



GENERAL PUBLIC SERVICE
SECTOR BARGAINING COUNCIL



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PANELIST: ADVOCATE J P HANEKOM

CASE NO: GPBC1183/2021

AWARD DATE: 26 OCTOBER 2021

In the matter between:

PSA obo A. LAMBRECHTS

Applicant

and

DEPARTMENT OF CORRECTIONAL SERVICES- WESTERN CAPE

Respondent

ARBITRATION AWARD

DETAILS OF THE HEARING AND REPRESENTATION:

1. This matter was set down for a virtual arbitration hearing on 5 October 2021 concerning an interpretation and/or application of a collective agreement (Resolution 5 of 2014 – hereinafter referred to as “the Resolution”).
2. Mr. J. Voster of PSA represented the Applicant and Mr. R. Shope of Labour Relations represented the Respondent. Both parties agreed and requested to argue the matter as a stated case on paper and to submit written argument by 12 October 2021.

ISSUE TO BE DECIDED:

3. I have to decide whether the Respondent correctly interpreted and or applied the Resolution. .

BACKGROUND:

4. The Applicant employed as a Unit Manager at Goodwood Correctional Facility commenced her studies in 2011 at UNISA. She attained her Bachelors of Arts Degree in Criminology (hereinafter referred to as "the improved qualification") on 27 June 2019.
5. The Department recognised the said Degree as an improved qualification as per the definition contained in the paragraph 3.3 read with paragraph 5 of the Resolution that relates to the conditions for recognition of the improved qualification.
6. During the time of her studies, the Applicant handed in the registration documentation and applied for study leave from time to time, which the employer approved. The Applicant also submitted her examination results as described by the employer's policy.
7. After obtaining her improved qualification, she applied for a cash bonus of R38 058, 30 (10% of her annual salary of R380 583, 00) in terms of paragraph 6 of the Resolution on or about 16 July 2020. The employer however informed the Applicant on or about 8 December 2020 that she did not qualify for the cash bonus, because she was not in possession of prior approval from the Regional Head: Human Resources to study for the improved qualification in question as per paragraph 6.4 and 6.5 of the Resolution. Paragraph 6.4 reads *"An employee who intends to register for improved qualification, upon completion of which he/ she wishes to be considered ... must inform the Department which qualification he/she intends to register."* Further, paragraph 6.5 reads *"The Head of Department or his/her delegate shall consider the employee's request for approval and provide written feedback within "one month" from the date of submission of the request as to whether the request is approved or not, should the request not be approved, reasons for non- approval must be provided. "*
8. The Applicant thereafter registered a formal grievance on or about 27 January 2021. The employer considered the grievance up to level 2 and the matter remained unresolved.
9. The Applicant then referred an unfair labour practice (benefits) dispute to the GPSSBC in respect of the cash bonus under case GPBC346/2021, when it was ruled that the Applicant should have referred

an interpretation dispute to the Council. The Applicant thereafter referred her dispute to the Council as an interpretation dispute on 16 July 2021.

EVIDENCE AND ARGUMENT BY THE APPLICANT:

10. The Applicant submitted documentary evidence and in her written submission confirmed the facts as stated in the background above.
11. The Applicant further submitted that it was not the intention of the parties to the Resolution to exclude employees that started studying before and finished studying after the Resolution came into effect. The implementation date of the Resolution was 1 January 2013.
12. The employer was well aware of her studies and that she applied for leave during the time of her studies. Once she obtained her qualifications, she informed the employer thereof and applied for the cash bonus.
13. The Applicant submitted that the Resolution does not indicate which way the employee must inform the employer of the registration of improved qualification.

EVIDENCE AND ARGUMENT BY THE RESPONDENT:

14. The Respondent did not submit written argument on or before the due date. However the Respondent's representative at the virtual arbitration hearing submitted that the Applicant did not qualify for the cash bonus, because the Applicant did not obtain prior approval to study for the improved qualification as per the prescripts.
15. The Respondent submitted that paragraph 6.4 and 6.5 of the Resolution require the employee who intends to study towards an improved qualification, to first inform the employer of the intention to study and to register for at a tertiary institution. The employee must apply in writing and the delegated authority must grant prior approval as per the prescripts.

ANALYSIS OF THE EVIDENCE AND ARGUMENT:

16. The parties were in disagreement as to the interpretation of the wording of paragraph 6.4 and 6.5 of the Resolution as to when an employee should register an improved qualification to qualify for a cash bonus.
17. The golden rule of interpretation is that the literal rule of interpretation (ordinary words must carry its ordinary meaning) must apply, unless the ordinary meaning of the words leads to absurdity and or ambiguity. Then one must find an alternative meaning that does not lead to absurdity. In other words, where phrases or sentences are capable of more than one meaning that leads to ambiguity or absurdity then the courts will deviate from the literal rule of interpretation. We call it the mischief rule of interpretation. However, if the language used is clear, words are given their ordinary grammatical meaning even if the result is harsh, unfair or inconvenient. The literal rule of interpretation was strictly applied by the Appeal Court in *Dadoo Ltd & others v Krugersdorp Municipal Council* 1920 AD 530 when the Court confirmed the literal rule of interpretation and held that the literal interpretation of the law only prohibited a certain Asiatics from buying or owning land in Transvaal. The law did not forbid Dadoo's company that was a separate legal entity from buying or owning land.
18. In order for me to give a meaning to the words used in paragraph 6.4 and 6.5 of the Resolution, I need to look at the ordinary rules of grammar and syntaxes. I need to look at the context in which the words are used. I need to look at the aimed purpose of the Resolution. I need to look at the definition section of the Resolution. Supreme Court of Appeal clearly outlined the aids to interpretation in the citation below.

