

In the matter between:

PSA obo V.B. F. MEYER

Applicant

and

DEPARTMENT OF PUBLIC WORKS

Respondent

ARBITRATION AWARD

DETAILS OF THE HEARING AND REPRESENTATION:

1. This matter was set down for arbitration on 24 July 2020 concerning an alleged unfair dismissal dispute. Mr. C.H. Olivier of PSA represented the Applicant. Ms. L. Mzimba, of Labour Relations represented the Respondent.
2. I digitally recorded the evidence concluded in one day.

ISSUE TO BE DECIDED:

3. I have to decide whether the Respondent dismissed the Applicant and if so, whether the dismissal was fair.

BACKGROUND:

4. Various Ministers of Parliament employed the Applicant on contract as a Personal Assistant (PA) for the past 20 years.
5. In October 2011, the then Minister of Public Works decided to retain the Applicant from his predecessor, Gwen Mahlangu. The Applicant's contract of employment was linked with the term of Office of Minister Nxesi, which ended in March 2017. However, from 2014 the Department transferred the Applicant to the Cape Town Regional Office after the Minister indicated that the Applicant was not fully utilized. The Regional Office at the time created a position additional to the establishment to accommodate the Applicant for the remainder of the Minister's term.
6. After or about March 2017, the Department performed a turnaround strategy, which required additional personnel. For that reason, the Department extended the Applicant's fixed-term contract on similar terms.
7. In 2019, the current Minister of Public Works, P de Lille, decided that the Department should discontinue with contract extensions and rather focus on a proper audit to budget for vacancies. The Applicant received a fixed-term contract for a period of six months April 2019 to 30 September 2019. Thereafter the employer verbally extended the contract for a three-month from 1 October 2019 to 31 December 2019 (hereinafter referred to "the last extension"), whilst post were advertised. The Applicant's contract ended 31 December 2019.
8. The Applicant claimed that there was a reasonable expectation to extend her contract on the same or similar terms. Accordingly, the Applicant alleged an unfair dismissal and requested reinstatement. The Respondent claimed the contrary.

EVIDENCE AND ARGUMENT BY THE APPLICANT:

9. The Applicant testified that she worked for various ministers on fixed-term contracts for approximately twenty years.
10. The Applicant stated that the employer created a reasonable expectation that her fixed-term contract would be extended on same or similar terms. According to the Applicant, after she was transferred to the Regional Office, she received a twelve-month fixed-term contract and thereafter a six-month fixed-term contract followed by a three-month fixed-term contract. At the time, the Applicant sought legal

advice and was told that if employed for longer than three months on a fixed-term contract, the employment becomes indefinite.

11. The Applicant further stated that she knew that her contract was going to be extended for three months (the last extension), whilst the employer advertised certain posts and that she could apply for those posts. She however did not apply for the posts, because she did not meet the criteria in that she was not in possession of a senior certificate.
12. Mr. Olivier, for the Applicant, submitted that because of the numerous extensions, the employer created a reasonable expectation to extend on same or similar terms.

EVIDENCE AND ARGUMENT BY THE RESPONDENT:

13. The Respondent led the evidence of C. Rossouw and further submitted documentary evidence in support of its case.
14. Rossouw testified that she is an Assistant-Director: Human Resources Management in the Department and amongst others responsible for extension of fixed-term contracts.
15. Rossouw stated that the Department seconded the Applicant to various Ministers from the period 2011 and 2017. The Ministers personally decided whom to appoint as PA in accordance with the Ministerial handbook and not in terms of the Public Service Recruitment and Selection Policy. Those ministerial appointments are linked to the term of the Minister.
16. In 2017, the Department embarked on a turnaround strategy and created additional posts. It then employed the Applicant on a fixed-term contract due to operational requirements until certain targets were met.
17. According to Rossouw, the Department never created an expectation of extension of the Applicant's fixed-terms contracts and it never made any promises to the Applicant. Whenever the Applicant received an extension, she received a notice in that regard and Rossouw explained the terms of the contract to her.
18. When Minister P. De Lille took over in 2019, she strictly applied in Public Service Regulations not to extend fixed-terms contracts of employees beyond twelve months. Therefore, the Applicant only received a three-month contract during the last extension. Rossouw informed the Applicant as to the reasoning behind the last extension. Further, that the Applicant was made aware at a general staff

meeting that she could apply for advertised posts. The Applicant further received a written notice on or about 3 December 2019 that the contract would end on 31 December 2019.

