



# ARBITRATION AWARD

Panelist: PHEEHA DANIEL SEOPELA  
Case No.: GPBC1434-2020  
Date of Award: 14 April 2021

**In the ARBITRATION between:**

PSA OBO MP MAKHURA ----- APPLICANT  
(Union / Applicant)

and

DEPARTMENT OF COOPERATIVE GOVERNMENT, HUMAN SETTLEMENT AND TRADITIONAL AFFAIRS  
- LIMPOPO PROVINCE

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## ARBITRATION AWARD

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### DETAILS OF HEARING AND REPRESENTATION:

[1] This matter was set down as arbitration on the 02<sup>nd</sup> of March 2021 at 09h00 at the offices of the respondent in Polokwane, Limpopo Province. The applicant, Mr MP Makhura was represented by Mr Mike Mkhize of PSA (trade union). The respondent, Department of Cooperative Government, Human Settlement and Traditional Affairs was represented by Mr M.T Mdaka of the Labour Relations Unit of the respondent. Pre-arbitration meeting was conducted on the 02<sup>nd</sup> of March 2021. The Parties were required to submit written heads of arguments and such were considered in the analysis of this award. The proceedings were digitally recorded. The respondent submitted bundle B which is comprises of 34 pages whereas the applicant submitted bundle A which is comprises of 80 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 the applicant acting allowance during 2018/2019 financial year as he acted as a Director. 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 applicant was employed on the 01<sup>st</sup> of March 1988. The applicant is currently employed as a Deputy Director under Municipal Finance Directorate. The applicant is on salary level 12. The applicant acted on a level 13 post as a Director under Municipal Finance Directorate. The applicant acted during 2018/2019 financial year. The applicant was paid acting allowance for the period 05<sup>th</sup> of March 2019 to the 04<sup>th</sup> of April 2019. The HOD signed an approved only appointment letter for acting capacity appearing at page 22 of bundle A. The applicant was paid R13 459-78 per month for acting allowance for the period 05<sup>th</sup> of March 2019 to the 04<sup>th</sup> of April 2019. The difference is salaries between salary level 12 and 13 is R13 459-78 per month. It is the prayer of the applicant that the respondent be ordered to pay him acting allowance for the period 18<sup>th</sup> of March 2018 to the 31<sup>st</sup> of March 2019 and that the period should exclude the acting allowance paid for the period 05<sup>th</sup> of March 2019 to the 04<sup>th</sup> of April 2019. It is the case of the respondent that the applicant was paid acting allowance for the period 05<sup>th</sup> of March 2019 to the 04<sup>th</sup> of April 2019 because such acting allowance was authorized.

### SURVEY OF EVIDENCE AND ARGUMENT:

#### The case of the applicant

The applicant, Mr. Moloko Petrus Makhura testified under oath as follows:

[4] He was not paid acting allowance. He submitted quarterly review on the 05<sup>th</sup> of October 2018 for the period April to June 2018 and it was directed to the office of the premier. He contended that his reports should be irregular if the respondent contended that his acting appointment was irregular as they found unqualified audit report for 2018/2019 financial year. He was appointed to act as Director for the period 05<sup>th</sup> of March 2019 to the 04<sup>th</sup> of April 2019 as per page 13 of bundle A and he was appointed by the HOD, Ngaka Dumalisile which was signed on the 13<sup>th</sup> of March 2019. Paragraph 2.2 at page 13 of A reads that: You may only act in the post of Director: Municipal Finance for a maximum uninterrupted period of six months or if the post is filled, whichever comes first. He must be back paid according to the HOD as per paragraph 2.2. Page 14 of A is an appointment letter in acting capacity for the period 3<sup>rd</sup> of December 2018 to the 31<sup>st</sup> of March 2019. The letter was signed by the Chief Director of Cooperative Governance Support which is not HR unit. The chief Director has got powers to sign and to appoint a person in acting capacity in terms of delegation of powers. He performed duties as a Director after he was appointed. He was never informed that his appointment was unlawful. The same pattern of appointment was followed until page 30 of bundle A. He was reporting to the Chief Director. He was not furnished with the reason for non-payment of acting allowance. The provincial treasury allowed him to act for only one month. He agree with the policy at page 8 of bundle B that he cannot be paid acting allowance for six months. The respondent should obtain approval from the provincial treasury. He denied the version put to him that the only appointment was the one which was signed by the HOD stating that other letters were also authorising him to act. It is true that his Supervisor can ask him to act without remuneration.

