



GENERAL PUBLIC SERVICE  
SECTOR BARGAINING COUNCIL



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## ARBITRATION AWARD

Panellist/s : **DOLLY MAHASHA**  
Case No : GPBC 1577/2021  
Date of Award : 21 November 2022

In the ARBITRATION between:

**PSA obo PM TEFFO**

**APPLICANT**

**And**

**DEPARTMENT OF EMPLOYMENT AND  
LABOUR**

**RESPONDENT**

Union/applicant's representative : **Mr THABO THOBAKGALE**  
Applicant's address :

Respondent's representative : **Ms. CORRETT SHOBA**  
Respondent's address :

## ARBITRATION AWARD

### DETAILS OF HEARING AND REPRESENTATION:

1. The Applicant, Patience Maggie Teffo, attended the hearing and was represented by Thabo Thobakgale of PSA.
2. The Respondent was also in attendance and represented by Corrett Shoba, Assistant Director Labour Relations.
3. Comprehensive bundles of documents were handed into the evidence and utilized during the arbitration hearing.
4. Parties were directed to submit their closing written arguments by the close of business, 11 November 2022. Both parties complied as directed.
5. The proceedings was conducted in English and digitally recorded.

### ISSUE TO BE DECIDED:

6. Whether or not the employer committed an unfair labour practice by not awarding the employee a performance bonus, and if so, the appropriate relief.

### BACKGROUND TO THE ISSUE.

7. The employee referred an unfair Labour Practice, relating to benefits dispute with the GPSSBC in terms of section 186(2) (a) of the Labour Relations Act 66 of 1995 ("the LRA") as amended.
8. The matter was not resolved at the conciliation stage, and was therefore referred for arbitration.
9. The matter was set down as an arbitration process on 03 to 04 November 2022.

### SURVEY OF EVIDENCE AND ARGUMENTS

10. For the purpose of this award, I do not intend, to record verbatim the evidence led, submission made and or the arguments raised on record. Only the prominent points raised by each party in their evidence that have a bearing on the issue in dispute to be decided, are recorded hereunder. I did however consider all the evidence that was presented.

## **APPLICANT'S CASE:**

### **PATIANCE MAGGIE TEFFO**

11. She testified that she was appointed by the Respondent as Deputy Director HR Development and Change Management in the financial year 2017/18.

12. She indicated that she submitted her assessments on time and felt that she has submitted a sufficient motivation to justify the score of 5 in all KPA that she was assessed on. She beefed her motivation in that she was also responsible to manage the change management Section in the Department which was a new section that did not have a Deputy Director in 2017/2018.

13. She contends that the PMDS policy does not empower the Quality Assurance Committee to reduce the scores once the Applicant and the supervisor agreed on the score. The only thing that the Quality Assurance Committee can do is to request extra motivation if not satisfied with the motivation submitted and further subject the suspected KRA to an investigation and take note of such recommendations.

14. She indicated that the Respondent was unreasonable in that she did not get a formal outcome from the Performance Management Unit after an investigator was appointed. She indicated further she only got part of the report when she requested the information from the manager of the Unit.

15. She lodged a grievance with the Respondent and an investigator was appointed to investigate her grievance but did not get an outcome report.

### **MAKHUDU DAVID MAMABOLO**

16. He testified that he is employed by the Respondent as Assistant Director strategic Planning.

17. In 2017/18 financial period, his duties were to administer PMDS policies.

18. Policy prescripts do not grant Quality Assurance Committee powers to reject the scores; their powers are vested in them having to refer back the assessment to the supervisor if they are not happy with the scores.

19. He indicated that he has never seen any document giving criteria in terms of drafting motivations. The determining factor is the performance indicators.

20. He further indicated that the Local Review Board has no power whatsoever to reject scores, they have nothing to do with reducing a particular assessment scores.

### **MADIMETJA JOSEPH LEDWABA**

21. He testified that he was appointed by the Respondent as Chief Director Corporate Services in the financial year 2017/18.

22. He emphasized that the Applicant deserves the merits award as she has performed very well. He indicated that the Respondent has committed an Unfair Labour Practice in that the funds that the department is having today is because of the work that the Applicant has spearheaded.

