



GENERAL PUBLIC SERVICE
SECTOR BARGAINING COUNCIL



Physical Address:
260 Basden Avenue,
Lyttelton, Centurion,
Pretoria

Postal Address:
PO Box 16663,
Lyttelton, 1040

Tel: 012 664 8132
Web: <http://www.gpsbc.org.za>

ARBITRATION

AWARD

Panelist/s: Adv. Itumeleng Kgatla

Case No.: GPBC1740/2021

Date of Award: 25 April 2022

In the ARBITRATION between:

PSA obo MNY MOKOATLE

APPLICANT

And

DEPARTMENT OF EMPLOYMENT AND LABOUR

RESPONDENT

Union/Applicant's representative:

Mr. ARCHIE SIGUDLA (PSA)

Union/Applicant's address:

Telephone:

Telefax: _____

Respondent's representative: **Mr.THABANG MARABA**

Respondent's address: _____

Telephone: _____

Telefax: _____

ARBITRATION AWARD

DETAILS OF HEARING AND REPRESENTATION:

- [1] This unfair labour practice dispute was enrolled for arbitration in terms of Section 186(2) (b) of the Labour Relations Act 66 of 1995 (LRA), and arbitrated over several days via virtual platform (zoom). The arbitration was concluded on the 28th of March 2022 and written closing arguments by the parties were submitted on the 06th of April 2022.
- [2] The Applicant was represented by **Mr Archie Sigudla**, a union official from the **(PSA)**. **Mr Thabang Maraba** represented the Respondent in his capacity as the Labour Relations Official employed by the Respondent.
- [3] The proceedings were conducted in English without any need for interpretation. Digital and manual recordings were made during the process. Both parties were afforded the opportunity to present *viva voce* evidence under oath, in chief and in re-examination and to cross examine opposing testimonies. Written closing arguments were presented and considered.
- [4] In terms of Section of 138(7) of the LRA, the Commissioner is required to issue a signed arbitration award with brief reasons. It is for this reasons that only salient points will be referred to in this award even though all evidence and submissions were considered.

ISSUES TO BE DECIDED:

- [5] I am required to determine whether or not the Respondent has, by virtue of having imposed a sanction in the form of a final written warning against the Applicant in the circumstances, acted in a manner that constitutes an Act of Unfair Labour Practice, as envisaged in Section 186(2) (b) of the Labour Relations Act.
- [6] Should I find that an act of unfair labour practice was committed by the Respondent against the Applicant, I must determine an appropriate remedy in terms of Section 193 (1) of the LRA.

COMMON CAUSE ISSUES

- [7] The Applicant was appointed by the Respondent as a Senior State Accountant with effect from November 2017 and is currently at a salary of **R30 948, 07** per month.
- [8] The correct procedure was followed by the Respondent before a final written warning was issued against the Applicant.
- [9] The Applicant's role in the payment of the SNT was to assist with the calculation of the correct amount to be paid.

- [10] The payment was approved by **Mr. Cornelius Straw** (the Supervisor) after all the processes were followed subject to the separation of powers.
- [11] The precise version of events is that, the Applicant checked or verified the request for payment, **Ms Samukelisiwe Shoji** captured it in the system and the Supervisor granted the necessary approval.

ISSUES IN DISPUTE

- [12] The Applicant is of the view that the final written warning is substantively unfair and the Respondent is of the view that it was an appropriate sanction in the circumstances.
- [13] In addition to the prayer that the final written warning be reviewed and set aside *ab initio*, the Applicant seeks an appropriate remedy in terms of Section 193 of the LRA. To be precise, the Applicant is praying for compensation in the amount equivalent to her 12 month(s) salary.
- [14] The Respondent has recorded its prayer that this application be dismissed.

SURVEY OF EVIDENCE

APPLICANTS' CASE

- [15] The Applicant testified as the first witness in support of her case and submitted documentary evidence which was accepted and marked bundle "A" by the Commissioner.
- [16] The witness stated that she joined the public service since 28 October 2005 under the employ of the Respondent, joined the Department of Justice on the 1st of June 2008 and returned to the Department of Labour on the 1st of November 2017.
- [17] The Applicant stated that she currently employed by the Respondent as a Senior State Accountant. The witness stated further that she has various responsibilities, *inter alia*: check and effect payment of travel and subsistence allowance, payment of Committee member allowances and advances.
- [18] The witness stated further that, she also checks accounts activities and make clearances, and further that, she performs such roles together with her team members in line with the separation of the allocated powers and duties.
- [19] The witness stated that the calculations of the amount to be paid in terms of prescribed percentages, is calculated on the basis and or guided by the itinerary of the trip and that such is done on the Basic Accounting System (BAS).
- [20] The witness testified that the Applicant on the BAS application form as it appears on page 4 of bundle "R" is **Mr Masombuka**, and that the payment was for the attendance for training in Turin, Italy.

