



GENERAL PUBLIC SERVICE
SECTOR BARGAINING COUNCIL



Physical Address:
260 Basden Avenue,
Lyttelton, Centurion,
Pretoria

Postal Address:
PO Box 16663,
Lyttelton, 1040

Tel: 012 664 8132
Web: <http://www.gpsbc.org.za>

ARBITRATION AWARD

Panelist: Mavhungu M.S
Case No.: GPBC1279/2020
Date of Award: 31 May 2021

In the ARBITRATION between:

M Mokonyane

(Union / Applicant)

and

Department of Public Works

(Respondent)

Union/Applicant's representative: Mr. M Mkhize
Union/Applicant's address: P.O. Box 1522
Ladana, 0704
Telephone: 061 0201782
Telefax: _____

Respondent's representative: Mr. M Sephoka
Respondent's address: P/Bag x9490
Polokwane
0700
Telephone: 067 410 2885
Telefax: _____

ARBITRATION AWARD

DETAILS OF HEARING AND REPRESENTATION

- 1) This is the award in the arbitration between M Mokonyane, the applicant and Department of Public Works, the respondent.
- 2) The arbitration hearing was held on 26 March 2021 and 13 May 2021 at the offices of Department of Public Works (Limpopo). The hearing was manually and mechanically recorded.
- 3) The applicant at all material times was represented by Mr. M Mkhize, a union official from PSA whereas the respondent was represented by Mr. M Sepkoka an employee of the respondent.

ISSUE TO BE DECIDED

- 4) Whether the respondent had committed an unfair conduct relating to the benefits in terms of Section 186 (2) (a) of the Labour Relations Act ("the Act"). The benefits relates to the payment of performance bonus for the financial year 2018/2019. The applicant alleged that the respondent was unfair in not paying her the performance bonus.
- 5) If found the act by the respondent to be unfair, I must determine appropriate remedy to be awarded. The applicant seeks to be paid performance bonus for the year 2018/2019 financial year.

BACKGROUND TO THE MATTER:

- 6) The applicant, Ms. M Mokonyane, is an employee of the respondent appointed as Assistant Director in HR Provisioning.
- 7) The applicant as per the annual performance assessment agreed with her supervisor for the rating of the score of 4. The supervisor to the applicant submitted the assessment results to the moderating committee for consideration. The applicant was not paid the performance bonus for the financial year 2018/2019 when other qualifying employees were paid.

- 8) The applicant escalated her matter to the Appeal Authority and was unsuccessful in her claim.
- 9) The dispute was referred to GPSSBC for conciliation and remained unresolved.
- 10) The matter was set down for arbitration and during arbitration the parties were allowed to lead evidence, cross examine and re-examine the presentation of the evidence as well as present closing arguments at the conclusion of their case. For the sake of brevity, the details of this will not be repeated in the award but it should not be construed that it was not considered.
- 11) The applicant alleges that the conduct by the respondent of not paying her performance bonus amounted to unfair labour practice related to benefits.

SURVEY OF EVIDENCE AND ARGUMENT:

Evidence

- 12) I am required to issue an award with brief reasons. I do not wish to offer an exhaustive survey of all the arguments presented at the arbitration hearing. I have had regard to everything presented to me, and what follows is a brief summary of the arguments relevant to my findings only.

The Applicant's Submissions

- 13) **Ms. M Mokonyane “the applicant”** testified under oath that she was rated a score of 4 which was agreed with her supervisor. The respondent has a policy of performance management development system, which was attached as per page 7- 41 of bundle B document.
- 14) As required by the policy on page 26 on clause 8.3.11 she rated herself and then also with her supervisor. The role of the supervisor is to review the performance and also to identify the areas which need improvement and where necessary recommends for further training.
- 15) The moderating committee conducts its duties as per page 28-29 of bundle B on clause 9. Its role is also to give reasons for its decisions.
- 16) She referred to page 43-44 of bundle B document, as per the letter it indicated that *“the Committee identified some discrepancies between the rating awarded and the*

evidence provided as extra achievement. The motivations provided do not indicate extra performance on the key result areas (KRA's) identified in item 5. In keeping up with the PMDS policy, you are hereby requested to get your subordinate to indicate extra performance out of the given motivation without making additions, failure of which you should reconsider the awarded score to correlate with the indicated performance".

