



ARBITRATION AWARD

Panelist: PHEEHA DANIEL SEOPELA
Case No.: GPBC2372-2017
Date of Award: 15 April 2022

In the ARBITRATION between:

PSA OBO RAMAISELA DOROTHY CHUENE ----- APPLICANT
(Union / Applicant)

and

DEPARTMENT OF AGRICULTURE - RESPONDENT

Union/Applicant's representative: PHILLIP MAPONYA

Respondent's representative: MR KHAZAMULA MASHELE

ARBITRATION AWARD

DETAILS OF HEARING AND REPRESENTATION:

[1] This arbitration hearing was heard on the 04th of March 2022 at 09h00 as a virtual hearing. Both parties were in attendance. The applicant, Ms Ramaisela Dorothy Chuene was represented by Mr Phillip Maponya of PSA (trade union). The respondent, Department of Agriculture was represented by Mr Khazamula Mashele of the Labour Relations unit. Pre-arbitration meeting was conducted on the 04th of March 2022. The Parties were required to submit written heads of arguments and such were considered in this award. The proceedings were digitally recorded. The parties submitted agreed bundle marked bundle A comprises of 35 pages and the applicant added bundle B which is comprises of 5 pages.

ISSUE TO BE DECIDED:

[2] I must determine whether the respondent committed an act of unfair labour practice against the applicant relating to promotion by not appointing her to the position of Director: Supply chain Management. I must determine the appropriate relief if I find in favor of the applicant in terms of section 193 of the Labour Relations Act.

BACKGROUND TO THE MATTER:

[3] The applicant, Ms Ramaisela Dorothy Chuene was employed by the respondent, Department of Agriculture from the 01st of January 2006. She is currently employed as Deputy Director: Supply Chain Management. The applicant is currently earning R1,038-999-00 per annum. The post of Director: Supply Chain Management was advertised on the 23rd of February 2016. The applicant was shortlisted and interviewed in 2016. Ms X obtained position one as per interview assessment. The applicant obtained position two as per interview assessment results. The applicant obtained position one during the interview and was recommended for appointment. The applicant and Ms X were subjected to competency assessment. The overall score of the applicant was 83 which was an aggregate score for interview assessment, competency assessment and technical test. The overall score for Ms X was 74 which was an aggregate score for interview assessment, competency assessment and technical test. The then MEC did not approve the appointment. The MEC indicated in his reasoning for not appointing the applicant that "There the panel did not provide clear candidate or outright competent candidate". The MEC further indicated that the post should be re-advertised. The applicant re-applied after the post was re-advertised. The applicant was shortlisted and interviewed on the second advert of the same post. The applicant was subjected to competency assessment in relation to the second interview. There was no appointment in relation to the second interview. The post was advertised for the third time. The applicant was shortlisted and interviewed in relation to the third advert. It is not known as to which position the applicant obtained in relation to the third interview. The respondent appointed Ms Mankgabe as Director: Supply Chain Management on the third interview. Ms Mankgabe did not take part in the first and the second interviews. It is the case of the applicant that the respondent committed an act of unfair labour practice relating to promotion by not appointing her to the

post of Director: Supply Chain Management after she was recommended for appointment in relation to the first interview in 2016. It is the case of the applicant that the MEC disapproved her appointment without valid reasons. It is the case of the respondent that no act of unfair labour practice relating to promotion was committed against the applicant as the MEC provided valid reason for not approving the recommendation of the interview panel. It is the prayer of the applicant that the respondent be ordered to appoint her to the post of Director: Supply Chain Management retrospectively backdated to the 01st of August 2016 and to be paid difference in salaries between salary level of the Director and Deputy Director backdated to the 01st of August 2016 to date.

SURVEY OF EVIDENCE AND ARGUMENT:

The case of the applicant

Ms Ramaisela Dorothy Chuene, the applicant testified under oath as follows:

[4] The then Acting MEC, Mr Seaparo Sekwati stated that there was no outright competent candidate. The MEC stated that upon his perusal of the recommendation made by interview panel members it was evident that the outcome of selection assessment of the recommended candidate does not provide outright competent candidate and recommended the post to be re-advertised. The reason advanced by the MEC is not valid as the MEC did not indicate why he was of the view that there was no outright competent candidate. The MEC was supposed to take the recommendation back to the panel members. The MEC must follow the prescripts in his prerogatives as panel members followed policy documents. Directive on the implementation of competent as per page 3 of bundle B was not followed. It says that competency assessment cannot be used alone but that it must be used in conjunction with Technical test and interview assessment. It was not enough for the MEC to simply say that there was no outright competent candidate. The MEC did not follow all aspects of recruitment procedures. The interview panel made recommendation and the power to approve or not to approve is the prerogative of the Executing Authority. She was also appointed as Acting Director: Supply Chain Management. She testified that she couldn't have let go an opportunity when it was put to her that she waived her right to challenge the first interview results as she applied for the second advert. She did not stop the department from issuing re-advert as she was still waiting for her results. The results were given to her on the 15th of June 2017. The MEC did not want to appoint her. She prayed that the respondent be ordered to retrospectively appoint her to the post of Director: Supply chain Management backdated to the 01st of August 2016 and to be paid the difference in salaries between the post of a Director and the Deputy Director for the same period to date.

