



Council Name

ARBITRATION AWARD

Panellist/s: Seretse Masete
Case No.: GPBC2735 /2018

Date of Award: 08/04/2019

In the ARBITRATION between:

PSA obo PUMLA NYATHI

(Union / Applicant)

and

MPUMALANGA DEPARTMENT OF EDUCATION

(Respondent)

Union/Applicant's representative: Pam Letebele from PSA

Union/Applicant's address: 2 Annecke street Sonpark Nelspruit.

Telephone: 013 741 7500

Telefax: 0872347688

Respondent's representative: Frieda Marie Rieger

Respondent's address: P/bag X11341 Mbombela 1200

Telephone: 013 766 5427

Cell: 072 0246 172

Particulars of proceedings and representation

1. The matter was held on the 8th of April 2019 at the Mpumalanga Department of Education premises Mapulaneng College at 9h00.
2. The Applicant, **Pumla Nyathi (employee)** was represented by Pam Letebele **from PSA** while the respondent, **Department of Education (employer)** was represented by its employee, **Frieda Marie Rieger**.
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 respondent by not paying the applicant cash bonus and its refusal to reconsider her assessment resulting from a successful rating during PMDS, 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.

Point in Limine

6. The employer representative raised a point in limine that the arbitration could not proceed because GPSSBC did not follow its own rules. She referred to rule 11 of the rules for the conduct of proceedings before the GPSSBC, Resolution 3 of 2017 which amended GPSSBC Resolution 4 of 2004 (**the Rules**). The rule provides that the secretary must notify the parties of conciliation before 14 days. She said the Secretary did not do that. She further referred to rule 13 which provides that if parties fail to attend, the certificate must be issued. She confirmed she has received the certificate of non-resolution but the employer was never notified of the conciliation process.

Ruling on Point in Limine.

7. I have considered that both parties received the certificate of non-resolution. **Section 135** of the “**Act**” provides that conciliation must be held within 30 days of the receipt date. **Section 135 (5)** of the “**Act**” further provides that when conciliation failed or at the end of 30 days, or period agreed upon by parties, the Commissioner must issue the certificate stating whether or not the dispute has been resolved. A copy of the

certificate must be given to both parties to the dispute. In this case, the period of 30 days has lapsed and therefore the certificate of non-resolution has been issued to both parties. The point in limine submitted by the employer was therefore dismissed and the matter proceeded.

Background to the dispute

8. The **employee** was employed by the employer on 03 March 2008 as an admin Clerk at a salary of R14600+ per month.
9. The employees completed her 2017/2018 reviews and was given a rating score of five (5) but she was not paid the cash bonus though she has given a pay progression.
10. She believed it was an unfair labour practice for the employer not to pay her the cash bonus and refused to reconsider her assessment. She wanted her reviews to be reassessed by a neutral committee and she be paid incentives in the form of cash bonus.
11. It was the employer's case that the procedure was followed when dealing with the employee's reviews and not every employee who qualified for cash bonus received it.
12. The employee testified as a sole witnesses and the employer promised to call witnesses and submit minutes of the moderating Committee.
13. The employee submitted one bundle of documents marked **Annexure "A" (Annexure)** and the two parties agreed that the Performance Management Policy (**Policy**) will be referred to in their closing arguments.

Survey of evidence and arguments

The Employees' version

The employee, Pumla Nyathi testified under oath as follows:

14. She was assessed from 01 April 2017 to 30 September 2018 for mid-year term. She referred to her annual assessment by her supervisor on page 17 of the **Annexure**. She was given a rating score of **five (5) (92%)** which was an exceptional performance as indicated on pages 20 and 21 of the **Annexure** respectively. She also submitted her motivation which is on page 23 to 25 of the Annexure where her supervisor explained why she qualified for a cash bonus.
15. She did not get any feedback from the intermediate Review Committee (**IRC**) and the Departmental Moderating Committee (**DMC**). She lodged a grievance, which is on page 14 of the **Annexure** but she never received any response from the employer. She **wanted to be**

paid cash bonus like other employees and or her file be re-moderated. Her performance was not acknowledged. Her supervisor gave her an outcome which qualified her to get performance bonus. The moderating committee was not fair and it did not know the policy.

The employer's version

The employer's representative, Frieda Marie Rieger, testified under oath as a witness, as follows:

16. Based on documentation, the Department confirmed that the employee was assessed and the process was fairly followed. The **IRC** did not give her a feedback because her supervisor is a member thereof. The **DMC** consisted of officials from Head office and District offices and its role was to assess whether or not the employee qualified for a performance bonus/Cash bonus. The Department did not give any guarantee that the employee would get performance bonus, it was the **DMC** that made recommendations and the HoD approved.
17. She confirmed the employee was not given a feedback but that the process was procedural. The employee was not unfairly treated. She (employee) was assessed and given a 1,5% pay progression which was an acknowledgement for a satisfactory performance. Not every employee received a performance bonus because it is a nice to have not a guarantee. The **DMC** made an intensive check before it gave a recommendation. The employee was not given a formal outcome and she could apply for her reviews to be reassessed.

