

Council Name

# ARBITRATION AWARD

Panellist/s: Seretse Masete

Case No.: GPBC706 /2019

Date of Award: 30/07/2019

In the ARBITRATION between:

**ERASMUS MAFUNE and 2 Others**

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(Union / Applicant)

and

**GOVERNMENT PRINTING WORKS**

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(Respondent)

**Union/Applicant's representative:** Phillip Maponya from PSA

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**Respondent's representative:** Lillian Maswanganyi

Respondent's address: 11 – 20<sup>th</sup> Ave Industria Polokwane **0700**

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### Particulars of proceedings and representation

1. The matter was held on the 30<sup>th</sup> of July 2019 at the respondent offices in Polokwane Limpopo at 9h00
2. The Applicants, **Erasmus Mafune, Khaukanani Matumba and Joseph Mahasa (employees)** were represented by Phillip Maponya of PSA and the respondent, **Government printing Works(employer)**, was represented by Lillian Maswanganyi.
3. The proceedings were in English and digitally recorded.

### Issues to be decided

4. I have to decide whether or not the conduct of the employer by not paying the employees their cash bonus after a **2017/2018 financial year** successful assessment of their quarterly reviews which rated them **4** constituted an unfair labour practice pertaining to benefits.
5. I must determine the appropriate relief, if I find that the conduct of the respondent constituted an unfair labour practice.

### Background to the dispute

6. The **employees, Erasmus Mafune, Joseph Mahasa and Khaukhanani Matumba** were employed by the employer on 01 June 1986, 05 May 1986 and 05 January 1975 respectively at a salary of R303339 per annum each.
7. They all completed their **2017/2018** reviews and were rated a score of **four (4)** but were not paid cash bonuses like other employees.
8. They believed it was an unfair labour practice for the employer not to pay them and sought the decision of the employer to be reversed and they be paid performance bonus accordingly.
9. The employer rejected the employee's version citing that the employees failed to submit their motivation to back up a rating of **four (4)**.
10. The employer called one witness and submitted four bundles of documents marked **B, C, D** and **E**. The employee called one witness and submitted one bundle of documents marked **Annexure A**.

## Survey of evidence and arguments

### The Employees' version

The employee, Erasmus Mafune, testified under oath as follows:

11. He completed his 2017/2018 reviews and was rated **four (4)** by his supervisor. **Mr Siraj Risvi (Siraj)** a director from head office in Pretoria, came to their office and collected his quarterly reviews and those of the two colleagues of his. He reassessed them and told them to sign. He further told them not to worry about the motivation as he would do it for them. He gave all the three of them a rating score of **four (4)**.
12. On page 25 of **Annexure A**, he was rated 133% which translated into a **four (4)** and their supervisor, Mr JM Nare agreed and signed as well. **Annexure B** is a list of all those who were paid cash bonuses. Nobody told him to submit a motivation except Siraj who said they should not worry about it because he was going to motivate for them.
13. He and his colleagues only followed instructions from their superiors from Head office because Siraj is a director from Head office. He was the one who told them not to submit any motivation. They could not have refused to obey the instructions of their superiors. MJ Chauke is his supervisee and he was paid without submitting any motivation. Siraj is senior to his supervisor Mr MJ Nare.
14. The employees' representative closed his case citing that there was no need to put the other two witnesses on the stand because they were going to say the same thing testified by Erasmus Mafune.

### The employer's version

The employer's 1<sup>st</sup> witness, Lindiwe Mahlangu, testified under oath as follows:

15. She is a director employed by the employer since 2016, her duties include managing HRD, internships and Performance Management and Development System (**PMDS**). She referred to **paragraph 14.8 of the PMDS policy** which states that, the head of the section must interrogate all assessments. If the view is that the assessments are **not a true reflection** of the employee's performance, she/he may request the **supervisor** to review the rating score with the **employee**.

