



ARBITRATION AWARD

Panelist: PHEEHA DANIEL SEOPELA
Case No.: GPBC426-2020
Date of Award: 11 August 2021

In the ARBITRATION between:

PSA OBO R.E THOBEJANE & 8 OTHERS ----- APPLICANT
(Union / Applicant)

and

DEPARTMENT OF HOME AFFAIRS - RESPONDENT

Union/Applicant's representative: KATE MAMABOLO
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Respondent's representative: VUSIMUZI MNGOMEZULU
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ARBITRATION AWARD

DETAILS OF HEARING AND REPRESENTATION:

[1] This matter was set down as arbitration on the 22nd of February 2021, 29th of March 2021 and was finalized on the 30th of April 2021 at 09h00 at the offices of the respondent in Polokwane, Limpopo Province. Both parties were in attendance. The applicants, Ms Raisibe Ethel Thobejane, Ms Ramaesela Sina Maja, Mr Motsweng John Letsoalo, Mr Letsibogo Nathaniel Mahlatji, Mr P.M Matlakala, Ms Matemane Ennia Lekganyane, Ms Mammetja Maggie Madisha and Mr Maphoro Joesph Thupana were represented by Ms Kate Mamabolo of PSA (trade union). The respondent, Department of Home Affairs was represented by Mr Vusimuzi Mngomezulu of the Labour Relations Unit of the respondent. This case is dismissed in relation to the ninth applicant, T.L Kekana who was not in attendance. Pre-arbitration meeting was conducted on the 22nd of February 2021. The Parties were required to submit written heads of arguments and such were considered in this award. The proceedings were digitally recorded. The respondent submitted bundle B which is comprises of 132 pages whereas the applicant submitted bundle A which is comprises of 78 pages.

ISSUE TO BE DECIDED:

[2] I must determine whether the respondent committed an act of unfair labour practice against the applicant relating to benefits by not paying them cash bonus for 2018/2019 financial year. I must determine the appropriate relief if I find in favor of the applicant in terms of section 193 of the Labour Relations Act.

BACKGROUND TO THE MATTER:

[3] The applicants are all officials of the respondent, Department of Home Affairs. The first applicant, Ms Raisibe Ethel Thobejane is currently employed as Administration Clerk and was earning R224 568-00 per annum during 2018/2019 financial year. The second applicant, Ms Ramaesela Sina Maja is currently employed as Administration Clerk and was earning R214 764-00 per annum during 2018/2019 financial year. The third applicant, Mr Motsweng John Letsoalo is currently employed as Administration Clerk and was earning R214 764-00 per annum during 2018/2019 financial year. The fourth applicant, Mr Letsibogo Nathaniel Mahlatji is currently employed as Administration Clerk and was earning R224 568-00 per annum during 2018/2019 financial year. The fifth applicant, Mr P.M Matlakala is currently employed as Administration Clerk and he was earning R214 764-00 per annum during 2018/2019 financial year. The sixth applicant, Ms Matemane Ennia Lekganyane is currently employed as Immigration Officer and was earning R217 980-00 per annum during 2018/2019 financial year. The seventh applicant, Ms Mammetja Maggie Madisha is currently employed as Switchboard Operator and was earning R187 017-00 per annum during 2018/2019 financial year. The eighth applicant, Mr Maphoro Joseph Thupana is currently employed as Administartion Clerk and was earning R214 764-00 per annum during 2018/2019 financial year. The applicants were assessed for PMDS for 2018/2019 financial year. The applicants received letters of reduction of the score from 5 to 4. The total score of each applicant was from 115 and above. The

applicants were not paid cash bonuses. The officials who were paid cash bonus received 5% of their annual salaries. It is the case of the applicants that the respondent committed an act of unfair labour practice relating to benefits as they had a final score of 4 which qualified them for both pay progression and cash bonus. It is the case of the respondent that the respondent did not commit an act of unfair labour practice relating to benefits as the applicants did not qualify for cash bonus. It is the prayer of the applicants that the respondent should be ordered to pay them 5% performance bonus of their annual salaries for 2018/2019 financial year. The applicants have agreed that Mr MJ Thupana will give evidence on their behalf and that such evidence will be binding on them

