

Council Name

ARBITRATION AWARD

IN THE GENERAL PUBLIC SERVICE SECTORAL BARGAINING COUNCIL HELD
VIRTUALLY ON 23 JULY 2020.

Case No GPBC463-2019

in the matter between

Nehawu obo C L Mabokela

Applicant

and

Department of Mineral resources and Energy (DMRE)

Respondent

ARBITRATION AWARD

Details of hearing and representation

1. The matter was held virtually on 23 July 2020 at 9h00.
2. The Applicant, **Chuene L Mabokela, (employee)** was represented by **Cairo Matseba** and the respondent, **Department of Energy and Mineral Resources (DMRE) (employer)** was represented by, **Edgar Lamola**.
3. The proceedings were in English and audio virtually recorded.

Issues to be decided

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4. I have to decide whether or not the conduct of the respondent by declining to pay the employee a once off cash bonus for the improved qualification obtained, constituted an unfair labour practice in terms of section 186(2)(a) of the ***Labour Relations Act 66 of 1995*** as amended (**the Act**).
5. I must determine the appropriate relief should I find that the conduct of the employer constituted an unfair labour practice against the employees.

Background to the dispute

6. The **employee**, was employed by the employer as an assistant director (ASD) budgets in the directorate of financial planning and management accounting.
7. She enrolled and completed a B-Tech degree as per her personal development plan which she developed together with her supervisor.
8. Upon completion of her B-Tech degree, she applied for a once off cash bonus and her application was declined by the employer.
9. Her relief sought was for the commissioner to provide clarity in the interpretation and application of Resolution 5 of 2014 and subsequent DPSA directive and order the employer to pay her the once off cash bonus for her completed degree.
10. The employer rejected the employees' version citing that the employee did not qualify for a once off cash bonus because her qualification was not in line with her scope of work.
11. Parties agreed on their own not to lead evidence during the hearing but to submit heads of arguments with bundles of documents attached. The employee party submitted one bundle of documents marked **employee's bundle** and the employer, 1st respondent and second respondent, submitted one bundle of documents each marked **1st respondent bundle and second respondent bundle** respectively.

Survey of evidence and arguments

The employee's heads of arguments

The Employees' representative Cairo Matseba, submitted his heads of arguments as follows;

12. The minimum qualification Assistant Director (ASD) budgets as seen on **page 33 of the employee's bundle**, is National Diploma/Degree in accounting / financial management / cost and management accounting/commerce.
13. The employee was appointed in the post with the national diploma in internal audit which was an equivalent qualification. Commerce was broadly regarded to include a number of studies including accounting, business management, project management and others. Project management entails among others, planning, organising, execution, monitoring and evaluation and this is what the employee does in the execution of her work for example when making comparisons whether project managers spent according to their projections. The nature of the employee's work therefore requires one to have knowledge of project management and above all, she is managing billions of Rands of local projects.
14. The employee's position, ASD budgets, was not included in the list of departmental improved qualifications endorsed by the **Department of Public Service and Administration (DPSA)** as per the requirement **of Resolution 5 of 2014, see page 11 to 30 of the 1st respondent's bundle**. The employer did not define qualifications relevant or related to the employee's work which was the first step which was supposed to have activated the collective agreement. The employer failed to consider the minimum requirements of the employee's position.
15. Project management has a commercial aspect within it and it is therefore in line with the minimum requirements of the employee's position. All the clients of the employees are project managers and she therefore requires projects management skills to perform her duties properly. The employer is the only party with access to data used to compile the list of qualifications it intends to recognise. The reason of having omitted the post occupied by the employee is unknown but can only be known to the employer. For the employee's application for a bursary to be declined, was that she scored lower than required and not that her qualification was not in line with her scope of work. The first respondent misrepresented facts in terms of the employee's job description when saying the improved qualifications were degree in Accounting/ financial/cost management, see the correct facts on **page 32 to 33 of the employee's bundle**. The first respondent and the 2nd respondent also contradicted each other as the 1st respondent said the employee's post was among those submitted to the DPSA for concurrence but the 2nd respondent said it was not among the list. It is the employee's prayer

that the employer pays her the once off cash bonus as claimed in terms of PSCBC Resolution 1 of 2012 and GPSSBC Resolution 5 of 2014.