16. Siraj did come to assess the employees and he assessed 12 of them of which 11 were rated four (4) and one was rated three (3). The Chairperson of the Moderating Committee told Siraj to go back and request motivation but Siraj did not come back with motivations for all the 12 employees, only some were submitted. The rating score of some including those of the employees, were reduced and they no longer qualified for a cash bonus.
17. She conceded that the policy does not say anything about reducing the rating scores of the employees. She was the scribe of the meeting where the scores were reduced but she did not bring the minutes thereof with. She did not know whether or not Siraj told the employees not to submit their motivation. Siraj failed to carry out the mandate of the Chairperson of the moderating committee. It was put to her that the employees were not informed about the reduction of their rating scores. She did not know whether Siraj did return to the employees for the second time to inform them of the outcomes or not. It was put to her that the employees were disadvantaged because of the mistakes committed by Siraj and their supervisor. She said she did not have a comment on that. She conceded that Siraj did it wrongly but the employee would not have qualified because the evidence was not enough.

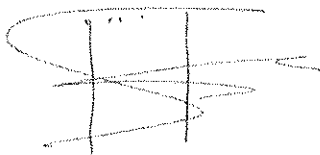
#### **Analysis of the evidence and arguments**

18. Page 22, paragraph 14.8 of the PMDS Policy provides that, if the view is that the assessments are not a true reflection of the employee's performance, the Chairperson of the Moderating Committee may request the **supervisor** to review the rating scores with the **employees**. This paragraph simply means that the supervisor and the employees should be the ones who review the rating scores. In this case, the moderating committee reviewed the scores without involving the employees. The rating scores on paragraph 25 of **Annexure A**, was still showing the rating score of 4. The employees were still under the impression that their rating score was four (4) and that they qualified for cash bonuses. The employer's witness conceded that the director, Siraj did not carry out the mandate of the Chairperson of the Moderating Committee.
19. The witness of the employer confirmed that Siraj is a Director at head office and that he was the one who reassessed the employees and scored them four (4). The Chairperson of the moderating Committee did not accept the scores and he told Siraj to go back and request motivation from the employees. The employees testified that Siraj never came back and the witness of the employer conceded that she did not know whether he went back or not. This means the version of the employees were not challenged and I accept it as what transpired.

20. Both the employer and the employees corroborated that though Siraj was not a direct supervisor of the employees, he was a Director stationed at head office and a superior to the employees' supervisor. Could the employees have refused to obey the instruction by Siraj, no, not even their supervisor J Nare, hence he also signed for the rating scores of four (4) allocated to the employees. The employees were not given any feedback about what transpired in the meeting of the Moderating Committee but their **scores were changed** without following **paragraph 14.8 on page 22 of the PMDS Policy**. I agree with the employer that if the evidence is not enough, or no motivation was submitted, the employee may not qualify for a cash bonus. However, in this matter, no motivation was demanded from the employees and they were rated the score of four (4) by their superiors and they were actually told that no motivation was necessary by Siraj. The employer did not challenge this version of the employees except to say motivation was required to make them qualify for a cash bonus. The employer could not prove that the employees were told about the submission of motivation and further could not prove that the employees and their supervisor were consulted when reviewing their rating score. I am satisfied that the employer acted unfairly when reviewing the rating scores of the employees.

#### **Award**

21. The employer, **Government Printing**, committed an act of unfair labour practice against the employees, **Erasmus Mafune, Khaukanani Matumba and Joseph Mahasa** relating to benefits.
22. The employer, **Government Printing Works** is ordered to pay Erasmus Mafune, **R27300-51** Khakanani Matumba **R27300-51** and Joseph Mahasa **R27300-51** which is a 2017/2018 PMDS Cash bonus for the employees calculated as each **employee's Notch X 9%**. The payment is subject to the relevant statutory deductions.
23. The payment cash bonuses to the employees by the employer must be made on or before 15<sup>th</sup> of October 2019.



Seretse Masete

Date 07 /08/2019

**GPSSBC Panellist**