- 17) The letter as on page 43 and 44 of bundle B document as per paragraph 5 did not indicate as to which KRA's were affected. As per bundle A on page 20-24 motivation for KRA's were submitted. In terms of bundle A as from page 25-38 evidence for the extra performance were attached.
- 18) As per bundle C on page 8 the name of the applicant's final rating was indicated as 4. In terms of bundle C on page 7, the Committee indicated that scores of the officials from level 1- 12 remain unchanged.
- 19) During cross examination she indicated that she concluded the performance agreement with Ms. Duba and the assessments were concluded with Mr. Khoza. As per the agreement with Mr. Khoza the agreed score was 4.
- 20) She communicated with Mr. Khoza after her assessment was brought back and the reason given was to remove some of the duties which were supposed to be conducted at HRD section. She did not agree with removing some of the duties as according to her she performed all those duties.
- 21) She conceded to have been aware of the letter written to her as per page 43-44 of bundle B document. She indicated as per the letter it was not indicated as to which KRA's were affected. She did not deny to have been approached by her supervisor and also by her union representative to give additional motivation. She indicated that she could not do anything as the letter was not specific as to which arrears needed to be changed.

The Respondent's Evidence

- 22) **Mr. Maimela Isaac Rapatsa the respondent 1st witness** testified under oath that; he is appointed in the Department in the position of Deputy Director: PMDS.

- 23) His duty amongst others is to make sure that the PMDS policy is implemented properly. In order for an employee to be paid performance bonus one must meet the requirements of submitting documents in time and the scores come into play if it meets the required level.
- 24) He was part of the moderating committee for the financial year 2018/2019. The applicant was not paid the performance bonus as her file was returned as per the recommendation of moderation committee.
- 25) He also indicated that the moderating committee has the right to return the files to employees in situations where they are not satisfied with the motivation provided. The applicant did not comply with the recommendation to provide more motivation in order for it to be considered by the Committee.
- 26) The matter was then reported to the Departmental Moderating Committee. The applicant was not paid the performance bonus as she did not meet the requirements for the rating of 4. A letter as attached on page 43-44 of bundle B document was sent to her.
- 27) He indicated that the letter did not have the exact KRA's which the applicant was supposed to give attention to them. He indicated that it was an oversight not to have included the KRA's which the applicant was to correct.
- 28) Under Cross-examination, he indicated that as per page 43-44 on bundle B document a decision was taken concerning the score of 4 which was given to the applicant.
- 29) He confirmed that the letter as attached on page 43-44 of bundle B document did not have the KRA's the applicant was to correct or attend to. He indicated that it was an oversight that the KRA's were not included.
- 30) He also confirmed to have been aware of the minutes as attached on bundle C document. As per page 3-4 of bundle C document it was agreed that all submissions are not to be amended in terms of the ratings.
- 31) He indicated that it was not indicated as per the minutes that the applicant was to be excluded for consideration of payments and that the moderating Committee was supposed to have indicated that.
- 32) He indicated that the employees who qualified were paid at the rate of 2.9%.

- 33) **Mr. K.P Khoza the respondent 2nd witness** testified under oath that he is appointed in the Department in the position of Director: EHW (Employee Health Wellness).
- 34) The applicant at the time of the performance assessment reported to him. He was a member of the moderating committee for the year 2018/2019 financial year. On the day of the moderation the committee felt that the applicant included KPA's which did not fall within her section and as such the applicant was requested to motivate further.
- 35) During cross examination he indicated that he issued the letter as attached on page 43-44 of bundle B document. As per the letter given to the applicant the committee needed more motivation from the applicant. The secretary on the letter did not indicate as to which KRA's was the applicant supposed to attend to.
- 36) The information as reflected on page 8 of bundle C, it is a confirmation on how the employees performed and the scores they obtained.
- 37) He was satisfied about the performance of the applicant and agreed with her on a final rating of 4.

ANALYSIS OF EVIDENCE AND ARGUMENT:

- 38) Whenever considering whether or not there was unfair labour practice committed by the employer, I must take into account the provisions of section 186(2) (a) of the Labour Relations Act, 1995 ("the LRA").
- 39) In determining the issue whether the applicant was unfairly treated or not, it is clear that I have to deal with a question of interpretation of the policy/prescripts and/or legislation together with the evidence tendered before me. This is precisely because, before me I have two contending versions or arguments.
- 40) The applicant's version is that she performed above the performance standards that were set as per the performance agreement and as a result she qualified for performance bonus.
- 41) The respondent's version on the other hand is that, the applicant was requested by the moderating committee to submit additional motivation to support her score of 4. The moderating committee had a duty to make sure that performance is assessed accordingly.