SURVEY OF EVIDENCE AND ARGUMENT:

The case of the applicant

Mr Maphoro Joesph Thupana, the eighth applicant testified under oath as follows:

[4] They received page 40 of bundle A after they have lodged a grievance. They were informed that their score was reduced from 5 to 4 hence they were not paid cash bonuses. They further received page 41 of bundle A. Page 41 is moderation committee annual performance assessment outcome and it contains reasons why they were not paid cash bonus. The second sentence as per page 41 of bundle A reads thus: Your annual assessment outcomes were subjected to the approval of Executing Authority. Limpopo Province have exceeded normal distribution bell curve of 25%. In view hereof, you have not been recommended for a performance bonus. The employer never bothered to explain bell curve. Page 69 of bundle A is incentive framework. His score was 115 as per page 45 of bundle A. His score fall under 115 to 129 bracket. 69 to 144 does not qualify one for cash bonus. There is no place in terms of PMDS policy where it says that score of 4 does not qualify one to be paid cash bonus. He did not see 25% bell curve in the policy. The criteria used by the respondent in paying others and not paying others cash bonus was not fair. They agreed with their supervisors on a score of 5 and such was reduced to 4 by moderating committee. He did not ask how his score was reduced. The employer indicated that he qualified for performance cash bonus. He testified that the respondent must show how the moderation was done in two phases. Their rating was reduced from 5 to 4. They were not informed of the first and second leg of moderation. They were also not informed about the two legs of moderation after they have lodged a grievance.

The case of the respondent

The witness of the respondent, Mr James Lesetja Kgole, the Assistant Director Human Resource testified under oath as follows:

[6] The moderation at district level is done by the panel. They assess people fairly. Unions form part of the process of moderation at the district level and the process must be signed off. Page 81 of bundle B is annual assessment. Page 4 of bundle B is annual assessment for Matlakala PM. They agreed on 3 except on KPA 3. The score of 5 is given when a person has performed extraordinarily. If the score was reduced to 4 it means the rating of 115 was also reduced. The rating which is less than 115 does not qualify one for performance bonus. The same process was followed in relation to page 66 of bundle B. Page 34 of B is bell curve graph which is used by DPSA. 22% qualify for cash bonus and 3% is for extra ordinary performance which is 150 to 160. No one qualified for 5 in 2018/2019 financial year. Page 45 of bundle C shows that the rating was reduced from 115 which also affected the overall score. The moderation was done in keeping with paragraph 10.7.2 of C as they had first and final moderation. It was done realistically except were

maximum bell curve was exceeded. The department is allocated 2.5 percent and 1.5 percent is for cash bonus and 1 percent is for pay progression. They should not exceed 2.5%. The moderation committee must come with the strategy to reduce the percentage. The moderation committee must come up with higher standard in order to be within the limits of 2.5 percent. The reduction of score from 5 to 4 was part of higher standard in keeping with 2.5%. The scores have been reduced from 5 to 4 as per page 45 of bundle B. It does not mean that the applicants did not perform satisfactorily. There was a need for reduction as 25 percent was exceeded. He testified that he did not prepare the battle when it was put to him that he does not have proof of what he was claiming. The procedure which was followed at first was that the score of 5 be reduced to 4 but it still exceeded bell curve. The rating of 115 to 149 qualifies for the score of 4.

ANALYSIS OF EVIDENCE AND ARGUMENTS:

[7] This dispute was referred in terms of section 186 (2) (a) of the Labour Relations Act. It is the alleged dispute of unfair labour practice relating to benefits. The applicants were only paid pay progression during 2018/2019 financial year. The dispute is in relation to non-payment of cash bonus for PMDS for 2018/2019 financial year. It is the case of the applicants that they qualified for cash bonus or performance bonus as their final overall score was from 115 and above and their ratings were reduced from 5 to 4. All the applicants received letters wherein their scores were reduced from 5 to 4. It is common cause that the final rating of the applicants was reduced from 5 to 4. The score of 115 and with a rating of 4 qualifies one for both cash bonus and pay progression. It is not the case of the applicants that they were not paid pay progression. The case of the applicants is that they qualified for cash bonus as their final score was 4 after it was reduced from 5. It is the case of the respondent that the applicants did not qualify for cash bonus for the period 2018/2019.

