

IN THE GENERAL PUBLIC SERVICE SECTORAL BARGAINING COUNCIL HELD AT POLOKWANE



CASE NUMBER: GPBC700/2019

PSA obo. M. M. RAGANYA

APPLICANT

and

NATIONAL DEPARTMENT OF PUBLIC WORKS

RESPONDENT

ARBITRATION AWARD

DETAILS OF HEARING AND REPRESENTATION:

1. This unfair labour practice dispute relating to benefits was enrolled for arbitration in terms of section 186(2)(b) of the Labour Relations Act 66 of 1995 (the Act) and arbitrated on 01 October 2019 at the regional offices of the respondent situated in Hans Van Rensburg street, Polokwane.
2. The Applicant was present and represented by Mr. M. Mkhize, a labour relations officer from the union PSA. The respondent was represented by Mr. V. Ngcuka, an official from the respondent's labour relations department.
3. The parties were allowed to present opening- and closing statements, *viva voce* evidence under oath and to cross- and re-examine on the respective testimonies presented. Both parties presented verbal closing arguments which I have considered.
4. The proceedings were conducted in English without any need for interpretation. Manual- and digital recordings were made of the process and of the *viva voce* evidence presented.
5. In terms of documentary evidence accepted, the applicant presented 3 bundles. Bundle A1 consists of 25

pages, bundle A2 of 25 pages and bundle A3 of 8 pages. The respondent's bundle was marked as bundle B and consists of 13 pages. All documentary evidence were accepted as documents which are what they purport to be.

6. Section 138(7)(a) of the Act requires a panellist to issue a signed arbitration award with brief reasons. For this reason, only the salient points will be referred to in this award, although all *viva voce*-, documentary evidence and submissions were carefully considered.

ISSUES TO BE DECIDED:

7. I am required to determine whether the respondent has committed an unfair labour practice by not awarding and paying an annual bonus to the applicant for the 2017 / 2018 performance cycle.

BACKGROUND TO THE DISPUTE:

Common cause issues:

8. The applicant is employed by the respondent as a Construction Project Manager. The performance bonus under consideration relates to the applicant's 2017 / 2018 performance cycle. The applicant's personal assessment- and his supervisor's assessment score allocated for this cycle are not in dispute.
9. The applicable policy which governs the payment of performance bonuses is the respondent's Performance Management and Development Policy of 2007 (the policy), a copy of which is included as pages 1 to 25 of bundle A2.
10. The monetary value of the performance bonus claimed by the applicant amounts to R19 739-69.
11. The applicant carries the *onus* to prove the commissioning of the alleged unfair labour practice and to commence with the presentation of evidence.

Issues in dispute:

12. The applicant alleges that the respondent committed an unfair labour practice by failing to follow the policy in respect of the payment of performance bonuses. The respondent argues in opposition, that the applicant did not qualify for the bonus as his overall assessed score was too low.
13. In terms of relief, the applicant claims for the payment of his 2017 /2018 performance bonus amounting to R19 739-69.

SUMMARY OF EVIDENCE AND ARGUMENT:

APPLICANT'S EVIDENCE:

Mr. M.M Raganya:

14. The applicant referred to paragraph (b) on page 9 of bundle A2 and identified this as an extract from the policy. He stated that he conducted his own assessment of his performance by using the workplan which was introduced by the respondent.
15. He and his supervisor were in agreement regarding the applicant's performance. He identified page 1 of A3 as the workplan and referred to the signatures appended on this official document. He identified the KPA's in the far left column and his first quarter score of 119 recorded at the bottom of the column on the right. The score of 30, at the bottom far right of the page, was identified as the workplan's average score for all of his 4 quarters combined. In this instance, his manual score was 29.75. The average score was however calculated at 30 by the workplan.
16. He referred to page 3 of A3 and confirmed his 2nd quarter score as 119. The workplan averaged the yearly score as 60 despite his manual score being 59.5. He referred to his 3rd quarter score recorded on page 6 of A3. The workplan reflects his average score of 90, despite the fact that his manual score was 89.5. Page 8 of A3 shows his 4th quarter score. His manual average score of 114.5 was rounded up to 115 by the workplan, as recorded at the bottom of this page.
17. The applicant testified in cross-examination that his manual score contradicted the score of 115 generated by the workplan. He again referred to paragraph (b) on page 9 of A2 and testified that the workplan "*comes with rounding off.*"
18. It was put to the applicant during cross-examination that he disadvantaged himself in his own assessment by allocating low scores of 3's for his last quarter. The applicant testified that he did not have sufficient time to produce the available evidence in order to score himself on 4 or 5 and accepted his final quarter score as 100. He was satisfied with the score of 100 for the last quarter as he would still have qualified for his bonus. He saw the average score of 115 on the workplan and realised that he qualified for a 4% bonus. Only after seeing the workplan score did he go to his supervisor to double check the scores and to sign off on the

workplan.

