



GENERAL PUBLIC SERVICE  
SECTOR BARGAINING COUNCIL



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## ARBITRATION AWARD

Panellist/s : **DOLLY MAHASHA**  
Case No : GPBC 1755/2022  
Date of Award : 15 February 2023

In the ARBITRATION between:

**PSA obo RP MOKOKA**

**APPLICANT**

**And**

**DEPT. OF MINERAL RESOURCES & ENERGY**

**RESPONDENT**

Union/Applicant's representative : **SOLOMON MOKOANE**

Respondent's representative : **JEFREY MATSIMELA**

## **ARBITRATION AWARD**

### **DETAILS OF HEARING AND REPRESENTATION:**

1. The Applicant, Patiance Mokoka, attended the hearing and was represented by Solomon Mokoane of PSA.
2. The Respondent was also in attendance and represented by Jeffrey Matsimela, Assistant Director Labour Relations.
3. Comprehensive bundles of documents were handed into the evidence and utilized during the arbitration hearing.
4. The proceedings was conducted in English and digitally recorded.

### **ISSUE TO BE DECIDED:**

5. Whether the Respondent committed an Unfair Labour Practice relating to benefits, and if so, the appropriate relief.

### **BACKGROUND TO THE ISSUE.**

6. The Applicant referred an unfair Labour Practice, relating to benefits dispute with the GPSSBC in terms of section 186(2) (a) of the Labour Relations Act 66 of 1995 ("the LRA") as amended.
7. The matter was not resolved at the conciliation stage, and was therefore referred for arbitration.
8. The matter was set down as an arbitration process on 30 January 2023 and parties were directed to submit their closing written arguments on 07 February 2023. Both parties complied as directed.

### **SURVEY OF EVIDENCE AND ARGUMENTS**

9. For the purpose of this award, I do not intend, to record the verbatim the evidence led, submission made and or the arguments raised on record. Only the prominent points raised by each party in their evidence that have a bearing on the issue in dispute to be decided, are recorded hereunder. I did however consider all the evidence that was presented.

### **APPLICANT'S CASE:**

**RAMADI PATIANCE MOKOKA**

10. She testified that she joined Department of Mineral Resources and Energy as Assistant Director: Labour Relations from 01 January 2010 until 31 August 2021, she then resigned when she got an offer at Department of Social Development as Deputy Director: Labour Relations.

11. She confirmed that she was not paid performance bonus for 2020/2021 financial year. On July 2022 she lodged grievance with the employer, around October 2022 she received a respond indicating that the Department is engaging National Treasury to pay the performance bonus and the process was at an advanced stage.

12. She was never informed of the reason why her performance bonus was not paid. Prior to lodging a grievance, she find out that she was not paid because she did not submit work plan for the financial year in question. She submitted proof to Performance section of the Work plan that was submitted and shows where the unit acknowledged receipt but they still refuse to accept it and indicated that she rather lodge a grievance, even at that stage they still refused to pay. She doesn't know the percentage she qualified for.

## **THE RESPONDENT CASE**

### **JEFFREY MATSIMELA**

13. DPSA and the National Treasury noticed that there is backlog regarding payments of performance bonuses for previous years. National treasury issued circular to all Accounting Officers, National Departments and provincial Departments to outline the budgetary process for the payment of performance bonuses to qualifying employees prior to 2021/2022.

14. The employer agreed that there was an error for not paying the performance bonus of the Applicant because later they discover that her Work plan was misplaced by Performance Management Unit. The Respondent violated the Performance and Management Policy.

## **ARGUMENTS**

The parties arguments were a repeat of evidence tendered during the arbitration proceedings. It is therefore not worth to record.

## **ANALYSIS OF EVIDENCE**

**15.** The Applicant referred an unfair labour practice dispute relating to benefits. Section 186(2) (a) of the LRA defines unfair labour practice, as “any unfair act or omission that arises between the employer and an employee involving unfair conduct by the employer relating to the promotion.....of an employee or relating to provision of benefits to an employee”.

**16.** It is trite that the onus is on the Applicant to prove unfair conduct on the part of the Respondent in relation to benefits.

**17.** The Applicant's case is based on the ground that she was not paid performance bonus for 2020/2021 financial year and never informed of the reason why her performance bonus was not paid. She lodged a grievance and prior to lodging a grievance; she finds out that she was not paid because she did not submit a work plan for the financial year in question. She submitted a proof to Performance section but they still refuse to accept it. She doesn't know the percentage she qualified for.

**18.** In the converse, the Respondent's case is that DPSA and the National Treasury noticed that there is backlog regarding payments of performance bonuses for previous years. National treasury issued circular to all Accounting Officers, National Departments and provincial Departments to outline the budgetary process for the payment of performance bonuses to qualifying employees prior to 2021/2022. There was an error for not paying the performance bonus of the Applicant because later they discover that her Work plan was misplaced by Performance Management Unit.

**19.** The employer did not dispute that the employee met the requirements to be afforded performance bonus. It appeared therefore that the only reason why the employee was not paid performance bonus was that the very same employer that was supposed to pay had misplaced her work plan.

**20.** It is trite that fairness should apply to both the employer and the employee. The question is whether the employer's failure to pay was fair. In my view, it was not. Reference was made by the employer to a circular that was issued by the National Treasury. There was no evidence by the employer as to how and why the circular had affected the payment that was due to the employee. Even if it had had such an effect, it would in my view, not apply retrospectively. Retrospective application thereof, would be contrary to the long standing principle of our law.

**21.** The employer had by laying out the criteria for employees to qualify for performance bonus, created a right to qualifying employees. Such a right cannot just be denied capriciously. The employer owed to the employee, a better and acceptable explanation for its conduct. It must also be said from the onset that parties were given an opportunity to make a written submissions about the quantum. The calculations were done as follows: Entry notch of salary level 10 during the 2020/2021 financial year = R470 040.00 x 1.20% (percentage for payment of performance bonus) = R 5640.48

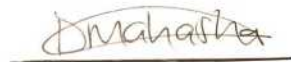
**22.** The employee had proved on a balance of probabilities that the employer committed unfair Labour practice and she is entitled to be paid performance bonus for the financial year, 2021/2022.

## AWARD

23. The Respondent is ordered to pay the Applicant a performance bonus to the amount of R5640.48

24. The Respondent is ordered to pay the amount referred to the above less statutory deductions, not later than 28 April 2023. The above amount was calculated as follows:

Entry notch of salary level 10 during the 2020/2021 financial year = R470 040.00 x 1.20% (percentage for payment of performance bonus) = R 5640.48



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**ADV. MAHASHA D.**  
**GPSSBC COMMISSIONER**