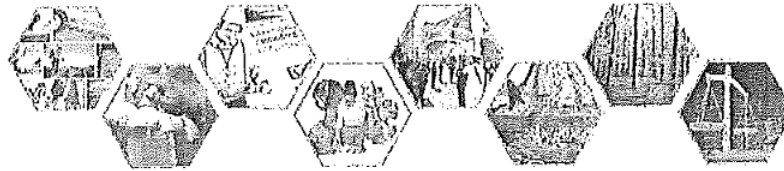




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# ARBITRATION AWARD

Panelist/s: Adv. Itumeleng Kgatla  
Case No.: GPBC947/2020  
Date of Award: 09 December 2020

In the ARBITRATION between:

PSA obo SC MARTINS  
(Union / Applicant)

And

DEPARTMENT OF COMMUNITY SAFETY  
(Respondent)

Union/Applicant's representative: G. SIMELANE  
Union/Applicant's address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
Telefax: \_\_\_\_\_

Respondent's representative: T. MLANGENI  
Respondent's address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
Telefax: \_\_\_\_\_

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## ARBITRATION AWARD

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### DETAILS OF HEARING AND REPRESENTATION:

1.1 This matter was set down before me on the 24<sup>th</sup> of November 2020 via virtual platform, zoom. Appearing before me was the Applicant who was represented by Ms G.Simelane, a trade union representative from PSA. The Respondent was represented by Ms T.Mlangeni who is an employee of the Respondent. After conclusion of oral evidence of both parties, it was agreed that parties will submit written heads of argument in closing on the 1<sup>st</sup> of December 2020. Both parties submitted their closing arguments on the 1<sup>st</sup> of December 2020. I appreciate the corporation of both parties.

### ISSUE TO BE DECIDED:

- 2.1 I am required to decide whether or not the Respondent committed an act of Unfair Labour Practice by eliminating the Applicant from the shortlisting process
- 2.2. Whether or not the Applicant failed to comply and or adhere to the criteria as set out by the advert when she failed to attach her Basic Traffic Diploma in support of her application.
- 2.3. Whether or not the Respondent had an obligation to grant the Applicant an opportunity to remedy the defect on her application.

### BACKGROUND TO THE MATTER:

The following facts are common cause between the parties and or were conceded to during cross-examination:

- 3.1 There was an advertisement dated the 4<sup>th</sup> of March 2020 for 24 Principal Provincial Inspector posts in various regions and the Applicant applied for the posts and or responded to the advertisement.
- 3.2 The Basic Traffic Diploma was one of the requirements as per the provisions of the advert and the Applicant did not attach the same, when she submitted her application.

- 3.3 The Respondent put a disclaimer in the advert that due to the anticipated high volume of applications, the Respondent will not acknowledge receipt of applications.
- 3.4. Both the initial advert and the erratum contained an instruction that certified copies of qualifications should be attached in support of the application.
- 3.5. There was an initial advert which was retracted and an erratum was issued on the same day and the aim of the erratum was to remedy the incorrect details relating to the number of vacant posts and salary notches.

**Facts that are in dispute:**

The following facts are in dispute:

- 4.1. Whether or not the Applicant adhered to the requirements of the advert when she failed to attach her Basic Traffic Diploma to her application.
- 4.2. Whether or not the Respondent was justified in eliminating the Applicant from the shortlist process merely because her application was defective.

**SURVEY OF EVIDENCE AND ARGUMENT:**

APPLICANT'S CASE

- 5.1. The witness Ms Suenelda Celestine Martins was sworn in and testified as follows:
  - 5.1.1. The witness testified that she was employed by the Department of Community Safety for a period of Seven (7) years under Saturation Unit. The Respondent advertised 24 Principal Provincial Inspector posts on the 04<sup>th</sup> of March 2020 via an internal circular and the witness applied for the same.
  - 5.1.2. The witness testified that, in her application, she attached her CV, certified copies of: ID, Diploma in Driving License Examination, and Certificate of Registration as a Traffic Officer. The witness testified further that she is in possession of additional 20 certificates from the RTMC.
  - 5.1.3. The witness testified that the requirements for the post were grade 12 and higher qualifications, 6-10 years' experience in the field of Traffic Law Enforcement, must be in possession of a Basic Traffic Diploma. The witness testified that she is in possession of a Basic Traffic Diploma and did not attach it.

- 5.1.4. The witness testified that she is not familiar with the recruitment policy of the Respondent and is of the view that the Respondent has been unfair for not responding to her application. The witness testified further that the Respondent ought to have considered her on the basis of her registration certificate and feels that her non selection borders on gender discrimination.
- 5.1.5. The witness testified that the Respondent should have granted her the opportunity to submit the missing qualification or simply retrieve it from her Human Resource file, which file is being possessed and controlled by the Respondent.
- 5.1.6. The witness argued under cross examination that possession does not necessarily mean the Applicant is required to attach, this was when it was put to her that the advert had a disclaimer that applications without attachments will be disqualified.
- 5.1.7. The witness submitted under cross examination that her omission to attach the diploma was due to an innocent mistake.

