



ARBITRATION AWARD

Panellist/s: P C MABITSELA
Case No.: GPBC451/2020
Date of Award: 20 August 2020

In the ARBITRATION between:

PSA obo RH Chuene

(Union / Applicant)

and

OFFICE OF THE PREMIER

(Respondent)

Union/Applicant's representative: Ms. P Matlhadisa

Union/Applicant's address: _____

Telephone: _____

Telefax: _____

Respondent's representative: Mr.M.M MASEKO

Respondent's address: _____

Telephone: _____

Telefax: _____

ARBITRATION AWARD

DETAILS OF HEARING AND REPRESENTATION:

- [1] This matter was scheduled before me at the Office of The Premier, Hans van Rensburg Street, Polokwane on the 07 of August 2020. The Applicant was represented by Ms. P. Matlhadisa an official of PSA. The Respondent, Polokwane Office of The Premier was represented by Mr.M.M Maseko who is a Director: Labour Relations Officer.

ISSUE TO BE DECIDED:

- [2] Whether the alleged unfair labour practice effected on the Applicant, constituted an unfair act/conduct as contemplated in **Section 186(2)(a)** of the **Labour Relation Act, 66 of 1995**("the LRA").

BACKGROUND TO THE MATTER:

- [3] After financial year end 2018/2019 the Applicant together with her Supervisor (Mr.P.S.Ntwampe) agreed on the rating score of 4 as per the method used by the Respondent to score PERFORMANCE MONITORING, REVIEW AND ASSESSMENT. Later a letter from the Departmental Moderating Committee addressed to the Supervisor of the Applicant indicating that, the information provided was insufficient to justify the score rating of 4, and the Committee requested the Supervisor to provide additional motivation or to consider/review the assessment ratings.
- [4] The matter was set down for conciliation on the 07 August 2020 and the matter was not resolved at Conciliation and Arbitration took place on the same date.

FACTS THAT ARE NOT IN DISPUTE

- [5] The PMDS cash bonus was not paid to the Applicant for the financial year end 2018/2019.

SURVEY OF EVIDENCE AND ARGUMENT:

APPLICANT'S CASE

The evidence by Ms. RH Chuene (Applicant)

- [6] She is employed by the Respondent as Deputy Director: Labour Relations Officer.
- [7] The requirements for qualifying PMDS cash bonus was a rating score of 4, according to the Respondent **POLICY ON PERFORMANCE MANAGEMENT AND DEVELOPMENT SYSTEM**, with an effective date of 01 March 2018.
- [8] The Applicant in her evidence testified after sworn under oath to say that, after the financial year end 2018/2019 the Applicant and her Supervisor (Mr. P.S Ntwampe) agreed on the score rating of 4, upon completion of the Performance Assessment Report, of which according to the **Policy on Performance Management and Development system** Applicant qualifies to receive PMDS cash bonus.
- [9] The Applicant upon not receiving PMDS cash bonus, she then started to make enquiries as to why it was not paid to her. She later then received a letter informing her that her rating score was reduced to 3 by the Committee, which led to her not qualifying for the PMDS cash bonus which was already paid to other employees, and the letter was received by the Applicant after PMDS cash bonus was not paid to her, but paid to other employees.
- [10] The Applicant argued and say that the Respondent failed her on the rating of 4 which was not disputed by the Supervisor, further stated that the Departmental Moderation Committee have no powers to reduce the score rating but only to recommend the rating to the Accounting Officer.
- [11] Referred to the letter on page 15 of the bundle provided that was addressed to her Supervisor requesting for additional motivation not the changing of the score rating, as well as the letter on page 16 regarding reducing of the score rating from 4 to 3 was sent to the Applicant after the was no PMDS cash bonus paid to her, unlike if the letter was sent to her before with reasons.

- [12] The Applicant also referred to page 23 of the bundle clause 9.5.6 of the policy, that indicate that if there are amendments, such issues should be resolved with Management, even after the Applicant submitted everything in terms of the policy, also referred to page 21 of the bundle clause 9.3.2 of the policy where it is talking about the Role of Branch Moderating Committee and processes to follow. The Applicant argued that the Respondent failed to comply with their own Policy.
- [13] The Applicant indicated further to say that the Committee had no powers to reduce the score but to rather recommend.

RESPONDENT CASE

The evidence by Mr. M.M Maseko

- [14] He is employed by the Respondent as a Director: Labour Relations Officer representing the Respondent in this matter.
- [15] The Respondent's Representative in his testimony testified under oath that the Applicant was supposed to make follow-up on the process of the Performance Assessment, and also emphasised that there was insufficient information to justify the rating score of 4.
- [16] The Respondent's Representative argued that the Applicant bears the onus to prove the unfair labour practise, he further referred to page 20 of the bundle clause 9.2 (c) of the policy that indicates that any recommendation on the changing of scores must be referred back to the employee's supervisor and the subordinate to try and reach consensus on the changes, also referred to page 21 of the bundle clause 9.3.2 of the policy that indicates the role and processes of the Branch Moderating Committee, ***“when a need arises Supervisor will be expected to motivate further to the Branch Moderating Committee”***.