- [21] The witness testified that the amount is determined by the submission from and signed by the Minister, which submission includes material details of the trip. The witness testified that the pocket money (SNT) was paid in the amount of **R14 396-27** and that the document was prepared by one **Ms Zanele Mthombeni**.
- [22] The witness stated further that the payment was effected after the officials had already left the country on the basis that the request was made on urgent basis.
- [23] The witness stated that the overpayment was based on the fact that the submissions provided did not indicate that the trip was sponsored. The witness further pointed to page 13 of bundle “**R**” that part on financial implications indicated a budget of **R65 000-00** for accommodation and **R78 000-00** for foreign air transport.
- [24] The witness stated that, under normal circumstances, the submissions would indicate whether or not the trip is sponsored wholly or in part or specify the items which are covered.
- [25] The witness stated that 80% of the full amount requested will be paid to the official in the circumstances where the trip is not sponsored and 15% in the case where the trip is sponsored. The witness stated that, in the circumstances of this case, an overpayment of 55% was made in error under the mistaken believe that the trip was not sponsored.
- [26] The witness testified that **Mr Masombuka** is in the process of repaying the money to the Respondent in instalments. The witness testified further that, in her view, the Respondent has not suffered any prejudice as a result of the overpayment and the circumstances thereof.
- [27] The witness testified that the overpayment occurred solely because the submission as per page 26 of “**R**” did not contain all the relevant information necessary to determine whether or not the trip was sponsored.
- [28] The witness testified that she is not sure whether or not other officials involved in the overpayment have been subjected to disciplinary process but submitted that she has heard from **Ms Zanele Mthombeni** who was part of the payment process that she has not been subjected to any disciplinary processes.
- [29] The witness testified that the pocket money (SNT) is 80% for self-catering where the trip is not sponsored and 15% where the trip is sponsored and the catering costs are covered by the sponsor.
- [30] The witness testified under cross-examination that she worked with **Ms Zanele Mthombeni** who is her subordinate whom she must supervise, guide and advice.
- [31] The witness testified that the amount on page 4 of bundle “**R**” was informed by the travel dates, currency converter and the travel manual which depends on the strength and or otherwise of the rand.
- [32] The witness testified that the submission as per page 13 of bundle “**R**” was accompanied by the travel itinerary indicating the start and end dates of the training. The witness stated that she only became aware of the documents on page 17 of bundle “**R**” two days after the advance payment was made.

- [33] The witness stated further that page 19 of bundle “**R**” indicates that subsistence covers lodging and meals on campus and that means that the trip has been sponsored and therefore the payable amount ought to be calculated at the rate of 15% instead of 80%.
- [34] The witness testified that the submission for the processing of payment was received by hand (hard) copy and there was no indication of what is in the bundle.
- [35] **Mr Mmokeng Moatshe** was sworn in and testified as the second witness in support of the Applicant’s case.
- [36] The witness testified that he is employed by the Respondent as a Senior State Accountant, Financial Management Directorate effective from September 2008 and knows the Applicant as a colleague.
- [37] The witness testified that the document on page 4 of bundled “**R**” is a BAS and Logis payment advice which is used to make payments and that he is seeing it for the first time.
- [38] The witness testified that, **Mr Masombuka** and **Mr Mahekiso** are the (officials) who went to Italy to attend a short course. The witness testified further that, the officials came to the office on a Friday afternoon at or about 16:00 and their documents were not in order, on the basis that they did not have a signed submission from the Minister to enable for the payment to be processed.
- [39] The witness testified that the officials were turned back and they returned on Monday and were assisted by the Applicant. The witness stated that the document on page 13 and 14 of bundle “**R**” is the submission approved and signed by amongst others the Deputy Minister and the Director General.
- [40] The witness testified that the nature and level of the funding for trips of this nature is normally clearly stated in the submission to put the finance approving authority in a position to determine the applicable percentage for the SNT (pocket money) payable.
- [41] The witness stated that, the submission as it is, creates an impression that the Labour Market Information Systems (LMIS) Section will bear the costs of the trip wholly.
- [42] The witness testified that he was involved in the payment process, and further that, days later, after the officials had left and payments effected, **Mutedi** sent documents which showed that certain items related to the trip were covered by the sponsor as per page 19 of bundle “**R**”.
- [43] The witness testified that his responsibilities and those of the Applicant are the same, save for the fact that they are divided and or allocated amongst or across different Directorates.
- [44] The witness testified that part of his role is to check if all the documents are signed and attached to the submission before authorising the payment. The witness stated further that, for international trips, the most important document is the submission from the Ministry and the flight itinerary.

