



# ARBITRATION AWARD

Case No: **PSHS117-19/20**

Commissioner: **Mr Anand Dorasamy**

Date of ruling: **26 February 2020**

In the matter between:

**PSA OBO VELOKUHLE SANDILE KHOWANE**

(Union/ Applicant)

and

**DEPARTMENT OF HEALTH-KWA ZULU NATAL**

(Respondent)

---

## DETAILS OF HEARING AND REPRESENTATION

1. The arbitration proceedings were scheduled for the 3 and 4 February and commenced at 09H00 on the 3 February 2020 at the Edumbe CHC in Edumbe, Paulpietersburg. After the evidence was completed the parties were to submit written closing arguments on the 11 February 2020 and the respondent applied for an extension and submitted her arguments on the 20 February 2020. The applicant lodged a dispute in terms of section 186(2) (a) of the Labour Relations Act (LRA) in respect of non-payment of EPMDS/ Pay progression or production bonus.

## ISSUE TO BE DECIDED

2. I am required to determine whether the Respondent (employer) had perpetrated an act of unfair labour practice against the applicant in respect of him not being paid

EPMDS/ Pay progression or production bonus. Should I find in favour of the applicant, I am to determine what relief should be granted to him.

### **BACKGROUND TO THE DISPUTE**

3. The applicant's dispute is about not being paid the pay progression for the financial year 2017/2018. The respondent/ employer contends that he submitted his assessment after the due date. The applicant contends that he submitted his assessment on time.

### **SUMMARY OF EVIDENCE**

#### **APPLICANT'S CASE**

##### **VELOKUHLE SANDILE KHOWANE**

The salient aspects of the witness' testimony are recorded below:

4. The dispute is for the assessment for the year 2017/18. The applicant scored above average and qualified for EPMDS/ pay progression and production bonus. The issue in dispute is whether he submitted his documents to the supervisor before the 31 October 2017. The employer contends that he submitted the documents on the 9 November 2017. The document Annexure "C" is dated 2 October 2017. He had to submit to the supervisor and not to the HR Department.
5. His supervisor Mr Nyele assessed him on the 2 October 2017. Normally the document is submitted to his supervisor and he/she has to submit to HR. He cannot be held liable for not submitting the document on time. He did not breach any policy or regulation.

Under cross examination he stated as follows:

6. He submitted the document to his supervisor on the 2 October 2017 and his supervisor did not tell him he did anything wrong.
7. He was called to the office and signed in the presence of his supervisor. The scoring was discussed with him.
8. He was surprised that others got EPMDS and his supervisor told him that the HR said that he did not qualify because he submitted it late. His supervisor was surprised with the letter and he lodged a formal grievance. His supervisor represented the employer.

9. There was no disciplinary action taken against him or his supervisor.
10. Mr. Nyele was requested to attend the hearing as his witness but as he is still employer by the respondent he was not released by the employer.

### **SUGANDREN PILLAY**

The salient aspects of his testimony are recorded below.

11. He is working at Edumbe CHC as an Assistant Director and knows the applicant and saw the Annexure "C". The document was signed by the applicant and supervisor who left the clinic in October last year.
12. Mr. Nyele reported to him. The applicant was given a score of 5 and Mr. Nyele consulted with him and he was satisfied that the document could be forwarded to HR. He saw the document on the 2 October 2017. The supervisor had to send the documents to HR. The applicant's responsibility ends when the documents are signed by the applicant and his supervisor. The applicants was given awards and was a good quality employee.
13. He believed that the receiving process at HR lacked human capacity in all sections. The documents were not signed and the receipt acknowledged in the presence of Mr. Nyele. They were requested to leave the register and EPMDS documents at the HR section to check for corrections when time was available. His question was that the stamp and signature may not be done on the same day when they physically came to the registry section of HR. The dates may not coincide with the submission and register date. This has since been changed to a sign, acknowledge receipt in the presence of the supervisor before sent to the forwarding section.

Under cross examination he stated as follows.

14. He supervised Mr. Nyele and they shared adjoining cubicles. Mr. Nyele got his EPMDS. Mr. Nyele did what he was supposed to do. He signed off Mr. Nyele's documents and showed proof that the documents were sent to HR.
15. Mr. Khowane did not get EPMDS and he had no idea of the processes and procedures. After finding out about the matter he consulted with Mr. Nyele and made query with HR who said the documents were sent late.
16. The document Circular No. 8 of 2017 states that the responsibility is with the supervisee and supervisor to lodge the documents timeously and disciplinary action should be taken if not submitted in time.

17. Ms. T G Mota recorded that she received the documents on the 9 November 2017. The employees according to their surname are given to HR employees and the documents are received by many employees. There are dates on the register that shows the dates are not in sequence. The register is kept by HR. The documents returned for corrections are not reflected in the register.

### **RESPONDENT'S CASE**

#### **ELCA PHILISIWE MDLALOSE**

The salient aspects of her testimony are recorded below.

18. She is the HR Manager and in charge of EPMDS processes. The applicant was not paid EPMDS because Annexure "C" was received late on the 9 November 2017 instead of 31 October 2017. The date stamp by Ms. Mota is 9 November 2017.
19. HRM Circular 8 of 2017 paragraph 8 states that it is the responsibility of the supervisee and supervisor that the documents are completed and submitted in time. Under cross examination she stated as follows.
20. Mr. Nyele was not disciplined by the employer. The documents do not come to her but other employees do the job.

### **CLOSING ARGUMENTS**

21. The parties submitted written closing arguments that were considered when I made my determination.

### **ANALYSIS OF EVIDENCE AND ARGUMENT**

22. The matter is fairly simple in that the application for consideration for EPMDS or pay progression required the supervisor and supervisor to submit the completed documents Annexure "C" before the 31 October 2017. The applicant scored above average and qualified to be granted EPMDS/ pay progression. He together with his supervisor signed the document on the 2 October 2017. Mr Pillay who was Mr Nyele's supervisor confirmed that the applicant qualified for the benefit. Mr Pillay raised concerned about the processes that were followed in receiving the documents by HR. The processes has since changed to acknowledge and sign the documents in the presence of the supervisor.
23. The respondent contends that Annexure "C" was submitted late by the 9 November 2017.

24. The onus to prove that the documents were not submitted late rested with the applicant. In any event although the applicant and supervisor signed the document on the 2 October 2017 and there was sufficient time for the document to be lodged with HR. The policy directs that should the "Annexure C" not be submitted on time the employee would not qualify for the benefit. The HR manager indicated that it was not her job to acknowledge the documents but it was done by other employees. Ms. Mota recorded that the document was received late.
25. Even if the applicant qualified for EPMDS or pay progression it was crucial that the necessary documents were submitted before the deadline. Further even if the applicant and his supervisor signed the document on the 2 October 2017 and the onus rested with the supervisor to submit the document to HR before the deadline.
26. The HRM Circular directs that disciplinary action be taken against the supervisor or supervisee should they not comply with the provisions of the Circular.
27. In a nutshell the document titled Annexure "C" had to be completed and handed to HR before the 31 October 2017. The document although signed on the 2 October 2017 long before the 31 October 2017 was not submitted in time and the applicant was not considered for the benefit. The applicant was accordingly not granted the benefit.
28. I am inclined to favour the submission by the respondent that the document was not submitted in time and that he therefore does not qualify for the benefit.
29. As a consequence of the above the applicant should not be granted the relief he sought and the application is dismissed.

#### AWARD

30. The respondent did not perpetrate any act of unfair labour practice against the applicant.
31. The application is dismissed.



Anand Dorasamy