



GENERAL PUBLIC SERVICE
SECTOR BARGAINING COUNCIL



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ARBITRATION AWARD

Panellist/s: THOMAS MAHASHA
Case No.: GPBC 2223/2018
Date of Award: 29 October 2020

In the ARBITRATION between:

(Union / Applicant)

PSA OBO K.C KHOROMBI

and

(Respondent)

DEPARTMENT OF WATER AND SANITATION

Union/Applicant's representative:

ARCHIE SIGUDLA (PSA)

Union/Applicant's address:

Telephone:

Telefax:

Respondent's representative: PRAVESH GAYAPARSAD

Respondent's address:

Telephone:

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DETAILS OF THE HEARING AND REPRESENTATION.

1. The Applicant attended the hearing and was represented by Archie Sigudla of PSA Union.
2. The Respondent was also in attendance and represented by Pravesh Gayaparsad. The proceedings were not digitally recorded. Parties agreed to submit written heads of arguments.

ISSUE TO BE DECIDED.

3. I am required to determine whether the respondent committed an unfair labour practice when it issued a final written warning to the applicant, and if so, an appropriate relief.

BACKGROUND TO THE ISSUE.

4. The Applicant, Konanani Christopher Khorombi, referred an unfair labour practice dispute in terms of section 186 (2) (a) of the Labour Relations Act 66 of 1995 ("the LRA") as amended.
5. The matter was set down for arbitration on 30 October 2019 at 09:00 AM, at Centurion, GPSSBC Offices. Parties agreed to submit written heads of arguments. The applicant submitted its written heads of arguments on 22 November 2019, a week after the agreed date. The respondent had to date, not submitted its heads of arguments. I therefore exercised my discretion, and proceeded to determine the dispute without the submissions of the respondent.
6. The Applicant seeks upliftment of the final written warning and compensation.

SURVEY OF EVIDENCE AND ARGUMENT.

APPLICANT'S CASE.

7. Archie Sigudla made submissions on behalf of the applicant as follows:-
8. The Applicant, was appointed by the respondent as Director: Institutional Management in the Gauteng Provincial Office. He was appointed as the acting CEO of the Vaal Proto-CMA and managed staff in Gauteng, Free State and Northern Cape. He was therefore managing the entire Vaal Water Management Area. In 2017, the Minister terminated the acting roles of the seven CEO's. Minister N.P Mokonyane extended the appointment of the applicant as a CEO to manage Proto-CMA in both the Free State and Northern Cape Provinces. It was during that time that Mr S Mthembu was transferred to Head Office. Mr Mthembu stopped the applicant from acting as a CEO.
9. Mr Mthembu instructed the applicant to develop the implementation plan to establish the Vaal CMA. Following the instruction, the applicant drafted three letters inviting participants to a meeting to discuss the implementation plan referred to above. In September 2018, the

applicant had a meeting with the staff members. When asked about the status of the CMA establishment process, he informed the staff members who attended the meeting that there was a new decision to establish one CMA in the entire country. Some of the answers were given by some senior staff members present during the meeting. On 08 October 2018, the applicant was charged for misleading the staff, misrepresenting the department on Vaal CMA establishment and insubordination for not adhering to instructions, and consequently, issued with a final written warning which was valid for six months without giving him the opportunity to be heard.

10. The respondent had no reason to issue the applicant with a final written warning because he performed tasks as mandated by the Minister.

RESPONDENT'S CASE.

11. The Respondent did not challenge the Applicant's submissions.

ANALYSIS OF EVIDENCE AND FINDINGS.

12. Section 186 (2) (b) of the LRA defines unfair labour practice, as "*any unfair act or omission that arises between the employer and an employee involving the unfair suspension of an employee or any other unfair disciplinary action short of dismissal in respect of an employee*".
13. The Applicant's case was that the Respondent committed an unfair labour practice when it unprocedurally and without substance, issued him with the final written warning. It is trite law that the employer has a right to discipline its employees. However, the law requires of the employer to act fairly in doing so. It was clear from the applicant's submissions that the applicant was not subjected to a formal disciplinary hearing before he could be issued with a final written warning. The final written warning was therefore, a form of instilling progressive discipline.
14. It was the applicant's unchallenged submission that there was no substance in issuing a final written warning because he was performing duties assigned to him. In the absence of any evidence to the contrary, I am convinced that it is inherently probable that the applicant was performing his duties when he clarified issues surrounding Pro CMA. My finding is that issuing of the final written warning to the applicant was substantively unfair.
15. The next issue of concern was whether the applicant was given an opportunity to present his side of the story, and if not, whether such an omission was unfair.
16. It is trite that the onus to establish the existence of unfair labour practice, lies with the Applicant.
17. It was submitted by the Applicant that he was issued with a final written warning on 08 October 2018 and that the warning was valid for six months. The warning effectively expired on 09 April 2019.
18. The next issue to be determined is whether the Applicant can be compensated. In terms of section 193(4) of the LRA, "*an arbitrator appointed in terms of this Act may determine any unfair labour practice dispute referred to the arbitrator, on terms that*

the arbitrator deems reasonable, which may include ordering reinstatement, re-employment or compensation. The applicant failed to prove grounds for entitlement to compensation. There was no evidence presented to prove the alleged humiliation suffered by the applicant. A mere allegation that he suffered humiliation is not enough.

19. I therefore find that the applicant is not entitled to any form of compensation

20. I find that the applicant has proved on a balance of probabilities that the respondent committed an unfair labour practice as envisaged by section 186 (2) (c) of the LRA.

AWARD.

21. I therefore make the following order:

21.1 The final written warning issued to the applicant is declared invalid.

21.2. The Respondent, Department of Water and Sanitation, is ordered to uplift the final written warning not later than 3 November 2020.



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MAHASHA TM
GPSSBC PANELIST