

PHSDSBC

PUBLIC HEALTH AND SOCIAL DEVELOPMENT
SECTORAL BARGAINING COUNCIL

ARBITRATION AWARD

Case No: PSHS817-18/19

Commissioner: Chris Mannde

Date of award: 13 August 2019

In the matter between:

PSA obo Watson Mhlanga

(Applicant)

and

Department of Social Development- Limpopo

(Respondent)

DETAILS OF THE HEARING AND REPRESENTATION

- [1] This is the arbitration award between Mr. S.W Mhlanga (hereinafter referred to as the Applicant) and the Department of Social Development in Limpopo Province (hereinafter referred to as the Respondent)

- [2] The arbitration hearing was held at Modimolle in the office of The Department of Social Development in Limpopo Province on the 06th May 2019 & 10th June 2019. The Respondent was represented by Jeffrey Matsimela . The Applicant was represented by Patricia Mahladisa a PSA union official.

- [3] The parties adduced oral evidence to dispense off this arbitration. The parties further agreed to submit written heads of closing arguments. The heads of arguments were submitted as agreed. I shall not repeat the written closing heads of arguments in this award but I shall make reference to relevant submissions and arguments.
- [4] The Labour Relations Act 66 of 1995 as amended shall be referred to in this award as the 'Act'. The proceedings were recorded digitally.

ISSUE TO BE DETERMINED

- [5] I am to determine whether the dismissal of the Applicant was both procedurally and substantively fair or not.

SURVEY OF EVIDENCE AND ARGUMENTS

THE RESPONDENT' S EVIDENCE

The Respondent's witness Manthata Naome Molomo testified as follows:

- [6] She was as a community Development practitioner under the Phahameng office under the Modimolle Local Municipality. She worked with communities and the NGOs including community development and also women empowerment. She was based in Mokgopong dealing with projects. She found projects in progress.
- [7] Projects were initiated by communities after they identified their needs. She advised communities in this regard. Around 2010 there were three projects under her. The Lehlabile Confectionery, Kodumela hle mosadi Rekgaotswi project and amongst the three she took care of the Lehlabile Confectionery project. She found the projects in progress. Her role in Lehlabile Bakery was to oversee and to advice the members on how to run the project. The project was funded by the department of Social Development (Respondent). She was instructed by the Applicant to assist the project with the business plan

amounting to R 269 500-00. She reported to Letsela at the time. She should have been approached by the project not the other way around. Her supervisor seemed to be aware of the funding raised by the Applicant and confirmed that she should do as instructed. The Applicant said the funding was to strengthen the project. At the time the project was self-sustainable.

- [8] The project did not apply for funding. She carried the instruction because it was given through the supervisor. The members of the project told her that the Applicant told them about the funds they could access from the department. The project at the time had a profit exceeding R 200 000-00. The project did not apply for the said funding. The project at the end got the funds but she was no longer part of the project. The Applicant took away an incomplete business plan from her and gave the other officer to complete the process.
- [9] She testified during cross examination that the Applicant instructed her to do the business plan for the Lehlabile Project. Her supervisor reaction to the effect that she should do as instructed indicated to her that the money was there. She could not respond to the fact that her business plan was used for funding but what she could testify for was that the business plan was taken from her. She did not see the business plan that was used for the funding. The business plan did not qualify for funding. She did not know whether it was the district or the province that approved the funding of the project.
- [10] During re-examination she testified that the Applicant took the business plan away from her.

Steve Mathobela testified as follows:

- [11] He knew the Applicant as he visited their project. He discussed project issues with the Applicant. It was true that the project was funded by the Respondent from the start in August 2008. There was a funding of R 269 500 that was received. The funding was not requested. The Applicant told them there was money. Naome was the one who assisted them and later she was replaced by Mr. Mphahlele. Mphahlele was the one who ensured that the funding was received. The Applicant was the one who told them about the money that could

be funded by the department. The project was sustainable at the time. The person that finally signed the documents that they receive the money was Mr. Mphahlele.

[12] He testified during cross examination that the Applicant monitored the project without checking the books. The provincial team visited them once before the funds were released to them. He did not sign any document with the Applicant.

Mr. Lucas Mphahlele

Mr. Lucas Mphahlele testified as follows:

[13] He was a community development practitioner reporting to Letsila. The Applicant requested him to complete the business plan of Letlabile Project. Dr. Tjale requested him to finish the business plan because the officer responsible was on leave. Dr. Tjale was with the Applicant. The person on leave was Naome Molomo. He did not know whether the project received money because he was not part of the Project.

