



ARBITRATION AWARD

Panelist/s: ADV. W, BLUNDIN
Case No.: GPBC277/19
Date of Award: 20 August 2020

In the Arbitration between:

F. TOKWAYO

(Union / Applicant)

and

DEPARTMENT OF CORRECTIONAL SERVICES

(Respondent)

DETAILS OF HEARING AND REPRESENTATION

1. This arbitration award has been made after the matter has been set down for an arbitration hearing on 8 August 2020 at the offices of the Respondent in Mthatha. The Applicant was represented by Mr.P. Somyalo from POPCRU and the Respondent was represented by Ms. Q.Mbubudla an official of the Respondent.

ISSUE TO BE DECIDED

- 2 It is required from me to determine as to whether the Respondent has committed unfair labour practice in relation to benefits (section 186 (2)(a) of the LRA as amended), when the Respondent deduct monies incorrectly paid to the Applicant with the implementation of the Second Phase OSD.

EVIDENCE AND ARGUMENTS OF THE PARTIES

Applicant's evidence

- 3 The Applicant was the only person who testify in this arbitration. The Applicant was employed at the Respondent on salary level 6.
- 4 According to him the Respondent has committed unfair labour practice when the Respondent has reduced his salary from R242577 to R235509 per annum, without any prior permission or consultation with him.

Respondent's evidence and arguments

- 5 The Respondent called two witnesses to testify on their behalf, Mr. Melitafu and Mr. Lungkwana, officials of the Respondent.

Mr. Sabelo Malitafu testifies that;

- 6 That he was working in the HR department of the Respondent at Mthatha for a period of 11 years and has at all times perform the HR functions. He further confirms that he was requested by the Area Commissioner to assist with the implementation of the Second Phase OSD for the operation category salary levels 3 to 8.

- 7 According to the witness they have used Resolution 2/2009 and the collective agreement to implement the above resolution. He makes specific reference to clauses 11 and clause 3.1 in the collective agreement and resolution.
- 8 According to the witness the applicant was entitled to 2.6 notch increased and that the Respondent has errored when they have calculated the salary of the Applicant to be R242577 p.a. According to the witness the calculation is according to the translation key on page 42 of the bundle.
- 9 According to the witness the error came in when they have wrongly calculated the notch increased on 1/7/2013 to 31/3/ 2014, when they gave the Applicant two notch increases but put it on R190461, instead on R184914. Instead of giving the Applicant two notch increase they gave him 3 notch increases.
- 10 Further evidence from the witness revealed that once they recognised the mistake, they rectified it according to the collective agreement. According to the witness clause 6 of the collective agreement give the department to rectify the over or under payment.

Mr. N.W. Lungkwana testifies that

- 11 He is Manager Persal in the employment of the Respondent and was instructed by the Director Corporate Services to audit the results or outcomes of the implementation of the Second Phase OSD to determine the correctness thereof.
- 12 According to him during their investigation they found that the team that have calculate the OSD in Mthatha has made some errors which also include the Applicant. The witness confirms the evidence of Mr. Malitafu as correct.

Analysis of the evidence and arguments

- 13 For ease of refence I will refer to Resolution 2/2009 and the collective agreement signed in November 2018. Clause 11 of Resolution 2/2009 reads as follows;

“ 11.1 With effect of 1 April 2010 the recalculation of salary notch position shall be based on DCS experienced as at 30 June 2009 based on years of experience obtained in addition to the experience required for appointment on that level. The recalculation will be limited to officials in level 3 to 8.

11.2 Translation of experience shall be recognised as 1 notch for every 5 years

11.3 The employer shall

- 14 Further the Respondent also rely on clause 3.1 of the collective agreement to calculate the number of years' experience to determine the notch increase.
- 15 The dispute in front of me is a dispute of unfair labour practice in relation to benefits (section 186(2)(a). In all unfair labour practice disputes, it is upon the Applicant to prove that the Respondent has committed unfair labour practice.
- 16 The parties and their employees/ members are bind to the terms of the collective agreement. Considering clause 6 of the Collective Agreement its clear that the parties has envisaged that mistakes/errors will be made and has decide upon a clause to rectify the error or mistake that was made.
- 17 The Applicant are unable to explain as to why he don't believe that the Respondent has made an error and only rely thereon that he was paid on R242577 and therefore he is entitled thereto. In the absence of any proper explanation I cannot find in any way that the Respondent has commit unfair labour practice. The Applicant failed to show why payment of him on R242577 was not an error or that the calculation was correct, and that the explanation of the Respondent was wrong.
- 18 I must accept the explanation of the Respondent that the error/mistake has cause a different out and when they recognised the error, they rectified the error in terms of clause 6 of the collective agreement.
- 19 After due consideration of the parties arguments I hereby made the following appropriate award.

Award

- 20 That the application of the Applicant is dismissed. The Applicant is not entitled to any relief.
- 21 No Order as to cost.

A handwritten signature in black ink, appearing to read "Adv. W. Blundin", is written over a horizontal line.

Adv. W. Blundin