

**Council Name**

# **ARBITRATION AWARD**

Panellist/s: Seretse Masete  
Case No.: GPBC 859/2018  
Date of Award: 30/01/2020

**In the ARBITRATION between:**

**PSA obo BARENG LETSAPA**

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(Union / Applicant)

and

**GAUTENG DEPARTMENT OF ECONOMIC DEVELOPMENT**

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(Respondent)

**Union/Applicant's representative:** MP Thotobolo  
Union/Applicant's address: 28 Mele Nzuza house Braamfontein  
Telephone: 011 718 5400  
Cell: 0741779167

**Respondent's representative:** Labour relations officer: Peter Mati  
Respondent's address:  
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## Particulars of proceedings and representation

1. The matter was held on 30 November 2019 at GPSSBC Lyttelton offices in Centurion Gauteng Province.
2. The applicant, Bareng Letsapa (**employee**) was represented by **Paul Thotobolo of PSA** and the respondent, **Department of Economic Development (employer)**, was represented by its Labour Relations officer **Peter Matli**.
3. The proceedings were in English and digitally recorded.

## Issues to be decided

4. I have to decide whether or not the conduct of the respondent by not renewing the contract of the employee constituted an unfair labour practice.
5. I must determine the appropriate relief, if I find that the conduct of the respondent constituted an unfair labour practice pertaining to failure to renew a contract.

## Background to the dispute

6. The **employee** was employed on contract since 11 March 2013 which was renewed twice and the 3<sup>rd</sup> one was a three-year contract. He was earning R355059-00 at the time of the dispute.
7. He received a letter on 6 March 2018 indicating that his contract has terminated on the same date of the 6<sup>th</sup> of March 2018 but he worked up to 14 May 2018.
8. H challenged the conduct of the employer for not renewing his contract for the third time and sought it to be renewed or paid compensation.
9. The employer rejected the allegations citing that there was no promise to renew his contract for extra three years and there was no mandate to pay the employee any compensation.
10. The employee testified on his and submitted one bundle of documents marked **Bundle A** and the employer called one witness and submitted one bundle of documents marked **bundle B**.

## Survey of evidence and arguments

### The Employees' version

The employee, Bareng Letsapa, testified under oath as follows:

11. There was an expectation that his contract would be renewed and that was created by the employer and it not do so. He has been with the Department for a period of five years on a renewal contract. He was a liquor inspector reporting to the Chief Director. The requirement of that position was initially not stated. He was interviewed for the position and was successful. The first contract started in March 2013 and ended in March 2014 and it was again renewed. Ms Sithole told him the 2013 contract would be renewed. He had a lot of discussion with Mr Martin just before 6 March 2018 who told him he was discussing the matter with other senior officials. He was not sure Mr Martin had powers to renew his contract. The project he was contracted to is still proceeding. He received a notice of termination on 6 March 2018 as seen on **page 11 of Bundle A**.
12. He was surprised and shocked as he had the expectation as it was renewed before, he discussed it with the Chief Director and the duties of the project was still available. He was not aware that he did not meet the requirement as his contract was renewed twice. Apart from his qualification, he was good in IT and used to assist the employer on IT related matters. He did not remember how often he got bonuses. He was currently unemployed but doing piece jobs. He was struggling to make ends meet as he has dependents and it is difficult to find a job these days. He prayed for the contract to be renewed for three years or be paid for three years. By the time of the termination they were only two and he was the only one who was not absorbed. He heard that another person was employed as an inspector after his termination.
13. He worked from 2013 to 2014, 2014 to 2015 and 2015 to 2018, the last one was for 3 years and it was the one which was not renewed. His expectation was that he had a contract already and that he had a discussion with Mr Martin. It was put to him that all contracts are generated at HR, and the people he spoke to, were unauthorised people to renew the contract. He did not have any comment. It was further put to him that the Department outsourced the job and the service provider employed him, he denied that. He signed the contract knowing it was going to end, but refused to sign the termination letter on 6 March 2018 because he thought it was going to be renewed. **Page 1 on bundle B** was an advert which required a candidate with a legal knowledge. He did not apply for the position but did not remember why he did not. He

might have not seen the advert and he was busy looking for a job. It was put to him that there was a job evaluation conducted and the job of an inspector needed a law degree and most of those appointed have a law degree. He denied that version citing that there was somebody there working as an inspector but he did not have a law degree but he did not remember who the person was. It was further put to him that there was never any absorption, people applied for the posts and they were taken.

14. He was not aware that Sithole and Martin did not have a mandate to renew the contracts, he did not know where the contract came from. He was not aware that the job required an LLB, he only saw it on the advert. He was interviewed by the GDED.