[8] Mr Kgole testified at length about the operation of bell curve in terms of its operation. The applicants qualified for cash bonus in terms of PMDS as their final score was 4 which is a rating of 115 and above. The applicants became aware of bell curve operation after they have lodged a grievance. The applicants in this case were waiting to be paid performance bonus as they have a final score of 4 after their score was reduced from 5 to 4. Mr Kgole contended that the reduction in score also affected their rating which means the rating was below 115. Justice must not only be done, it must also be seen to have been done. The respondent failed adversely to communicate the reasons for the non-payment of performance bonus to the applicants after they have received letters of score reduction from 5 to 4. The applicants did not object the reduction from 5 to 4 as both qualified them for performance bonus. It is the evidence of Mr Kgole that there were first and second legs of moderation committee. It is my considered view that the respondent was not transparent in disqualifying the applicants from getting performance bonus.

[9] The application of bell curve should be open and transparent. The applicants were ambushed by the decision of the respondent as they have accepted the score reduction of 4 which qualified them to be paid cash bonus. It is my view that the applicants would not have lodged a grievance had the respondent been open with the reasons for non-payment of cash bonus. Higher standard was applied as per the evidence of Mr Kgole as bell curve was exceeded. The problem in this case was that bell curve was used without the knowledge of the applicants. It is my considered view that an act of unfair labour practice relating to benefits was committed by the respondent against the applicant by not paying them cash bonus whereas they qualified as their final score was 4. The respondent concealed other processes which were used to exclude the applicants from been paid

cash bonus which detrimentally affected them. It is the employer who issued letters of score reduction from 5 to 4. The applicants accepted it as it also qualified them for cash bonus in terms of PMDS.

[10] I make a finding that the respondent committed an act of unfair labour practice relating to benefits by not paying them cash bonus whereas they had a final score of 4 which qualified them for cash bonus. The application of bell curve to exclude the applicants from getting cash bonus was unwarranted as it was done without the knowledge of the applicants. It is the duty of the respondent to motivate the workers and PMDS is used to motivate performing employees. The decision of the respondent was demoralizing as the good performance of the applicants in terms of PMDS policy was ignored. The applicants prayed to be paid 5% of their annual salaries as the officials who were paid were paid on a 5% of the annual income. I have no reason not to grant the applicants their desired relief. .

AWARD:

[11] The respondent committed an act of unfair labour practice against the applicant relating to benefits as they were not paid cash bonus for 2018/2019 financial year.

[12] The respondent, Department of home affairs is order to pay the applicants 5% of their annual salary calculated as follows as per their individual yearly income:

[12.1] The respondent is ordered to pay the Ms Raisibe Ethel Thobejane and Mr Letsibogo Nathaniel Mahlatji in the amount of R11 228-40 each which is the equivalent of 5% of their annual income which was R224 568-00 in 2018/019 financial year.

[12.2] The respondent is further ordered to pay Ms Ramaesela Sina Maja, Mr Motsweng John Letsoalo, PM Matlakala and Mr Maphoro Joseph Thupana in the amount of R10 738-20 each which is the equivalent of 5% of their annual income which was R214 764-00 per annum in 2018/2019 financial year.

[12.3] The respondent is furthermore ordered to pay Ms Matemane Ennia Lekganyane in the amount of R10 899-00 which is the equivalent of 5% of her annual income which was R217 980-00 during 2018/2019 financial year.

[12.4] The respondent is ordered to pay Ms Mammetja Maggie Madisha in the amount of R9 350-85 which is the equivalent of 5% of her annual income which was R187 017-00 during 2018/2019 financial year.

[13] The amounts mentioned at paragraphs 12.1, 12.2, 12.3 and 12.4 are to be paid to the applicants on or before the 30th of September 2021.

PHEEHA DANIEL SEOPELA



Name:

(GPSSBC) Arbitrator