The employer's version

The employer's representative, M.E. Lamola submitted his heads of arguments as follows;

16. Paragraph **6 of resolution 5 of 2014**, provides criteria for recognition of improved qualifications amongst others that it must be a higher level qualification related to the employee's scope of work and enhances her performance, **see page 3 of the 1st respondent's bundle**. Paragraph **6 of Resolution 5 of 2014**, requires the Departments to define relevant qualifications in consultation with Labour and seek concurrence with the DPSA. **The Resolution further states that an employee who intends to register for an improved qualification, upon completion of which she/he wishes to be considered for the cash bonus referred to in the agreement, must inform the Department which qualification she/he intends to register, see page 4 of the 1st respondent's bundle**. Page 31 and 32 of **the 1st respondent's bundle** shows that the Department together with Labour signed the list of improved qualifications to be recognized by the Department on 26 September 2016.
17. The job description for the post of ASD budgets, was signed by the employee and her supervisor on 15 May 2017, **see pages 37 to 45 of the 1st respondent's bundle**. The application of the employee for a once off cash bonus was declined because the job description for her post indicated the degree in accounting/financial/cost management as the improved qualification, **see pages 35 to 45 of the 1st respondent's bundle**. The employee had applied for a bursary to study B-Tech in Project management and her application was declined. B-Tech in project management is not an improved qualification to the position of ASD budgets. The employer did not commit any unfair labour practice against the employee and the commissioner should dismiss the employee's allegations.
18. The second respondent represented by Ms **Nozinhle Mzinyane**, corroborated the first respondent with the following additions. In terms of ***Kwazulu Natal Joint Liason Committee v MEC for the Department of Education, Kwazulu-Natal and others* 2013 (4) SA 262 (CC)**, the principle that apply when interpreting a written document, including a collective agreement was that it must be read as a whole, having regard to its context and backgrounds facts to determine its meaning. The words used in the documents must be given their ordinary meaning unless the context indicated otherwise. In ***Scotish union & National insurance Co Ltd v***

Native Recruiting corporation 1934 AD 458, it was held that if the language used by the parties was clear, effect must be given to what the parties themselves have said and we must presume that that they knew the meaning of the words used. In **KPGM chartered Accountants v Securefin Ltd 2009 (4) SA 399 (SCA)**, It was held in parole evidence rule that, the meaning of the words used are clear and unambiguous, evidence is not admissible to contradict, add or modify that meaning. Many case laws corroborating the above ones were mentioned by the 2nd respondent. The applicant's qualification was not among the list provided to DPSA when concurrence was sought and the claim by the employee should be dismissed.

Analysis of the evidence and arguments

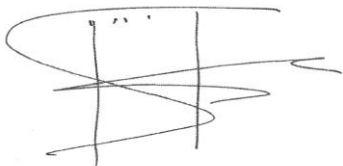
19. In line with **Section 38 of the Act**, I am not going to reproduce everything said by the parties in my analyses, but will only concentrate on the points I believe to be key in determining the matter. Secondly, there is no way I can differ with the decided cases as mentioned in paragraph 18 above that, if words that are used in a document are unambiguous and clear no evidence should be admissible to contradict, add or modify them. Parties did not specifically point out any ambiguous paragraph, word or clause from the Resolution which needed specific interpretation. Their argument was general in terms of the application of **Resolution 5 of 2014 (the Resolution)** which is based on the **PSCBC Resolution 1 of 2012** and the subsequent circulars like **HRD 3 of 2015**. I am therefore among other things going to look at what does the Resolution require and look at the meaning of the words as they were used.
20. The dispute is based mainly on **Resolution 5 of 2014** which will hereafter be referred to as **the Resolution**, and the job description of the employee. I looked at the job description several times and could not find the word "**improved qualifications**" but I found the words "**Learning field**". I also found the word "**Minimum qualification**" which according to my understanding means the entry level into a particular post. The employee in her learning field has written **Economic and financial field** and under Minimum qualifications, she wrote "**National diploma /degree /accounting/ financial /cost management /accounting/ commerce**". Project management is not there in any part of the employee's job description but in terms of the employees' representative arguments, he said it was implied because, project management was part of the employee's work as it involved planning, organising, execution, monitoring and evaluation. Now the issue of interpretation comes to the forth, is the employee's interpretation in line with paragraph 18 above, I don't think so.