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follows in Natal Joint Municipal Pension Fund v Ndumeni Municipality (2012) (4) SA 593 (SCA) at para [18]: “ The interpretation is the process of adding meaning to the words used in a document, be it legislation some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and circumstances attendant upon its coming into existence.

Whatever the nature of the document, consideration must be given to the language used in light of all theses ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and material known to

those responsible for its production. Where more than one meaning is possible each possibility must be weighed to one that leads to insensible or un-businesslike results or undermine the apparent purpose of the document. Judges must be alert to, and guard against, the temptation to substitute what they regard as reasonable, sensible or businesslike for the wording actually used. To do so in regard to a statute or statutory instrument is to cross the divided between interpretation and legislation; in a contractual context it is to make a contract for the parties other than the one they in fact made. The inevitable point of departure is the language of the provision itself, read in context and having regard to the purpose of the provision and background to the preparation and production of document."

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19. If more than one meaning is possible, I must find an alternative meaning that does not lead to absurdity. The plain reading of the words in paragraph 6.4 is that "*An employee who **intends to register** for improved qualification, **upon completion** (my emphasis) of which he/ she wishes to be considered ... must inform the Department which qualification he/she **intends to register** (my emphasis).*" Further paragraph 6.5 of the Resolution reads "*The Head of Department or his/her delegate shall consider the employee's request for approval and provide written feedback within "one month" from the date of submission of the request as to whether the request is approved or not, should the request not be approved, reasons for non- approval must be provided. "* If one reads paragraph 6.4 together with paragraph 6.5 it leads to absurdity. The Respondent's interpretation of paragraph 6.4 and 6.5 of the Resolution is that an employee must be in possession of prior approval of registration of an improved qualification in order to qualify for a cash bonus upon completion of the said qualification. If no prior approval, then the employee will not qualify for a cash bonus upon completion of the improved qualification. The Applicant's interpretation of paragraph 6.4 and 6.5 is that no prior approval to study must be obtained, but simply that the employee must notify the employer of the studies the employee is registered for and after completion of the studies apply for the cash bonus.
20. My literal interpretation of paragraph 6.4 in isolation is simply that the employee must inform the employer of his/her studies. I see nothing in paragraph 6.4 that reads that the employee must get prior approval of registration of studies at a tertiary institution from the employer. An employee does not need the prior approval of the employer to study, unless the employee wants to qualify for a state funded bursary referred to in the Resolution. In fact, most employees who are busy studying towards an improved qualification register every year at a tertiary institution for the studies of that year. Further, most of them apply for leave to study, which leave the employer normally approves. Paragraph 6.5

talks about approval, but the parties to the agreement failed to specify specifically what request the employer needs to approve. Further, Resolution does not contain a definition of “request”. So what “*request for approval*” should be approved?

21. If one applies the internal aids to interpretation and follow the contextual approach (to read the words in context with the rest of the Resolution) then the meaning of the words is clear. Paragraph 6.6 of the Resolution clearly stipulates, “*Improved qualifications **completed and attained** before 1 January 2013 shall not be eligible for the payment of the cash bonus.*” That to my mind indicates that the Respondent’s interpretation would lead to absurdity. That is to say that an employee must first get approval to register for certain studies towards an improved qualification. That would mean that employees who registered for studies before 1 January 2013 when the Resolution came into effect, and who attained their qualifications after 1 January 2013 would not qualified for the once-off cash bonus, if one follows the Respondent’s interpretation. That could lead to an unfair labour practice and discrimination against some employees. The employer is supposed to provide similar treatment to all employees for similar work performed.
22. In my view, the parties to the Resolution clearly did not intend with paragraph 6.6 of the Resolution that improved qualification registered before 1 January 2013, completed, and attained after 1 January 2013 will not qualify for the payment of the cash bonus. For that to be the case, the parties would have clearly stipulated that in paragraph 6.6. If I again follow the contextual approach, my interpretation of paragraph 6.5 is that the delegated authority must approve or disapprove the “request” or application for the cash bonus and not the registration at a tertiary institution of the improved qualification. Paragraph 6.8 of the Resolution supports my interpretation where it says, “*After successful completion of the improved qualification, the employee shall make a formal **request** (my emphasis) for the payment of the once- off cash bonus.*” If the parties to the Resolution intended that prior approval to register to study for an improved qualification were a qualifying factor for the cash bonus they would have mentioned that in the Resolution.

23. Accordingly, I find that the Respondent did not correctly interpret the Resolution.

AWARD:

24. In the premises, I make the following award:

- (1) I find the Applicant discharged the onus of proving that the employee incorrectly interpreted the Resolution.
- (2) I order the Respondent to pay the Applicant a cash bonus of R38 058, 30 (10% of her annual salary of R380 583, 00) on or before **15 December 2021**.



ADV J P HANEKOM

GPSSBC COMMISSIONER: **J P HANEKOM**