



GENERAL PUBLIC SERVICE SECTOR BARGAINING COUNCIL

Held in Nelspruit

Date 22 July 2023

CASE NO: GPBC860/2022

In the matter between

PSA obo TI Masinga and 5 Others

Applicant

And

Department of Higher Education and Training

Respondent

VARIATION RULING

DETAILS OF HEARING AND REPRESENTATION

- [1] This is a variation ruling issued in terms of section 144 of the Labour Relations Act of 1995.
- [2] This application was received on 8 June 2023 and the Respondent did not oppose the application to vary the award.

ISSUE TO BE DECIDED

- [3] I am called to decide whether the arbitration award dated 4 April 2023 should be varied or not.



VARIATION APPLICATION

- [4] Upon issuing of the arbitration award, the Applicants exercised their discretion to apply for the variation of the award upon seeing some discrepancies in the award that they seek corrections of those errors and/or omissions. In terms of section 144(a) of the LRA, the Commissioner is entitled to vary or rescind the award if there are valid reasons to do so and/or at the request of each party in dispute.
- [5] In her founding affidavit the Applicant's Representative Ms Pamela Letebele has given a brief outline of the reasons why this award must be varied. Of those reasons include the incorrect initials of the Fourth Applicant who is recorded as PA Mdaka whereas her correct initials are . Furthermore to that, the wording of "performance bonus" as the issue in dispute should read as "" since the dispute was about that not the bonus as the award reads.
- [6] The Applicant further put the table of the notches of the Applicants and the pay progression that they were supposed to receive since the financial year of 2019/2020 up until 2023 respectively. The Applicant contends that she has submitted this application to the Respondent, the Respondent has neither responded nor opposed the application therefore I regarded it as unopposed. The relief sought by the Applicants is that, over and above the one month's compensation, I should also award them with the back-pay for the monies lost during the period under review.

BACKGROUND TO THE DISPUTE

- [7] The dispute emanated from a dissatisfaction of the Applicants when the Respondent decided not to pay them the pay progression for the year 2019/2020 even though they believed to be

qualifying for the payment. The Applicants here below were omitted from payment of the pay progression for the year 2019/2020:



1. Ms TI Masinga - Senior Admin Clerk earning a basic salary of R16, 794. 75
2. Ms NP Mhaule– Senior Admin Clerk earning a basic salary of R16, 794. 75
3. Ms DP Mhaule– Senior Admin Clerk earning a basic salary of R16, 794. 75
4. Ms DP Mdaka – Senior Admin Clerk earning a basic salary of R16, 794. 75
5. Ms PA Mdaka - Senior Admin Clerk earning a basic salary of R16, 794. 95.
6. Ms MK Ingle - Cleaner earning a basic salary of R9, 623, 75

[8] Aggrieved by this decision, they followed internal grievance process where others were paid but the six Applicants were excluded from those payments. After not getting satisfaction from employer's response or reasons for excluding them from the payment they approached this Council for arbitration. The Applicants' relief sought is that they be paid monies due to them as it was never their fault their documents did not get in time to the relevant authorities deciding on payment of the bonuses.

SURVEY OF EVIDENCE AND ARGUMENTS

APPLICANTS' CASE

[9] The Applicant called their first witness Ms T. Masinga who testified under oath that she is an Admin Clerk in the Campus. She testified that when the time of completion of Performance Management and Development System policy, referred herein as PMDS, has arrived, their

Supervisor will call them in to do performance assessment and submit to central office for the submission to the Head Office. On 1st of April 2019 she signed her performance appraisal along with her colleague MSs DP Mhaule.

[10] On the 27th of June 2019 they were called by the then Supervisor Mr Sifiso Malinga informing them that there has been an error and their performance agreements has to be re-done. The signed the new documents and left them at Mr Malinga's office for submission.



