



GENERAL PUBLIC SERVICE  
SECTOR BARGAINING COUNCIL

## **ARBITRATION AWARD**

Panellist: T MAHASHA

Case No: GPBC402/2019

Date of the award: 30 September 2019

**In the matter between:**

**PSA obo CHUENE HOPE**  
(Union / Applicant)

and

**OFFICE OF THE PREMIER**  
(Respondent)

**Union/Applicant's representative: (PSA) PHILLIP MAPONYA**

Union/Applicant's address:

Telephone:

Telefax:

**Respondent's representative: MBOBOLE MICHAEL MASEKO**

Respondent's address:

Telephone:

Telefax:

### **DETAILS OF THE HEARING AND REPRESENTATION.**

1. The Applicant attended the hearing and was represented by Phillip Maponya of PSA.
2. The respondent also attended the hearing and was represented by Mbobole Michael Maseko.

### **ISSUES TO BE DECIDED.**

3. Whether the respondent's decision not to grant the applicant leave with full pay to undergo training was unfair, and if so, the appropriate relief.

### **BACKGROUND TO THE DISPUTE.**

4. The Employee declared a dispute of unfair labour practice relating to training in terms of section 186 (2) of the Labour Relations Act, herein referred to as the "LRA".
5. The matter was set down for arbitration hearing at Office of the Premier, Polokwane on 05 September 2019.
6. Parties agreed to submit written heads of arguments on specified dates, which they did.
7. The matter was concluded on written submissions made by both parties.
8. The applicant was granted a bursary to study LLB. The Applicant obtained her LLB in 2016. The Applicant was afforded a bursary to do legal practice at Edupark, which she completed in 2017.
9. The applicant applied for leave with full pay to serve articles. The leave was not approved by the respondent. The respondent, had instead; offered to release the applicant without pay. The applicant did not accept to be released without pay.
10. There is a Provincial Special Leave Policy and Public Service Regulations in place.
11. The applicant's duties involve co-ordinating labour related issues in the province.
12. The relief sought is that the respondent should be ordered to release the applicant with full pay to serve articles with office of the State Attorney.

## **SURVEY OF EVIDENCE AND ARGUMENT.**

### **Applicant's submissions.**

13. It was submitted on behalf of the applicant that the respondent's conduct not to release the applicant, was unfair, inconsistent and arbitrary.
14. The applicant was granted the two bursaries on account of the motivation by her supervisor. The supervisor noted and acknowledged that the applicant was performing duties that required interpretation of the law.
15. The respondent's refusal to release the applicant with full pay rendered her a dropout out since she was denied an opportunity to compete her practical training course by serving articles.
16. Serving articles is necessary as shown in a circular signed by the Department of Justice.
17. The training required by the applicant is regulated by PSCBC Resolution 1 of 2005 which provides that where necessary, special leave with full pay may be granted to an employee under circumstances mentioned hereafter.... 7.1.2 practical work required as a prerequisite for registration in a particular profession. PSCBC Resolution 1 of 2005 should take precedence over National Prescripts on condition that it does not provide anything less than what the Public Service Regulation provides.
18. The respondent is willing to release the applicant without leave to undergo training, which is contrary to what the approval stipulates.
19. Clause 7.1.2 provides that where a study necessitates a practical training, the employee should be allowed a study leave with full pay.
20. It is not true that the training required by the applicant is not relevant to her day to day duties as the Labour Relations Officer. Training required by the applicant is a continuation of the theoretical study which commenced at the law school for which a bursary was allocated.
21. The bursary offered to the applicant to do PLT created a reasonable expectation that there will be no additional financial expenses that the respondent would incur should the applicant be permitted to complete the course for which the bursary was offered.
22. The Provincial Policy is not applied consistently to other individuals in the Provincial Administration.
23. The reasons provided by the respondent for denying the applicant study leave in pursuance of her studies to complete her qualification is unfair and arbitrary, and therefore constitutes unfair labour practice.



### **Respondent's submissions.**

24. It was submitted on behalf of the respondent that the position of a labour relations officer does not require one to be an admitted attorney.  
The applicant does not represent the employer in any legal dealings, but co-ordinate labour relations policy across the provincial departments.
25. Clause 7 of the PSCBC Resolution 1 of 2005 provides that "where necessary, special leave with full pay may be granted to an employee under circumstances mentioned hereafter, on condition that the department is satisfied that the studies undertaken is in the interest of the department".  
Clause 7.1.1 provides: "fulltime studies at a recognised educational institution within the republic or abroad. Study leave in this regard shall be granted only for the prescribed duration of the particular course or degree. 7.1.2 Practical work required as a pre-requisite for registration in a particular profession; or 7.1.3 attendance of a self-enrichment course (e.g. flower arranging, interior decorating, sewing) which is in the interest of the department".
26. Legal representation within the departments is dealt with by office of the state attorney, which positions require one to be admitted as an attorney.
27. The required special leave with full pay is not in the interest of the respondent, and neither is the practical work a prerequisite for registration as a labour relations Deputy Director.
28. The applicants are only three in the Directorate: Labour Relations Transversal. For the applicant to be away on special leave with full pay will cripple the operations of the employer. The budgetary constraints in relation to compensation of employees is under strain and will not allow for employment of a replacement when the applicant is granted such a leave.
29. Although labour relations officials are expected to be able to understand and apply the principles of the law as it applies to labour relations, they are not expected to be admitted attorneys and or legal practitioners.