21. The key points of project management, planning, organising, execution, monitoring and evaluation, might be applicable in the employee's post, but what about **B-Tech in Labour Relations** for argument sake! The employee is an assistant director, and ASD is a managerial position. She needs to deal with discipline of her supervisees if they commit misconduct, eg, counselling them, issuing verbal warning and written warnings because **discipline is a managerial function** in terms of the **PSCBC Resolution 1 of 2003** as amended. Would the employee qualify for cash bonus if she completed B-Tech in Labour Relations, I believe not, unless if it was agreed upon and DPSA concurred. Similarly, most of the occupations, if not all, need the incumbent to plan and organise before execution and then look back and check if things are done according to plan (monitoring and evaluation). It therefore would need the agreement between the two parties, especially in their bargaining council, as to which qualifications would be recognised as improved ones in a particular post.
22. Coming to the requirement of qualifying for a cash bonus, both parties agree that the qualification must be higher than the one the employee possesses, it must be relevant to the employee's work and enhances her performance, **see paragraph 5 on page 4 and 5 of the 1st respondent's bundle**. The agreement / resolution, was agreed upon between the two parties in the council (**GPSSBC**). The employee argued that the employer is the one with resources and which drew data used to draft job description and I agree with the employee. The employee further indicated that the employer left out the post of ASD budgets when submitting the list to DPSA for concurrence. Leaving out the post of ASD budgets out of the list of improved qualifications is actually a different dispute. In terms of the resolution, a list compilation was to be done by both parties, I did not see any submission that showed the employee having challenged the leaving out of the post of ASD budgets from the list. In this case, there was an omission by both parties and they should have sat down and correct the issue. Remember, unions are established to among others make sure that employers are treating their employees equally, and similarly, it is the responsibility of the employer to make sure that no one employee is treated unfairly. My conclusion is that there was no agreement that project management shall be one of the improved qualifications for the ASD budgets post and the employee therefore did not qualify for a once off cash bonus.
23. I further take it that, since there was an omission, where the list which was sent to the DPSA for concurrence did not include the employee's post, the employee should have then complied with **paragraph 6.4 of the Resolution and paragraph 5.5 of circular no HRD 3 of 2015 on pages 4 and 8 respectively of the 1st respondent's bundle**. Both paragraphs state that ***an employee who intends to register for an improved qualification upon completion of***

which she/he wishes to be considered for the cash bonus shall first request approval from the Head of department to register for that qualification. In the documents submitted by both parties and in their closing arguments, I have not seen anywhere, where the employee applied to the Head of Department in terms of **the said paragraphs above**. If that was done, we would not have been where we are today. Had she applied, the Head of Department could have either declined or approved. If the application could have been declined, the employee could have had an opportunity to lodge a grievance for project management to be included in her post as one of the improved qualifications. The rejected application for a bursary was not an application in terms of **paragraphs 6.4 and 5.5 of the Resolution and the circular** respectively as seen in **paragraph 23** above. The employee actually clarified it that it was not about qualifying or not, but that the rejection was because the employee scored low points to qualify. My finding is that the employee did not comply with the requirements of the Resolution when registering for her B-Tech degree in project management and when applying for the once off cash bonus. The employer therefore did not commit an unfair labour practice when declining the employee's application to be paid a once off cash bonus.

Award

1. The employer, **Department of Mineral resources and Energy (DMRE)** did not commit an act of unfair labour practice against the employee, **Chuene L Mabokela**.
2. The employee's allegation is hereby dismissed.
3. No order as to cost.



Seretse Masete

Date 23 August 2020

GPSSBC Panellist