The case of the respondent

The witness of the respondent, Mr Moloko Phineas Letshokgohla, the Acting Director: Human Resource Management testified under oath as follows:

[5] The panel members make recommendation based on scores of the candidates. The recommendation is subjected to competency assessment and technical test assessment. The panel will reconvene and gather the score after competency assessment and technical assessment. The results are not combined. The panel were not supposed to have combined the score. The MEC applied his mind properly. The reasons of the MEC are always valid. It was the prerogative of the MEC to approve or not to approve. He was not the Acting MEC in July 2016. He was not present when the reasons were advanced. The MEC has got final word. The applicant was not subjected to competency assessment as

she was subjected to the same in 2015. The applicant was not appointed because there was no outright competent candidate according to the MEC. The applicant did not do well in the subsequent assessments. He was giving Human Resource management perspective of the processes. The approach is holistic. The acceptable percentage is 50+. It is not possible to fail competency assessment after a candidate has obtained position one during interview.

ANALYSIS OF EVIDENCE AND ARGUMENTS:

[6] This dispute was referred in terms of section 186 (2) (a) of the Labour Relations Act. It is the alleged dispute of unfair labour practice relating to promotion. The applicant in this case is challenging the reason advanced by the Acting MEC, Seaparo Sekwati for not approving recommendation of interview panel members to appoint her. It is common cause that the applicant was recommended for appointment in 2016 after the first interview for the post of Director: Supply Chain Management. The then Acting MEC did not approve the recommendation. The Executing Authority is required in terms of Public Service Act to give reasons for not appointing the recommended candidate. The reason advanced by the Acting MEC was that the panel assessment did not provide a clear outright or competent candidate. The Acting MEC further indicated that the post should be re-advertised.

[7] The reason advanced by the Acting MEC for not approving the recommendation is the major bone of contention in this case. It is common cause that the power to approve or not to approve falls within the prerogatives of Executing Authority. The administrative action however must be fair. It is not the case of the applicant that the Acting MEC appointed Ms X in relation to the first interview. The post was re-advertised and the applicant applied again for the same post without challenging the first interview except that she requested for the results which were given to her on the 15th of June 2017. The applicant was shortlisted and interviewed on the second interview. The respondent did not appoint or approve any candidate in relation to the second interview. The applicant did not challenge the second interview results. The post was advertised for the third time and the applicant applied. The applicant was shortlisted and interviewed in relation to the third advert. The respondent appointed Ms Mankgabe as the Director: Supply Chain Management after the third interview.

[8] The applicant received aggregate score of 83 which was total score for competency assessment, interview assessment and technical assessment as per the minutes of pre-arbitration meeting. Ms X received aggregate score of 74 which was total score for competency assessment, interview assessment and technical test. It is the evidence of Mr Letshokgohla that the reason advanced by the Acting MEC for not approving the recommendation is valid. The Public service Act requires the reason to be valid. The Acting MEC indicated that there was no outright competent candidate. The reason advanced by the Acting MEC was valid under the circumstances of this case. The respondent did not appoint Ms X who obtained position to instead of the applicant.

[9] The applicant waived her right to challenge the outcome of the first interview in that she applied when the same post was re-advertised. The applicant testified that he was not going to let opportunity go by when he was asked why she applied when the same post was re-advertised. The applicant chose not to challenge the second and third interview results for unknown reason. The applicant competed thrice for the post in question and was beaten by a fair process. The applicant did not challenge the reason advanced by the Acting MEC before re-advert was issued because she was satisfied with the reason advanced.

[10] The applicant did not suffer any form of prejudice as the respondent appointed competent candidate after third interview and the applicant decided to challenge the first interview seeing that she was beaten by a fair process on the third interview. There are instances where reasons advanced by Executing Authorities are not valid but not in this case. The reason advanced by the then Acting MEC was valid.

[11] I make a finding that the respondent did not commit any act of unfair labour practice relating to promotion against the applicant. The respondent provided a convincing reason not to approve the recommendation made by the panel interview members to appoint the applicant. The applicant waived her right to challenge the outcome of the first interview by competing in the subsequent interviews for the same post as the post was advertised thrice. The case of the applicant stands to be dismissed.

AWARD:

[12] The respondent did not commit an act of unfair labour practice against the applicant relating to promotion.

[13] The case of the applicant is dismissed.

PHEEHA DANIEL SEOPELA



Name:

(GPSSBC) Arbitrator