[14] He testified during cross examination that Dr. Tjale was the coordinator of projects at the time.

THE APPLICANT'S EVIDENCE

The Applicant Mr. S. W Mhlanga testified as follows:

[15] He was the manager in community development. He started to work in the old government On the 01 July 1991. The process for funding a project started with mobilisation, to assist them with the business plan after the needs identification. He was not approving projects. The approval was obtained from the province. The district director was involved at the district level. He was dismissed on 03 June 2013 and appealed. During the appeal he performed as a manager and even acted on other occasions as a district director. He even was assed and

got PMDS during his appeal period. He did not agree with the allegations levelled against him. Naome was not reporting to him. He did not instruct Naome to draft the business plan. He did not instruct Lucas to complete the business plan. Lucas was not reporting to him. He read page 52 which was approval request done Dr. tjale. Meso signed acting on his behalf. The amount applied for was R 269 500.00. The assessment of the project was done by Mr. Letsela. He was not involved with the assessment and submissions involving the project. In the year in question about 14 projects were funded. The allegations were unfounded. He humbly prayed for reinstatement.

[16] He testified during cross examination that he did not instruct Molomo to draft a business plan. The project funding was done by the province. He was aware that Lehlabile would be funded but he was not involved in the process that could lead to the funding. He did not know that Tjale instructed Lucas.

ANALYSIS OF EVIDENCE AND ARGUMENTS

[17] In this matter it is upon the Respondent to prove on the balance of probabilities that the Applicant's dismissal was both procedurally and substantively fair.

PROCEDURAL FAIRNESS

[18] It is not in dispute that the Applicant was dismissed 03rd June 2013 . The Applicant appealed. It is trait that the Public Service regulations provide that the appeal would be processed within 30 days. It is also not in dispute that the dismissal was confirmed on the 17th October 2018. It is clear that the Respondent was procedurally unfair. The delay was excessive in such a way that there were no words which can justify or meditate the delay. In fact the delay tempers with the spirit of the code of good practise which is within the act that provides that a disciplinary action must be prompt.

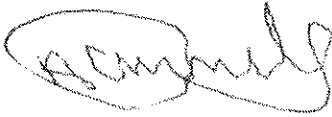
SUBSTANTIVE FAIRNESS

- [19] The applicant was dismissed after he was charged with the four charges which appeared in page 17 & 18 in the Applicant's bundle of documents. To paraphrase, the charges are related to dishonesty concerning the misappropriation of funds amounting to R269 500-00.
- [20] The witness Naome Molomo testified that the Applicant instructed her to the business plan for Letlabile Projects that will cost R269 500-00. Naome further testify that the Applicant took an incomplete business plan from her and gave it to a colleague to complete. The colleague Naome was referring to was Lucas Mphahlele. Contrary to Naome's testimony Lucas testified that he was given the incomplete business plan by Dr Tjale to complete and not by the Applicant and at the time Naome was on leave. The Respondent's witness's evidence was not coherent. Naome was not sure which business plan was used to access the funds. It is highly improbable that the Applicant was involved in the business plan. There is no evidence at all that suggests that the Applicant attempted or misappropriated the funds as suggested by the charge. It is clear on the memo presented that the Applicant was not involved in the approval or recommendations of the funds in question.
- [21] It is my findings on the balance of probabilities that the Respondent was substantively unfair. The Respondent created a mountain out of a mole hill.
- [22] The following is my award:

AWARD

- [23] The Applicant's dismissal was both procedurally and substantively unfair.
- [24] I order the respondent to reinstate the applicant on similar or the same conditions that prevailed before he was dismissed on the 17 October 2018. The Applicant must resume work on the 01st September 2019.

- [25] I further order the Respondent to pay the Applicant money which is a total amount of **R 637 832-25** (Six Hundred And Thirty Seven Thousand Rand Eight Hundred And Thirty Two Rand And Twenty Five Cents) which is the total of nine months (09 Months) in which the Applicant was dismissed. The money mentioned excluded the bonuses the Applicant should have earned during the time the applicant was dismissed.
- [26] The order I mentioned in [25] must be affected on or before 01st September 2019.
- [27] Failure to pay in time interest shall accrue as per section 143(2) of the Act.
- [28] I make no order as to costs.



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Christopher Mannde
PHSDSBC PANELIST