



# ARBITRATION AWARD

Commissioner: **Bheki Khumalo**

Case No: **PSHS863-22/23**

Date of award: **4 April 2023**

In the matter between:

**PSA OBO ZANDI E MHLANGA**

Applicant

and

**DEPARTMENT OF HEALTH- KWAZULU-NATAL**

Respondent

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## **DETAILS OF THE HEARING AND REPRESENTATION**

1. The matter was set-down for arbitration in terms of Section 191(5) (a) of the Labour Relations Act (LRA) at the respondent's offices in Estcourt, on 31 March 2023. A union official Mr Mbanjwa represented the Applicant. While Mr Dlamini, the Labour Relations Officer appeared for the Respondent.
2. A common bundle of documents was used. The Parties were allowed to submit their written closing statements by 3 April 2023 and they dully complied for which fact I am grateful to them.

### **ISSUE TO BE DECIDED**

3. The Applicant referred an unfair labour practice dispute in terms of s186(2) of the LRA. I have to decide whether the Respondent committed an unfair labour practice within the definition of the law by its failure to pay the Applicant her performance bonus in respect of the year 2021.

### **BACKGROUND**

4. The Applicant was employed in 1998. She occupied her current position of being an assistant nursing manager responsible for primary health care (PHC) since 2014. As part of management reporting to the CEO, she is also a member of Executive Committee.

### **SURVEY OF EVIDENCE AND ARGUMENT**

#### ***Common cause facts***

5. In terms of a policy on Employment Performance Management Development System (EPMDS), the Applicant is entitled to a performance bonus if her performance is reviewed as satisfactory by her supervisor, the CEO.
6. In respect of 2021, the Respondent issued a directive that the closing date for submitting the EPMDS documentation is 29 October 2021.
7. The Applicant duly submitted hers on 27 October 2021 and had a performance review meeting with the CEO on the same day ("A" page 9). In terms of the said performance review, the Applicant is entitled to R 8479,52 bonus.
8. The Applicant's EPMDS documents were submitted by the CEO'S office to the human resources development (HRD) office for processing on 3 November 2021 which was after the submission cut-off date of the 29 October 2021. Therefore, the Respondent refused to pay the Applicant's performance bonus.

### ***Applicant's case***

9. The Applicant averred that she submitted her claim in time. She is not responsible for submission to the HRD, but the CEO's office. The CEO accepted her claim and did not give her any feed-back about it or queried her claim.
10. She also submitted in time her subordinates' EPMDS documents to HRD and monitored the same. But two of her subordinates whose claims were submitted in time were denied bonus payment for the same false allegation of late submission according to Respondent's record on page 5 of the bundle. While others were paid.
11. The Respondent's record on page 5 is inaccurate and unreliable. It indicates wrong submission dates or no dates at all in other instances. The Applicant is also recorded twice on page 5 which conflicts each other.
12. The Applicant's witness, Mariska House (Mariska), who also reports to the CEO submitted her EPMDS documents on 15 October 2021 and had a meeting with the CEO on 25 October 2021. But she was also not paid because her claim was purportedly submitted on 3 November 2021. All her subordinates' performance bonus claims were not paid because according to HRD they were submitted on 3 November 2021, yet Mariska submitted them to HRD before the closing date. Mariska and the Applicant also discovered that the HRD recorded the submission date for all EPMDS documents as 3 November 2021
13. In the written closing heads of argument, the Applicant contended that she submitted earlier to her supervisor and she was not responsible for a late submission to the HRD. She also contended that, the CEO's office negligently failed to motivate for and invoke the condonation of its' late submission to HRD.

### ***Respondent's case***

14. In summary, the Respondent's witness Lungelo Mbhele (Lungelo) who is the HRD manager stated that the EPMDS submission dates are set to comply with the Provincial deadline dates. The bundle page 1 is a circular to the departments indicating their submission dates.



15. The bundle Annexure "B" is a register being a record of EPMDS submission by the respective departments. It is signed by the HRD official who was an intern in this case.
16. According to the said register the Applicant's claim was received by HRD on 3 November 2021 while it was supposed to have been submitted on 29 October 2021 according to the notice in the bundle page 1.
17. However, the email sent by the Applicant indicates that she submitted her claim on 27 October 2021 to her supervisor, the CEO. Normally, the CEO instructs his subordinate to submit the EPMDS to HRD. Lungelo is aware of the period of grace provision for the late submission of the EPMDS which is invoked by the CEO. He also conceded the human errors in page the bundle 5 and annexure "B", specifically the missing signature of the HRD official in annexure "B".
18. In its' written closing heads of argument, the Respondent relied on Circular 34 of 2018 and contended that the Applicant and her supervisor were responsible for ensuring that the EPMDS documents are submitted to HRD by the closing date. In this case, the Applicant's performance documentation was submitted to HRD late. Therefore, she became illegible for a performance bonus.

#### **ANALYSIS OF EVIDENCE AND ARGUMENT**

19. In this case I must determine whether the conduct of the Respondent constituted an unfair labour practice concerning benefits as envisaged by the law. The unfair labour practice doctrine is intended to protect against irrational, mala fide and arbitrary decision making by an Employer, and any decision by an Employer must be evaluated on that basis.
20. The material facts of this case are, as stated in 5 to 8 above, common cause and there is no need to restate the same. In this case I find that the Respondent committed an unfair labour practice by its failure and/or refusal to pay the Applicant her due performance bonus. The brief reasons for my finding are as follows.
21. In terms of clause 7.1 (c) of Circular 34 of 2018, which is based on the Public Service Regulations 72.3; the relevant supervisor must ensure that the signed performance agreements are submitted to their internal HRM/D components on or before the end of the first working day following the due date for the signing of performance agreements.

22. It is further provided in clause 10.5 (d) of the same Circular that the Employee is responsible for presenting the draft performance agreement, work plan and performance development plan to the supervisor for discussion and joint agreement on the final performance agreement documents.
23. It is common cause that the Applicant's supervisor being the CEO failed to ensure that the performance agreement concluded on 27 October 2021 is submitted to HRD. It is also common cause that the same CEO inexplicably failed or ignored to resuscitate the situation by invoking the period of grace provision which would have avoided subjecting the Applicant to an unfair labour practice.
24. Further implicating the CEO as an accounting officer of the institution is the fact that in HRD an intern without supervision, simply inserted wrong EPMDS documents submission dates even in respect of the Applicants' subordinates. Yet those documents were submitted in time to HRD by the Applicant and her witness as the supervisors. Therefore, in the circumstances, I deem the following award equitable.

### **AWARD**

25. The Respondent committed an unfair labour practice by its failure and/or refusal to pay the Applicant her due performance bonus.
26. The Respondent is hereby ordered to, by no later than 30 April 2023, pay the Applicant her due performance bonus in the amount of R8479,52.



**Bheki Khumalo**