



GENERAL PUBLIC SERVICE
SECTOR BARGAINING COUNCIL

ARBITRATION AWARD

Panellist: SB Balkaran
Case No.: GPBC20/2018
Date of Award: 1 August 2019

In the ARBITRATION between:

PSA obo E Swart
(Union / Applicant)

And

Department of Education
(Respondent)

Union/Applicant's Representative:

Union/Applicant's address:

Telephone:

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Mr Perfect Zulu

Public Servants Association of South Africa

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Respondent's Representative:

Respondent's address:

Telephone:

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Mr Dexter N. Thwala

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DATE AND VENUE

1. This Arbitration was held on 3 May 2019 at the Department of Education, 288 Pietermaritz Street, Pietermaritzburg (Kwazulu-Natal). The Applicant (Mrs E Swart) was represented by Mr P. Zulu (PSA). The Respondent was represented by Mr D.N.Thwala (Assistant Director: Employee Relations) of the Department of Education (Pietermaritzburg).

ISSUE IN DISPUTE

2. This dispute deals with an unfair labour practice (benefits) in terms of section 186(2)(a) of the Labour Relations Act (66 of 1995).
 - 2.1. The Applicant used her private car to attend management meetings outside the Pietermaritzburg area and had not been reimbursed/paid from 2011 to 2015 financial years.
 - 2.2. The Respondent counters that the S & T allowance is not a benefit and therefore does not fall within the ambit of section 186(2)(a) of the LRA.
 - 2.3. The Respondent argued Condonation as the matter was submitted on 12 December 2017 for claims in respect of June 2011 to December 2014.

BACKGROUND TO THE DISPUTE

3. Mrs E Swart ("Swart") was employed by the Department of Education (DoE) as a Deputy Director ("DD") - Human Resource since October 2008. Her duties required her to travel to officially sanctioned MANCO meetings (Pmb/Durban/Sisonke) using her personal car/vehicle. In terms of the S&T Policy, she is entitled to be reimbursed on completion and submission of S&T claim forms, itinerary, and travel approved forms. Swart alleges that the documents were approved and certified by the Director (Mr LJM Mkhize), but her claims were not reimbursed from June 2011 to December 2014 for the amount of R86 011.00.

SURVEY OF SUBMISSIONS

4. The Applicant attended meetings arranged by the respondent. It is common cause that the Applicant did travel using her private car to attend official meetings but was not reimbursed for the following periods:
 - 4.1. **2011/2012** - It is common cause that the Respondent had not reimbursed her for the kilometres travelled for official meetings using her car [Applicant's Bundle page 1 to 10]. The Subsistence & Travelling Claim Forms were completed by the Applicant and were certified correct by her Supervisor Mkhize, LJM [Applicant's Bundle pages 11 to 19].
 - 4.2. **2012/2013** - The Applicant attended management meetings for this financial year [Applicant's Bundle pages 20 to 37]. The Subsistence & Travelling Claim Forms were certified correct by the Applicant's Supervisor Mkhize LJM [Applicant's Bundle pages 38 to 48].
 - 4.3. **2013/2014** - The Applicant attended management meetings for this financial year [Applicant's Bundle pages 48 to 58]. The Subsistence & Travelling Claim Forms were certified correct by the applicant's supervisor Mkhize LJM [Applicant's Bundle pages 59 to 70].
 - 4.4. **2014/2015** - The Applicant attended management meetings for this financial year [Applicant's Bundle pages 71 to 77]. The Subsistence & Travelling Claim Forms were certified correct by the applicant's supervisor Mkhize LJM [Applicant's Bundle pages 78 to 88].
5. The Applicant lodged a grievance with the Respondent. The Respondent failed to resolve the grievance and on 26 April 2017 the PSA (Union) requested a bilateral with the Respondent to resolve

inter alia the outstanding claim owed [Applicant's Bundle page 89]. On 28 April 2017 the Director: Labour Relations, Mr. Charles Ngcobo responded proposing a meeting with Director Sibiya to resolve the grievance [Applicant's Bundle page 90]. Constant communication ensued to secure the meeting between the Respondent and the PSA (8 June 2017 - 12 June 2017 - 15 June 2017 - 23 October 2018 - 02 November 2018) On 12 December 2017 lodged its referral with the GPSSBC [Applicant's Bundle page 96 to 103].

6. The Policy on Subsistence & Travelling Allowance which formally implemented by the Respondent as per Circular No. 17 of 2010 [Applicant's Bundle page 112], makes provision at paragraph (h) for Incidental Expenses Whilst On Official Journeys whereby an employee may claim for costs relating to the use of private vehicles for official journeys subject to the prescribed conditions [Applicant's Bundle page 108].
7. PSCBC Resolution 3 of 1999 gave effect to the aforementioned Policy on Subsistence & Travelling Allowance: The Resolution 3 of 1999 at paragraph XI:
 - 3.1. *"if an employee must use her or his private transport to carry out her or his duties, the employer may*
 - (a) *Provide allowance to cover reasonable actual costs and /or*
 - (b) *compensate the employee according to tariffs prescribed by the Department of Transport"*.
8. The total amount claimed by the Applicant is R 86, 011, 00 [See page 161], calculated as follows:

1 May 2011 – 29 February 2012 =	R 22 785.00	[see page 157]
1 March 2012 – 28 February 2013 =	R 38 353.00	[see page 158]
1 March 2013 – 28 February 2014 =	R 18 009.00	[see page 159]
1 March 2014 -28 February 2015 =	R 6 864.00	[see page 160]
9. The Applicant prays that he be paid the S&T allowance owed to her by the Respondent to the amount of R 86 011. 00

10. **CONDONATION**

11. The Applicant has shown good cause that the matter was ongoing and the Respondent had failed to deal with the interventions sought timeously.
12. The Applicant does not need to file any application for Condonation.

13. **ANALYSIS OF SUBMISSIONS AND ARGUMENTS**

14. The definition of unfair Labour Practice in terms of Section 186 "means any unfair act or omission by the employer relating to the promotion, demotion, probation or training of employee or relating to provision of benefits to the employee."
15. The Applicant was employed by the Respondent and instructed to attend official meetings outside Pietermaritzburg. She was required to use her private vehicle and all trips were authorised by her Supervisor and her subsequent claims for reimbursement were also approved by the same Supervisor.
16. In casu, the Respondent had signed a PSCBC Resolution 3 of 1999 with the Unions which gave effect to the Department's Policy on Subsistence Allowance and Incidental Expenses whilst on Official Journey, which reads as follows in paragraph 6.1(h):

"... the employer may claim for costs relating to the use of private motor vehicle for official journey subject to prescribed conditions".

17. What the Applicant sought was payment of an already existing benefit and not seeking to demand a benefit which she did not have in terms of the existing policies. The demand therefore is not based on the benefit that the Applicant ought to have but rather she is entitled to in terms of the existing Policy/Collective Agreement.
18. The Respondent sought to deny the payment of the approved claims on the grounds that it was a benefit the Applicant was seeking rather than that which the existing S&T policy conferred.

RULING

19. The Applicant does not need to file any application for Condonation.
20. The Respondent has perpetuated an unfair labour practice in denying payment for authorised travel undertaken by the Applicant for which valid claims were submitted for payment.
21. The Respondent is to pay the Applicant (Swart) a total amount of R86 011.00 within 30 days from receipt of this award.

Signed and dated in Durban on this 1 August 2019.



Sanjay Balkaran
Panellist