



GENERAL PUBLIC SERVICE
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ARBITRATION AWARD

Panellist/s: Mr S M MOEKETSI

Case No.: GPBC 1091/2020

Date of Award: 04 September 2020

In the ARBITRATION

Between:

NEHAWU obo S E BOHLALE

(Union / Applicant)

And

FREE STATE DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT

(Respondent)

MR S F PHALADI

Union/Applicant's representative: _____

Union/Applicant's address: NEHAWU

Telephone: _____

Telefax: _____

MR GPC NORVAL

Respondent's representative: _____

Respondent's address: Department of Agriculture and Rural Development- Free State

Telephone:Telefax: _____

ARBITRATION AWARD

DETAILS OF HEARING AND REPRESENTATION:

1. The matter came before the council for arbitration in terms of section 186 (2) (a) of the Labour Relations Act 66 of 1995. It was then set down for an arbitration hearing at the Department of Agriculture and Rural Development, Gielie Joubert Street, Chemistry Building Glen College on the 31st July 2020.
2. The applicant Mr SE Bohlale attended the hearing and he was represented by Mr SF Phaladi, an official of the applicant's trade union NEHAWU.
3. The respondent, the Department of Agriculture and Rural Development- Free State also attended the hearing and was represented by Mr GPC Norval an official of the respondent.
4. The matter proceeded on the 31st July 2020 and the 25th August 2020. The parties agreed to file their closing addresses on or before the 1st September 2020, which were received as agreed.
5. Due to the fact that the matter before me is unfair labour practice, the applicant bears the onus of proof.
6. The proceedings were digitally recorded.

ISSUE TO BE DECIDED:

7. The fairness or otherwise of the respondent's conduct in not paying for an overtime benefit as alleged by the applicant.

BACKGROUND TO THE MATTER:

8. The applicant Mr. Bohlale is employed as a personal assistance to the Chief

Financial Officer Ms. Lerato Mngomezulu;

9. On the 9th July 2019, Mr Bohlale was instructed to perform an overtime work by his supervisor Ms. Mngomezulu. He then prepared what is called a request letter for overtime work which Ms. Mngomezulu approved;
10. The letter of request was then submitted to Human Resource for them to compile a submission for further approval;
11. The said submission was then prepared by Human Resource and submitted for processing and approval;
12. Bundle "A" was submitted on behalf of employee, and the employer's bundle is "B", "B1" and "B2";
13. Both Bundles contain documents exchanged between the parties including the policies guiding the issue in dispute.
14. The documents were accepted by both parties to purport what they ought to be.

SURVEY OF EVIDENCE AND ARGUMENT:

Evidence

15. Applicant

The applicant, Mr. Bohlale was the only witness who testified in his case. In summary he testified as follows:

- 15.1. That on the 09th July 2019 he was instructed by his supervisor Ms Mngomezulu that he should work overtime from the 09th July 2019 to the 31st July 2019 in preparation for audits;
- 15.2. He then prepared what is called a request letter on the same date of the 09th July 2019 which was approved by Ms Mngomezulu on the 10th July 2019;
- 15.3. The request letter was then submitted to the Human Resource on the 11th July 2019 for them to compile a submission for HoD's approval;

- 15.4. After he submitted the request letter, he never heard anything further about the overtime request and he continued working as instructed;
- 15.5. He also testified that he did follow up on the matter regarding payment of the overtime work from his supervisor and she told him that he must follow up with Human Resource as it was Human Resource matter;
- 15.6. That as a result he wrote an email on the 18th September 2019 addressed to Mrs Carina Lombard who is a Director Human Resource;
- 15.7. He however received no response from Mrs Lombard and he ultimately lodged a grievance which also was not attended to even after the 30 days period as expected in terms of the grievance policy;
- 15.8. On the remedy sought he indicated that he would want to be paid the overtime work which he stated that Human Resource (respondent) will confirm the amount.

16. Respondent

The respondent also called one witness Mrs Carina Lombard and she testified as follows:

- 16.1. That she is the Director of Human Resource and does know Mr Bohlale;
- 16.2. That overtime was requested but it was never approved. She further stated that overtime pay in the Public Service is guided by a number of documents and legislation that need to be adhered to which documents are contained in Bundle "B";
- 16.3. She then testified about the process followed after they prepared the submission leading up to the approval;
- 16.4. She indicated that if the request is not approved, they inform the relevant sections and give reasons why it is not approved;
- 16.5. She also stated that overtime work is approved in advance although there are certain circumstances where it may be approved *ex post facto*;
- 16.6. She also testified that they inform different sections that they should not start overtime

work before approval though some sections, in some instances go ahead with overtime notwithstanding this caution;

16.7. She further testified that the Act authorised the executive to take steps against any head of department for non-compliance with the overtime policy;

16.8. That there are deviations at times from what is expected in terms of approval of overtime work but that each case is dealt with on its own merits;

16.9. That the applicant's overtime worked does not form part of emergency work as contemplated in the overtime policy;

16.10. That all policies are made known through circulars, put on departmental website etc. and that the overtime policy was no exception;

16.11. That she is not sure if Mr Bohlale was informed of non-approval as she is not the one communicating directly such decision but within her departmental/ section;

16.12. She further stated that she assumes that Mr Bohlale might not have had an option but to go ahead with his supervisor's instruction to work overtime.