### **The employer's evidence and arguments**

#### **The witness of the employer, Mr Siphiwe Nhlapo , testified under oath as follows:**

15. He was employed as an assistant director recruitment and selection where he advises management and identify posts. He knew Mr Letsapa and did not have any personal vendetta against the employee. He knew him from 2013 when a number of people about 15 came through Khalvest which was an outside company. The Department outsourced the inspector jobs due to lack of capacity by the Department. There were inspectors but it was not coping. Identifying a post include a lot of things which include the HoD, DPSA and Treasury. The Department took Khalvest employees and interviewed them, then three of them were taken. The positions were advertised and interviews took place. The job of inspectors, needed a legal qualification as seen on page one of **bundle B**. The requirements of the post were designed by the job evaluation section. The adverts were in 2017 and 2018 and it would continue because some inspectors exit the system. Mr Letsapa and Aaron were not shortlisted. Aaron was appointed in a different post. The person who is claimed not to have a legal qualification, (Kgomotso) is **not working as an inspector but works in a client services section**. Inspectors' duties include checking policies and legislations to ensure compliance. **He did not have an idea about the employee working even after the 6<sup>th</sup> of March 2018.**
16. During the contractual employment, there was no job requirement at that time. When the employer is still building capacity, it could bring in any contracts while still busy. In 2013 there was actually no requirements but people were just interviewed as the Department wanted capacity. He did not prepare the document on page 11. He did not know anything about the discussion between the employee, Martin and Sithole. He would not know when to renew or not to renew the contract because that was not within his competency. Basically, it would be

**unfair to terminate the employee and let him work and then terminate again.** His believe was that when an employee get a contract, he would know when it should end. It was put to him that the letter on page 11 says a reminder but he was not informed before, he responded by saying but the employee knew about the ending date of the contract.

### **Analysis of the evidence and arguments**

17. **Section 138(7)(a)** of the **Act** requires me to issue an award with “brief reasons”. I therefore will only concentrate on the summary of the evidence relevant to my findings.
18. We have seen many cases where there was a believe that after a fixed term contract of employment is rolled over or renewed, an employee may develop a right to expect the employer to continue renewing the contract. This kind of dispute has been dealt with in the courts adjudicated by different judges. Different judges have ruled on the matter differently depending on the evidence led by the parties. There are so many judgements on this matter and what follows are only few of them. In **Malandoh v SABC, case no. J 700/08**, it was held that a contract of employment which was rolled over 8 times did not mean that there was an expectation to renew it further. The court further held that being promised a renewal of one’s contract by an unauthorised official, did not create an expectation to renew the contract. The employee in the current case, argued that there were two officials who promised to renew his contract and it was found that those officials were not authorised to do so. He further testified that his contract was renewed two times and these two reasons raised the legitimate expectation to renew his contract. Following the case of Malondoh above, these reasons by the employee fall away. In **Thiso & others v King Dalindyebo municipality (p437/03) [2005] ZALC47**, the court held that a contract which was rolled over four times created an expectation to renew it. In **Sactwu & others v Cadema Industries (Pty) Ltd, {2008} 8 BLLR 7990 (LC)**, it was held that a renewal of contract four, times created expectation to continue renewing it depending **on the availability of work**. Looking at the employee’s case, there was no evidence led to show that the work was still available. What was led before me, was that the work which was available was job evaluated and upgraded and therefore needed law qualification and the employee did not have one. Furthermore, people who are presently working in those upgraded posts, have applied, shortlisted and interviewed while the employee was not shortlisted. The employee argued that he did not know that the upgraded post needed a legal qualification, but when the employer’s witness mentioned that he applied but not shortlisted he did not challenge him.. In **Dierks v UNISA**, it was held that all circumstances like, **(a) agreements, (b)undertaking by the**

employer, (c) Practice, (d) Availability of work, (e) reasons for fixed term, (f) inconsistent conduct by the employer, (g) failure to issue out reasonable notice and (h) nature of the employer's business, must be taken into consideration when determining the dispute of expectation to renew a contract. These circumstances were echoed in **NUM obo Mpaki v CCMA and others JR 1983/2014 (2016)ZALCJHB 354**. In **University of Capetown v Auf der Heyde {2001}12BLLR 1316 (LAC)**, it was held that it must first be determined whether the employee actually expected the contract to be renewed and whether the expectation was reasonable.

