

JURISDICTIONAL RULING



Case Number: **GPBC1614/2019**

Commissioner: **Mavhungu Musiwalo Seth**

Date of Ruling: **28 February 2020**

In the **ARBITRATION** between

PSA obo OM Lefifi

(Applicant)

And

Department of Performance Monitoring and Evaluation

(Respondent)

Applicant's representative: **Mr. J Ntwampe**

Address:

Telephone:

Telefax:

E-mail:

Respondent's representative: **Ms. K Bambo**

Address:

Telephone: **012 432 4800**

Telefax:

E-mail:

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DETAILS OF HEARING AND REPRESENTATION

1. The matter was set down for arbitration on 22 January 2020 in the GPSSBC Boardroom, 260 Basden Avenue Lyttleton, Centurion.
2. The Respondent was represented by Ms K Bambo and the Applicant was represented by Mr. J Ntwampe a union official from PSA.

ISSUES TO BE DECIDED

3. I must first decide whether or not the GPSSBC has jurisdiction to arbitrate the dispute referred by the applicant.

PRELIMINARY ISSUES

4. At the commencement of arbitration, it became apparent that the jurisdictional issue had to be determined first before the GPSSBC could assume powers to arbitrate the dispute as referred. The employer representative raised an issue and indicated that the matter raised by the applicant does not fall within unfair labour practice dispute as provided in terms of section 186 (2) of the Labour Relations Act 66 of 1995 and that GPSSBC lacks jurisdiction to entertain the matter.

SUBMISSIONS BY PARTIES

5. I am required to issue a ruling with brief reasons. I do not wish to offer an exhaustive survey of all the submissions made by the parties. I have had regard to everything presented to me, and what follows is a brief summary of the evidence relevant to my findings only.

THE RESPONDENT'S SUBMISSION

6. The Respondent submitted that the conduct or omission alleged by the applicant is not unfair labour practice in terms of section 186 (2) of the Labour Relations Act 66 of 1995.

7. In terms of the dispute the applicant alleged that the respondent has delayed to finalize the administration/conclude the cell phone deal with the service provider in terms of the cell phone policy of the Department.
8. Reference was made to the case of **SAPU obo Louw and others, South African Police Service**, wherein it was held that the “benefit” constitutes a material benefit such as pensions, medical aid, housing subsidies, insurance, social security or membership of a club or society.
9. It was submitted that the applicant did not suffer any prejudice due to the Departmental action or omission. The Respondent further submitted that the council does not have the requisite jurisdiction to deal with the dispute.

THE APPLICANTS’S SUBMISSION

10. The applicants submitted that the respondent failed to act timeously to process the renewal of cell phone contract which resulted in the applicant having to be charged additional amount of R2 586, 91.
11. It was submitted that the term “unfair” in the legislation implies a failure to meet an objective standard and may be taken to include arbitrary, capricious or inconsistent conduct, whether negligent or intentional. Reference was made to the case of **APOLLO Tyres SA (Pty) Ltd v CCMA & others (2013) 34 ILJ 1120 (LAC)**, the court found that the better approach to interpret the term “benefit” is to include a right or an entitlement to which an employee is entitled (ex contractu or ex lege) including some rights judicially created as well as an advantage or privilege which has been offered or granted to the employee in terms of policy or practice or subject to the employers discretion.
12. They further submitted that the applicant’s claim is a benefit as prescribed by section 186 (2) (a) of the LRA since such privilege has been offered or granted to the applicant in terms of the respondent policy as attached at Annexure B.

ANALYSIS OF ARGUMENTS

13. In terms of section 186 (2) (a) of the Labour Relations Act: unfair labour practice means any unfair act or omission that arises between an employer and an employee involving, unfair conduct by the employer relating to the promotion, demotion, probation (excluding disputes about dismissal for a reason relating to

probation) or training of an employee or relating to the provision of benefits to an employee.

14. A benefit can be defined to mean existing advantages or privileges to which an employee is entitled ex contractu or ex lege or granted in terms of a policy or practice subject to the employer's discretion.
 - On authority of the **Apollo Tyres case**, the Labour Appeal Court has held the definition of benefit to, as contemplated in section 186(2) (a) of the LRA was not confined to rights arising ex contractu or ex lege, but included rights judicially created as well as advantage or privileges employees have been offered or granted in terms of a policy or practice subject to the employer's discretion and that in this instance the early retirement scheme constituted a benefit..
15. The respondent submitted that the policy that the applicant relied on as Attached **Annexure B** document was not effective during the term of the application of the cell phone renewal of the applicant. They further submitted that the policy which was effective at the time of the dispute is "policy on the provision of information and communication related to tools of trade effective date 1 October 2017.
16. The respondent indicated that the policy which the applicant referred to was effective in 2014 and not at the time of renewal of the contract of the applicant. The submission by the respondent to make reference as to which policy was effective during the time of the dispute confirms that indeed the respondent had a policy on cell phone allowance. The policy in place gives privileges to which employees are entitled or granted cell phone allowance in terms of it
14. In case where the employer has policy guiding on the provisions of the cell phone to the employees, the employees claim that the employer acted unfairly by not renewing the contract timeously will amount to unfair labour practice. The applicant in this case is claiming the renewal of his cell phone allowance timeously. In the case of **Apollo Tyres case**, the Labour Appeal Court has held the definition of benefit to include amongst others "rights judicially created as well as advantage or privileges employees have been offered or granted in terms of a policy or practice subject to the employer's discretion and that in this instance the early retirement scheme constituted a benefit".
15. It is on this basis that since the matter of the applicants is about the cell phone allowance and that the applicant alleges that the employer has acted unfairly by

not renewing her contract timeously. The arbitration would be the most appropriate platform to make a clear determination as to whether the respondent committed an act of unfair labour practice or not. The Council (GPSSBC) will have jurisdiction to entertain the matter.

RULING

16. The GPSSBC has jurisdiction to arbitrate the matter.

17. The matter must be set down for arbitration.

A handwritten signature in black ink, consisting of a large, stylized 'P' followed by several vertical and diagonal strokes, ending with a small comma.

GPSSBC Panelist

Date: **28 February 2020**