



IN THE GENERAL PUBLIC SERVICE SECTORAL BARGAINING COUNCIL

Held in JAN KEMPDORP

Commissioner: PHOLO, GMP (Dr)

Case No.: GPBC1650/2020

Date of Award: 28 August 2023

In the Dispute between:

PSA obo MOTLOGELWA

(Union/Applicant)

and

DEPARTMENT of TRANSPORT, SAFETY & LIASON

(Respondent)

Applicant's Representative: Ms REVELIN MOKWENA

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Respondent's Representative: Mr THEMBEKILE AARON

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PARTICULARS OF PROCEEDINGS AND REPRESENTATION

1. This is an arbitration award in the matter between Mr Motlogelwa (applicant) and the Department of Transport, Safety & Liaison (respondent). The matter was set down for an arbitration in terms of section 186(2)(a) of the Labour Relations Act, 66 of 1995. The arbitration was held at the offices of the respondent at Jan Kempdorp on the 15th of February 2023. The arbitration proceedings were electronically recorded, and the recordings are filed with the General Public Service Sector Bargaining Council (GPSSBC).
2. The applicant was represented by Ms Revelin Mokwena (PSA – FTSS) and the respondent was represented by Mr Thembekile Aaron who attended the first sitting (4 November 2022), and did not attend the second sitting (15 February 2023). The matter continued in the absentia of the respondent.
3. The applicant handed in one (1) set of documents.
4. At the end of the arbitration, the applicant party requested to submit the written closing arguments on the 21st of February 2023.

THE ISSUE IN DISPUTE

5. To determine whether the respondent committed an act of an unfair labour practice (benefits) in terms of section 186(2)(a) of the Labour Relations Act, 66 of 1995.

BACKGROUND TO THE DISPUTE

6. The applicant is employed as the “**Provincial Inspector**” (PI) by the department of transport, safety and liaison (DTSL), and he (applicant) is placed at Jan Kempdorp (Northern Cape).
7. The supervisor (Ms Shuping) assessed the performance of all other employees under her supervision at Jan Kempdorp depot but the applicant for the period 2019/2020 financial year.
8. The applicant was aggrieved and thus lodged an “**internal grievance procedure**” for in which it did not receive the joy of response from the respondent.
9. As the result, the applicant referred the dispute to the Council (GPSSBC) for conciliation and arbitration. The matter could not be resolved through the conciliation process. As such, the matter was scheduled an arbitration on the 4th of November 2022.



10. Given that there was a challenge of water availability in the area (Jan Kempdorp), the matter was then forced to be postponed to the later date (15th of February 2023).
11. On the 15th of February 2023, the applicant and his representative were in attendance and the respondent chose not to attend the precedence, no apology was tendered.
12. Given the non-attendance of the respondent, I then verified with the Council whether both parties were notified of the sitting of the 15th of February 2023, and I could confirm that both parties were notified on the 19th of December 2022.
13. Noting that parties were notified and that no apology was tendered, I continued with the arbitration inquiry.

SUMMARY OF EVIDENCE AND ARGUMENT

The applicant's evidence

Mr Diteko John Motlogelwa testified under oath that:

14. He is employed as the "**Provincial Inspector**" (PI) by the "Department of Transport, Safety and Liaison" (DTSL) and he is based at Jan Kempdorp (Northern Cape).
15. He was not assessed for the performance (EPMDS) like other employees in the depot for the period 2019/2020 financial year by the supervisor.
16. The normal practice for the performance assessment within the depot is that, the supervisor would arrange the one-to-one (face-to-face) assessment meetings with the subordinates. These meetings will be arranged and be conducted in terms of the "**EPMDS policy**" (Employee Performance Management and Development System). The two (supervisor and subordinate) will agree or disagree on a Provisional Assessment Rating (PAR) and then the supervisor will submit the same (PAR) to the EPMDS unit.
17. The performance assessment meetings between the supervisor and subordinates are initiated and arranged by the supervisor. As expected, the supervisor did arrange the one-to-one performance assessment meetings with all the employees within the depot (Jan Kempdorp) but she excluded him (applicant).