Analysis of the evidence and arguments

18. One of the principles of the **Mpumalanga Performance Management Policy**, on **paragraph 8.6** states that- There shall be regular, honest and timely feedback, both positive and negative. The employee testified that she was not given any feedback and the employer confirmed but justified it by saying for the fact that the employee received pay progression, her performance was acknowledged. My take is that Pay progression and or cash bonus are the end results (outcomes) of the processes of assessment and ratings. I agree pay progression is an acknowledgement of the employee's performance but feedback must be given to the employee during and after the assessment and moderation. This did not happen. I therefore accept the evidence of the employee. The contextual feedback mentioned in the policy is that the employee must be given a feedback during the assessment between the supervisor and the

employee, and after the moderation by the Intermediate Review Committee (**IRC**) as well as after the oversight by the Departmental Moderating Committee (**DMC**).

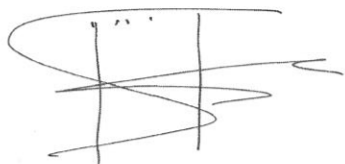
19. Paragraph **9.2.3** of The (**Policy**) states that: ***the system must be applied fairly***. Paragraph 10 of the Policy provides that the recognition and reward shall be managed through the Mpumalanga incentive Policy. It further provides that all employees eligible for recognition and reward shall be recommended by the immediate supervisor at the end of the cycle. The reward shall be based on the score obtained by the employer. Individual employees may be rewarded after the recommendation of the **DMC** approved by the Head of Department(**HoD**). From the evidence of the employee which was not disputed by the employer, the employee did not receive any feedback as to whether or not the DMC recommended her for the reward. Both the **IRC** and the **DMC** did not give feed back to the employee. The employee was in the dark, not knowing whether she would receive cash bonus or not. She only found out after payment was made to those who qualified and or recommended to receive the cash bonus and this is against the policy. I agree with the employee that she was unfairly treated. The employer should have at least given feed back to the employee, explaining to her why she was not recommended for the cash bonus as required by the policy.
20. **Paragraph 13** of the policy outlines the procedure to be followed by the **IRC** during the assessment. It assesses the score/rating agreed upon between the supervisor and the employee. If it agrees with the score, it becomes the validated assessment rating (**VAR**). **Paragraph 13.5** provides that should there be any recommendation for **lowering/upgrading** of the rating score, it must be **referred back to the employee and the supervisor**. In this case, no evidence was led as to whether or not the rating scores of the employee was lowered or upgraded. The employee had a legitimate expectation that she would be paid a cash bonus because she was given a rating score of **five (5)** and nobody told her that she was not recommended to receive it. I do agree with the employer that the DMC must recommend and the **HoD** should approve for payment before the employee is paid the performance bonus. However, the employee was not told whether she was recommended or not, she was waiting for payment to be effected but it was not. I am satisfied that the **employer committed an act of unfair labour practice related to benefits against the employee**.
21. The employer indicated that not every employee who was given a rating score of four or five received the performance bonus. She indicated that it was not automatic to receive it because there were employees who received the rating score of **four and five** but did not receive the performance bonus or cash bonus. I cannot accept that version because the employer did not prove it, no evidence was led to that effect and or no witness was called to corroborate it. The

employer also did not lead evidence on the criteria used to select those who qualified and those who did not. The employer therefore failed to prove that the criteria used (if any) was not unfairly selective.

22. **Paragraph 15.4** of the Policy provides that if the **DMC** identifies discrepancies, they should deal with them in a fair, just and consistent manner. The employee did not know whether there were discrepancies or not, no feedback was given to her. The paragraph further states that the **DMC** must keep detailed minutes of the decision taken, especially if there is a lowering of the rating score. The employer did not produce any document to that effect as promised during the opening statement. **Paragraph 15.6** of the policy provides that if the employee is aggrieved she/he may submit a grievance to the assessment appeal panel or submit it in terms of the Public service grievance procedure. The employee complied with this provision and her grievance appeared on page 14 of the **Annexure** but the employer did not respond. It is my findings that the employer committed an act of unfair labour practice related to benefits to the employee. I do not see the necessity of making a reassessment of the employee's Reviews because the rating scores were not reduced or upgraded. The employee was given a rating score of five **(5) (92%)** and she must be paid performance bonus accordingly.
23. The employee was unfairly treated and a cash bonus calculated based on her notch and the rating score of **five (5)** should be paid to her.

Award

24. **The employer, Mpumalanga Department of Education, committed an act of unfair labour practice against the employee, Pumla Nyathi relating to benefits.**
25. The employer is ordered to pay the **employee** a cash bonus which is calculated based on her notch and the rating score of five (5).
26. The money should be paid to the employee on or before the **30th of June 2019**.



Seretse Masete

Date

GPSSBC Panelist