### **The case of the respondent**

**The witness of the respondent, Mr Phuti Ramagoshi, the Director under Human Resource Management Practices and Administration testified under oath as follows:**

[5] He was transferred into a sub directorate under recruitment and selection in October 2019. He was informed that the applicant was enquiring about non-payment of his acting allowance. He started to check the date of the applicant's appointment in acting capacity. He found that the applicant acted only for one month. There was a recommendation from the chief director of the applicant in September 2019 to have the acting allowance for the applicant back paid. The recommendation was reported to the HOD. It is part of the process to make submission to the provincial treasury for appointment in acting capacity. The appointment was approved internally. The approval was for one month as per page 3 of bundle B. The applicant was subsequently paid his acting allowance as per page 3 of bundle B. There must be approval from the HOD if the person in acting capacity wants to be remunerated. The other letters of appointment did not reach Human Resource Management unit. The acting capacity was supposed to have been coordinated by HRM. It will be a chaos if the respondent will have to deal with acting allowances after officials have completed their acting capacity. The submission was delayed. The submission to Treasury was done in January 2019 and was submitted in February 2019. He does not know the number of months recommended to the treasury in January 2019. The first delay was from the Chief Director in September 2018 which was saying that the acting should be from July 2018. The post has been vacant from April 2018. The HR department did not know that the applicant was acting in June 2018. The applicant was not compelled to execute the duties of the director. The acting could have been six months but it was one month at the time of the approval. It is not unlawful for the Chief Director to appoint his subordinate to act.

### **ANALYSIS OF EVIDENCE AND ARGUMENTS:**

[6] 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. To be precise, the dispute is pertaining to non-payment of acting allowance. Everyone has a right to a fair labour practice in terms of section 23 of the Constitution of the Republic of South Africa. It is common cause that the applicant acted as Director under Municipal Finance from the 17<sup>th</sup> of April 2018 to the 04<sup>th</sup> of April 2019. The respondent does not deny that the applicant acted as the Director for the period in question. It is the case of the respondent that only one of the appointments letters received by the applicant was authorized. The respondent acknowledged appointment in acting capacity of the applicant for the period 05<sup>th</sup> of March 2019 to the 04<sup>th</sup> of April 2019. It is worth noting that the applicant was paid acting allowance for the period 05<sup>th</sup> of March 2019 to the 04<sup>th</sup> of April 2019 in the amount of R13 459-78 which is the difference in salaries between salary level 12 and 13. It is common cause further that the applicant was issued with acting appointment letter by the Chief Director under Municipal Finance authorizing him to act as a director.

[7] Mr. Ramagoshi testified that there was delay with regard to the submission to the treasury. The respondent disadvantaged the applicant by preparing the submission to the treasury in January 2019 and only submit the request for approval in February 2019 after the applicant have acted for almost 10 months. The submission which was submitted to the treasury is not in the bundle. The applicant was appointed by the Chief Director and his work was important as his work end up in the hands of the MEC. It cannot be said that the HOD did not know that the applicant was acting as a Director under Municipal Finance. The approval from the Provincial Treasury is dated the 05<sup>th</sup> of March 2019 as per page 3 of bundle B and the HOD issued acting appointment letter to the applicant on the 13<sup>th</sup> of March as directed by the approval. The last sentence on the approval letter from the treasury provides that any appointment done contrary to this approval, the department will be liable for irregular expenditure. The respondent decided to cause the applicant to suffer than facing the consequences.

[8] Chief Director is no ordinary person in the department and I consider her appointment letters issued to the applicant as valid and lawful. The applicant helped the respondent to keep the ball rolling and the respondent decided to take short cut in dealing with the case of the applicant. The conduct of the respondent by submitting acting allowance request on behalf of the applicant to the treasury in January 2019 amount to gross unfairness. I make a finding that the appointments letters which were issued by the Chief Director to the applicant were valid and lawful pertaining to delegation of powers. The applicant was actually left with only one month to complete 12 months as the acting Director hence the approval from the Provincial treasury was for one month. It cannot be said that the respondent requested approval for one month acting allowance for the applicant after he had work for eight months.

[9] I make a finding that the respondent committed an act of unfair labour practice relating to benefits by not paying him acting allowance. The respondent is to be blamed for the late submission to the Provincial Treasury requesting permission. I deem payment for six months acting allowance to be fair and equitable under the circumstances of this case. The applicant was paid one month acting allowance already and such has to be subtracted from six months. The applicant is to be paid five months difference in salaries between level 12 and 13. According to the table at page 3 of the respondent's bundle the difference in salaries between level 12 and 13 is R14 918-00 per month.

**AWARD:**

[10] The respondent, Department of Cooperative Government, Human Settlement and Traditional Affairs committed unfair labour practice against the applicant pertaining to benefits by not paying him acting allowance.

[11] The respondent, Department of Cooperative Government, Human Settlement and Traditional Affairs is ordered to pay to the applicant, Mr Moloko Petrus Makhura in the amount of R74 590-00 (seventy four thousand five hundred and ninety rand) which is the equivalent of five months salaries been the different in salaries between salary level 12 and 13 which is  $R14\ 918-00 \times 5 = R74\ 590-00$ .

[12] The amount mentioned at paragraph 11 above is to be paid to the applicant on or before the 15<sup>th</sup> of May 2021.

**PHEEHA DANIEL SEOPELA**



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**Name:**

**(GPSSBC) Arbitrator**