



Default Award

Case Number: MPEM1141-20
Commissioner: Abel Venter
Date of Award: 12-Jul-2020

In the **ARBITRATION** between

PSA obo Nkotsoe, M

(Union/Applicant)

and

Department of Employment & Labour - Mpumalanga (Department of Employment & Labour - Mpumalanga
(Respondent)

Union/Employee's representative: Mr J Heynecke (Union Official)

Union/Applicant's address: PO Box 282

Sonpark

Nelspruit

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Telephone: 0137417500,0828808938

Telefax: 013 741-750-5608,0872347688

E-mail: pamela.letebele@psa.co.za, Mothusi.nkotsoe@labour.gov.za

Employer's representative: Absent

Respondent's address: Private Bagx 117

Pretoria

0001

Telephone: 0829080790

Telefax:

E-mail: tina.roos@labour.gov.za, mothusi.nkotsoe@labour.gov.za

DETAILS OF HEARING AND REPRESENTATION

1. The matter was set down for an arbitration process by the Commission on 9 July 2020, at the CCMA House, 69 Kruger Street, eMalahleni, Mpumalanga, 1035, at 1-00 pm.
2. The Applicant (Mr M Nkotsoe) attended the enquiry and was represented by Mr J Heynecke of the Public Service Association (PSA). The Respondent (Department of Employment and Labour) was absent despite a set down that was sent by email to Tina Roos on 15 June 2020.
3. In the absence of the Respondent the matter proceeded.(Section 138 (5)(b)(i)of the Labour Relations Act)
4. The Applicant handed a comprehensive bundle of 31 pages to the CCMA and the hearing was digitally recorded.

ISSUE TO BE DECIDED

5. I am to determine, whether the Applicant has a right to access of information 1 to section 16. About disciplinary hearings conducted due to his alleged misconduct.

BACKGROUND TO THE ISSUE

6. The Applicant is currently employed as the Manager of the Department of Employment and Labour in Witbank and was charged on 1 December 2017 with 13 allegations of misconduct.(See pages 12 to 14) On 8 May 2018 the Applicant was found not guilty on 12 charges but guilty on one and given a final written warning. The arbitration to "clear his name" will be heard on 5 August 2020 at the General Public Service Sectoral Bargaining Council (GPSSBC)
7. On 19 February 2020 the Applicant was again charged (See pages 23 to 26) with 5 allegations of misconduct but the hearing was not finalised.

SURVEY OF EVIDENCE AND ARGUMENT

8. In the absence of the employer the union argued that all they need is a transcript of the hearing that was finalised on 8 May 2018 and the two investigation reports relating to NEHAWU.
9. The information is needed in order for the union to prepare for the arbitration on 5 August 2020 at the GPSSBC

ANALYSIS OF EVIDENCE AND ARGUMENT

10. Disclosure of information is defined in Section 16 of the Labour Relations Act. In essence it should not cause harm to an employee, when it is legally privileged or private personal information.
11. The request is in line with the PROMOTION OF ACCESS TO INFORMATION MANUAL page 42; "A requester who seeks information on records about himself or herself or next of kin if the information is about a deceased individual is exempted from paying costs.
12. In the matter between **Police & Prisons Civil Rights Union v Minister of Correctional Services & Others (1999)** 20 ILJ 2416 (LC) it was held that the employee charged has the right to copies of the statements of persons to be called as witnesses as well as copies of all documentation to be adduced in evidence.
13. In the light of points 10 to 12 above the request for disclosure of information of the PSA will reflect in my ruling.

Ruling

1. The Department of Employment and Labour (Mpumalanga) is ordered disclose information here under the PSA obo Mr M Nkotsoe without paying costs and by 3 August 2020

2 The information required is:

- 2:1 The transcripts of the proceedings of the hearing 8 May 2018
- 2:2 The investigation conducted following the manhandling by some NEHAWU officials who removed the Applicant from the building on 23 November 2017 following the complaint laid against him.
- 2:3 The investigation report that followed the complaint laid by NEHAWU against the Applicant which led to the current disciplinary action against the Applicant which were served on 10 December 2019
3. The information as per paragraph 2 below must be issued on or before the 03 August 2020.



AP VENTER
SENIOR COMMISSIONER
CCMA