23. He testified that had it been him in position of Ms Makhubu (supervisor) signing the assessment on page 27 of the Applicant's bundle, he would still append his signature without any hesitation.

## **THE RESPONDENT'S CASE:**

### **PINDILE MAKHUBU**

24. She testified that she is employed by the Respondent as Director Human Resource Management. She indicated that she was responsible for assessing the Applicant in the financial year 2017/18.

25. She testified that they agreed with the scores with the Applicant and further assisted the Applicant with motivations that were sent to the Quality Assurance Committee and local review Board.

26. She explained the responsibility of quality assurance Board. She indicated that the case of the Applicant was referred to the local review board because the Quality Assurance Committee returned the assessment and requested motivation of the score.

27. She indicated that the Local Review Board also returned the assessment of the Applicant because they were requesting her motivation to be beefed up as she exceeded her performance.

28. On the last sitting of the Local Review Board, an investigator was appointed by the Performance management Unit to assist in resolving the dispute of the Applicant. She indicated that she did not receive an outcome of the investigation as the supervisor of the Applicant.

## **ARGUMENTS**

The parties arguments were a repeat of evidence tendered during the arbitration proceedings. It is therefore not worth to record.

## **ANALYSIS OF EVIDENCE**

29. In my analysis, I have considered the closing arguments made by both parties

30. Section 186(2) (a) of the LRA defines unfair labour practice, as "any unfair act or omission that arises between the employer and an employee involving unfair conduct by the employer relating to ....of provision of benefits to an employee".

31. The Applicant's case is based on the ground that she submitted a sufficient motivation to justify the score of 5 in all KPA that she was assessed on. She contends that the PMDS policy does not empower the Quality Assurance Committee to reduce the scores once the Applicant and the supervisor agreed on the score. The only thing that the Quality Assurance Committee can do is to request extra motivation if not satisfied with the motivation submitted and further subject the suspected KRA to an investigation and take note of such recommendations. The Respondent was unreasonable in that she did not get a formal outcome from the Performance Management Unit after an investigator was appointed; she only got part of the report when she requested the information from the manager of the Unit. The Respondent should have rewarded her with a performance bonus and that the Respondents failure to do so amounts to unfair Labour Practice relating to benefits.

32. In the converse, the Respondent's case is that the Quality Assurance Committee requested the Applicant to beef up her motivation to qualify the score of five; however, she failed to comply with the request. The case was escalated to the local review Board; however, the Local Review Board returned the assessment of the Applicant because they were requesting her motivation to be beefed up.

33. It is not in dispute that payment of a performance bonus falls within the category of what is defined as benefits in terms of section 186(2) (a) of the LRA. The fact that she allocated a 5 to herself cannot create a prima facie entitlement. She must also provide supporting evidence justifying the score and then prove that the Respondent acted unfairly / arbitrary that would prima facie, entitle her to the payment of a performance bonus.

34. In my view, the Applicant has herself to blame. She was given an opportunity to beef up her motivation but failed to comply with the request. The Committee has carried out their responsibilities by requesting motivation that could satisfy them that indeed the Applicant far exceeded her performance.

34. Section 186 (2) of the LRA requires of employers to act fairly when they decide on awarding benefits to employees. Unfair conduct or omission relating to benefits is Unfair Labour Practice. The question is whether or not a decision to reduce the score and not to award performance bonus, to the Applicant was fair. In Apollo Tyres South Africa (Pty) Ltd v CCMA the Labour Appeal Court held "It has been said that unfairness implies a failure to meet an objective standard and may be taken to include arbitrary, capricious or inconsistent conduct, whether negligent or intended" In light of this finding – it should follow that there was no unfair labour practice.

35. I therefore find that the Applicant had failed to prove on a balance of probabilities, that the Respondent had committed an unfair labour practice relating to benefits. There was no evidence that the scores were reduced by the quality assurance committee. The only evidence presented was that the Committee sought motivation from the Applicant. The dispute was in fact prematurely referred.

## **AWARD**

36. The applicant's dispute is dismissed.

37. I make no order as to costs.



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**MAHASHA D.**  
**GPSSBC COMMISSIONER.**