#### RESPONDENT CASE

- 5.2. The witness Ms E Makgopa was sworn in and testified as follows:
- 5.2.1. The witness testified that she is the Assistant Director for Human Resources responsible for recruitment, appointments and implementation.
- 5.2.2. The witness testified that the requirements for the advertised posts were: Grade 12 and or higher certificate, 6-10 years' experience in the field of traffic law enforcement, must be in possession of basic traffic diploma, no criminal record or cases pending against the Applicant.
- 5.2.3. The witness testified further that the Applicant did not attach her Basic Traffic Diploma as specified by the requirements in the advert. She testified further that the number of applications received for the post is 803 in total.
- 5.2.4. The witness testified that the Respondent has no policy which obliges them to contact applicants for positions to submit outstanding documents required by the advert. The witness testified further that the advert was posted on the internal communication channels and circulated by email to regions and also

posted on the physical notice boards. She testified further that the advert was structured in a manner that a reasonable person in the position of the Applicant would understand.

5.2.5. The witness testified that the requirements included possession of a Basic Traffic Diploma and further that the advert specified at the end that Applicant must attach certified copies of their qualification. The witness testified further that the Applicant was disqualified from the process by failing to comply with the instruction and or criteria as set out in the advert.

5.2.6. The witness testified that the Applicant filled an inquiry form requesting reasons why she was not shortlisted and such reasons were advanced to the Applicant. The witness testified further that that the process has been completed and successful candidates have been appointed effective from the 1<sup>st</sup> of October 2020.

5.2.7. It was put to the witness during cross-examination that the Applicant only received the initial application and not the erratum. The witness made it clear that the changes brought by the erratum were only on the notch and the number of posts and that the disclaimer for attachments remained the same in both adverts.

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

6.1 It is common cause that both the advert dated 4 March 2020 and the subsequent erratum included a disclaimer that all applications must be accompanied by CV and certified copies of qualifications and the Applicant failed to attach her Basic Traffic Diploma. The Applicant argues that her failure to attach was due to an innocent mistake and that the Respondent ought to have informed her that her application is incomplete.

6.2. The Respondent has argued that it has no obligation in terms of its own policies and in law to inform applicants of their defective applications and or offer them opportunity to cure the defects. The Applicant argued further that in her application, she has attached her certificate of registration as a Traffic Officer which can only be acquired by persons who have a Basic Traffic Diploma, which Diploma she ought to have attached but failed to do so.

- 6.3. The Applicant argued further that, her registration as a Traffic Officer ought to have been sufficient evidence to satisfy the selection panel that she indeed possessed the Basic Traffic Diploma. The Applicant argued further that she qualified for the position and should have been condoned for non-compliance with the advert criteria. I find that the posture of the Applicant which seeks to apportion the entire blame on the Respondent for her own deeds is over simplistic and riddled with entitlement.
- 6.4. The Respondent argued that the Applicant was eliminated from the process merely for failing to comply with the criteria set out by the advert and it's not in dispute that she would have qualified for the position had she adhered to the criteria as set out in the advert. The Respondent argued further that the Applicant is at liberty to apply for similar posts which will be advertised in future. I find that, to certain extend, the Respondent was correct to emphasize compliance with the criteria set out by the advert to ensure the credibility and legitimacy of the of the recruitment process.
- 6.5. I find however that, the approach taken by the Respondent in dealing with the case of the Applicant who was an internal Applicant was rigid and had elements of fault finding than finding solutions. I find that the Respondent did not attend to the case of the Applicant with an open mind expected from a reasonable person in the circumstances.
- 6.6. In the case of ***Denosa obo of JE van der Merwe v Department of Health and Social Development (J1282/09) [2010] ZALC 293***, the employee in this case was eliminated from the shortlist on the basis that she did not fulfill the advert criteria which required that she must attach Council certificate, certified copy of ID, general and midwifery certificates. The panel records the employee's reason for being screened out as: "*no qualifications*". The crux of the matter is that the three disputed documents were not before the selection panel. Bhoola J held that:
- "Indeed the Respondent's reliance on the defective application as the reason for her exclusion cannot be sustained. There would be no reason why the employee could not be afforded the opportunity to remedy the defect".*

- 6.7 I associate myself with the findings of the learned Judge in the case above and abide by the authority of the Court.
- 6.8 In the circumstances, I therefore find that the Respondent committed an act of Unfair Labour Practice when it eliminated the Applicant from the shortlist process merely on the basis that her application was defective without granting her the opportunity to remedy the defect.
- 6.9 It is clear that the recruitment process has already been finalized and that the Respondent has already made appointments on the positions in question.
- 6.10 The Applicant prays for compensation in terms of Section 194(4) of the Labour Relations Act.

**AWARD:**

- 7.1 The Respondent is therefore ordered to pay the Applicant an amount equal to R40 213,38 (R20 106,69 X 2 months salary) into the account of the Applicant known by the Respondent, the amount is subject to normal tax deductions.
- 7.2 The order in paragraph 7.1 above must be implemented within 30 days from the date of this order.
- 7.3 There is no order as to costs.



**Name: Adv. Itumeleng Kgatla**

**(GPSSBC) Arbitrator.**