



DEFAULT ARBITRATION AWARD

Panellist: PJ GREYLING

Case No.: GPBC1540/2019

Date of Award: 10 SEPTEMBER 2020

In the ARBITRATION between:

NEHAWU obo RA GAUSE

(Union / Applicant)

and

FET TALETSO

(Respondent)

Union/Applicant's representative: T MOYAKE

Union/Applicant's address: 63 VICTORIA ROAD

GOLF VIEW

MAHIKENG

Telephone: 066 305 0570

Telefax: -

E-mail: thabom@nehawu.org.za

Respondent's representative: ABSENT

Respondent's address: 2735 ALBERT LETHULI DRIVE

MMABATHO UNIT 3

MAHIKENG

Telephone: 018 384 2346 / 083 254 3214

E-mail: mabathoane@taletsofetcollege.co.za



ARBITRATION AWARD

DETAILS OF HEARING AND REPRESENTATION

1. The matter was heard 04 February 2020 at 09h10 at the offices of the Respondent in Mahikeng. Both parties were present and the matter was postponed to 07 May 2020. Due to the national lockdown, the matter was set down on 01 September 2020 and took place virtually via Zoom. The Applicant, Mr RA Gause was represented by Mr T Moyake, a trade union representative and the party connected via Zoom by 09h00. The Respondent party did not join the proceedings.
2. The initial notice of set down was forwarded to the parties on and 09 June 2020. The notice informing the parties that the arbitration will be dealt with via a virtual platform was sent on 04 August 2020. The electronic invitations to join the proceedings were sent on 31 August 2020. The following e-mail addresses:
gause1506@yahoo.com
info@taletsocollege.edu.za
lilly@taletsofetcollege.co.za
lesedi@taletsofetcollege.co.za
mabathoana@taletsofetcollege.co.za
thabom@nehawu.org.za
wayne@nehawu.org.za
thando@nehawu.org.za

ISSUE TO BE DECIDED

3. It is to be decided whether the failure of the Respondent to pay the Applicant's housing allowance for the period 01 April 2016 to 03 March 2019 (36 months) constitutes an unfair labour practice as envisaged in Section 186(2)(a) of the Labour Relations Act.



4. The Applicant submitted a bundle of documents to be used during the proceedings. The bundle will be referred to as Bundle A and consists of 20 pages. Reference to documents will be made to documents in the following manner: BoD A, p__.

BACKGROUND TO THE DISPUTE

5. See para 6.1 below.

SURVEY OF EVIDENCE AND ARGUMENT

Evidence of the Applicant

6. The Applicant, **Mr RA Gause** testified under oath to the following:
- 6.1 The Applicant was initially appointed by the FET College, the Respondent. The Respondent was therefore the employer and in terms of the contract of employment the Applicant received a housing allowance. The Department of Education and Training (“the Department”) took over the responsibility for the colleges in 2015. The employees previously contracted by the colleges were then transferred to the Persal system. In practical terms, it meant that housing, medical and pension funds payments were made directly to the beneficiaries and were not paid out as an allowance to the employee.
- 6.2 The college system paid an allowance of 37% in lieu of benefits in addition to the monthly salary. The migration to the new system took place in 2016. The Respondent’s employees who did not own houses and rented accommodation also received accommodation allowances. It was initially believed that non-property owners will not receive an allowance. It later became apparent that such an allowance was payable. The particular Respondents’ employees were however not notified of the change in policy.
- 6.3 When the Applicant became aware of the policy he engaged the human resources department of the Respondent to effect the necessary changes. After the Applicant had proven to the Department that the Applicant previously received a housing



allowance and that his service was not interrupted, the Applicant was again linked to the allowance and started to receive the allowance as from April 2019.

- 6.4 It is the Applicant's case that his allowance was stopped 31 March 2016, and that he did not receive a further allowance up until 31 March 2019. He believes that he was fully entitled to the allowance and for some reason or another Respondent fails to rectify the omission. The Applicant believes that an amount of R42,000.00 is due to him in respect of outstanding allowance.

Evidence by the Respondent

7. As stated above, the Respondent did not attend the Zoom proceedings.

SUBMISSIONS BY THE PARTIES

8. The Applicant submitted heads of arguments which were considered in the analysis.

ANALYSIS OF EVIDENCE AND ARGUMENT

9. In his heads of argument, the Applicant's representative pointed out that the collective agreement that was signed by the PSCBC, Resolution 2 of 2004, the Owners Allowance Scheme was repealed and replaced with a Housing Allowance scheme. In terms of this scheme an allowance is paid irrespective of whether the employee owns property. It is therefore available to all employees. It was further submitted that to qualify for this allowance the Applicant must have been previously employed by the Respondent's Council. He further pointed out that prior to the migration from the Respondent's personnel administration system to the Persal system, he received the allowance.
10. When the migration from the one system to the other took place the system failed to take cognisance of the fact that the Applicant was receiving a housing allowance, which was incorporated in the 37% in lieu of benefits payment. For a time, the Applicant was uncertain as to whether he qualifies for the allowance. It later became apparent that he qualifies and he therefore approached the officialdom to rectify the matter. As from April 2019 the Applicant



was again paid the allowance. However, the Respondent failed to rectify the omission in respect of the period April 2016 to March 2019.

11. The Applicant further stated that at the time when his allowance payment was interrupted in April 2016, the value of the allowance was R900.00. Since then, there were certain small adjustments to the allowance and he believes, according to his calculations that an amount of R42,000.00 is payable to him for the outstanding allowances.
12. The Respondent was fully aware of the proceedings as proper notice of the proceedings was sent to all parties concerned. As the previous proceedings that were held on 04 February 2020, the Respondent was represented by the principal, Mr STG Mabthoana, who at that point in time requested a postponement due to the fact that he was not properly prepared and briefed as a result of one of the deputy principals, leaving the service of the Respondent. I therefore have no other alternative but to accept the version of the Applicant.

RULING

13. In view of the above, and in the absence of evidence to the contrary, I must conclude that the failure of the Respondent to pay is the Applicant a housing allowance for the period 01 April 2016 to 31 March 2019, constitutes an unfair labour practice as envisaged in terms of Section 191(2)(a) of the LRA.

14. It is ordered:

14.2 That the Respondent pays to the Applicant, the amount of R 42,000 .00 (FORTY TWO THOUSAND RAND) being outstanding housing allowance for the period 01 April 2016 to 31 March 2019;

14.3 The amount in 14.1 is to be paid not later than 31 October 2020.

Name: PJ GREYLING
(GPSSBC) Arbitrator