16.13. The witness then handed in the document which was added to Bundle B as page 40 which confirmed overtime amount of R2 808.60.

Argument

Applicant's Argument

The applicant argued that he should be paid overtime work in the amount as hereby indicated and also be paid compensation for unfair labour practice. The following are the reasons advanced:

17. The provision of clause 3.5 of the overtime policy and argue that the employer has in the past approved ex post facto overtime;

18. That the employer is not consistent with the ex post facto approval of overtime;

19. That if overtime was not worked for audit preparation on the 09 July – 31 July, that

might have resulted in a negative audit outcome;

20. Indicated an award for payment of the benefits relating to overtime worked to the amount of R2 808.60 as well as compensation for unfair labour practice to the amount of R 181 641.00 and referred to the provisions of section 194 (4) of the Labour Relations Act.

Respondent's Argument

The respondent also submitted their argument asking me to find in their favour due to the following reasons:

21. Firstly they mentioned a number of matters which are common cause to both parties' arguments;
22. Then summarised both the case for the applicant as well as that of the respondent;
23. Made reference to the number of documents and legislation guiding the overtime policy in Particular the Departmental Policy on Overtime, the Public Service Regulations of 2016 with specific reference to regulation 49 (1); the PSCBC Resolution No3 of 1999, overtime clause as per Bundle 'B';
24. The respondent also argue what process is to be followed for overtime work to be approved and referred to emergency work in the overtime policy and maintained that the applicant's overtime does not amount to emergency;
25. That because the overtime worked and payment for overtime did not have the pre-approval by the HoD as per legal obligations the applicant is therefore not entitled to payment thereto.

ANALYSIS OF EVIDENCE AND ARGUMENT:

26. Given that it is common cause that the applicant/employee worked overtime and that at no stage did the employer indicate that overtime was not supposed to be worked;
27. I then conclude that the overtime worked was in deed genuine;
28. The applicant started overtime work on the 09th July 2019, a date on which he also

signed what is termed a request letter. On the 10th of July 2019, his supervisor who is above the applicant in terms of level approved such request;

29. On the 11th July 2019, the request was submitted to the Human Resource for further processing;

30. It is my view that the employer was as early as the 10th July 2019 aware that this person, that is the applicant, was working overtime;

31. The employer did not bother in any way to notify the applicant that he should stop working overtime because there is no approval;

32. The reason for overtime work was audits preparation. One will therefore conclude that audits was an important task to be performed by the department;

33. On enquiry by the applicant as to why his overtime was not paid, he was informed that the acting GM, Mr. Ndumo did not sign the submission because it should have been approved by the acting HoD prior to him working overtime;

34. With that said, I cannot understand and there was no evidence given as to why that was not communicated to the applicant considering that the employer was as early as the 10th July 2019 aware that the applicant is working overtime;

35. It was therefore logical for the employee to conclude that his overtime submission is undergoing the required process of approval and thus continued with the overtime work;

36. The overtime policy allows *ex post facto* approval. That is the reason that the respondent argue that the overtime worked by the applicant does not amount to emergency work which would have justified *ex post facto* approval;

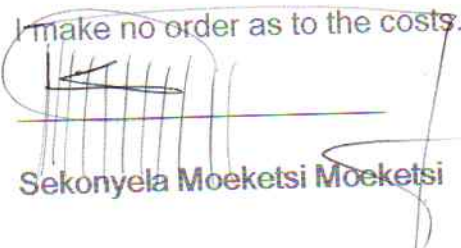
37. It is my view that the employer would profit unjustly if I were to agree that *ex post facto* approval is not applicable in relation to the applicant's overtime as they were already aware as early as the 10th July 2019 of such overtime work;

38. I understand that the purpose of the overtime policy is to manage and /or regulate overtime work to avoid a situation where employees would work overtime without approval to unjustifiably benefit themselves;
39. I do not believe however, that in this instance the applicant had any such intentions;
40. What is before me is that the applicant received instructions from his supervisor to work overtime and the submission was compiled for approval;
41. I therefore dismiss the respondent's argument that the conduct by the employer does not amount to unfair labour practice;
42. The applicant further claims compensation based on unfair labour practice for emotional and financial loss;
43. The matter before me is Unfair Labour Practice as provided in S 186 (2) of Labour Relations Act;
44. Even if I was empowered to deal with the for compensation as sought by the applicant there is no evidence presented in relation to this claim by the applicant;
45. As an arbitrator I am bound by the statutes when making decision on the disputes before me. Therefore, if I decide on the compensation sought of R 181, 641. 00, I will be acting *ultra vires* as the commissioner considering that such is not encapsulated in section 186 of the Labour Relations Act.

AWARD:

I find that the respondent had committed an unfair labour practice relating to benefits. I therefore order the respondent to pay the applicant an amount of R 2 808.60, on or before the 30th September 2020.

I make no order as to the costs.


Sekonyela Moeketsi Moeketsi