



GENERAL PUBLIC SERVICE
SECTOR BARGAINING COUNCIL

IN THE GENERAL PUBLIC SERVICE SECTOR BARGAINING COUNCIL

Case No GPBC936/2018

In the matter between

DEPARTMENT OF JUSTICE

Applicant

and

PSA obo NEMAVHOLA

Respondent

PANELIST: D P Van Tonder

HEARD: HEARD ON THE PAPERS

DELIVERED: 14 December 2019

RULING

INTRODUCTION

- [1] At the request of the General Secretary of the GPSSBC, I decided this matter on the papers.

BACKGROUND

- [2] On 24 September 2018 another panellist of this council made an arbitration award against applicant in favour of respondent. It is common cause that the award was made following a formal arbitration hearing on 10 September 2018, and that applicant was not present at this hearing.
- [3] The award was sent to the parties by the council during September 2018. A year later on 10 September 2019 applicant applied for rescission of this award. Respondent is opposing the rescission application. It is this application that I am required to determine. Respondent amongst others submits that the rescission application has been made late. It is common cause that applicant has not applied for condonation.

EVALUATION

- [4] The first point to made about the rescission application is that it is defective. Rule 30(1) read with rule 30(4) clearly provides that a rescission application must be supported by an affidavit. The application is not supported by an affidavit. It is supported only by a statement. No application was made to dispense with the provisions of rule 30. Although a panelist may in principle dispense with the rules and decide an application in any manner he deems fit, reasons must be provided why the rules must be dispensed with. The rules are there for a reason and parties cannot at their own discretion simply ignore these rules without providing reasons why the rules cannot be complied with. For this reason alone the application cannot be considered. However, since I have read the papers, I will give directions for the further conduct of the matter so as to ensure that no further time is wasted.
- [5] A rescission application must be made within 14 days after a party becomes aware of the ruling or award. ¹ Applicant claims that it received the award from the council on 11 July 2019. This means that on applicant's own version, rescission must have been applied for by not later than 25 July 2019, failing which condonation had to be applied for.

¹ Rule 31

- [6] Since applicant has not applied for condonation and since rescission was only applied for in September 2019, I have no jurisdiction to consider the rescission application. However, I am satisfied that it would serve no purpose for applicant to apply for condonation only from 25 July 2019, because my finding is that it was aware of the arbitration award long before July 2019.
- [7] Applicant claims that it did not receive the award in September 2018 because it was emailed by the council to the wrong email address. Applicant states that the award should have been emailed to SetLedwaba@justice.gov.za whereas it was emailed to setledwaba@justice.gov.za. The only difference between the two is that the letters “S” and “L” in the one are in capital letters whereas in the other they are not. I have never heard of email addresses being case sensitive. In order for applicant to persuade this council to accept that using small letters “S” and “L” instead of capital letters will have the effect that the email is not delivered to the correct email address, applicant will have to present an affidavit of an IT expert. However, for the following reasons, this is neither here nor there and will take the matter no further.

- [8] Respondent states that it too emailed the award to applicant on 26 October 2018 at two email addresses namely to setledwaba@justice.gov.za and to the email address of Ms Chauke who was initially responsible for this matter at ochauke@justice.gov.za.
- [9] More importantly, respondent states that thereafter Mr Ledwaba met with the union about this matter on 1 November 2018 where the implementation of the award was discussed. Respondent further states that applicant already implemented the first part of the award already in December 2018. The only part of the award that is not implemented is the monetary part. Only after respondent applied for a writ of execution was the rescission application made.
- [10] There is not evidence before me to dispute the version of respondent that Mr Ledwaba met with respondent already during November 2018 to discuss the implementation of the award, and that thereafter applicant did in fact implement certain parts of the award. I accept respondent's version in this regard. In the circumstances, it cannot be the truth that applicant only became aware of the award during July 2019. It was clearly aware of the award already during 2018.

ORDER

Accordingly, I make to following order:

1. The rescission application is defective because it is not supported by an affidavit.
2. The GPSSBC has no jurisdiction to consider the rescission application, unless and until condonation is applied for and granted.
3. The version of applicant that it only became aware of the award during July 2019 is rejected.
4. Should applicant want to pursue to the rescission application it is directed to file a new application, supported by **affidavit** in which it must apply for condonation. Seeing that I have rejected the version that applicant only became aware of the award during 2019, applicant will have to apply for condonation for the entire period of the delay since 2018.
- 5 There is no order as to costs.



D P Van Tonder
Part Time Panellist: GPSSBC