18. The failure by the supervisor to assess the applicant and/or the exclusion thereof, was not the first thing to happen to him (applicant). He was also isolated in one of the previous the performance assessment. As the result, the dispute was also referred to the Council (GPSSBC) for an arbitration and the award under reference GPBC1461/2018 was issued in his (applicant) favour.
19. The supervisor does not treat her employees (subordinates) the same manner, particularly with specific reference to the applicant. This conduct by the supervisor demoralizes his moral and performance.
20. The non-assessment of the applicant by the supervisor has a negative impact to him because he (applicant) is denied the opportunity for the “**notch increment**” and the “**grade progression**”. As the result, his **salary** and the **pension fund** remain stagnant.
21. Given the above paragraph, the intake (personnel) recruited after him (applicant) have already acquired the higher salary notch, as such, they are earning higher salary than him.
22. He felt aggrieved and then lodged an “**internal grievance procedure**” with the department against the supervisor, and the matter could not be resolved to his satisfaction.
23. He then referred the matter for conciliation before the Council, and when the matter could not be resolved, he filed for an arbitration which was set for the 4th of November 2022 and the 15th of February 2023 respectively.
24. He demands to be paid the one and half percent (1.5%) grade progression and to be compensated for the sufferings and pains which are caused by the ill-treatment of the supervisor.

ANALYSIS OF EVIDENCE AND ARGUMENTS

25. In line with paragraph 5 of this award, I am to determine whether the respondent acted fairly or unfairly in terms of section 186(2)(a) of the Labour Relations Act (66 of 1995). If I find the breach to section 186(2)(a) of the LRA, to determine the equitable sanction.



26. As the result, my analysis on the matter will be informed by the facts and merits presented in line with the policy of “**Employee Performance Management and Development System, 2018**” (the policy).
27. The word “**supervisor**” in this award is used in the context of the “**definition**” as provided by the EPMDS, 2018 to refer “**an official responsible for the allocation of work, monitoring of activities, discussing performance and development, and conducting quarterly performance reviews/assessment and annual performance appraisal of an employee**”., and this is merely stated to avoid the different interpretations to this award.
28. Therefore, in accordance as provided in the paragraph above, the supervisor was expected to:
- 25.1. allocate work to the applicant,
 - 25.2. monitor the work of the applicant,
 - 25.3. discuss the performance and the development of the applicant,
 - 25.4. conduct the quarterly performance reviews/assessment of the applicant, and to
 - 25.5. conduct the performance appraisal of an employee.
29. In line with paragraph above, the “**supervisor**” did not perform her duties as expected in terms of the functions as allocated to her by the “**EPMDS policy**”. Accordingly, the supervisor’s failure to perform her duties led to this dispute (unfair labour practice, benefits) in terms of section 186(2)(a) of the LRA. The non-compliance to the EPMDS policy by the supervisor constituted somewhat a serious dereliction of duty if not incompetence. As the result, the management of the depot under Ms Shuping (supervisor) needs an urgent consequent management as an intervention.
30. Accordingly, the purpose of the performance management and development system in terms of item 5.1 of the “**policy**” is aimed at “**aligning individual contribution to departmental objectives and ensuring that individuals uphold corporate core values. It provides for expectations to be defined and agreed in terms of roles and responsibilities (expected to do), skills (expected to have), and behaviours (expected to be). The overall aim is to develop the capacity of employees to meet and exceed expectations and to achieve their full potential to the benefit of themselves and the department**”.



31. In line with the above quoted paragraph, and in relations to the “**purpose**” of this policy, the “**supervisor**” cannot use the “**performance assessment**” as a tool to punish the applicant in order to settle their own personal scores by means of violating and/or abusing the “**policy**” or her “**position**”. By so doing, the supervisor compromises (a) her duties and responsibilities, (b) the intention of the policy, (c) the department, (d) the development of the applicant, and (e) the overall well-being of the applicant.
32. In terms of the “policy” the word “**performance**” refers to a “**process in which resources are used in an effective, efficient and productive way to produce results that satisfy requirements of time, quality and quantity, and which are the effect or outcome of the actions or behaviour of a performer in the work process**”. In line with the “**definition**” as quoted by the policy versus the conduct of the “**supervisor**” how will it be possible to “**effect or outcome of the actions or behaviour of a performer (in this case, the applicant) to be determined in his work process**” if the performance of the applicant is not periodically assessed.
33. Accordingly, item 12.1 of the “**policy**” outlined the roles and responsibilities of the “**supervisor**” step by step to conduct the “**performance assessment**” of an “employee” as follows:
- 29.1. to work jointly with the employee to **develop performance agreement**,
 - 29.2. to schedule and conduct **performance reviews** with employees and to **assess progress**,
 - 29.3. to schedule and conduct **mid-year reviews** and **annual assessment** of an employee,
 - 29.4. to **communicate** with an employee about performance for **feedback, coaching** and **mentoring**,
 - 29.5. to **identify unsatisfactory performance** at the earliest opportunity and to **develop an improvement plan**, and
 - 29.6 to **deal with the sub-standard performance** to **improve the morale** of employees.