19. It was put to him in cross-examination that the respondent needs to verify the scores entered into the workplan and makes use of an Excell Spreadsheet to verify the calculation of the scores. It was further put that this secondary verification method is necessary due to the fact that some employees have previously tampered with their last quarter scores. The applicant had no knowledge of this other method of verification used by the respondent. In re-examination, the applicant testified that the policy fails to make any mention of the manual calculation of scores and only refers to the "*Workplan Scoring Sheet.*"
20. He is of the view that the respondent failed to use the workplan as per their own policy. His scores were incorrectly calculated manually without the respondent relying on the score calculated by the workplan.
21. The score of 115 as reflected on the workplan qualified him to be awarded with a 2017 / 2018 annual performance bonus. A minimum score of 115 for all of the 4 quarters combined is required to qualify. He is of the view that he was treated unfairly. His manual score of 114.5 was correctly rounded up by the workplan to 115 in terms of the policy.

RESPONDENT'S EVIDENCE:

Ms. T.S.P. Semanya:

22. She testified regarding the verification process used within the region. After the submission of the individual scores by officials, she checks whether the ratings are in line with the respondent's policy. All 4 quarterly scores allocated for the respective periods must be averaged in terms of the policy.
23. During cross-examination it was put to her that the respondent's policies are not discretionary and that it should be followed. She replied by stating that she is uncertain as to whether any deviation from a policy is acceptable or not and she regards the policy as a guiding tool.
24. The 4 quarterly scores are manually entered onto her spreadsheet in order to verify the individual submissions. She testified that on many occasions, the manual averages did not tally with the workplan averages. This verification method serves as a "*checks and balances*" measure. The sum total of the 4 quarterly scores are divided by 4 in order to get the annual average.
25. She confirmed that all employees must use the workplan which effects automatic calculations on their behalf.

The policy however does not say that this verification cannot be done manually. It is also not prescribed how these averages should be calculated. She makes use of an Excell spreadsheet which disregards numbers after the decimal.

26. Paragraph (b) on page 9 of A2 refers to ratings done by employees themselves and not by her whenever she verifies these averages by means of manual calculation. Under cross-examination, she however conceded that no mention is made in this referred to paragraph to any ratings done by employees. She also conceded that this paragraph states that "*rounding off*" must be avoided. She read paragraph from 7.5.2(b) on page 8 of A2 and testified that she averaged the scores in terms of this provision.
27. She testified under cross-examination that the workplan was introduced to effect calculations on behalf of all employees. She initially testified that what is recorded on the workplan is often not a true reflection. She continued and stated that she has the right to verify the averages but expressed her uncertainty as to whether the scores calculated by the workplan, is in fact an accurate reflection. She was unable to confirm whether the workplan scores were manipulated or formatted by the applicant.
28. She was referred to the workplans on pages 6 and 8 of A3. She agreed that the score of 59.5 is correct if a calculator is used. She testified that she was told not to round off and as such, disregarded the 0.5 in order to record the score as 59. The applicant's yearly average is manually calculated as 114.5. In line with her referred to method, she again disregarded the 0.5 in order to reflect an average score of 114.
29. She conceded that there is a difference between rounding off and rounding up. She conceded that the workplan rounded the manual score of 114.5 to 115. It was put to her that the policy clearly attempts to avoid rounding off. She replied by stating that there is no clear guide to show her exactly what to do. She conceded that if she rounded up that the applicant's score would have been 115, which score would have qualified him for receiving his annual bonus. She replied to a clarifying question put to her and agreed that the policy does not prohibit rounding up.
30. In re-examination she confirmed that in accordance with the existing norms and practice, that she is directed to never focus on any numbers after the decimal and that only the scores before the decimal should be considered.

ANALYSIS OF EVIDENCE AND ARGUMENTS:

31. This dispute was referred as an unfair labour practice dispute relating to benefits in terms of the provisions of section 186(2)(a) of the Act which reads as follows:

“(2) ‘Unfair labour practice’ means any unfair conduct or omission that arises between an employer and an employee involving-

(a) unfair conduct by the employer relating to the promotion, demotion, probation (excluding disputes about dismissals for a reason relating to probation) or training of an employee or relating to the provision of benefits to an employee.”

32. It remains common cause that in terms of “Category C” of the respondent’s “Reward Structure for Employees on Salary Levels 11-12...” (page 23 of bundle A2) that an employee, such as the applicant, stands to benefit from being awarded with an annual performance bonus upon achieving an overall averaged score of 115 within the assessed cycle.

