



DEFAULT AWARD

Panelist/s: **BML Moloto**

Case No.: **GPBC38/2020**

Date of Award: 18 September 2020

In the ARBITRATION between:

NEHAWU obo T.T MOLEFE

(Union / Applicant)

And

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

(Respondent)

Union/Applicant's representative: Mr Tsepo Molefe / Mr Segosapelo

Union/Applicant's address: 46 Malan Street
Koster

Rustenburg, 0348
Telephone: 071 539 1714
Email: tsmolefi@gov.za

Respondent's representative: Non- Attendance

Respondent's address: Regional Office Mafikeng
Ayob Building
Mafikeng

Telephone: 014 543 2024
Telefax: 086 629 3222

DEFAULT ARBITRATION AWARD

DETAILS OF HEARING AND REPRESENTATION:

The Arbitration was held on 05 August 2020 at Koster. The Applicant Mr. T.T Molefi attended the hearing together with his trade union Representative Mr. J. Segosapelo whilst the Respondent Department of Justice and Constitutional Development were not present and I proceeded with the matter as default.

ISSUE TO BE DECIDED:

1. The dispute was referred in terms of Unfair Labour Practice Section 186(2)(a). I am required to determine whether or not the Respondent committed an unfair labour practice by not paying the Applicant's performance bonus or not.
2. The Applicant's relief seeks salary adjustment of two notches higher than the current grade and monetary payment in terms of Performance Management Policy of the Employer.

BACKGROUND TO THE MATTER:

3. The Applicant Mr. T.T Molefi attended the hearing together with his trade union Representative Mr. J. Segosapelo whilst the Respondent Department of Justice and Constitutional Development were not present and not Represented.
4. On perusing the file, I contacted the GPSSBC Case Management and it was confirmed that the Respondent was duly notified through Fax no: 0867597053 and email address Lmabebe@justice.gov.za.
5. The Arbitration commenced in terms of section 138(5)(b)(1) of the Labour Relation Act of 1995, as amended.
6. The dispute entails payment of performance bonus and notch elevation for the financial year 2017/2018. The Applicant's case is that he signed a performance management agreement with the Respondent and that he further on the 01st October 2018 submitted an annual performance assessment instrument which contains an Employee's agreed performance score.

SURVEY OF EVIDENCE AND ARGUMENT:

Evidence

7. The Applicant Testified Under Oath and submitted that there was no agreement between him and Supervisor Mrs Masibi- Seleke on performance score stated at page 17-31 of Bundle "A", and the latter was thereafter transferred from Koster to

Tlhabane Magistrate Court and assumed a position of Acting Area Court Manager Rustenburg.

8. The Applicant further testified that his supervisor (Masibi-Seleke) was also appointed chairperson of the moderating committee responsible for Rustenburg Area, which included Koster. According to the Applicant his score rating of four (4) was not presented before moderation committee by Mrs Masibi-Seleke (Supervisor). As a result of failure to present his performance assessment he was not paid performance bonus and he was not elevated with two notches during 2017/2018.

Argument

9. The Applicant's contention is that an omission by the Respondent of not to present his Annual Performance Assessment Report at the moderating committee resulted in an Unfair Labour Practice.
10. The Applicant also submitted that the Respondent failed to resolve a grievance in relation to this omission which he logged on the 05th November 2019 regarding the Employers failure to present Annual Assessment in terms of Performance Management Policy.
11. The Applicant further argued that the omission by the Respondent was not aligned with the principles embodied in the Performance Management Policy which require it to be equitable and fair system while maintaining transparency and administrative justice.

ANALYSIS OF EVIDENCE AND ARGUMENT:

12. The matter was referred in terms of Unfair Labour Practice Section 186(2)(a). I am required to determine whether there was an omission on the part of the Respondent which resulted in an Unfair Labour Practice.
13. According to the Applicant the Respondent's has committed Unfair Labour Practice by not assessing him in terms of the Employer's Performance Management Policy and therefore unfairly denied payment of performance bonus and which to him is seven percent (7%) of R192 000.00 and elevation of two (2) notches which amount to salary scale of R194 000.00
14. The Applicant also submitted the document's named annual performance assessment instrument which states illustrate that the supervisor did not sign the instrument, from page 17-28 in Bundle "A".
15. As a question of fact, it is seemingly supported by the testimony of the Applicant and the documents submitted that the performance appraisal instrument was not signed, nor was it submitted to the moderating committee for appraisal. This evidence before me appears credible, uncontradicted, consistent with the claims of the Applicant and in conflict with the Respondent's policies.
16. It was also established based on the facts before me that a grievance with respect of alleged omission remains unresolved.

17. The evidence, however, with respect to both the substance of the evaluation and the possible monetary benefit cannot be left to the self-estimation of the Applicant or to me as a Panelist. Therefore, although the Applicant has established ground for an Unfair Labour Practice, it cannot be that as Panelist I substitute the valid appraisal process of the Respondent as employer with my own or with that of Applicant.

AWARD:

18. I find that the omission by the Respondent amounts to Unfair Labour Practice.

19. I order that the Respondent should appoint a Supervisor to assess the Applicant for financial year 2017/2018 and the Moderating Committee should convene in compliance with the Respondent's Performance and Management Policy wherein a decision should be made in respect of performance assessment results within a reasonable time not exceeding 30 working days from the day the Respondent is made aware of this award.

20. I make no order as to costs.

Signature

Name: BML Moloto

GPSSBC Panelist.