[17] He argued further and say there was no evidence submitted and no reason provided to justify the rating of 4. And also mentioned that the Performance Assessment Report was referred to the General Manager, as per policy on page 23 of the bundle clause 9.5.6.

The evidence by Mr. S.V. Ngobeni (Respondent’s witness)

[18] He is employed by the Respondent as a Deputy Director: PMDS

[19] The witness testified after sworn under oath that the Applicant did not qualify level 4 but to remain on level 3 as per her target, and her motivation did not satisfy the committee. The messenger handed over the letter to the Applicant informing her about the changes of the score rating from 4 to 3, and she was supposed to read it and take the letter to (Mr.P.S Ntwampe) the supervisor.

ANALYSIS OF EVIDENCE AND ARGUMENT:

[20] The **South African Constitution, Act 109 of 1996** in **Section 23(1)** pledges to everyone the “right to fair labour practices”. In the employment context, this constitutional rights is narrowed down in **Section 185(b) of the Labour Relation Act, 66 of 1995** (“the LRA”). This particular section the LRA unequivocally guarantees that “*every employee has the right not to be subjected to Unfair Labour Practise*”.

[21] It is common cause that the Respondent pays PMDS cash bonus to employees who scores a rating of 4 during their Performance Assessment for each financial year end period.

[22] The Respondent failed to inform the Applicant in advance that her score rating of 4 has been reduced by the Committee to 3, but only send a letter to the Applicant after she queried as to why she was not paid PMDS cash bonus.

[23] The Committee has taken a decision to reduce the score rating of 4 to 3, without the additional motivation requested from the Applicant’s Supervisor. The Respondent Representative failed to convince the

Commissioner that such motivation was received by the Committee before reducing the score rating from 4 to 3.

- [24] The Respondent's Representative failed to produce proof of motivation that justified reducing the score rating of 4 to 3, he also failed to challenge the evidence led by the Applicant when emphasised that really there was an agreement between her and the supervisor regarding the outcome rating of 4 and that was valid and outcome rating as per **PERFORMANCE MONITORING, REVIEW AND ASSESSMENT** attached on the bundle provided, The Respondent Representative puts all the blame on the Applicant's supervisor for not following processes and communicating back to the Applicant, and this is an admission that the Respondent indeed treated the Applicant unfairly.
- [25] The Respondent also failed to comply with their policy, page 20 of the bundle clause 9.2(c) which states that any recommendation on the changing of the score rating **must** be referred back to the Supervisor and the Employee to try and reach consensus on the changes, in this matter there is no evidence to prove that such process was followed. Also on page 21 of the bundle clause 9.3.2 of the policy which state that, in the process the Branch Moderating Committee may agree or disagree with the PAR. **must** be referred back to the employee's supervisor to try and reach consensus on its view. When a need arise the employee's supervisor will be expected to motivate further to the Branch Moderating Committee. There is no evidence or proof that all that was done and communicated back to the Applicant and Supervisor.
- [26] Page 23 of the bundle clause 9.5.6 of the policy, indicates that "if the Departmental Moderating Committee wishes to amend rating submitted by the Branch Moderating Committee, or if the Accounting Officer does not wish to approve recommendation of the Departmental Moderating Committee, such issues should be resolved at Management level after consultation with relevant Managers. If this process result in changes to individual assessment scores, and employee refused to accept the changes, employee may follow the grievance rules of the Public Service". Unfortunately in this case the Applicant did not receive the changes of the score rating well in advance or rather before the payment of PMDS cash bonus in order to make a decision as to whether to accept the changes or follow the grievance rules, she only lodged formal grievance after other employees have received their PMDS cash bonus.

[27] The Respondent also failed to produce proof such as written motivation, sworn affidavit, attendance register or minutes of the seating with all Committees as well as the seating with the General Manager to prove that indeed the Respondent has complied with their Policy, or call all relevant witnesses to lead oral evidence, especially the Applicant's Supervisor (Mr.P.S. Ntwampe) who is considered to be a key witness in this matter.

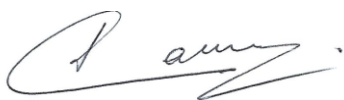
[28] The Respondent failed to follow the processes of their own policy, as such that disadvantaged the Applicant from receiving PMDS cash bonus, which the score rating of 4 is regarded as Highly Effective according to the **POLICY ON PERFORMANCE MANAGEMENT AND DEVELOPMENT SYSTEM**. The Applicant qualifies the rating of 4 as per **PERFORMANCE MONITORING, REVIEW ASSESSMENT TOOL**, and that was not in dispute with the supervisor, and there was also no motivation to justify the reduction of the score rating from 4 to 3.

AWARD:

[29] According to the above analysis there was a gross unfair labour practice effected on the Applicant by the Respondent.

[30] The Applicant must be paid and in full the PMDS cash bonus for the financial year end 2018/2019 in terms of the Policy page 25 (10.3) **Rewarding of Individual Performance**, *"EAs must determine an appropriate rewards scale in the establishment of performance incentive scheme to reward employees or any category of employees as contemplated in Regulation 73(1) of the Public service regulations 2016"*.

[31] The payment be effective by no later than 30 days after receipt of this award.



Name: P.C MABITSELA
(GPSSBC) Arbitrator