33. The relevant clause in the policy, to which both parties consistently referred to, is paragraph (b) at the top of page 9 of bundle A2. This paragraph specifically states that:

“b) The overall performance rating scores generated by the electronic Workplan Scoring Sheet **shall** be considered to avoid rounding off. Only the first two digits must be recorded, e.g. 50% or 80%, etc.”
(My emphasis).

34. It is further common cause, that the applicant’s performance score for the 2017 / 2018 performance cycle was generated by the “*electronic Workplan Scoring Sheet*” at 115. It remains uncontested that this computerised system was introduced by the respondent in order to assist employees with these calculations.

35. From the evidence considered, it is further common cause that all employees are expected to make use of this workplan to record their individual assessments. This is a mandatory procedure in terms of which employees enter their individual scores into a computerised system, which then generates performance rating scores, which “*shall be considered*” It is abundantly clear that this portion of the applicable policy contains a mandatory term and can never be regarded as a mere “*guiding tool*”.

36. I have considered the judgement, regarding the rules of interpretation, in the matter of *National Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA). The Supreme Court of Appeal held that:

“Interpretation is the process of attributing meaning to the words used in a document, be it legislation or some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where

more than one meaning is possible, each possibility must be weighed in the light of all these factors. The process is objective and not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusiness like results or undermines the apparent purpose of the document. The inevitable point of departure is the language of the provision itself, read in context and having regard to the purpose of the provision and the background to the preparation and production of the document”.

37. From the uncontested evidence of Ms. Semenya (Semenya), it remains undisputed that the manual calculation of the applicant's average score was 114.5. Semenya testified that she was told not to have any regard to any numbers after the decimal and therefore effectively rounded off the manual score to 114. The policy clearly prohibits the rounding off of any scores, a fact which was never challenged by either of the parties.
38. The electronically generated averaged score was however recorded on the workplan as 115. The parties remained *ad idem* on this highly relevant aspect of the evidence. It is apparent that the sophisticated software which operates the computerised workplan, actually rounded up the agreed manual score of 114.5 to 115 and did not disregard the numbers after the decimal, as done by Semenya.
39. The pre-programmed calculations conducted by the workplan are clearly in line with the respondent's policy which is specifically aimed at avoiding any rounding off. It remains unchallenged that the computerised workplan practically executed the seemingly pre-programmed mathematical function of rounding up, hence recording the applicant's generated score as 115.
40. In line with the purposive approach adopted in the *National Joint Municipal Pension Fund* judgement referred to *supra*, the use of the words “...performance rating scores generated by the electronic Workplan Scoring Sheet shall be considered...” creates absolutely no interpretational predicaments and / or any confusion. These words are clearly used and also understood within their ordinary grammatical meaning and constitutes a mandatory provision to use the scores generated by the workplan, to the apparent exclusion of any manually calculated and rounded off scores.
41. Semenya testified that scores generated by the workplan would often not tally with the manual scores. I have considered the probability of this undisputed statement which was provided in the absence of any other corroborative evidence to show that the computerised workplan system was not functioning properly. Semenya failed to provide any specific examples and / or elaborate on possible causes for these discrepancies, which I assume would have been readably available in the form of printed error logs and / or by leading the evidence of an information technology specialist, having knowledge of these alleged flaws in the respondent's widely used computerised system. From the further evidence of Semenya considered, I find it highly improbable that the respondent would seemingly continue to use this workplan in light of these alleged inaccuracies in the operation thereof. I take note of the inherent accuracy and reliability of sophisticated software and accept that the workplan was purposefully programmed to execute mathematical

functions such as calculating averages and rounding up of figures. I am not satisfied that the respondent has managed to prove that the workplan was or is dysfunctional and therefor favour the view that these discrepancies were in all probabilities considered, rather as a result of human error.

42. From the totality of the evidence considered, I am satisfied that the respondent failed to adhere to its own policy which clearly dictates that the performance scores generated by the workplan should have been considered to avoid rounding off. This finding results in the further determination that the applicant has in fact achieved an averaged performance score of 115 as per the workplan, which qualifies him to receive the agreed upon benefit in accordance with the respondent's policy. These aforesaid failures considered, constitutes an unfair labour practice in accordance with the provisions of section 186(2)(b) of the Act.

AWARD:

43. The respondent is ordered in terms of section 193(3) of the Act, to pay to the applicant, his annual bonus for the 2017 / 2018 performance cycle, amounting to R19 739-69.
44. The aforesaid bonus must be paid on or before 15 December 2019.

SIGNED AT PRETORIA ON 21 OCTOBER 2019.

A handwritten signature in black ink, appearing to read 'SJ Lombard', with a stylized flourish at the end.

SJ LOMBARD
GPSSBC PANELLIST