



ARBITRATION AWARD

Panellist/s: A S DORASAMY
Case No.: GPBC 1743/2018
Date of Award: 13 SEPTEMBER 2019

In the ARBITRATION between:

PSA O B O P GARANE

(Union / Applicant)

and

DEPARTMENT OF AGRICULTURE & ENVIRONMENT AFFAIRS

(Respondent)

Union/Applicant's representative: MR M MBANJWA
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1. DETAILS OF HEARING AND REPRESENTATION:

1. The arbitration proceedings commenced at 09H00 on the 1 August 2019 at the Department of Agriculture Boardroom in Umzimkhulu. Mr M Mbanjwa of the PSA represented the applicant Mr Phumezile Garane and Ms L C Madondo represented the respondent.

After discussing the matter the parties agreed and drafted a stated case with the submission dates as follows:

1. The applicant/employee will serve its Founding papers via e-mail in the WORD FORMAT on the Arbitrator, employer/ respondent on or before the **12 AUGUST 2019. SUBMITTED 20:08:2019.**
2. The respondent /employer will serve its answering papers via e-mail in the WORD FORMAT on the Arbitrator, employee/ applicant on or before the **19 AUGUST 2019. SUBMITTED 03:09:2019**
3. The applicant/employee will serve its replying papers via e-mail in the WORD FORMAT on the Arbitrator, employer/ respondent on or before the. **26 AUGUST 2019. SUBMITTED 06:09:2019.**

2. ISSUE TO BE DECIDED

Whether the respondent had perpetrated an act of unfair labour practice against the applicant in respect of him not being paid a cash bonus for his improved qualification. Should my decision favour the applicants I am to determine the appropriate relief.

3. BACKGROUND TO THE ISSUE

The applicant had obtained a Masters in Sustainable Agriculture degree but was not approved by the DPSA but there employees who were paid and he was denied a bursary. He prays to be paid the cash bonus for his improved qualification and that he be granted the bursary for the qualification and be reimbursed his costs.

The respondent opposes the application and prays that the matter be dismissed.

SURVEY OF EVIDENCE AND ARGUMENT

4. APPLICANTS'S SUBMISSION

1. The arbitration was held on the 1st August 2019 at the KZN Department of Agriculture premises in uMzimkhulu KZN under the auspices of the General Public Service Sectoral Bargaining Council (GPSSBC) in terms of Section 24(4), 24(5) of the Labour Relations Act, No. 66 of 1995 as amended.
2. The dispute was referred to the council on the 09th August 2018 after the matter remain unresolved after the conciliation.

3. **ISSUES TO BE DECIDED**

3.1 The applicant was treated unfairly and discriminated against when he applied for the bursary to study for the Masters in Sustainable Agriculture, the respondent denied granting the applicant the bursary based on distorted information.

3.2 Applicant was not paid a once off cash bonus for the improved qualification, after he obtained Masters in Sustainable Agriculture (kindly see Annexure 4).

4. The applicant applied for the bursary to further his studies and study towards in Masters in Sustainable Agriculture but responded denied granting Mr Garane a bursary based on the distorted information. The respondent is alleging that the applicant had not completed the period of one year he had received/ granted the bursary to study for his B-Tech. (As per Departmental Bursary Policy). Mr Garane completed his B-Tech in 2013 and made the application for the bursary to study towards his Master in 2016 after three years after he received the bursary for his B-Tech, the bursary committee made a wrong decision for not granting him a bursary, bursaries were granted to employees who were not recommended by the departmental bursary committee.

The decision they made was not in line or based in the Departmental Bursary Policy. The respondent was unfairly treated and discriminated against Mr Garane, as a result he suffered financial prejudice as he had to pay for his studied from his finances.

Mr Garane had to paid for the following: -	Accommodation R1200 X 5day X 8 Blocks	R96 000
	Tuition & Books	= R30 000
	Transport & Lunch R120 X 5 Days X 8 Blocks	= R4800
	Total	<u>R 130 800</u>

5. Mr Garane was also treated unfairly and discriminated against by the respondent, after he completed his Masters in Sustainable in Agriculture and he submitted his qualification in order for him to be paid a once off bonus for the improved qualification (GPSSBC Resolution 5 of 2014) (kindly see the attached Annexure 2) and Departmental Staff Circular No. 13 of 2017 (kindly see the attached Annexure 3). He was informed that his qualification in Masters in Sustainable Agriculture was not approved by DPSA for the payment of qualification bonus, his qualification does not form part of the list of qualifications that were approved qualifications for Agricultural Advisors/Senior Agricultural Advisors, but later we discovered that employees (See the attached annexure 1) who were not forming part of that list were paid the once off cash bonus but Mr Garane was discriminated and treated unfairly, further information

that was received that employees who completed Masters in Sustainable Agriculture were paid except Mr Garane. Mr Garane had been discriminated and treated unfairly by the respondent.

