



ARBITRATION AWARD

Panellist/s: Mr Martin Sambo _____
Case No.: GPBC951/2019 _____
Date of Award: 16 September 2020 _____

In the ARBITRATION between:

MATJIYE ANNA MOGOPA

(Union / Applicant)

AND

DEPARTMENT OF PUBLIC WORKS AND TRANSPORT: MPUMALANGA

(Respondent)

Union representative: Mr Rodney Sibuyi _____

Applicant's address: _____

Union Official _____

Telephone: _____

Telefax: _____

Respondent's representative: Mr Sikhosana _____

Respondent's address: Department of Public works Roads and Transport _____

Telephone: _____

Telefax: _____

ARBITRATION AWARD

DETAILS OF HEARING AND REPRESENTATION

This matter was scheduled for arbitration on 01 July 2020 at the Offices of the Department of Public Works in Kwa-Mhlanga. Both parties were present. At the commencement of the sitting the Respondent representative indicated that the Respondent is not aware of this sitting and wanted to apply for postponement. As I was not aware of the status for postponements during lockdown I advised the parties that if there is no necessity for oral testimony that parties may opt to deal with this matter through submission of written heads of arguments. Since the Respondent representative claimed not to have mandate to represent on this case, we had a tentative agreement with the parties that this matter will be dealt with through written submissions. The parties then agreed that the Applicant will have 10 days within which to send her submissions. They further agreed that in the first three days of that period they will verify if there is no necessity of oral testimony and a possibility to use affidavits to support their heads of arguments if need be. The parties were made aware that should they not opt not to proceed with written submissions, the matter will proceed in a virtual hearing on another date.

The employee party, Ms MA Magopa (hereinafter referred to as the Applicant), was represented by her union representative Mr Sidney Sibuyi. The employer party, Department of Public Works Roads and Transport (hereinafter referred to as the Respondent), was represented by its Labour Relations Officer Mr Stephen Sikhosana.

The parties opted to proceed with written submissions of heads of arguments.

ISSUE TO BE DECIDED

Whether, in the circumstances detailed hereunder, the Respondent has committed an unfair labour practice as set out in section 186(2) of the Labour relations Act 66 of 1995 ('the LRA') by refusing to pay the Applicant her performance bonus for the 2017/18 financial year.

BACKGROUND TO THE ISSUES

The Applicant Ms MA Magopa is employed by the Respondent as a Cleaner. The Respondent is the Mpumalanga Provincial Government Department responsible for Public Works, Roads and Transport.

The Applicant was assessed for the 2017/18 financial year by her supervisor and scored to qualify for performance bonus. The Moderating Committee reduced her score so that she did not qualify for performance bonus. The Applicant was dissatisfied, lodged a grievance and finally referred the matter to Council for conciliation. The matter could not be resolved through conciliation and was referred to Council for arbitration.

The Applicant seeks to be paid her performance bonus for the 2017/18 financial year. The parties opted to deal with this matter through submission of written heads of arguments.

ANALYSIS OF EVIDENCE AND ARGUMENT

I am required to determine whether, in the circumstances detailed hereunder, the Respondent has committed an unfair labour practice as set out in section 186(2) of the Labour relations Act 66 of 1995 ('the LRA') by refusing to pay the Applicant her 2017/18 financial year bonus.

The onus to prove the facts on which an allegation of such an unfair labour practice falls on the Applicant. In this case the Applicant submitted that she was scored above average by her supervisor Ms Legodi for doing extra work than normal. The scope of work as per daily allocation of each cleaning employee in the section for the Applicant was extended since Ms Tshabangu was on sick leave and she had to cover her work. Ms Legodi assessed the Applicant's performance as good performance based on the job performance of both quarters of the year. In category B if one is rated between 71% and 90% such is regarded as good performance and above average. Her supervisor scored her above 80% and it is surprising that the Mederating Committee that does not work on the floor and are not aware of the commitment and struggles of cleaning staff fails to rely on the assessment of the supervisor who is aware.

On the other hand Mr Sibusiso Aron Mbatha submitted his affidavit for the Respondent and stated that it is the responsibility of the Moderating Committee to ensure quality assurance that every employee who qualifies for performance incentive is entitled to through motivation and portfolio of evidence which justify for payment of incentive. He stated that the Applicant was scored 80% by her supervisor which is good performance and that score was confirmed and maintained by the District Moderating Committee. He further indicated that the score of the Applicant was not reduced by the Moderating Committee but by a sectional meeting in the second semester. Mr Mbatha acknowledged in his affidavit that the Applicant cleaned on behalf of Ms Tshabangu for 3 months and admitted for the Respondent that it was an omission that the Applicant was not paid incentive bonus for the 2017/18 financial year. He further stated that the Respondent was misled by the Section, which reduced the score of the Applicant without good reason to do so.

Having considered the submissions of the parties, it is clear from the only affidavit submitted by the Respondent of the Director of Nkangala District Mr Sibusiso Mbatha, that the Respondent concedes to have not paid the Applicant her performance bonus in error as a result of being misled by the supervisors sectional meeting that reduced her scores without good reason. From the circumstances outlined above, I therefore find that the Respondent has committed an unfair labour practice as set out in section 186(2) of the Labour relations Act 66 of 1995 ('the LRA') by not paying the Applicant her performance bonus for 2017/18 financial year.

AWARD

1. The Respondent is ordered to pay the Applicant her performance bonus for 2017/18 financial year.
2. Payment in clause 1 above must be paid on or before the 30th October 2020
3. I make no order as to costs.