- [11] After not getting their pay progression they declared a grievance to HR department. After this grievance certain colleagues were paid and they were left out. Upon enquiring they were given letters that are on pages 23-26 of Bundle A stating the reasons for non-payment of the bonuses. The letters were specific to the reasons for non-payment which consisted the late submission and the refusal of the amnesty requested by the college to the department. This amnesty was requested by the College to the Department to have employees pay progression paid as it is not their fault the submissions were late but that of the College. This request for amnesty was rejected by the Department this leading to non-payment of the pay progressions.
- [12] The Applicant further called a second witness Mr France la Grange. Mr La Grange testified under oath that he is the General Foreman responsible for general maintenance and buildings in the college. He testified that on the 18th of April 2019 he submitted PMDS documents to the Central Office to Mr Jabu Nkosi the then HR Manager. There were other forms that were sent for alterations but Mr Jabu Nkosi came to the college/campus after April submission with other forms.
- [13] Ms Elizabeth Sibiya was called as the third witness. She testified under oath that she works with Ms PR Mdaka and Ms PA Mdaka. Although she is not conversant about the date but she sat with them around May 2019 for performance appraisals. This was after the reminder from Mr Jabu Nkosi about the submission of the assessments as the deadline was looming. During cross examination it was rejected that she sat for her assessments in May 2019 because the date signed shows 15 July 2019 instead.
- [14] The fourth testimony was obtained from Ms Mavis Ingle, who testified under oath that she is the cleaner at Central Office. In 2019 Ms Busi Mdaka her then Supervisor called them with her colleague for the assessment. Since they are not conversant about the PMDS they relied on her explanation on what is happening, but she did confirm that they qualify for the bonus, she doesn't understand why she did not get paid.



RESPONDENT'S CASE

- [15] The Respondent led its evidence through witnesses and Mr Sifiso Malinga was called in. He testified under oath that he is the Assistant Director Labour Relations as of September 2022. In 2019 he was Assistant Director Human Resource Development responsible for performance management and general conditions of employment. He stated that according to PMDS which is the policy managing performance and payment of bonuses, employees must enter into an agreement before the financial year end of the department between 1st of April and 31st of May every year.
- [16] He testified that they receive PMDS documents through campus managers and sectional heads from all seven campuses of the college. This includes Performance Management Agreements, Workplan, Personal Development Plan and Job Description submitted all at once. Assessments are done in March and September for the final evaluation. He testified that at the time of assessments of First and Second Applicant, he was their supervisor. He confirmed to have signed the documents on the 30th of June 2019 which were a month late.¹
- [17] He further confirmed the knowledge of the motivational letter to the Department to have amnesty on the payment of pay progression that were submitted late². In this letter the Principal Mr E.M Mbuyane begged the department not to punish workers on the errors coming from the employer as they accept to be at fault, improper documentation that led to employee documents being sent back to the campus for re-assessment.
- [18] He further stated that the Department held a workshop to teach heads of departments and managers on PMDS. During cross-examination he confirmed that officials were not at fault but the institution was at fault hence the motivation. He also stated that the Department has rejected the amnesty request or motivation in a letter on page 84 of the Respondent Bundle.

¹ Page 55 of Bundle R

² Pages 14-20 of Bundle A



- [19] The second witness to take the podium was Ms Zinhle Gumbi. Ms Gumbi testified under oath that she is the Performance Management Specialist of the Respondent based in Pretoria. Her duties involve assisting of the colleges on issues pertaining to pay-progression and pay progression payment and qualification criteria.
- [20] She testified that after 12 (twelve) month cycle an employee will qualify for the pay-progression and/or performance bonus after all due diligence has been done. This includes all steps that are followed in assessing performance and the targets set which are checked twice per year. In the event of a dispute, it is the duty of Labour Relations to investigate the matter, once completed they inform their department to process payments, in this issue, they followed the same criteria in payments as per the advice of the Labour Relations.

ANALYSIS OF ARGUMENTS AND EVIDENCE

- [21] Section 186(2)(a) of the Labour Relations Act prohibits unfair labour practice against an employee on issues pertaining to benefits. Here I am expected to determine whether the reasons for the employer not to grant pay progression for the Applicants for the period 2019/2020 are fair or not. It is common cause that performance assessment documents were late and in terms of PMDS policy.
- [22] It is also common cause that the delay wasn't caused by the fault of the Applicants but due to errors that were caused by the people managing the process. It with this notion the motivation was done for those pay progressions be paid. This motivation is a clear admission of guilt by the Respondent in that, the reasons for those delays are not at Applicant's fault but due to system glitches and/or some technicalities in finalizing the assessments and submission.