6. **Relief Sort**

Mr Garane to be reimburse all the monies that he paid from his own finances, to finance his studies towards his Masters in Sustainable Agriculture (R130 800).

The payment of once off cash bonus of Improved Qualification as per GPSSBC Resolution 5 of 2014, 4.1.2 “ Upon an Attainment of an Improved Qualification an Employee will receive a once off cash bonus of 10% of the employees annual salary notch, provided that this does not exceed 10% of the minimum notch of Salary Level 08.

5. **RESPONDENT’S SUBMISSION**

1. **BACK GROUND:**

- I. The applicant (Mr P. Garane) declare a dispute to the General Public Service Sectoral Bargaining Council (GPSSBC) for **Unfair Labour Practice -Benefit**
- II. The applicant requested to be paid a once-off cash bonus for the improved qualification, after he obtained Master’s Degree in Sustainable Agriculture.
- III. The applicant requests to be re-imbursed all monies R130 800 that he paid from his own finances, to finance his studies towards his Master’s Degree in Sustainable Agriculture
- IV. Matter sat on 1 August 2019 for Arbitration hearing and made an application for parties to submit heads of arguments to the commissioner as per the following dates. Applicant on the 16 August 2019, and the respondent submitted on the 23 August 2019 and the replying submission was due on the 30 August 2019.
- V. Subsequently the commissioner ruled that both parties must submit their Heads of argument because the matter is based on documentary evidence.
- VI. The applicant was represented by Mr Mbongeni Mbanjwa and respondent /employer was represented by Lindiwe Madondo.

The Relief sought by:

- VII. Mr Garane to be reimburse all the monies that he paid from his own finances, to finance his studies towards his Master’s Degree in Sustainable Agriculture (R130 800).The payment of once off cash bonus of Improved Qualification as per GPSSBC Resolution 5 of 2014, 4.1.2 “Upon an Attainment of an Improved Qualification an Employee will receive a once off cash bonus of 10% of the employees annual salary notch, provided that this does not exceed 10% of the minimum notch of Salary Level 08.

2. **Arguments/Facts and evidence:**

Commissioner, the issue that I will address first, is the issue of a once-off cash bonus for the improved qualification in terms GPSSBC Resolution 5 of 2014. The applicant (Mr Garane) in his heads of argument stated that he was treated unfairly and discriminated against by the respondent, after he completed his Master's Degree in Sustainable Agriculture. After completion of his Degree he submitted his qualification to the respondent in order for him to be paid once off-cash bonus for the improved qualification. Mr Garane further stated that he was informed that his qualification Master's Degree in Sustainable Agriculture was not part of the list of qualifications that was approved by DPSA for the payment of once off cash bonus after of upon attainment of an improved qualification.

It is true Commissioner that Mr Garane was not paid once off cash bonus as alluded above, however, I would like to draw your attention to the Agreement on the Recognition of the improved qualification in the Public Service Resolution 5 of 2014 (**Annexure A**). The resolution is very specific on the processes to be followed to apply to study and payment for cash bonus for improved qualification. Reference is made to the agreement Section 6.1 to 6.4 which reads as follows;

- “6.1 Department must define the qualification which are relevant and or related to their respective areas of work and which they intend to recognise.
- 6.2 The qualifications must be consulted with Labour in the respective Chamber.
- 6.3 In defining those qualifications Department shall obtain concurrence with the Department of Public Service and Administration (DPSA) on the definition of those qualifications before they are published.
- 6.4 An employee who intends to register for an improved qualification, upon completion of which he/she wishes to be considered for the cash bonus referred to in this agreement must inform the Department which qualification he/she intends to register
- 6.5 The Head of Department or his/her delegate shall consider the employee's request for approval and provide written feedback within “one month” from the date of submission of the request as to whether the request is approved or not, should the request not be approved, reasons for non-approval must be provided”.

The Department followed the process as prescribed in GPSSBC Resolution 05 of 2014, qualifications which were relevant at that stage were identified, consulted and submitted for concurrence to DPSA (**Annexure B**). The qualification in dispute was not amongst the qualifications submitted and approved by DPSA. It is for this reason that an application by Mr Garane for the payment of once off- cash bonus

for the improved qualification was turned down and he was informed of the decision in writing (**Annexure C**).

