



VARIATION RULING

Commissioner: Mavhungu Musiwalo Seth
Case No.: GPBC37/2018
Date of Ruling: 06 November 2020

In the matter between:

PSA obo SM Xonti

(Union / Applicant)

And

Department of Labour

(Respondent)

BACKGROUND TO THE APPLICATION

1. This is a variation of the arbitration award that was dated 31 August 2020 and received on 02 October 2020 under the case number GPBC37/2018.
2. I Commissioner Mavhungu Musiwalo Seth have made an obvious error or omission by issuing an award using the incorrect pay slip and having excluded the 13th cheque.
3. I had considered the variation on application by the applicant.

ISSUES TO BE DECIDED

4. To determine whether the arbitration award should be varied in accordance with section 144 of the Labour Relations Act 66 of 1995 ("The LRA").

SUMMARY OF FACTORS

5. I erroneously used the 2015 instead of 2017 pay slip in calculating the back pay amount to be paid to the applicant.
6. The award was therefore issued with the error as the amount reflected as per paragraph 45 was incorrect. It is against this background that I seek to vary my award.

ANALYSIS OF FACTORS

7. In terms of section 144 of the LRA, the commissioner who has issued an arbitration award or a ruling, or any other commissioner appointed by the director for that purpose, may on that Commissioner's own accord or, on the application of any affected party, vary or rescind an arbitration award or ruling in which there is an ambiguity, or an obvious error or omission, but only to the extent of that ambiguity, error or omission.
8. The applicant made an application for the error to be corrected.
9. It is therefore my view that the award should be varied as an error or omission was made and then indicates as to how much the applicant is to be paid.
10. The calculation used was incorrect as I used the 2015 payslip instead of 2017 payslip. I also calculated 36 months instead of 39 months and excluded 13th cheque.

RULING

11. The award issued by Commissioner Mavhungu M.S on 31 August 2020 under case number GPBC37/2018 is varied.
12. The amount in terms of paragraph 45 to be paid to the applicant is therefore R1, 626,841.32 instead of R1, 342,555.55.
13. The applicant must be paid the amount of R1, 626,841.32 by no later than 30 November 2020.



GPSSBC COMMISSIONER
Musiwalo Seth Mavhungu