

IN THE GENERAL PUBLIC SERVICE SECTORAL BARGAINING COUNCIL (GPSSB)

In the matter between

PSA obo P MOTSWENI

APPLICANT

And

DEPARTMENT OF PUBLIC SERVICE & ADMINISTRATION

RESPONDENT

Case NO: GPBC2537/2018

ARBITRATION WARD

DETAILS OF HEARING AND REPRESENTATION

This matter was scheduled for arbitration on 14 August 2019 at the Offices of the General Public Service Sectoral Bargaining Council, 260 Basden Avenue, Lyttleton in Centurion. Both parties were present. The matter relates to unfair labour practice benefits.

The employee party, Mr P Motsweni (hereinafter referred to as the Applicant), was represented by his union representative of PSA Mr Ntwampe. The employer party, Department of Public Service and Administration (hereinafter referred to as the Respondent) was represented by its Labour Relations Officer Ms Rendani Marema.

The parties narrowed down the issues and agreed to send written heads of arguments since there was no need for oral testimony.

ISSUE TO BE DECIDED

Whether, in the circumstances detailed hereunder, the Respondent has committed an unfair labour practice as set out in section 186(2) of the Labour relations Act 66 of 1995 ('the LRA') by refusing to pay the Applicant his performance bonus.

BACKGROUND TO THE ISSUES

The Applicant Mr Motsweni is employed by the Respondent currently as a Security Administrator and has in its employ since 01 March 1994. The Respondent is the government department responsible for public service and administration in South Africa.

The Applicant was assessed by his supervisor and the Branch Moderating Committee and was awarded a score that qualifies him for category C bonus. The Departmental Moderating Committee reduced that score so that the Applicant, as a result, does not qualify. The Applicant was dissatisfied, lodged a grievance and finally referred the matter to Council for conciliation. The matter could not be resolved through conciliation and was referred to Council for arbitration.

The Applicant is seeks to be paid his performance bonus which according to the Respondent is R11 389,35. This amount is indicated by the Respondent in its submission and has not been disputed by the Applicant. The parties indicated that they had no points *in limine*.

COMMON CAUSE ISSUES

The parties agreed on the following as common cause issues:

- The Applicant was assessed for 2015/16 financial year and got a score of 119% which qualifies him for category C bonus,
- The Applicant was scored by his supervisor, confirmed by the Chief Director Assessment Panel and the Branch Validating Committee,
- The assessments then went to the Departmental Moderating Committee (DMC) which considered budgetary constraints amongst other things (eg quality assurance, scores, consistency, validating the whole departmental performance),
- The DMC reduced the percentage of the overall budget for the branches. This cascaded to the reduction of the individual scores.

ISSUES IN DISPUTE

- The DMC does not check individual scores but checks branch performance,
- The Respondent submits that they have powers indicated in the last common cause issues. The Applicant disputes such powers,
- The Applicant further submits that he was not consulted on the reduction of his ratings
- The Applicant disputes that budgetary constraints is an excuse to not pay the Applicant his bonus as the Respondent has a duty to budget.

ANALYSIS OF EVIDENCE AND ARGUMENTS

I am required to determine whether, in the circumstances detailed hereunder, the Respondent has committed an unfair labour practice as set out in section 186(2) of the Labour relations Act 66 of 1995 ('the LRA') by not paying the Applicant his performance bonus.

The onus to prove the facts on which an allegation of such an unfair labour practice falls on the Applicant. In this case the essence of the Applicant's dispute is that: he has qualified for category C bonus; the Respondent's DMC opted to reassess him and reduced his score so that he does not qualify; the Respondent has no power to reduce an individual's score or to reassess the individual; the policy requires that he be consulted prior to the reduction of the assessment rating score; the Respondent has failed to consult with the Applicant in breach of the policy; further, in terms of case law the Respondent has no power to refuse payment of bonuses to those who qualify.

On the other hand, the essence of the Respondent's case is that: in order to remain within the budgetary 1.5% threshold which they have exceeded, the DMC developed an objective criteria in paying performance bonuses; the DMC did not deal with the case of the Applicant individually; the criteria was such that those who were qualified for category B bonus were paid at category C bonus and those at category C were only given pay progression; the DMC has the power to come up with and apply such criteria; the DMC did not re-assess or reduce the individual scores of the Applicant; the policy speaks about giving feedback and not consulting the employees after finalisation of the process; the Applicant was notified of the outcome through a letter.

Having considered the submissions of the parties, the Respondent does not dispute that the Applicant qualified for category C bonus. The Respondent dispute that the DMC has reduced the scores of the Applicant but that it came with a criteria that led those who qualified for category C bonus to not be granted any bonus but only pay progression. It is clear that the decision of the Respondent amounts to refusal to award category C performance bonuses to qualifying employees.

In *PSA obo L. Matlakala v DG of the Presidency of South Africa*, it was held that “*the excuse for non-payment of bonuses due to lack of funds is unsustainable. It was further stated that according to the policy framework of the Employer, it is evident that in this regard the policy maker did anticipate the situation where there could be shortage of funds. The policy framework provides a clear approach to be adopted by the Employer should such a situation arise. The approach does not include refusal to pay bonuses to those who qualified on the basis of lack of funds. The Employer's powers in the event of lack of funds is limited to having to scale down whatever the amount was about to be paid to those who qualified or tightening the criteria for qualifying to receiving the bonus*”.

Clause 9.5 of the Employee Performance Management Development System (EPMDS) states that “*should the budgeted 1.5% amount prove to be insufficient to award maximum percentage cash bonuses, the DMC may scale down the applicable percentages by allocating a lower percentage in the range of qualifying employees to ensure that the Department stays within the 1.5% limit. The percentage decided upon by the DMC should be applicable to all employees in the specific categories*”. The Respondent is not given powers to refuse to pay bonus to qualifying employees. By refusing to pay the qualifying employee his performance bonus, the Respondent exercised powers it does not have.

From the circumstances detailed above, I find that the Respondent has committed an unfair labour practice as set out in section 186(2) of the Labour relations Act 66 of 1995 (‘the LRA’) by not paying the Applicant his performance bonus.

AWARD

1. The Respondent is ordered to pay the Applicant his category C performance bonus of R11 389,35 as calculated by the Respondent.
2. The Respondent must pay the amount in clause 1.above on or before the 28 February 2020.
3. I make no order as to costs.



MARTIN SAMBO
PANELLIST
24 January 2020