19. The Respondent submitted that it never promised the Applicant any extension or never created a reasonable expectation of further extensions after the last extension. All extensions were at the sole discretion of the employer due to operational requirements or service delivery requirements.

ANALYSIS OF THE ARGUMENT:

20. The Applicant worked as a PA on contract for various Ministers until 2011 when Minister Nxesi retained the Applicant from his predecessor whose term ended. The history thereafter as referred to in the background above, was common cause.
21. It was clear from the Respondent's evidence that the Applicant's employment depended on the term of the respective Minister. The Ministers made those appointments in terms of the Ministerial Handbook. In other words, the Minister decided whom to appoint as his PA. It was therefore not a case of open competition where the normal recruitment and selection process of the Public Service Regulations applied.
22. The Department embarked on a turn-around strategy in 2017 when the Applicant received two twelve month fixed-term contracts during 2017 and 2018. However, in 2019 the Applicant received a six-month contract for the period 1 April 2019 to 30 September 2019 and the last extension for the period 1 October 2019 to 31 December 2019.
23. It was further clear from Rossouw's evidence that she never created a reasonable expectation or never promised the Applicant an extension after the last extension. The extensions at the time were based on service delivery requirements. The employer a month or two before the expiry date of the fixed-term contract would normally know of such need. Rossouw further confirmed that the employer has the sole discretion to extend fixed-term contracts due to operational requirements. The documentary evidence of the Respondent supported her evidence in that regard.
24. It was further the undisputed evidence of the Respondent that when Minister De Lille took over in 2019, she decided not to continuously extend fixed-term contracts, but to advertise posts.
25. The Applicant during her testimony conceded that the employer never promised her any extensions. She based her reasonable expectation solely on the fact that she received numerous extensions over

the years. The Applicant further during cross-examination conceded that once she received the six-month contract and the last extension, she became worried and approached the union in that regard. She also sought legal advice in respect thereof. That to my mind indicated that she should have known that the employer might not again extend her contract.

26. The Applicant did not dispute the fact that the employer advertised contract posts. She did not apply for those posts, as she did not meet the minimum criteria. The Applicant further did not contest the Respondent's evidence that the employer granted extensions at its sole discretion due to operational requirements. That in my view supported the Respondent's evidence that it did not create a reasonable expectation.
27. It was my inference from the Applicant's testimony that she expected the Respondent to extend her fixed-term contract, because of the numerous extensions in the past. To my mind, the period from 2017 became relevant to decide the issue in dispute. The Applicant then no longer worked for the Ministers. The Department then and not the Ministers employed her on fixed-term contracts. I find on a balance of probabilities that the Respondent did not create a reasonable expectation. The Applicant on her own version conceded that she became worried when her last two extensions were for reduced periods. The Applicant also did not dispute the fact that the employer decided to advertise contract posts after Minister De Lille took over as Minister of Public Works. Under those circumstances, the Applicant should have known that the employer was not going to extend her contract on same or similar terms. I therefore find that the Applicant did not discharge the onus of proving a reasonable expectation. Accordingly, the Applicant did not prove a dismissal in terms of section 186 (1) (b) of the Labour Relations Act 66 of 1995 as amended. I was not a case where the employer allowed the fixed-term contract to lapse and that the work was still available without being advertised- see also *King Sabata Dalindyebo Municipality v CCMA and others* [2005] 7 BLLR 696 (LC).

AWARD:

28. In the premises, I make the following award:
- (1) I find that the Applicant did not discharge the onus of proving a dismissal. I therefore dismiss the application.



ADV J P HANEKOM

CCMA COMMISSIONER: **J P HANEKOM**