34. In line with paragraph 29 above, it is shocking to learn that the “**supervisor**” does not comply with the intentions of the “**policy**” and this is known by the management but there is no consequent management taken into consideration to remedy the situation. Given that the same thing happens for the second time against the same employee, it is an indication that there is no intention to comply (deliberate act). This form of the “**don’t care attitude**” by the “**supervisor**” is bound to haunt the department if the non-compliance issue is not taken care off.
35. It is important to note that the “**policy**” declares in its item 13 as to what measures are needed to be taken against the non-compliance but seems nobody cares “**what a laissez faire management**”. Item 13 of the “**policy**” states that “**employees and supervisors who do not comply with the requirements of this policy, including non-compliance with the due dates for the submission of EPMDS documentation shall, automatically be disqualified from any possible performance-related incentives for the under review and may be subjected to a disciplinary action**”, I have taken note of the fact that the “**policy**” says that the “**employees and supervisors may be subject to a disciplinary action for non-compliance**”. The “**policy**” is not designed for the subordinates only but to all employees within the designated group. The performance management system in the hands of Ms Shuping as the supervisor at Jan Kempdorp is in shambles, and therefore, urgent attention is needed for the system to work. Her management of the system works against the intentions of the “**policy**” and the “**department**”.
36. I subscribe to the definition of a “**policy**” by **Ranney** (in Cloete et al, 2013) in that the policy refers to “**a declaration and implementation of intent**”. In this case, there is a total ignorance to what is “**declared**” by the “**policy**” and there is no attempt to implement the “**policy**” by the “**supervisor**”. Therefore, the question remains what is the meaning, purpose and why the use of EPMDS policy at Jan Kempdorp.
37. I have no doubt that the failure by the respondent to assess the performance of the applicant in accordance with the “**EPMDS policy**” constituted an unfair labour practice in terms of section 186(2)(a) of the LRA, and that compensation for the applicant’s impairment is necessary and appropriate.



38. In line with the arguments as presented above, the respondent is to pay the applicant the 1,5% pay progression, and the 6 months compensation for the atrocities caused by the supervisor.
39. I find it sacrosanct to mention that the conduct of the employer representative in this matter to be non-committal. In the first sitting of the arbitration on the 4th of November 2022, it took more than one and half (1½) hour to locate his whereabouts whereas he was informed on the 21st of September 2022 (43 days) prior to the arbitration sitting. After locating him, the arbitration process was forced to wait another two (2) hours for the employer representative to arrive. The arbitration precedence which was scheduled for 09:00 had to start at 12:30.
40. Similarly, on the second sitting on the 15th of February 2023, the arbitration precedence was delayed for two (2) hours trying to locate the employer representative and the efforts proved fruitless. It is worth noting that this time around, the parties were informed on the 19th of December 2022 (59 days) prior to the actual sitting of the arbitration but still the employer representative did not show up. I found no reason to postpone the matter. Surely, at a certain point the prejudices of the applicant had to be considered.

AWARD

I hereby order that:

41. The failure to assess the performance of the applicant by the respondent was unfair,
42. The applicant to be grade progressed to the next notch,
43. The applicant to be paid the compensation of R156 799.72 which is equal to 6 months gross salary.
44. The payment in terms of paragraph 43 above, be made subject to the applicable statutory deductions, and
45. The payment must be paid to the applicant on or before the 15th October 2023.



GENERAL PUBLIC SERVICE
SECTOR BARGAINING COUNCIL



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Dr GMP PHOLO

GPSSBC Commissioner

Signature: _____