



GENERAL PUBLIC SERVICE  
SECTOR BARGAINING COUNCIL

# ARBITRATION AWARD

Panellist/s: J.J.ERASMUS  
Case No.: GPBC2258/2019  
Date of Award: 6 June 2022

In the ARBITRATION between:

PSA obo DUMBA  
(Union / Applicant)

and

DEPARTMENT OF TRANSPORT, ROADS & COMMUNITY SAFETY  
(Respondent)

Union/Applicant's representative: Mr. Malusi - PSA

Union/Applicant's address:

Telephone:

Telefax:

Respondent's representative: Mr. Van Wyk

Respondent's address:

Telephone:

Telefax:

## PREAMBLE

- [1] This is an arbitration award issued in terms of Section 138 of the Labour Relations Act 66 of 1995 (as amended) and herein after referred to as the LRA.
- [2] This award is not intended to be a verbatim transcript of the evidence led at the arbitration hearing but rather a determination with brief reasons for such determination.
- [3] Evidence relevant to the determination or to support any of the elements of fairness as required may be referred to. This however does not mean that I failed to consider other evidence or ignored such evidence in coming to my decision.

## DETAILS OF HEARING AND REPRESENTATION

- [4] The arbitration was arbitrated on numerous dates during 2021 and 2022, initially at the Bapong Weigh Bridge but thereafter virtually. The Applicant was present and represented by Mr. Malusi, an official from PSA, whilst the Respondent was in turn represented by Mr. Van Wyk, an official of the Department.
- [5] The proceedings were conducted in English, a digital recording was made and I also kept handwritten notes.
- [6] As most issues was seemingly common cause and the case centers around the correct interpretation and application of the S& T Policy, parties initially agreed to present their respective cases by way of written arguments. I duly received and upon consideration thereof, noted that there was indeed a dispute of facts. I therefore ruled that the matter had to be set down for an arbitration hearing again.

## **BACKGROUND TO THE ISSUE**

- [7] The Applicant is employed by the Department as a Senior Provincial Inspector since February 2009.
- [8] The Applicant submitted certain claims for May & June 2019, but these claims remained unpaid. The Applicant subsequently lodged an internal grievance regarding this non payment of his claims but the Respondent still refused to pay the said claims.
- [9] Being of the view that this was unfair, the Applicant then (with the help of his Union) referred an unfair labour practice (ULP) dispute to the GPSSBC which remained unresolved after conciliation. The matter was then referred to arbitration.

## **ISSUE TO BE DECIDED**

- [10] I am required to decide whether the Respondent's failure to pay the Applicant's claims was unfair and amounted to an unfair labour practice (ULP)?

## **SURVEY OF EVIDENCE AND ARGUMENT**

- [11] Both parties submitted a bundle of documents (Applicant Bundle A - 42 pages and Respondent Bundle R : 40 pages) which was accepted as what it purports to be. Parties further agreed that the following issues were also common cause:
  - [11.1] That the S& T claim for May 2019 was for breakfast and lunch and was for an amount of R1059 – 24 (as per Bundle R – pages 29 & 30)
  - [11.2] That the S & T claim for June 2019 was also for breakfast and lunch and was for an amount of R 940.00 (as per Bundle R – pages 35 & 36).
  - [11.3] That the relevant part of the policy is Paragraph 3.7 (Bundle R – page 7).
  - [11.4] That the Applicant did not submit any documentary proof or receipts with the claims.

[12] *Applicant's case*

*Applicant : G. Dumba*

- [12.1] He is a Senior Provincial Inspector and his duties include law enforcement and escort duties.
- [12.2] He submitted claim forms without receipts as he understood that if you wanted to claim the new tariffs, you had to submit receipts. Otherwise you had to claim the lower amounts.
- [12.3] He relied on the S& T Policy as per Bundle A – Pages 17 -22 but could not proof that the document on Bundle A – Page 40 was part of this policy.
- [12.4] He agreed that he indicated 05:00 as the time (Bundle A – Page 23) which was the time that he left his home but said that it was a practice as there was not another form to indicate when they left from home. He however only reported to the office in Bapong at 06:00 and agreed that you can only claim S & T for the hours that you have worked and are not paid for the time between home & work. He was never told that the times on the two forms had to be the same.
- [12.5] They are still using the old policy and form in Bapong.

[13] *Respondent's case*

The Respondent called one witness, *Mr. W.J. Esterhuizen*, whose evidence was briefly as follows:

- [13.1] He is a Control Provincial Inspector at Bapong Traffic Centre.
- [13.2] He stated that the document on Bundle A – Page 40 is not at all part of the S& T Policy and was a previous document. Currently people are still claiming in terms of this document as they have not yet implemented the new policy.



