



DEFAULT ARBITRATION AWARD

Panellist/s: Mandla Nkabinde.
Case No.: GPBC 628/2020
Date of Award: 12 November 2020.

In the ARBITRATION between:

**PSA OBO PF MAKOTA.
(Union / Applicant)**

And

**Department of Public Works Roads and Transport
(Respondent)**

Union/Applicant's representative: PSA OBO PF MAKOTA

Union/Applicant's address: P O Box 1022

Telephone: 013 741 7513

Telefax: 087 234 7704

Respondent's representative: Department of Public Works
Roads and Transport

Respondent's address: Private bag X1800
Middelburg
1050

Telephone: 013 243 4426

Telefax: 013 243 2111

AWARD

DETAILS OF HEARING AND REPRESENTATION:

- [1] This dispute was set down as an arbitration on 15 September 2020, through virtual.
- [2] The dispute was referred as an alleged unfair labour practice relating to benefits namely acting allowance.
- [3] The Applicant PF Makota, a tradesman aid, was represented by Asnath Sedibane, an LRO from PSA were present.
- [4] The Respondent was absent and did not send a Representative, did not applied for postponement.
- [5] There is a proof in the file that the notice for arbitration hearing was sent to parties.
- [6] I contacted the Respondent on two contact cell phone without any success.
- [7] I proceeded with the default arbitration by only hearing the evidence of the Applicant. The matter was digitally recorded.

ISSUE TO BE DECIDED:

- [8] I am required to decide whether or not the Respondent committed an unfair labour practice towards the applicant by not paying him an acting allowance.

BACKGROUND TO THE MATTER:

- [9] The Applicant is an employee of the Department of Public Works Roads and Transport.
- [10] The Applicant was employed since 01 May 2008, as a tradesman aid, Assisting Technicians in assessing/evaluating Roads, Construction material, collecting samples amongst others.

SURVEY OF EVIDENCE AND ARGUMENT:

EVIDENCE.

- [11] The Applicant's submitted a bundle of documents, indexed, paginated and numbered was emailed to me.
- [12] The Applicant was the only witness at the hearing, and statements from one of his witnesses were in the bundle and later sworn affidavits were filed as the witness had a family emergency thus could not attend.

THE RESPONDENT.

- [13] The Respondent were absent and did not attend the arbitration hearing.

APPLICANT

The Applicant was the only witness who testified under oath

- [14] The Applicant submitted that was requested to act as data capture from 01 February 2015 together with other acting employees in different Job categories in the same department.
- [15] He was requested to act by the then principal road superintendent MJ Sibanyoni on, 8 August 2014.
- [16] The acting was not documented as per the acting policy but authorised as per letter stated in paragraph 19. He testified that there was a moratorium on filling of vacancies in the Department.
- [17] Due to financial constraints, these acting employees were not paid acting allowance in 2015.
- [18] The Union in the sector invited its members to submit names to their regions who were paid in 2018, others in 2020. It was stated that the Applicant was not paid in both periods.
- [19] The Applicant submitted that on 15 April 2019 BJ Mputle (Acting control engineering Technician) and ME Madihlaba, wrote to the Director SA Mbatha requesting for either the translation or acting allowance remuneration for PF Makota

ANALYSIS OF EVIDENCE AND ARGUMENT:

- [20] The LRA defines unfair labour practice means “any unfair act or omission that arises between an employer and an employee involving –
 - a) *Unfair conduct by the employer relating to promotion, demotion, probation (excluding disputes about dismissals for reason relating to probation) or training of an employee or relating to the provision of benefits to an employee.*
- [21] The GPSSBC Resolution 1 of 2002 on acting allowance clause.
 - 3.1.7 “ *An employee may not act in a higher post for an uninterrupted period exceeding twelve months.*
- [22] The Applicant bears the onus to prove the unfair conduct of the respondent. The party that alleges bears the onus to prove on a balance of probabilities.
- [23] Turning to the issue of unfair labour practice relating to benefits (acting allowance) before me. In these proceedings I only have the evidence or version of the Applicant and it was not challenged during hearing.

- [24] The documentary evidence of letters from authoritative individuals relative to the Applicant is authentic and credible
- [25] The dates on these documents as they relate to the Applicant are corroborated with the documents of the one employee who was paid acting allowance.
- [26] The Respondent did not present its side of the story, I am convinced that the Respondent was aware of the arbitration and failed to appear to hear their version on alleges unfair labour practice pertaining to the nonpayment of the benefits.
- [27] This absence of the Respondent to argue or led evidence on their' version, leaves me With no options but to accept the version of the Applicant on balance on the balance of probabilities. I have no reasons not to accept the version of Applicant because this is the only version before me
- [28] **In Apollo Tyres South Africa (Pty) Ltd v CCMA & Others (2013) 34 ILJ 1120 (LAC)**
The Court held that the definition of benefits, as contemplated in section 186(2)(a) of the LRA was not confined to rights arising ex contractu or ex lege, but included rights judicially created as well as advantage or privileges employees have been offered or granted in terms of a policy or practice subject to the employers discretion and that in this instance the early retirement scheme constituted a benefit.

REMEDY

- [29] Section 193(1) of the LRA as amended remedies for Unfair Labour Practice. If the arbitrator appointed in terms of this *Act* finds that is unfair the Court or the arbitrator may to re institute the employee from any date not earlier than the date of dismissal; order the employer to pay compensation to the employee. In this instance the Applicant remedy wants to be paid the acting allowance for the period he acted. There was no evidence before me that the Applicant relief should be granted. Section 194 of the LRA empower the arbitrator to order compensation that is not more than 12 months remuneration calculated at the employees rate of remuneration.

AWARD:

In the premise I make the following ruling.

- [30] The Respondent Department of Public Works Roads and Transport has committed an unfair labour practice relating to benefit against the Applicant
- [31] The Respondent is ordered to pay the Applicant the difference between the current Salary notch of the Applicant and the commencing notch of salary level 5 for 3 months calculated as follows.
- [32] The Applicant current notch basic salary is R10216. 25 and the level 5 basic salary is R14 475.25 and the difference is R4259.00 x 3 months (compensation) is equal to R 12777.00 (**Twelve Thousands Seven Hundrend and Seventy Seven Rands**)

- [33] The Respondent is ordered to pay the above-mentioned in par [32] the total difference of acting allowance to the Applicant known bank account details by not later than the 30 November 2020.
- [34] The interest will accrue in terms of section 143 (2) of the Labour Relations Act of 1995 as amended from the date of the award at the prescribed rate.
- [35] There is no order for cost.

Mandla Nkabinde

A handwritten signature in black ink, appearing to be 'MN', with a long horizontal stroke extending to the right.

Name: GPSSBC Panellist