

FAX

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From :NelisiweM@CCMA.org.za

Subject:Fax1477579502481LiveGAU - For attention Barnabas Ramarumo Maluleka and 1 other (case GATW6833-15)

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To: Barnabas Ramarumo Maluleka and 1 other

Fax: 012 432-4848

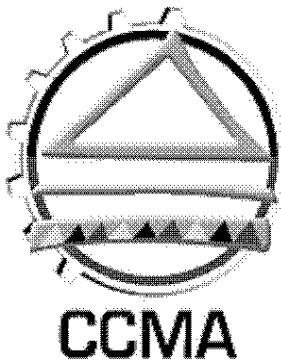
From: CCMA - Nelisiwe Agnes Mahlangu 0123177800 NelisiweM@CCMA.org.za

Sent: Thu 27-Oct-2016 16:45:02.481

Reference: Fax1477579502481LiveGAU

Attachments:

[1] Award



Arbitration Award

Case Number: **GATW6833-15**
Commissioner: **Stephens Shema Molapo**
Date of Award: **25th October 2016**

In the **ARBITRATION** between

Barnabas Ramarumon Maluleka and one other

(Union/Applicant)

and

Sita Pty Ltd

(Respondent)

Union/Employee: ***Mr L. Jensen***
Union/Applicant's address: ***PO Box 8801***
Pretoria
0001

Telephone: ***012 470 1592 / 012 432 4838***
Telefax: ***012 367 4929 / 012 4848 / 012 432 4849***
E-mail:

Employer's representative: ***Mr M. Ngcezulla***
Respondent's address: ***PO Box 26100***
Monument Park
0105

Telephone: ***012 482 3000 / 012 482 2633***
Telefax: ***012 367 5151 / 012 367 4761 / 012 367 4762 / 012 482 2100***
E-mail:

DETAILS OF HEARING AND REPRESENTATION

- [1] This matter was heard at the offices of the CCMA, 351 Francis Baard Street, Tshwane on the 06th October 2016 at 10h00. The applicant, Mr Barnabas Ramarumo Maluleka, was present and represented by Mr Lourens Jensen a trade union official from PSA. The second applicant, Ms Zanele Masisi, was absent and there was no valid explanation for her absence and as a consequence of that her application was dismissed. The respondent was represented by Mr Mangaliso Ngcezulla the Employment Relations Consultant for the respondent. The parties were also provided with an opportunity to make additional submissions not later than the 13th October 2016.
- [2] Two (2) sets of documents were submitted and they were marked as Bundle A & B.
- [3] The parties agreed that the matter should be decided based on the verbal and written submissions that were made.

BACKGROUND TO THE DISPUTE

- [4] The applicant was employed in April 2008 as a Project Administrator and was promoted to the position of Project Coordinator in 2013. Prior to his promotion he was earning a salary of R285 000.00 per annum and after the promotion, his salary was expected to be R338 239.00 per annum. However, the applicant's salary package was reduced to R308 598.12 per annum. The applicant asserted that the respondent had committed an unfair labour practice relating to promotion and as result of that he referred an alleged unfair labour practice dispute to the Commission and averred that the respondent should be ordered to pay him the difference between a salary package of R338 239.00 p.a which was the offer that he had accepted when he was promoted and the implemented salary package of R308 598.12 p.a. It is this alleged unfair labour practice dispute which is the subject of these arbitration proceedings.

ISSUE TO BE DECIDED

- [5] I must decide whether the respondent had committed an unfair labour practice. If so, then I must grant appropriate relief.

SURVEY OF EVIDENCE AND ARGUMENT

THE APPLICANT'S CASE

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[6] The applicant submitted that:

The respondent had advertised the post of a Project Coordinator on Job Level C5 at a salary range of R338 239.00 to R450 985.00. His application was successful and he was eventually appointed to the Project Coordinator position at a salary rate of R338 239.00 per annum with effect from the 01st May 2013. He further asserted that they (the applicant and the respondent) had signed the offer of employment which confirmed that indeed he was promoted to the position of Project Coordinator and that his new salary will be R338 239.00 with effect from the 01st May 2013. (See pages 21 to 24 of bundle A)

[7] The applicant also submitted that the respondent did not adjust the applicant's salary to be in line with the R388 239.00 p.a which was the correct remuneration for the position that he was promoted to. He asserted that the respondent had adjusted his salary to R308 598.12.00 p.a on the basis that the remuneration for the Project Coordinator position was incorrectly graded. He denied that the position was incorrectly graded and submitted that he was entitled to be paid at the rate which he had already accepted and signed.