- 42) It is acknowledged that given the nature of the Respondent's business and the risks involved, it is crucial that it should have policies, procedures and prescripts in place. In terms of the performance management policy of the Department on page 11 to 41 of bundle B, it gives provisions as to how the moderating committee performs its duties and how the policy is to be complied with.
- 43) The applicant is required to prove, on a balance of probabilities, that the respondent committed unfair labour practice by not paying her performance bonus.
- 44) I am required to determine whether the respondent committed an act of unfair labour practice when the respondent dealt with the annual performance assessment of the Applicant for the financial year 2018/2019.
- 45) In determining the issue, I find the version of the applicant substantiated and with merits. My reasons are based on the applicant's own version and witnesses, including, but not limited to, the documentary evidence tendered.
- 46) It was submitted by the applicant that she received the letter addressed by the moderating committee to the supervisor to provide additional motivation. According to the letter as attached on page 43-44 of bundle B document, it did not indicate as to the KRA's which needed additional motivation.
- 47) As per the letter it indicated that *"The Committee identified some discrepancies between the rating awarded and the evidence provided as extra achievement. The motivations provided do not indicate extra performance on the key result areas (KRA's) identified in item 5. In keeping up with the PMDS policy, you are hereby requested to get your subordinate to indicate extra performance out of the given motivation without making additions, failure of which you should reconsider the awarded score to correlate with the indicated performance"*.
- 48) As per the paragraph 5 it indicated that the affected KRA's are as follows and nothing was indicated as to what KRA's the applicant was supposed to attend to.
- 49) It was the applicant's submission that the letter as per page 43-44 of bundle B document was silent on issues to be corrected.
- 50) The branch moderating committee has the right to return the performance assessment to the employee if they find that the motivation does not justify the rating. This right of the committee must be exercised in a fair manner.
- 51) The respondent 1st witness Mr. M.I Rapatsa who was the secretary to the moderating committee confirmed that the letter was not clear as to what needed to

be corrected. He further indicated that it was an oversight not to have indicated the exact KRA's which needed to be corrected. It was not clear as what the applicant was expected to correct.

- 52) In terms of the letter given to the applicant as per page 43-44, part of it indicated that *"Failure of which you should reconsider the awarded score to correlate with the indicated performance"*.
- 53) As per page 8-10 of bundle C document the applicant's name was included in the list of the names of employees and their final rating. The respondent had a duty to reconsider the scores as directed by its own letter. The applicant was rated a score of 4.
- 54) According to the same document there was no indication that there was an issue with the submission by the applicant in terms of the rating obtained.
- 55) The respondent submitted that there was no additional motivation submitted to the moderating committee as requested. The question to ask will be what the applicant was expected to submit additional motivation on? It would be unfair to blame the applicant for the instruction given which was not clear.
- 56) In his evidence the applicant was able to demonstrate that the instruction given for the additional motivation requested was not clear and as such was unable to comply with it.
- 57) A conclusion can be made that failure by the respondent/supervisor to reconsider the scores of the applicant and also submitted a list of the employees and their ratings included the applicant, which gave an impression that the score of 4 was not changed.
- 58) Based on what was presented by the applicant, a conclusion can be made that her exclusion from payment of performance bonus was unreasonable.
- 59) My duty is to determine whether the respondent was fair in not paying the applicant performance bonus for 2018/2019 financial year. My answer is that the respondent was not fair in not paying the applicant the performance bonus.
- 60) In ***IMATU obo Visagie v Mogale City Municipality (JR86/15) [2017] ZALCJHB 432*** (handed down on 20 November 2017) it was held that the law requires the employee to show the existence of the conduct or decision complained of. Therefore the onus rests with the employee. It follows that if the applicant is challenging the process and that decision or conduct by the respondent is not established by the applicant that is the end of the matter.

- 61) In the current case the applicant demonstrated the above factors. Therefore she is entitled to a relief. The applicant sought payment of performance bonus for the financial year 2018/2019.
- 62) In the light of the above, I find that the application of payment of performance bonus must succeed.
- 63) The applicant during 2018/2019 financial year was earning a yearly salary of R523, 818.00. The employees of the respondent for the financial year 2018/2019 were paid at the rate of 2.9%.
- 64) The respondent is therefore ordered to pay the applicant the amount of fifteen thousand one hundred and ninety rand and seventy two cents (R15 190,72), calculated as $R523\,818.00 \times 2.9 / \text{by } 100$.

AWARD

- 65) I find that the respondent committed unfair labour practice against the applicant. In the premise I make the following order:
- 66) The respondent, Department of Public Works (Limpopo), is ordered to pay the applicant, Ms. M Mokonyane an amount of fifteen thousand one hundred and ninety rand and seventy two cents (R15 190, 72) which is payment of performance bonus which was due to her.
- 67) The amount above is to be paid to the applicant by no later than 01 August 2021.
- 68) The amount referred to above is minus such deductions as the employer is in terms of the law entitled or obliged to make.
- 69) As provided for by section 143 (2) of the LRA, any unpaid amount due in terms of this award will attract interest at the rate prescribed in terms of section 2 of the Prescribed Rate of Interest Act, Act 55 of 1975, as from that date on which it was due.



Musiwalo Seth Mavhungu

GPSSBC Panelist