- [45] The witness stated further that, in some cases, there are additional supporting documents which must be attached before payment can be processed.
- [46] The witness stated that he is not sure if the letter, as it appears on page 15 and 16 of bundle “**R**”, indicating that the trip was approved at the costs of the Department was part of the submission or not.

RESPONDENT'S CASE

- [47] **Ms. Cornelius Straw** was sworn in and testified as the only witness in support of the Respondent ‘s case.
- [48] The witness testified that she employed by the Respondent as the Assistant Director for Labour Relations, Finance and Service Termination.
- [49] The witness testified that she is responsible for benefits and relocation, payment for travel and subsistence requests for both international and domestic travel claims.
- [50] The witness testified that she knows the Applicant her direct sub-ordinate. The witness stated that the role of the Applicant was to check if the payment advice, as it appears on page 4 of bundle “**R**” is proper with all the attachments before processing if for payment.
- [51] The witness stated that submissions from the Minister will indicate whether or not the trip is sponsored and that accommodation includes meals.
- [52] The witness testified that 80% SNT is payable in the case where the trip is not sponsored to cover costs for breakfast, lunch and dinner and 15% is payable to cover incidental costs in cases where the trip is sponsored by the host, which sponsorship includes and or covers the meals.
- [53] The witness testified that in the circumstances where submissions are very vague under financial implications section on whether or not the trip is sponsored by the host, the officials would normally pay the SNT at the rate calculation of 80%.
- [54] The witness testified that the submission as per page 13 of bundle “**R**” paragraph 1.1. indicates to the Minister that two officials have been nominated to attend training in Turin, Italy and that a brochure is attached and marked annexure “**A**”.
- [55] The witness testified that he was out of office conducting financial inspections at the time when the document was processed and that she only saw it upon her return to the office.
- [56] The witness stated that the document on page 19 of bundle “**R**” indicates an amount of E2335 tuition, E1,400 subsistence and a total of E3,735.

- [57] The witness testified that the amounts indicate that the Department pays for tuition and subsistence (which cover lodging and meals) and therefore the rate payable will be calculated at 15% of the subsistence allowance on the basis that the Department is carrying the costs for the meals.
- [58] The witness testified that the 80% is comprised of 45% for dinner, 15% for incidental costs and 20% for lunch.
- [59] The witness testified that the submission signed by the Minister indicated that annexure “A” is attached, and that, it is incumbent on the finance official to peruse the annexure before effecting payment, alternatively, enquire from the sender in case the alleged annexure is not attached.
- [60] The witness testified under cross-examination that the submission must indicate under financial implication, the availability of the budget and what items will be paid for by the department.
- [61] The witness testified further under cross-examination that paragraph 4.1 of the Minister’s submission indicates that the Department will pay for the air transport and accommodation and that can be interpreted to mean that the Department will pay 80% of the allowance to the official and the 20% would not be paid as the breakfast is included in the in the accommodation cost.
- [62] The witness testified that the submission is normally received by the Finance Section coming from the International Relations Section. The witness stated that it is possible that payment is processed after the official has already left the country especially in cases where the submission is made on urgent basis.
- [63] The witness stated that **Mr. Masombuka** has made arrangements to pay back the money in installments over a 12 months period and that **Mr Mahekiso** has made an arrangement to pay back the money in a once off installment.
- [64] The witness testified that there is generally a separation of powers or duties in the process of effecting payments of the BAS system i.e., compiling, capturing and authorization.
- [65] The witness stated that, save for not receiving or obtaining the annexure “A” as a document accompanying the ministerial submission, there was nothing wrong done by the Finance Department in this case.
- [66] The witness stated that, where a submission is made on urgent basis, payment affection cannot be stopped or stalled merely because an annexure is missing.
- [67] The witness stated further that, even though the Applicant had a responsibility to ensure that everything on the documentation is in order, she cannot be blamed for the wrong calculation and therefore formal progressive disciplinary measures were not warranted in the circumstances.