### **ANALYSIS OF SUBMISSIONS AND ARGUMENT.**

30. In any unfair labour practice dispute, the applicant bears the onus of proof.
31. It must be mentioned from the outset that the respondent had no issue to grant the applicant a special leave without pay.
32. The applicant's case is that the respondent's conduct was unfair when it refused to release her on full pay, to serve articles with the Office of the State Attorney. The applicant's argument is that serving articles with the office of the State

- Attorney is a continuation of the practical of the practical legal training, for which she was granted a bursary. It was further argued on her behalf that the respondent created a legitimate expectation when it granted her bursaries to pursue legal qualifications and refused to grant her a special leave with full pay to serve articles with office of the State Attorney. Her case is that as a Labour Relations Officer, she had to serve articles. She argued that the reasons provided by the respondent are untrue and that they should be rejected.
33. The respondent's case is that an employee can be granted special leave when the employer is satisfied that the studies undertaken is in the interest of the department". I agree with the respondent that the applicant does not have to be an attorney in order for her to perform duties as a Labour Relations Officer. I am further persuaded that the Directorate: Labour Relations, Transversal, could be understaffed, especially because such a submission was not challenged by the applicant herself.
34. The question is whether or not the respondent's conduct can be said to be unfair as alleged by the applicant.
35. Section 186(2) C a) of the LRA does not define what is referred to as "Unfair Conduct". Dr John Grogan in his book entitled "Employment Rights" second edition (Juta 2014) at page 114-115, adequately summed up the hallmarks of unfair conduct as follows:
- "Where one person or a group of people is favoured over another on the basis of irrelevant criteria, where people are treated arbitrarily, i.e. not in accordance with established rules, where people are treated irrationally, i.e. on the basis of an unproven or untested views and suppositions or where people are penalised or denied an advantage without being able to state their case".
36. The above-mentioned policies do not however, create a right for the employees to be granted special leave upon request. It is evident that PSCBC Resolution 1 of 2005 and the Public Service Regulations give the accounting officer a wider discretion in awarding special leaves. The determining factor is whether in exercising such a discretion, the respondent can be said to have acted rationally and fairly. The fairness and rationality will be deduced from the reasons given for refusal to grant a special leave.
37. It is clear from the submissions that the respondent had three reasons why the applicant could not be released with full pay to serve articles. The applicant could not be released because it was not in the interest of the department for her to serve articles, the directorate she was attached to was understaffed and that the respondent could not afford to pay salaries for a replacement for the period the applicant will be serving articles.
38. The applicant's contention is that refusal on the basis of the above- mentioned grounds was unfair, arbitrary and contrary to clause 7.1.2 of PSCBC Resolution



- 1 of 2005, herein referred to as the "Resolution". I agree with the applicant. If the reasons alluded to by the respondent were legitimate, the respondent would not be prepared to release the applicant on a special leave without pay. I find it to be unfair for the applicant to be expected to be without an income for a period of 12 months, which is required for serving articles.
39. In the converse, the Respondent's contention is that in refusing to grant special leave with full pay, it had complied with clause 77 (1) of Public Service Regulations and clause 7 of PSCBC Resolution of 2005. Clause 77(1) of PSR provides: "for purpose of enhancing the performance of the work of the department, a head of department may grant financial or other assistance for any study training or research where- the employee has requested such assistance and the study, training or research is related to the employer's skills requirements".
40. It is common cause that the applicant requested to be released on full pay. The respondent's conceded that Labour Relations Officials do need some degree of knowledge of law to perform their duties. The crux of the respondent's argument is that the applicant is not expected to represent the respondent in courts where it can be expected of her to be admitted as an attorney. If that reason was a legitimate one, the respondent would not have offered a bursary to the applicant to undergo practical legal training.
41. I agree with the respondent that one does not have to be an admitted attorney to work as a labour relations officer. It does not however, appear from the provisions of the policies referred to, that an employee can only be offered financial assistance if the qualification pursued is a requirement in a specific directorate. Both policies refer to the interests of the Department. They do not refer to a specific Directorate. The question is whether or not serving articles would be to the interests of the Premiers Office. It is common cause from the submissions made, that a Labour Relations Officials will need a certain degree of knowledge of the law in order to perform their duties competently. The degree of the knowledge law required was not defined or stated by both parties. What is clear is that both parties are in agreement that some degree of the knowledge of law is required.
42. I do not agree with the respondent that serving article ship was not to the interest of the respondent. If that was the case, the respondent should not have granted a bursary to the applicant to study Practical Law Training. It is my finding that giving her such a bursary was an acknowledgement that Practical Law Training, was to the interest of the Respondent.
43. It is therefore reasonably probable on the basis of the submissions made by both parties, that serving articles with the Office of the State Attorney was in the interest of the respondent as envisaged by clause 7.1.2 of the Resolution. I agree

with the applicant that an expectation to be released to serve articles was created by the respondent when it granted her a bursary to study LLB and to do Practical Law Training. I agree with the applicant that serving articles with the Office of the State Attorney was a continuation of the theoretical knowledge she had gained in the PLT School. On the basis of the above, I find the respondent's reasons for refusing paid leave of absence to the applicant to be irrational and unfair.

44. The Applicant, had, in my view, succeeded in proving on a balance of probabilities, that the respondent committed unfair labour practice relating to training.

**AWARD.**

45. The Respondent, Office of the Premier, is ordered to release the Applicant, Raesetsha Hope Chuene, with full pay to serve articles for a period to be specified in her contract of article ship.



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**MAHASHA TM**

**GPSSBC PANELIST.**