should continue to be handled in a confidential manner and should only be used for purposes of submitting facts and no speculation nor irrelevant disclosure of the Applicant's medical condition will be allowed.

13. On the alleged lateness of the referral, I find that the matter was duly referred to the Council within the prescribed 90 day period.

14. In the premise, I render rulings for both preliminary issues as follows:

RULING

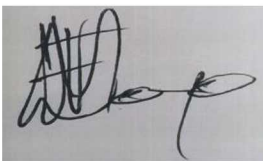
15. On the jurisdictional claim, I conclude that condonation application is unwarranted in this matter.



16. On the claim related to POPIA, I order that that only relevant documents will be accepted and such documents will be considered on merit at arbitration solely for purposes of determining the dispute. Unjustified reliance on the medical records will be disregarded and the information will be treated with the necessary sensitivity and confidentiality.

17. The GPSSBC case management office is directed to schedule the matter for arbitration.

Dated and signed on the 08th of November 2022.



Vusi Moyo
GPSSBC Commissioner