[8] He asserted that the respondent had committed an unfair labour practice by not paying him the salary difference between the salary of R388 239.00 p.a and R308 598.00 p.a.

THE RESPONDENT'S CASE



[9] The respondent submitted that:

The position of the Project Co-ordinator position was advertised at C5 job level with a salary range of R338 239.00 – R450 985.00. The applicant had successfully applied for the aforesaid position and on the 18th April 2013 was offered the position and that he had accepted the offer and signed it to confirm that that he had accepted it. The respondent further averred that it was subsequently discovered that the position that was offered to the applicant was wrongly graded at C5 Job level with a salary range of R338 239.00 – R450 985.00 and asserted that the correct job level of the Project Co-ordinator position was C3 and ultimately offered the applicant an amount lower than the one reflected on the offer which was signed and accepted by the applicant.

ANALYSIS OF SUBMISSIONS AND ARGUMENT

[10] According to Section 186(2) of the LRA unfair labour practice means *“any unfair act or omission that arises between an employer and an employee involving –*

[a] unfair conduct by the employer relating to the promotion, demotion, probation..... or training of an employee or relating to the provision of benefits to an employee.

[b] The unfair suspension of an employee or any other unfair disciplinary action short of dismissal in respect of an employee.

[c] The failure or refusal by an employer to reinstate or re-employ a former employee in terms of any agreement, and

[d] an occupational detriment, other than dismissal, in contravention of the Protected Disclosures Act, 2000.....”

[11] It was common cause from the evidence that was adduced that the respondent had advertised a position of Project Co-ordinator at C5 job level and that the applicant had successfully applied for it. It was also common knowledge between the parties that the aforesaid position was advertised at the salary range of R388 239.00 – R450 985.00. Furthermore, the respondent agreed that the applicant was offered a salary of R338 239.00 p.a and that he had signed and accepted the aforesaid offer.

[12] It was also apparent from the submissions that were made that the applicant was in fact promoted to the position of the Project Co-ordinator and that the respondent paid him a salary of R308 598.00 p.a on the basis that the salary that was offered was incorrectly graded and that the correctly graded salary was paid to the applicant. On the other hand the applicant maintained that he was entitled to be paid at a salary rate which was advertised and that he had signed and accepted when it was offered to him.

[13] It is clear from the submissions that were made that the applicant had been promoted to the position of Project Co-ordinator and that the salary package of R338 239 .00 was agreed to by both parties and that it was associated with the promotion of the applicant. Accordingly I am not persuaded by the respondent's claim which proposed that the agreed salary package was on the basis of an incorrect grading because the respondent did not provide any credible evidence or documentation to show that indeed the grading was incorrect. Furthermore, the applicant was entitled to be paid R338 239.00 because the position was advertised at the aforesaid package and he was offered the said package and signed the offer to confirm that he had accepted the R338 239.00 which was in line with the promotion that he had applied for. In that regard, I am persuaded that the respondent had committed an unfair

labour practice by not paying the applicant at the salary package of R338 239.00 which was the salary associated with the applicant's promotion to the position of Project Co-ordinator.

- [14] Accordingly, I find on the balance of probabilities that the applicant was able to discharge the onus to show that the respondent had committed an unfair labour practice relation to promotion on the basis that the respondent did not pay him the salary that was related to his promotion.

AWARD

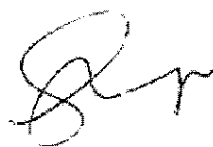
- [15] The respondent had committed an unfair labour practice relating to promotion. Accordingly the respondent is ordered to:

- [15.1] Pay the applicant, Barnabas Ramarumo Maluleka, the salary difference between the R338 239.00 and R308 598.00 = R29 641.00 X 3yrs (R88 923.00) and 5 months (R5928.20) = R94 851.20 and to retrospectively adjust the applicant's salary package to R338 239.00 with effect from the 01st May 2013. The respondent is also ordered to ensure that all the salary increment which were implemented from the 01st May 2013 are also paid to the applicant.

- [15.2] The respondent is ordered to pay the applicant, Mr Barnabas Ramarumo Maluleka the aforesaid money within a period of 45 days after receipt of this award.

- [16] The application for Ms Zanele Masisi is dismissed

- [17] There is no order as to costs.



Signature: _____

Commissioner: *Stephens Shema Molapo*

Sector: _____