

JURISDICTIONAL RULING

Case No: **PSHS431-20/21**

Commissioner: **Victor Madula**

Date of ruling: **26 January 2021**

In the matter between:

PSA OBO SIBOGISILE BLESSING FORTUNATE VILAKAZI

Applicant

and

DEPARTMENT OF HEALTH- MPUMALANGA

1ST Respondent

SIFISO KOROMBO MAHLANGU

2ND Respondent

DETAILS OF THE HEARING AND REPRESENTATION

1. This matter was set down for arbitration hearing before me on 15 December 2020 at Witbank Hospital, Witbank, Mpumalanga Province at 10:00AM. Both parties were present during the hearing. The applicant (respondent), Mr. Sibogisile Blessing Fortunate Vilakazi was represented by Flip van der Walt from Public Servants Association of South Africa (PSA), while the 1st and 2nd respondents (applicants), Department of Health- Mpumalanga and Mr. SK Mahlangu were represented by Maxwell Sithole, the employee of the 1st Respondent. The point *in limine* was opposed.

BACKGROUND TO THE ISSUE IN DISPUTE

2. The applicant referred an unfair labour practice related to promotion dispute on 01 October 2020. The matter was scheduled for arbitration on 15 December 2020.

PRELIMINARY ISSUES

3. During the arbitration hearing, the respondents have just before the start of the arbitration raised a jurisdictional issue (*point in limine*) *thereby challenging* that the Council does not have jurisdiction to hear the matter because the applicant did not apply for condonation for the late referral of the dispute. The respondents submitted that the process pertaining to the applicant's non-promotion dates back as far as 19 June 2020 and the applicant's referral was extremely late. The referral of the applicant's dispute was made on the 1st October 2020, while the applicant became aware of the act or omission which allegedly constitutes unfair labour practice on 19 June 2020. The respondents further submitted that, the applicant indicated in his grievance form that he became aware of the act or omission which allegedly constitutes unfair labour practice on 19 June 2020.
4. The submission of the applicant was that, he became aware of the act or omission which constitutes unfair labour practice on 19 June 2020. The applicant lodged a grievance with the respondent on 24 June 2020. The feedback for the grievance was received by the applicant on 20 July 2020. It was correct that the dispute was referred to the Council for conciliation on 01 October 2020. It was also correct, according to the applicant that, the unfair labour practice dispute should be referred to the Council within 90 days from the day one became aware of the act or omission which constitutes unfair labour practice. The applicant has calculated his 90 days from the 20th July 2020 when he received the feedback of the grievance from the 1st Respondent. The applicant further submitted that the Council has jurisdiction to arbitrate the matter, since the dispute was referred to it within the stipulated 90 days' time frame (20 July 2020 and 01 October 2020).

ANALYSIS

5. Section 191 (1) (a) and (b) of the Labour Relations Act, 66 of 1995 as amended states that “If there is a dispute about the fairness of a dismissal, or a dispute about an unfair labour practice, the dismissed employee or the employee alleging the unfair labour practice may refer the dispute in writing to-

A referral in terms of paragraph (a) must be made within –

Days of the date of the act or omission which allegedly constitutes the unfair labour practice or, if it is a later date, within 90 days from the date on which the employee became aware of the act or occurrence.”

6. In terms of the submissions of both the parties, it is common cause that the applicant became aware of the act or omission which allegedly constitutes the unfair labour practice on 19 June 2020. It is also common cause that the dispute was referred to the Council for conciliation on 01 October 2020. The date on which the applicant became aware of the act or omission which allegedly constitutes the unfair labour practice was the 20th July 2020 when he received the final outcome of his grievance. The 90 days’ time frame prescribed by the Labour Relations Act, 66 of 1995 as amended (the Act) should be counted from the 20th July 2020, when the applicant received the final decision of the respondent in respect of the grievance he lodged. The applicant firstly exhausted the internal remedy by lodging a grievance with the respondent. There was no dispute until the 20th July 2020. In view of the above, I believe that the applicant’s dispute was referred to the Council (PHSDSBC) within the 90 days’ time frame prescribed by the Act and as such there is no need for the condonation application.

RULING

7. The *point in limine* raised by the 1st and 2nd respondents is dismissed.
8. The Council (PHSDSBC) does have jurisdiction to arbitrate the matter.
9. The Council must schedule this matter for arbitration.



Victor Madula