



GENERAL PUBLIC SERVICE
SECTOR BARGAINING COUNCIL



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ARBITRATION AWARD

Panellist/s: Mandla Nkabinde.
Case No.: GPBC 308/2017.
Date of Award: 4 October 2020.

In the ARBITRATION between:

**PSA OBO L. COETZER
(Union / Applicant)**

AND

**DEPARTMENT OF AGRICULTURE, RURAL DEVELOPMENT, LAND AND ENVIRONMENTAL
(Respondent)**

Union/Applicant's representative: PSA OBO L. COETZER
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Respondent's representative: DARDLEA
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ARBITRATION AWARD

DETAILS OF HEARING AND REPRESENTATION:

This matter was referred as an unfair labour practice, benefits. The matter was initially arbitrated on 05 August 2020, however, due to a Covid 19 case discovery, it was postponed and finalised on 20 August 2020. The applicant Len Coetzer, a senior technician, represented by PSA labour relations officer, Pamela Letebele. The Respondent, the Department of Agriculture and Land Affairs, was represented by Mr N Gasa, a Deputy Director. The venue was at the Department building in Mbombela. The arbitration was recorded, and non-verbatim notes were scribbled. Two indexed, paginated, and labelled bundles of documents were exchanged for ease of reference.

ISSUE TO BE DECIDED:

I am required to decide whether or not the Applicant was subjected to an unfair labour practice, which denied him an incentive as a benefit or not.

BACKGROUND TO THE MATTER:

The applicant is a senior technician at the Department. He started working in 1982. He went through the ranks to his present position. He was reporting to P. Noku (Ledwaba) with two others as technicians. They were each given his/her own project as a way of developing them. These projects would form part of their KPAs to be evaluated at each quarter in the four quarters of the financial year of the department, until project completion. The year of dispute is 2015/16 the third quarter, noting each quarter will influence the year's performance

SURVEY OF EVIDENCE AND ARGUMENT:

The evidence of the applicant was tendered through the applicant only. The respondent also called one witness to attest for the Department, the supervisor, Patricia Ledwaba (Noku). Both parties' witnesses were sworn in, led their evidences, cross-examined, re-examined and both parties closed their cases.

Evidence

APPLICANT

The applicant had the performance agreement, performance plan and the key performance areas agreed and signed off with the supervisor.

The two first quarters had no major issues. The third one was the reason the applicant launched a grievance.

He sat in many moderation sessions as a shop steward, while others were evaluated, he noticed the committee was merely rubberstamping the work/performance of others.

He was not given feedback, assumed it will be a score of five qualifying him for a merit.

He believed as a senior technician he performed at a researcher level.

His scores were downgraded by the supervisor with the moderation committee.

She failed to represent him, he gave her all the info, she complained of insufficient information.

Desired outcome is that he be appreciated with an A class merit which would fast track his promotion and pay progression.

RESPONDENT

There are three technicians, Applicant one of them. All supervised by P. Noku.

The third quarter was scored by the Applicant and the supervisor accepted some scores, and changed others up or down as per their discussion.

The scored technicians from all Departments were then subjected to a moderating panel for the district. (bigger group)

The scores range from one being an underperformer to five being an exceptional performer.

There was a requirement of the progress report which was not in the pack of the applicant.

Some information on collaboration with researchers at national was not done since 2014, when the project started.

The targets were not shown, meaning progress could not be measured.

At moderation it was noticed both had an oversight of these identified areas.

The overall assessment was that the moderation committee downgraded some scores and understood why and agreed with them.

The following year after correcting those areas he got the merits again.

She is no longer his supervisor since 2018.

ARGUMENTS.

The parties were to send their closing arguments in writing on or before the 28 of August 2020. I did not receive from applicant.

Applicant believes the scores were changed by the supervisor. But is aware of the moderation processes.

He believes to have performed exceptionally, so was he scored by the supervisor but when compared with the bigger group, assessed by moderation committee, it turned out different.

Following their process (PDMSC) they downgraded his scores and that made him an average performer.

ANALYSIS OF EVIDENCE AND ARGUMENT:

In terms of section 138(7) of the Labour Relations Act (Act) the arbitrator is required to issue a signed arbitration award, with brief reasons.

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 denied the applicant incentives.

The Labour Relations Act of 1995 section 186(2) as amended defined unfair labour practice as

"Any unfair act or omission that arises between an employer and an employee involving –

- a) *Unfair conduct by the employer relating to promotion, demotion, probation (excluding disputes about dismissals for reason relating to probation) or training of an employee or relating to the provision of benefits to an employee."*

The Moderation Committee is established in terms of **Performance Management and Development Systems (for Employees below SMS) (PMDS)**. The purpose of **Policy** is to provide guideline and standards on which the performance of employees can be monitored, measured and rewarded in order to enhance efficiency, effectiveness and improve public service. The Policy further provides that the role of the Moderation Committee include among others, the reviewing of all assessment scores.

The **Performance Management and Development Systems** was used to assess all Mpumalanga Technicians, included the Applicant's has sat while others were assessed.

The Moderation Committee from Departments to District are spelt out in the policy. The Applicant was awarded a merits before and after 2015/16 financial years using the same policy.

At the face of the evidence by the parties, the Applicant failed to discharge the onus, that the Respondent committed an unfair labour practice by denied him an incentives bonus. On the balance of the probabilities the Applicant failed to prove that the Respondent perpetuated an unfair conduct against the Applicant's

AWARD:

In the premise I make the following ruling.

- 1) The Respondent did not subject the Applicant to an unfair labour practice in relation to this benefit.
- 2) The Applicant's claim is dismissed.

Mandla Nkabinde
(GPSSBC) Arbitrator

Date: 04 October 2020.