- [13.3] He explained that they have different shifts and that the traffic officers all report to the Bapong Office where they book on/off.
- [13.4] He stated that the Applicant's claims were not paid as the amounts were not as stipulated on Bundle A – Page 40. He informed the Applicant of the fact that they should still claim in terms of the old policy but he anyhow submitted his claims in line with the new policy.
- [13.5] There were no receipts for the claims, the full amount was claimed and there were also problems with the times in that he claimed from his house (instead of from the office). Officials can only claim from the time that they report at the office except if they are doing outside duties.
- [13.6] He conceded that the whole office was claiming S& T without receipts but said that they claimed in terms of the old policy. The new policy was not yet implemented

#### **ANALYSIS OF EVIDENCE AND ARGUMENT**

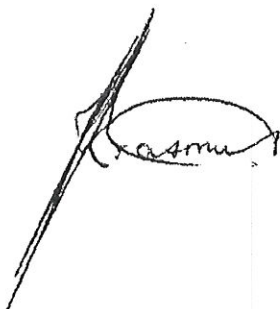
- [14] Section 186 (2) of the Labour Relations Act, 1995 (LRA) define an unfair labour practice as *“any act or omission that arises between an employer and an employee involving –*
- (a) Unfair conduct by the employer relating to the promotion, demotion, probation (excluding disputes about dismissals for a reason relating to probation) or training of an employee or relating to the provision of benefits to an employee.”*
- [15] In the matter before me, the Applicant alleged that the Respondent had committed an unfair labour practice pertaining to the provision of benefits when they failed or refused to pay his subsistence claims for May & June 2019.
- [16] It was not in dispute that employees of the Respondent are indeed (in terms of internal policies) entitled to claim and receive subsistence (meals) as well as transport. I am as such convinced that the dispute involves the payment of a benefit and therefore falls within the realm of Section 186(2)(a) of the LRA.

- [17] The next question is whether the Respondent acted unfairly in not paying these benefits to the Applicant?
- [18] The Respondent submitted that the Applicant's claims for May & June 2019 were not paid due to the following reasons:
- The Applicant did not qualify for payment of these benefits.
  - The Applicant did not submit receipts for the amounts claimed.
  - The wrong benefit amounts were used when claiming.
  - The claims submitted were fraudulent.
- [19] The way I understand the evidence provided to me is that within the Department there is an old subsistence policy (Bundle A – Page 40) and a new subsistence and travelling policy addendum (Bundle R – Page 21 – 27).
- [20] The old policy provide guidelines as to the amounts that can be claimed for breakfast, lunch and dinner. I firstly noted that in terms of this policy, employees are entitled to claim without submitting receipts. In order to qualify for payment of these benefits, an employee must secondly leave his home/place of work before a certain time and only return there after a certain time.
- [21] In terms of the new policy (Bundle R – Page 25), an employee the benefit amounts are slightly adapted/increased. It however now states that an employee will only be entitled to payment of the benefits is he is away on official duty from his place of work and leaves his home before 06:00 and return after 11:00 (for a breakfast claim); leaves his home or place of work before 11:00 and returns after 14:00 (for a lunch claim) and leaves his home or place of work before 14:00 and only returns after 20:00 (for a dinner claim). It furthermore now requires that a claim must be supported by documentary proof or receipts.
- [22] According to the evidence of both the Applicant as well as the Respondent's witness (Esterhuizen), the new policy had however not yet been implemented and employees are therefore currently still claiming in terms of the old policy. This is confirmed by the letter by Esterhuizen to the District Manager (see Bundle A – Page 33).

- [23] If the Applicant therefore wanted to claim in terms of the old policy, he was indeed exempted from submitting receipts or other documentary proof, but he then had to use the old tariffs as per Bundle A – Page 40). It is however clear from his claims (Bundle R – Page 30 & 36) that he in fact used the tariffs in terms of the new policy, which has not yet been implemented.
- [24] The Applicant tried to get the best of both worlds namely to claim the higher amounts in terms of the new policy but then also wanted to use the exemption not to submit documents in terms of the old policy.
- [25] As the new policy has not yet been implemented, his claims for May & June 2019 is therefore clearly incorrect and not in line with the amounts stipulated in the old policy. He had to first qualify for these benefits (by working the required hours) and then had to use the amounts stipulated in the old policy. He did not and this would explain why it was not processed and paid by the Respondent. I therefore really see no unfairness in the refusal to pay these claims.
- [26] In the light of my decision above, I do not see any need to further analyze or comment on the other reasons why the claims were not processed and paid.

#### AWARD

- [27] The Respondent had not committed an unfair labour practice pertaining to benefits.

A handwritten signature in black ink, appearing to read 'J.J. Erasmus', is written over a horizontal line. The signature is stylized with a large, sweeping initial 'J'.

Panellist/s: J.J. ERASMUS