

**IN THE GENERAL PUBLIC SERVICE SECTORAL BARGAINING COUNCIL HELD
AT CENTURION**

Case No GPBC2521/2018

In the matter between

PSA obo WS MOCHE

Applicant

AND

NORTH WEST DEPARTMENT OF EDUCATION

Respondent

JURISDICTIONAL RULING

DETAILS OF THE HEARING AND REPRESENTATION

1. This matter was set down for Arbitration on 17 February 2020 at GPSSBC Boardroom, 260 Basden Avenue, Lyttleton, Centurion, Gauteng Province at 09h00AM. Both parties were present during the hearing. The applicant, **Moche WS** was represented by Joes Ntwampe from Public Servants Association of South Africa (PSA), whilst the respondent, **North West Department of Education** was represented by Boitumelo Phuswane, its employee. The matter was decided on the papers of records.

BACKGROUND TO THE ISSUE IN DISPUTE

2. The nature of the dispute is an unfair labour practice related to benefits.

PRELIMINARY ISSUES

3. The matter was scheduled for Arbitration process on 17 February 2020. At the commencement of the arbitration hearing, the respondent raised a jurisdictional

issue (*point in limine*) thereby challenging that the Council does not have jurisdiction to hear the matter, because the applicant did not comply with Section 191 (1) of the Labour Relations Act No. 66 of 1995 as amended. The respondent submitted that the applicant's dispute in relation to the non-compliance with the PMDS policy which resulted in the non-payment of pay progression benefits in respect of 2013/2014 and 2015/2016 PMDS cycles. It was the submission of the respondent that, the applicant became aware of the non-payment of pay progression around February 2015. The formal grievance was lodged by the applicant on 24 October 2017. The dispute was referred to the Council in November 2018.

4. The applicant submitted that he referred the dispute to the council on 21 November 2018, after becoming aware of it since February 2015. It was the submission of the applicant that, he kept on making follow ups about the outstanding payment of pay progression (2013/2014 and 2015/2016) since February 2015. The applicant was informed about the missing of his 2013/2014 and 2015/2016 performance assessments in October 2018.

ANALYSIS

5. The respondent submitted that the Council lacks jurisdiction to arbitrate this matter, because the applicant referred the dispute outside 90 days period.
6. The applicant on the other hand submitted that he felt the Council has jurisdiction to arbitrate the matter, because the dispute was referred to the Council within the prescribed time period of 90 days. The applicant also submitted that the dispute was ongoing and not a once off event, therefore there was no need for the application for condonation.
7. It is trite law that Section 191 (1) (b) (ii) provides that a dispute about unfair labour practice must be referred to the Council within 90 days of the date of act or omission that constitute the alleged unfair labour practice. However, Section 191 (2) of the same Act, provides that, on good cause shown the Council may permit the referral of the dispute after the expiry of the 90 days' time period. The

dispute is relating to the non-payment of pay progression in respect of two PMDS cycles, 2013/2014 and 2015/2016. However, it was not clear from both the parties whether the payments of the pay progression for the two cycles were made at the same time or not. I am raising this point, because both parties did not explain about 2014/2015 PMDS cycle. The applicant should have clearly explained to me why he feel the Council has jurisdiction to arbitrate the matter. According to my understanding, the applicant is dealing with the non-payment of pay progression in respect of the two cycles in one dispute, but he did not indicate to me whether the two cycles were implemented at the same time. It is also my belief that performance assessment in the Public Service is done as per assessment cycle, which starts from 01 April to 31 March of the following year. Therefore, dispute related to PMDS could not be ongoing.

8. It is therefore, my finding that the applicant's referral was out of 90 days' time period and as such application for condonation would need to be made before the Council assume jurisdiction.

RULING

9. The point *In Limine* raised by the respondent, North West Department of Education is upheld.
10. The Council (GPSSBC) does not have jurisdiction to arbitrate the matter.
11. The applicant should apply for condonation for the late referral of the dispute.



Victor Madula
Panelist