[68] The witness testified he has in the past received a written warning under similar circumstances but personally as a Manager, he would not have invoked disciplinary measures in the current circumstances.

ANALYSIS OF EVIDENCE, ARGUMENT AND FINDINGS:

[69] The statutory provision for the determination of this dispute is provided by the provisions of Section 186 (2) (b) of the LRA, which reads as follows:

“Unfair Labour Practice means any unfair conduct or omission that arises between an employer and an employee involving (b) unfair suspension of an employee or any other unfair disciplinary action short of dismissal in respect of an employee”

[70] Briefly, I am required to determine whether or not the conduct of the Respondent to issue the Applicant with a final written warning following the payment of a substantive allowance using a wrong calculation in the circumstances of incomplete accompanying documents was fair, and whether or not such conduct amounts to an act of unfair labour practice envisaged in Section 186(2) (b) of the LRA.

[71] It is common cause that the Applicant has effected payment using an 80% rate instead of 15%. The Applicant has argued that the mistaken calculation was on the basis of an impression created by the Ministerial submission that the trip was not funded or did not have a sponsor.

[72] It is common cause that the details of the trip, as it appears on annexure “A” as an accompanying attachment to the Ministerial submissions clearly states that the trip is sponsored by the host.

[73] The Applicant has submitted that the accompanying annexure is stated in the Ministerial submission but was not attached or was not at her disposal at the time that payments for the two officials were effected. The Applicant has argued further that the document (**annexure A**) only came to her attention from **Mr. Mutedi**, only two (2) days after the payments were effected.

[74] The Respondent has argued that, it is incumbent on the Applicant to peruse the accompanying annexures or attachments before making payment, alternatively, the Respondent argued, it is incumbent on the Applicant to enquire or request annexures which are stated in the Ministerial submissions but not attached for whatever reason.

[75] Both the Applicant and the Respondent have not led or submitted any evidence as to the date, time and manner through which the annexure “A” as a document accompanying the Ministerial submission was received and or brought to the attention of the Applicant. I will deal with that issue and its accompanying explanations as proffered by the parties later.

- [76] The most material issue which requires immediate attention from me, is whether or not, a reasonable person in the position of the Applicant would have processed payment in light of the circumstances wherein a stated annexure is not attached, or would have first acquired or enquired about the stated same.
- [77] It is common cause that the prejudice suffered by the Respondent in the circumstances has been cured by processes put in place to recover the amounts lost due to the overpayment(s) arising from the negligence or mistaken conduct of the Applicant. I find that the prejudice suffered by the Respondent has been cured, alternatively, the Respondent is not without a solid recourse.
- [78] I find that the conduct of the Applicant in the circumstances arose from a *bona fide* human error and therefore the invocation of progressive formal disciplinary processes and the imposition of a final written warning as a sanction by the Respondent against the Applicant were not warranted and or justified in the circumstances.
- [79] The Applicant has in addition to the prayer for the setting aside of the final written warning, prayed without quantification for compensation in the amount equivalent to her 12 months' salary, the maximum compensation as a remedy prescribed by Section 193 of the LRA. I find that such a prayer is overly ambitious and unrealistic in the circumstances.
- [80] Compensation as a remedy is not available merely for the asking, and I see no reason why such should be granted slavishly and or as merely prayed for by the Applicant in this matter.
- [81] I find that the conduct of the Respondent was unwarranted in the circumstances, and that, the imposition of a final written warning by the Respondent against the Applicant was harsh, and therefore, an act of unfair labour practice was committed against the Applicant, as envisaged in terms of Section 186(2)(b) of the LRA.

AWARD

- [82] The final written warning issued by the Respondent against the Applicant is reviewed and set aside *ab initio*.
- [83] The Respondent is ordered to pay the Applicant an amount of **R15 474-035** in compensation, being 50% of the Applicant's one (1) month salary.
- [84] The order in paragraph 83 above must be implemented on or before the 31st of May 2022.
- [85] No order as to costs.



Name: Adv. Itumeleng Kgatla
(GPSSBC) Arbitrator