



In the

GENERAL PUBLIC SERVICE SECTOR BARGAINING COUNCIL

Held in Nelspruit

Date: 28 July 2021

CASE NO: GPBC 320/2021

In the matter between

PSA obo ZE Khwekhwe

Applicant

And

Cooperative Governance and Traditional Affairs

Respondent

ARBITRATION AWARD

DETAILS OF HEARING AND REPRESENTATION

- [1] The hearing was scheduled under the auspices of GPSSBC heard before me on the 28th of June 2021 at the offices of the Respondent in Nelspruit. For the Applicant Ms Nomfundo Mlangeni from PSA appeared and for the Respondent it was Mr Nkosana Matume.
- [2] Applicant submitted a document bundle which I marked Bundle A. Respondent relied on the documents submitted by the applicant. Proceedings were recorded electronically and parties agreed to furnish closing arguments on the 9th of July 2021.



ISSUE TO BE DECIDED

- [3] I had to decide whether the Respondent acted in contravention of section 186(2)(a) relating to benefits, by refusing to pay the Applicant Subsistence and Travelling Allowance.

BACKGROUND TO THE DISPUTE

- [4] The issue emanates from the failure of the Respondent to pay the Applicant subsistence and travelling allowance or claim for costs. The Applicant is employed by the Respondent as the Assistant Director Human Resource Development and he currently earns a basic salary of R40, 955. 75. After failing to be assisted internally he then referred the matter to the Council for adjudication. His desired outcome is that the Respondent must pay him his money.

SURVEY OF EVIDENCE AND ARGUMENTS

APPLICANT'S CASE

- [5] The Applicant Mr EZ Khwekhwe testified under oath that he is the employee of the Respondent employed as Assistant Director HRD. He said the dispute arose after he was on official work at Piet Retief in March 2020. On the day he came back to the office he was about to submit his claim for signing by the relevant manager but he felt sick and went to the doctor. This was on the 23rd of March 2020 and the countrywide lockdown was about to commence and upon his return from the doctor all the relevant personnel had already left.
- [6] During the month of June when the country was put on alert level 2 he tried to access the government complex to submit the claim but he was denied entry by the security and he went back. On the 6th of July 2020 he came back to work, asked other personnel on how to submit a late claim now that the period has surpassed. When he could not get any response he decided to write the memorandum to Chief-Director motivating his reasons for late submission.



- [7] The Chief Financial Officer responded in that the Applicant had ample time to submit his claim in June 2020 before the submission of financial statements on 30th of June 2020 as a result this claim falls. This was echoed by acting HOD that the claim lacks basis and the Applicant must forfeit this claim.

ANALYSIS OF ARGUMENTS AND EVIDENCE

- [8] The Respondent opted not to give any evidence but echo what is said on the documents submitted by the Applicant. As the Arbitrator I must listen and weigh evidence on balance of probabilities and take the most probable version and make a final determination on it. In this case, the Applicant was tasked to do work at Mkhondo Local Municipality and as per policy of the department he qualifies for Subsistence and Travelling allowance as he is not working within the normal work place.
- [9] The policy makes it clear that all claims for the month shall be submitted for processing on or before the end of the following month any deviation shall be submitted for the recommendation of the CFO and the approval of the HOD.¹ In this case, the Applicant complied with this section and submitted a memorandum along with the reasons for his claim to be late. Upon doing this the Respondent decided to refuse the claim without giving any reasons other than that he had ample time ignoring all the lockdown debacle and the fact that the Applicant was sick.
- [10] In my view, the actions of the Respondent are very egregious, inhumane and lack empathy as a result such actions must be abhorred and rejected with contempt they deserve as they undermine the rule of law that prohibits the unfair labour practice towards employees. The Applicant was indeed sick and submitted the sick note to prove that he was genuine, he made attempts to access the government complex but due to lockdown regulations that are known by the Respondent he could not access the complex, when he could do so his claim is rejected on vexatious and frivolous reasons as if during lockdown was business as usual.

¹ S12(e) of Subsistence and Travel Policy -2019/20



[11] In light of the deliberations above I find the actions of the Respondent to have constituted unfair labour practice and with that the Applicant's prayer must be sustained. In addition to that I will impose the cost to the Respondent for the vexatious and frivolous matter that they failed to honour their own policy and pay the Applicant the benefits he deserved as the Respondent acted in *mora*.

AWARD

[37] I therefore make the following order:

1. The actions of the Respondent constitutes unfair labour practice.
2. The Respondent is ordered to pay the Applicant Subsistence and Travelling claim amounting to R10, 279. 84 interest included, on or before 31st August 2021.
3. Respondent is also ordered to pay the costs of this arbitration. Council is ordered to calculate and furnish the cost this arbitration to the Respondent on or before the 31st of August 2021.

Sivuyile Tshingana



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GPSSBC Arbitrator