Commissioner, I would now like to deal with the second matter, which was submitted by the applicant related to Mr Garane's application for a bursary. It is indisputable fact that the applicant did apply for a bursary to study towards Master's Degree in Sustainable Agriculture. The allegations made by the

applicant that the decision not to grant him a bursary was based on distorted information is baseless and the applicant has not substantiated his claim. The applicant went further to say that the applicant was not granted a bursary because he had not completed a year after completing his B Tech which was funded by the department.

It is my submission that all what is alleged to be the reasons for not granting a bursary to Mr Garane is not factual. The bursaries in the Department are being managed through the Bursary policy, which was widely consulted in the Departmental Forums and approved by the Head of Department (**Annexure D**). The bursary policy advocates the establishment of structures which are instrumental to the management of bursaries. These structures are Bursary Committee and the Human Resource Development Committee and both structures Organised Labour is equally represented and Departmental Management. The Bursary Committee in dealing with applications for bursary was guided by the policy especially **section 10 of the policy**, which outlines the criteria to be followed in considering the applications. The application for a bursary for Mr Garane was considered fairly with other applications by the Bursary Committee. The bursary committee considered the affordability as criteria in deciding that candidates who have been recently funded by the Department be held back and new applicants be given priority and recommended for a bursary. I must mention that there were other applicants similar to Mr Garane who were also not awarded a bursary because of the same reason.

It is the prerogative of the respondent to decide the relevance of qualification that had to be recognised.

According to GPSSBC Resolution 5 of 2014, paragraph 5.7 and PSCBC Resolution 01 OF 2012, paragraph 7.5 an employee does not qualify for once off –cash bonus if his or her studies were funded by the State through bursary or in-service training. (**Annexure E**) Therefore, it is not appropriate that Mr Garane to expect the Department to contravene the collective agreements by paying for his studies and pay him once off cash bonus.

In terms of GPSSBC Resolution 5 of 2014 paragraph 5.9, Department is allowed to review the list of qualification and update it accordingly. In the event Mr Garane's qualification is included in the list, he would be considered for once off cash bonus for improved qualification, not at this stage.

RELIEF SOUGHT

The commissioner to dismiss the applicant dispute for unfair labour practice-benefit and rule in favour of the respondent

6. APPLICANT'S REPLY

1. Commissioner the issue of once off cash bonus in relations to Improved Qualifications in terms of Resolution 5 of 2014, it's a common cause that the Qualification of Master's Degree in Sustainable in Agriculture is not part of KZN Department of Agriculture and Rural Development list that was approved by the DPSA, however our dispute is that Mr Garane was treated unfairly and discriminated against by the respondent in that other employees who had obtained Improved Qualifications that were not forming part of the list were paid by respondent and other employees who had obtained Qualifications of Master's Degree in Sustainable Agriculture were paid the once off cash bonus except Mr Garane (copy of employees who were paid was attached in our first heads of arguments submitted as Annexure 1).
2. Commissioner in the respondent's response to our Heads of Arguments they never addressed issue of the applicant being discrimination against and treated unfairly by the respondent and the respondent committing an act on Unfair Labour Practice – Benefit Section 186 (2) (a) LRA
3. Commissioner the applicant (Mr Garane) was treated unfairly and discriminated against by the respondent, Commissioner until today all those employees who were paid the once off cash bonus for Improved Qualifications and benefited, who had Qualifications that were not forming part of the list the respondent never recovered those monies until today. It is our submission that Mr Garane was treated unfairly and discriminated against by respondent.
4. Commissioner the second matter of the application of a bursary to study towards Master's Degree in Sustainable Agriculture, the respondent did acknowledged that, they did received the applicant's application for bursary, the respondent communicated to applicant (Mr Garane) after the applicant approached the Bursary Section of Department for the reasons why he was not granted the bursary, the reasons that was communicated to him was he had not completed one year after he received his first bursary to study his B-tech, the information that he was not concerned or granted because it was bursary committee who considered that affordability as criteria in deciding that candidates whom had been recently funded by the Dept be held back & new applicants be given priority is baseless, it's a new information that is not factual, they were never a bursary committee meeting where were they were such discussions, this is a new information, if needed there was such a discussions in the Departmental Bursary Committee or in another Forum
5. The respondent should have included the minutes of the meeting in their response to our Heads of Arguments where that was discussed, they is only reason that was communicated by the respondent and was that he had not finish one year after he had received the bursary to study towards his B-Tech of which it was not true. When the applicant applied for the bursary to study towards his master's degree in Sustainable Agriculture, he had completed 3 years to 4 years after

