

POSTPONEMENT RULING

CASE NO: GPBC2342/2016

In the matter between:

PSA obo EJT Morolo

APPLICANT

and

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL

1st RESPONDENT

DEVELOPMENT

H MASEKO

2nd RESPONDENT

JM SEKO

3rd RESPONDENT

POSTPONEMENT RULING

DATE OF RULING: 15 SEPTEMBER 2022

ARBITRATOR: INGRID DIMO

DETAILS OF HEARING AND REPRESENTATION

1. This matter was referred for arbitration in terms of Section 186 (2) (a) of the Labour Relations Act 66 of 1995 (the LRA) as amended. The hearing was scheduled for 10 December 2020, and it was heard virtually (via zooms facility).
2. The Applicant party, Mr EJT Morolo was not present, but he was represented by Mr Joel Ntwampe of PSA, at the hearing.
3. The Respondent party was present or represented by Adv. Nthabiseng Thokoane, at the hearing.

ISSUE TO BE DECIDED

4. I am required to decide whether to grant postponement of the hearing in terms of rule 23 of GPSSBC Rules.

SURVEY OF EVIDENCE AND ARGUMENT

THE APPLICANT'S SUBMISSIONS

5. It was submitted that the Applicant part (Mr EJT Morolo) had applied for study leave. He became aware of the study leave approval by the Respondent on 9 December 2020. That, the study leave application was for the exams he was due to write on 12 December 2020.

THE RESPONDENT'S SUBMISSIONS

6. The Respondent opposed the application for postponement and stated that all prior postponements were at the instance of the Applicant party. That, the Applicant party became aware of the timetable for his exams in good time (as early as 15 October 2020) but had elected to apply for postponement of the hearing late. The Respondent party stated that the postponement request was prejudicial it as all its witnesses were present and ready to testify at the hearing.

7. The Respondent party stated that any postponement should be considered with an award of cost at party-to-party scale (payment of the State Attorney fees and Advocate fees to the amount of R30 000.00) in favour of the Respondent party.
8. In **reply**, the Applicant party's representative denied that he received the timetable on 15 October 2020.
9. The Applicant party's representative submitted that other requests for postponement had to be made because of the Applicant party's ill-health and the double booking of the Applicant party's representative.
10. In responding to the request for cost order, the Applicant party's representative pleaded that same should not be awarded as the Applicant party's non availability at the hearing was justified by the fact that he was due to write exam.

ANALYSIS OF EVIDENCE AND ARGUMENT

11. I am required to decide whether to grant postponement of the hearing with cost awarded in favour of the Respondent party.
12. Rule 23, subrule 1 -7, of the Rules for the conduct of proceedings before the GPSSBC provides as follows:
 1. A scheduled hearing should be finalized in three (3) sittings and may be postponed:
 - (a) By agreement between the parties in terms of sub-rule 2, or
 - (b) By application and on notice to the other party in terms of sub-rule 3.
 2. The Secretary must postpone a hearing without the parties appearing if –
 - (a) All the parties to the dispute agree in writing to the postponement; and
 - (b) The written agreement for postponement is received by the Secretary at least five (5) working days prior to the scheduled date of arbitration.

3. All conditions of sub-rule 2 are not met any party to the dispute may request postponement provided that it is received by the Secretary and the other parties to the dispute at least seven (7) working days before the scheduled date of the hearing.
 4. A party that does not agree to a postponement as contemplated in sub-rule 3, may make written representations to the Secretary at least five (5) working days before the scheduled date of the hearing.
 5. After due consideration of any written representations received in terms of sub-rule 4, the Secretary must decide whether or not to grant a request for postponement in terms of sub-rule 3 and convey his/her decision in writing to the panelist and all parties to the dispute.
 6. If a party to a dispute fails to comply with the time periods referred to in sub-rule 1 or 3, the hearing must take place on the scheduled date, unless the Secretary on good cause shown grants a postponement and conveys his/her decision in writing to the panelist and all parties to the dispute.
 7. If a panelist adjourns a hearing in terms of Rule 31, the party, or parties responsible for the adjournment must bear the cost of adjournment.
13. I have considered all the submissions by both parties and am satisfied that postponement of the hearing should be granted.
14. In so far as the cost requested by the Respondent party, at party-to-party scale, I find that no cost should be awarded in favour of the Respondent party as the Applicant party was not represented by a legal practitioner at the arbitration proceedings before the GPSSBC. Therefore, the provisions of Rule 40 (3) of the GPSSBC rules would not carry.

RULING

15. The Applicant party's request for postponement of an arbitration hearing held on 10 December 2020 is granted.
16. There is no order as to costs.

Thus done and signed in Johannesburg on 15 September 2022.

A handwritten signature in black ink, appearing to be 'IDIMO', written over a horizontal line.

INGRID DIMO
GPSSBC COMMISSIONER