



DEFAULT AWARD

Case No: PSCBC178-19/20

Date: 26 August 2020

Panellist: Vuyiso Ngcengeni

In the matter between

PSA obo T Mapundu

Employee

And

Department of Education – EC

Employer

Employee representative:

Samkelo Mzuku

Telephone:

047 501 2508

Email:

samkelo.mzuku@psa.co.za

Employer Rep:

Absent

Email:

nyameko.tshabo@ecdoe.gov.za

DETAILS OF HEARING AND REPRESENTATION

1. This is a default award in the arbitration between the parties mentioned above.
2. The arbitration was virtually heard on 25 August 2020 under the auspices of the Public Service Co-ordinating Bargaining Council (“the Council”) in terms of section 24 (4) 24 (5) of the Labour Relations Act, No 66 of 1995 as amended (“the Act”). The collective agreement that is at the centre of the dispute is Resolution 2 of 2015 (the Resolution).
3. The Employee was present in the hearing and she was represented by Mr Samkelo Mzuku from PSA.
4. The Employer was absent.
5. I decided to continue with the arbitration, after I satisfied myself that the Employer was notified of the hearing, in terms of section 138 (5)(b)(i).
6. The Applicant submitted two bundles of documents and the first one (A) consists of the resolution and the Employee’s printed copies of payslips for a number of selected months starting from 2015 to August 2020. The second bundle (B) is made of the pre-arbitration minutes conducted by the parties on 14 August 2019.
7. The dispute is about a 28.5% Employer contribution to the Government Employees Medical Scheme (GEMS) which was lacking between April 2012 and December 2014.

ISSUE TO BE DECIDED

8. I have to determine whether the Employer failed to correctly interpret and apply the Resolution when it failed to pay the Employee an amount of R 6 062.52 which is 28.5% as per Resolution 2/2015 clause 6.1.1.
9. The Employee wants to be paid the above mentioned amount.

BACKGROUND TO THE ISSUE

10. The Employee is employed as an Administrative Clerk, based in the Engcobo district in the Eastern Cape. She is on level 6 and earns R 19 874.25 per month.
11. The dispute arose on 14 February 2018 and was referred to the Council for conciliation on 12 July 2019.

Applicant's case

Samkelo Mzuku made the representation below under oath, on behalf of the Employee –

12. The Employee has been employed since 2010.
13. She has been contributing to GEMS since 2010 up to 01 January 2015, as can be seen from the payslips in the bundle (A).
14. In terms of the Resolution clause 6.1.1 which reads *“Medical assistance for in-service employees on the Government Employees Medical Scheme (GEMS) will be adjusted by 28.5% effective on the 1st January 2015.”*
15. All other employees were paid the 28.5% as a lump sum, starting from January 2015 and only the Employee was omitted for reasons only known by the Employer.
16. In the pre-arbitration meeting they held with the Employer, the Employer did not dispute that the Employee qualifies for the 28.5% and it promised that it was going to make submissions to have her paid.
17. The Employee's payslips are contained in the bundle and they indicate that in 2014, she was a member of GEMS, so she qualifies for the 28.5%.
18. The purpose of the Resolution was to compensate employees for lack of adjustments for the period of 2012 to 2014.
19. The payment was made as a once off payment in 2015 to other employees, albeit not at one time, but various employees were paid over a period that covered many months.
20. The amount therefore was and is still due to the Employee, and that is R 6 062.52.

ANALYSIS OF EVIDENCE AND ARGUMENTS

21. The evidence presented and the bundle of documents are uncontested, owing to the absence of the Employer in this matter.
22. As Samkelo stated that the purpose of the Resolution was to compensate employees for lack of adjustments for the period of 2012 to 2014, and further that the Employer has failed to make a payment of R 6 062.50 which is due to the Employee.
23. It follows therefore that the omission of the Employee from such payment constitutes erroneous departure from the correct interpretation and application of the Resolution.
24. To this end, the Employer must comply fully with the Resolution and apply it accordingly. By so doing, pay the amount due to the Employee.

AWARD

25. The Employer has failed to correctly interpret and apply the Resolution.
26. The Employer is ordered to pay the Employee an amount of **R 6 062.50**.
27. The Employer is further ordered to pay the aforementioned by no later than 30 September 2020.



Commissioner / Panellist
Vuyiso Ngcengeni