he had received his first bursary

6. The same respondent granted bursary to employees who were in management who were never recommended by the Departmental Bursary Committee just because were in management they were granted bursary.
7. Commissioner the applicant (Mr Garane) was discriminated against and treated unfairly by the respondent first for not paying him a once off cash bonus for the Improved Qualification and secondly for not granting him bursary to study towards Master's Degree in Sustainable in Agriculture, he suffered financial prejudice as he had to paid for studying from his own finances, he had to pay R 130 800 from his finances.
8. **RELIEF SOUGHT**
We pray that the Commissioner rule in our favour

ANALYSIS OF EVIDENCE AND ARGUMENT

7. This matter deals with an allegation of Unfair Labour Practice (s186(2)(a)) and related to benefits namely the grant of a bursary and payment of a once –off cash bonus for improved qualifications. The applicable source documents being Resolution 5 of 2014 DARD Internal and External Bursary policy and Staff Circular 13 of 2017.
8. I intend to deal with this matter as an unfair labour practice dispute and not a discrimination dispute as the applicant seeks payment of a benefit in terms of the Department's policy or contract of employment.
9. The applicant completed a B Tech qualification in 2013 and was granted a bursary. In 2016 he made an application to study towards his Master's degree. The Bursary Committee did not recommend granting him a bursary.
10. He was informed that the Masters qualification was not approved by DPSA for payment as his qualification did not form part of the list of qualifications that were approved for payment.
11. The above source documents must be interrogated in a holistic manner and not in a piece-meal fashion.
12. This is not a difficult matter to determine as the above documents give clear direction on its implementation.
13. I will now deal with the salient aspects of the documents and relate it to the dispute at hand.
14. Resolution 5 of 2014 is titled Agreement on Recognition of Improved Qualifications in the Public Service and the implementation date was the 1 January 2013. This agreement binds the employer and employees.

15. The applicant qualified to be paid a cash bonus as his qualifications were obtained after 1 January 2013.
16. Section 6 deals with the Process to be followed to apply to study and payment for cash bonus for improved qualifications.
 - Section 6.1. Departments must define the qualifications which are relevant and or related to their respective areas of work and which they intend to recognize.
 - Section 6.7 An employee who attains more than one improved qualification will not qualify for more than one cash bonus.
17. The applicant on the 27 September 2017 was advised in writing that “In terms of the approved list of qualifications the approved qualifications for Agricultural/ Advisors/ Snr. Agricultural Advisors are M.Sc. in Agriculture/ M Tech and Phd only.
18. The applicant did not have any of the approved qualifications.
19. In terms of PSCBC Resolution of 2012 related to the Agreement on salary adjustments and improvements on conditions of service in the Public Service for the period 2012/2013 -2014/15 .
 - Section 7 RECOGNITION OF IMPROVED QUALIFICATIONS
 - 7.5. Employees who have received state-funded bursaries for the attainment of an improved qualification are not eligible for the once-off cash bonus
 - 7.6 The cash bonus is limited to the attainment of one additional qualification.

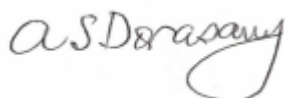
In terms of Staff Circular NO 13 of 2017 clause 3.6. “The cash bonus is limited to the attainment of one additional qualification per employee.
20. If one looks at the minutes of the Departmental Bursary Committee Meeting of the 20 January 2016 there are employees that were recommended to receive a bursary and others not recommended. Mr Garane like Mr S Z Kunene and M Sizolwethu E- MSC Sustainable Agriculture not recommended because recently sponsored by the Department. Further there are number of examples in the minutes of employees either being granted a bursary while others were not granted a bursary.
21. The applicant in obtaining his B Tech qualification would have qualified him to get the once-off cash bonus. The cash bonus is limited to the attainment of one additional qualification.
22. In respect of the bursary grant there is ample evidence that the respondent applied the policy consistently.
23. The applicant is seeking to have the agreement varied to suit him but the agreements clearly directs on how improved qualifications should be applied.
24. As a consequence of the above the application must fail and the applicant is not entitled to any relief.

AWARD

I accordingly make the following award:

- 25.1. The respondent did not perpetrated any act of Unfair Labour Practice against the applicant.
- 25.2. The application is dismissed and the applicant is not entitled to any relief.

Signature



Arbitrator: Anand Dorasamy

Sector :DARD