



ARBITRATION AWARD

Panellist/s: Nkosinathi Mkhize
Case No.: PSCB58-19/20
Date of Award: 18 May 2020

In the ARBITRATION between:

PSA obo BB Mabona

(Union / Applicant)

and

Department of Education – Mpumalanga - 1st respondent

&

Department of Public Service and Administration – 2nd respondent

(Respondents)

Union/Applicant's representative: Mr. Mduduzi Simelane
Union/Applicant's address: PO BOX 582
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Telefax: m.simelane@mpuedu.gov.za

2nd Respondent's representative: Ms. Frieda Rieger
Respondent's address: Private Bag 11341
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DETAILS OF HEARING AND REPRESENTATION

1. This is the award in the matter between PSA obo BB Mabona ("the applicant") and the Department of Education – Mpumalanga ("the respondent").
2. The arbitration was held at the offices of the Respondent in Mpumalanga Province on 14 November 2019.
3. The applicant was present and represented by Mr. Mduduzi Simelane, a trade union representative.
4. The respondent attended the proceedings and was represented by Ms. Frieda Rieger, its employee.
5. The second respondent was not in attendance.
6. The proceedings were electronically recorded.

BACKGROUND

7. The parties agreed that the facts were not in dispute. The commissioner had to record what the parties had submitted.
8. The parties further submitted that they would seek to resolve the matter amongst themselves by 11 November 2019 and to advise the Council about that and where there was no resolution of the matter internally, then the Commissioner would be requested to deliver the award.
9. The award, if it was necessary, should be based on the stated case as agreed between the parties.
10. It must be recorded that there was no further instruction to the Commissioner, hence this award was issued.

ISSUE TO BE DECIDED

11. I had to decide whether the respondent properly interpreted and applied Resolution 7 of 2015 when it stopped the housing allowance that was being paid to the applicant.

The stated case

Common cause facts

12. The applicant was employed by the respondent as Institutional Administration Clerk for Makhathini Primary School.
13. The applicant was earning R14 475.25 cents per month.
14. That the housing allowance was R1 398 per month as a home owner allowance.
15. Where an employee was renting other than owning a house, she would receive a rental allowance of R900 per month and the difference between the two amounts would put into a savings scheme to be released only when the employee owns a house.
16. The applicant had received a monthly allowance of R900 during the period of September 2015 until March 2016.

17. As from 1 April 2016 until 30 June 2017 the allowance was programmatically stopped in the system (see code Q68526).
18. As from July 2017, the applicant started receiving the home owner allowance. The applicant had to apply for that allowance after she acquired her own house / home.
19. An amount of R 2 100 was however paid to the applicant as part of the arrear housing allowances. It was not clear what allowances were those, whether it was for the saved R300 portions. They required the Commissioner to evaluate it and make a determination.

SURVEY OF EVIDENCE AND ARGUMENT

20. There were no disputes between the parties but what I had to determine was the amount of arrear allowances due to the applicant.
21. It was therefore clear that the applicant was claiming for the home rental allowance of R900 per month that was programmatically stopped and was not paid to him during the period 1 April 2016 up to June 2017 of which amounted to a period of 15 months.
22. The arrear allowances therefore amounted to R900 x 15 months = R13 500.00 (thirteen thousand, five hundred rands).
23. The respondent's bundle at page 4 – 5 showed that the representative had on the 23rd of May 2019 responded to the applicant's trade union officials (Ms. Mnisi, Ms. Letebele and Mr. Nkosi) and of interest was what she put on paragraph (3) *"To accommodate the member Persal can only allow payment of (R300 times 7 = R2100) arrears and HRM is in the process to prepare a submission in this regard for approval by the District Director. In other words, the member can lodge a claim for arrears amounting to R2100.00."* Since the applicant had not been paid the actual allowance of R900 per month since April 2016 and the savings amount of R300 monthly that go with that, it was not clear or explained in that email as to why only 7 times R300 could be claimed and not all the arrear amounts.
24. The Resolution 7 of 2015 at clause 4.5.6 provided as follows (**Individual - linked savings facility**):
 - 4.5.6.1 *Employees who are eligible to receive the housing allowance but do not own a house shall continue to receive R900 per month. The difference between the total housing allowance and the R900 shall be diverted into and accumulated in an individual – linked savings facility.*
 - 4.5.6.2 *Employees may elect to have the full housing allowance diverted into and accumulated in an individual – linked savings facility.*
 - 4.5.6.3 *Accumulated savings shall only be accessed for the purpose of acquiring home ownership, building and improving a house.*

4.5.6.4 Accumulated savings shall be held in an interest bearing – bearing facility until such time as the employee is ready to access the funds for the purposes of acquiring home – ownership, building and improving a home.

25. It was therefore clear that the R 2 100 that was paid to the employee on 27 May 2019 as arrear housing allowance could not have been the savings it could not have been in conformance with any of the provisions and sub provisions of clause 4.5.6 of the Resolution. It however appeared from the email sent on the 22nd of May 2019 by one Zodwa Modingwana to the respondent's representative (*see page 69 of the applicant's bundle*) that the only reason for the claiming of the R 2 100 only rather than the whole arrear amounts was that the respondent's system could not allow (open) for such claim to be made and if it was made, it could have resulted into an audit query.
26. It was therefore probably that the applicant did not receive even the arrear savings when she acquired her own home as she was allowed to apply for the R300 (presumably as part of the savings pocket) way after she had acquired her own property. It should be borne in mind that she acquired her own home in 2017 and was allowed to make a claim for arrear housing allowances in May 2019 at a time when she was receiving the full home owner allowance. That at face value appeared to be arbitrary.
27. It was therefore reasonable and fair to face, in the absence of any evidence in the contrary that the applicant was further owed whatever amounts that were in her savings facility, mind you, the Resolution provided that such savings facility account should be interest bearing, so it could not have been a straight R300 as it was deducted from her, it must have been R300 plus interest.
28. It was therefore equitable and fair that the proper resolution of this matter should be that the applicant be paid R13 500 less R2100 that was paid as arrear housing allowance [i.e. R11 400 (eleven thousand, four hundred rands) plus whatever was in her individually – linked savings account and due as at 31 April 2017 and for the period between April 2016 up to June 2017 (**note:** *as the subsequent month, the applicant qualified for home ownership allowance and such was paid in full*).
29. I therefore find that the respondent failed to interpret and apply correctly Resolution 7 of 2015.

AWARD

30. The respondent failed to correctly interpret or apply Resolution 7 of 2015.
31. The respondent is ordered to pay to the applicant an amount of R11 400 **plus** all the savings accumulated into the applicant's individually - linked interest bearing savings account, including the accumulation for the period between 01 April 2016 up to and including 31 June 2017.
32. The amounts above mentioned shall be paid to the applicant within 30 days from the date this award comes to the attention of the respondent.
33. There is no order as to costs.



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Nkosinathi Mkhize
Panellist/s