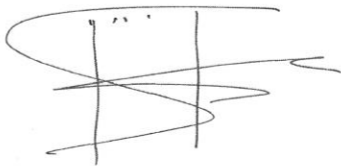
19. The question to deal with now, is did the employee expect his contract to be renewed or not. According to the employee, he expected it to be renewed because it was rolled over two times and that some senior officials discussed the matter with him with a view of renewing his contract. In terms of **University of Capetown** case above, the two reasons by the employee are not enough to raise an expectation for renewing his contract. These two reasons of the employee are therefore not reasonable.
20. The evidence led by the employer was that the posts of inspectors were upgraded due to a fact that they needed people who could interpret and implement legislations and or policies. The employee did not challenge the existence of the advert and the requirements, but denied that all people working as inspectors possessed law qualification. He argued that there was one employee who was retained but did not have a law qualification though he did not remember who that person was. The employer denied this allegation and added that the same person (Kgomotso) the employee was referring to, was not working as an inspector but in a client service section. Since it was the case of the employee to prove, I cannot accept his claim without any proof. The employee therefore failed to prove the inconsistency of the employer. I believe what was held in **Dierks v UNISA** and **NUM obo Mpaki v CCMA** cited above, that all circumstances surrounding the matter must be considered must also be applied in this matter.
  - a) The employee did not proof that there was an **agreement in terms of renewal**, no evidence was led to that effect.
  - b) the work of inspectors was not **available the available one needed a law qualification** which the employee did not have. The employee did not challenge that he applied and not shortlisted because he did not qualify
  - c) The employee did not proof that there was an **undertaking by the employer to renew** his contract, except to say some officials who were not even called to corroborate him, promised his contract to be renewed. It was discovered even through the employee's testimony that those officials did not have an authority to renew contracts of employees.

- d) The employer testified that **the purpose** of fixing the term was that it needed capacity at the time when it was still making evaluations and this could not be proved otherwise by the employee. The employee was actually recruited from Khalvest and given a fixed term contract because by then the employer did not have capacity and legal qualification was not a requirement since the post was not evaluated as yet, this version was not proven otherwise by the employee.
- e) The employee did not proof any **inconsistent conduct** by the employer, there was no evidence of the case he mentioned, that there was one person working as an inspector but did not have a law qualification. The same person's name was said to be Kgomotso by the employer's witness. And it was testified by the employer's witness that Kgomotso was working in the client services, this was not proven otherwise by the employee.
- f) The employer testified that the business **deals with liquor where legislations and policies** are involved and therefore needed people with law qualification, there was no contrary evidence by the employee on this version except to say the post did not require legal qualification initially.
- g) **Failure to give reasonable notice.** The contract was a fixed term contract. Every time it was renewed, the employee knew the end date thereof. The contract in dispute was ending on 6 March 2018 and the employee was reminded when that date arrived. There is no obligation by the employer to give a notice to terminate a fixed term contract because the employee was working knowing the last day of his contract. In his testimony, the employee never mentioned whether he was told to continue working after the 6<sup>th</sup> of March 2018 or not. He testified that he continued working until the 14<sup>th</sup> of March 2018, but he never indicated who told him to continue working. The employer's witness testified that he did not know anything about the employee working two months after his contract was terminated on the 6<sup>th</sup> of March 2018. No one corroborated or denied this version of working after the contract had terminated.
- h) Looking at the pattern and the length of the contract, it was a one year renewed once, and a three year which was not renewed. My finding is that the employee's contract was fixed with the start and the end date and it terminated on the 6<sup>th</sup> of March 2018. The employee was reminded of the termination. The employee's contract was then tacitly renewed on a month to month basis where the employee worked for two months. There was no evidence led during the arbitration as to how the employee was told to stop working on the 14<sup>th</sup> of May 2018. Since there was no written contract (tacit agreement) to work until the 14<sup>th</sup> of May 2020 after the termination, and it was not clear whether the employee just left on his own or not, I

conclude that the employee was not given a notice to terminate the tacit extension of his contract by two months. The employer's witness testified that he did not know anything about the employee working even after the termination of his contract and he felt that if the employee did work, it would be unfair to him. Because the termination of the tacit agreement for the extended two months was not done properly, the employee should be compensated. The manner in which the termination of the employee's tacit agreement happened, was not fair. For this reason, the employer is not completely innocent and must pay compensation equivalent to **two months' salary to the employee**. In granting this compensation, I considered that the employee, though he was doing some piece jobs was not having a decent job at the time of the hearing.

#### **Award**

21. The employer, **Gauteng Department of Economic Development did not create a legitimate expectation to renew the employee, Bareng Letsapa's contract of employment.**
22. The employer, however failed to properly handle the termination of the tacit agreement reached between the two parties, and **the employer is ordered to pay the employee an amount of R59 183 -17, which is equivalent to two (02) months' salary.**
23. The money must be paid to the employee on or before the **30<sup>th</sup> of April 2020** failing which **interests will accrue.**
24. No order as to cost.



Seretse Masete

Date 17/02/2020

**GPSSBC Panellist**