- [23] Other than that there is no amnesty granted to the college for their request, I could not find any other compelling reason as to why this request cannot be granted. The college through its accounting officer which is the Principal made a plea that employees should not be punished for the fault that is not theirs but this was ignored. Instead, the Department decided to punish the Applicants who were not at fault and sparing the real culprits.
- [24] In my view, the Respondent's actions in this must be condemned with the content it deserves. The failures of their system can never be repaired or fixed at the expense of poor workers. It is my finding that the actions of the Respondent of not paying the employees' pay progression are malfeasant and must be condemned.
- [25] The Applicants complied with the PMDS policy but the college management failed to comply with the policy that they are tasked to execute, these are the people that should have been condemned not condemning the already condemned employees.
- [26] Dealing with the variation application by the Applicant, it is worth-noting that although the facts contained in the affidavit are reasonable and having a ground for the variation, the Applicants were offered enough chance to prepare and furnish such information to the Commissioner during arbitration proceedings which that did not happen although I have made aware of this. In making a decision, it was impossible for me make any order to adjust the notches of the Applicants without the information submitted after the award has been issued.
- [27] However; in pursuant of prevalence of justice I am inclined to consider this application and deal with it accordingly, also the fact that the Respondent is not opposed to this application I have no choice but to accept the contents of the affidavit as true and correct. It is therefore my view that the Respondent must be ordered to remunerate the Applicants according the salary notches listed here below; however, as for back-pay over and above the compensation awarded as per the Applicant's prayer, that would mean I am not correcting the wrongs happened but I am now enriching the Applicants.



[28] The Respondent had initially shown remorse on the mishap of non-payment of pay progression hence they pleaded with their principals for the amnesty in this regard trying to remedy the situation, it will be therefore brutal for me to award back-pay over and above the One month's salary as the compensation, in so saying, this request must fall

RULING

[35] In light of the above deliberations in make the following order:

1. The Respondent's actions of not paying the Applicants their pay progressions for the year 2019/2020 constitute unfair labour practice.
2. The Respondent is ordered to pay the Applicants the compensation amounting to **R93, 597. 50** with less statutory deductions (tax directive) equivalent to One (1) Month salary to each Applicant by no later than **Friday, the 28th of May 2023** divided as following:

- 1) **Ms TI Masinga - R16, 794. 75**
- 2) **Ms NP Mhaule–R16, 794. 75**
- 3) **Ms DP Mhaule–R16, 794. 75**
- 4) **Ms DP Mdaka –R16, 794. 75**
- 5) **Ms PA Mdaka - R16, 794. 95.**
- 6) **Ms MK Ingle - R9, 623, 75**

3. The Respondent is ordered to correct and adjust the salary notches of the Applicants effective from the **1st of July 2023** as follows:

- 1) **Ms TI Masinga – Two hundred and twenty-two thousand, eight hundred and twenty eight Rand per annum (R222, 828.00)**



- 2) **Ms NP Mhaule** – Two hundred and twenty five thousand, nine hundred and fifty seven Rand per annum (R225, 975.00)
- 3) **Ms DP Mhaule** - Two hundred and twenty five thousand, nine hundred and fifty seven Rand per annum (R225, 975.00)
- 4) **Ms DP Mdaka** – Two hundred and twenty five thousand, nine hundred and fifty seven Rand per annum (R225, 975.00)
- 5) **Ms PA Mdaka** - Two hundred and twenty five thousand, nine hundred and fifty seven Rand per annum (R225, 975.00)
- 6) **Ms MK Ingle** – One hundred and thirty five thousand, seven hundred and twenty nine Rand per annum (R135, 729. 00)

Sivuyile Tshingana



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GPSSBC Arbitrator