



GENERAL PUBLIC SERVICE
SECTOR BARGAINING COUNCIL



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ARBITRATION AWARD

Panellist/s: Mr Martin Sambo _____
Case No.: GPBC2687/2018 _____
Date of Award: 08 October 2020 _____

In the ARBITRATION between:

PSA obo MANZINI NZ

(Union / Applicant)

AND

DEPARTMENT OF EDUCATION

(Respondent)

Union/Applicant's representative: Mr MA Simelane _____
Union/Applicant's address: PSA _____
Union Official _____
Telephone: _____
Telefax: _____

Respondent's representative: Ms Ivy Madonsela _____
Respondent's address: Department of Education _____

Telephone:

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ARBITRATION AWARD

DETAILS OF HEARING AND REPRESENTATION

This matter was scheduled for Virtual Arbitration Hearing on 29 July 2020. Both parties were present. At the commencement of the sitting the parties indicated that there was no need to call witnesses and agreed that this matter will be dealt with through written submissions.

The employee party, Ms Manzini NZ (hereinafter referred to as the Applicant), was represented by her union official Mr Simelani of PSA. The employer party, Department of Education: Mpumalanga (hereinafter referred to as the Respondent) was represented by its Labour Relations Officer Ms Ivy Madonsela.

The parties opted to deal with this matter through submission of written heads of arguments as they insisted that there was no need to lead oral evidence.

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 not paying the Applicant her performance bonus.

BACKGROUND TO THE ISSUES

The Applicant Ms Manzini NZ is employed by the Respondent as an Administration Clerk and she is stationed at the Breyten Circuit Office. The Respondent is the Mpumalanga Provincial Department of Education.

The Applicant was assessed by her supervisor for the 2017/18 financial year and got a final score rating of which qualified her for category B incentive bonus. The first level Moderating Committee assessed the Applicant and upgraded her bonus to level A. The PMDMC then assessed her and degraded her to a level where she does not get bonus but only gets pay progression. 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 is seeks to be paid her category A incentive bonus for 2017/18 financial year. The parties submitted bundles of documents in support of their written submissions.

APPLICANT'S SUBMISSION

The Applicant contends that she has been assessed and scored by her line manager and as a result was nominated for category B bonus. Her line manager is the one who is conversant with her key performance areas (KPA's) and the expected output. Her file was then taken to the first level moderation committee whereby her supervisor is called to justify the scoring and the nomination. The PMDS policy states that if the first level moderation committee if the evidence by the supervisor is enough they can opt to upgrade the nomination to higher category. In this instance the first level moderation committee felt the evidence of the supervisor is sufficient and then upgraded the Applicant's nomination to category A. The file was then taken to the second level moderation committee which omitted to read the minutes of the first level moderation committee. Seemingly the committee did not scrutinize the Applicant's matter nor did the employer give it any attention but rather put a blind eye to the Applicant's exceptional service. The second level committee (PMDMC) prejudiced her and deemed her not deserving of any incentive bonus

but only qualifying for pay progression. They regarded her KPAs in her motivational letter not to be on line with those that were in the performance contracts. She dispute that assertion by the Respondent as provide bundle A and G as proof. Further, the outcome of her grievance form the Labour Relations Office clearly states that there is a contradiction in terms of the category from the first level committee's allocation of category A but the PMDMC captured B instead of A. Therefore one cannot trust the decision by the PMDMC as they might have never read the minutes correctly hence they ended up with awarding only pay progression decision. The Applicant had attached the motivation letter to justify her scores as required by policy (see Bundle G). The downgrading of scores by the PMDMC is a clear indication that they did not read the minutes of the first level committee and her motivational letter. Further, there are extra duties that she performed over and above her duties (see Bundle G, page 3).

RESPONDENT SUBMISSION

The Respondent submits that it is common cause that the Applicant was assessed quarterly by her supervisor, and rated 5 (exceptional performance-mean performance far exceeds the standard expected) in all quarterly assessments. It is also common cause that the supervisor and designated manager recommended the Applicant for category 'A' performance bonus (as reflected on the 4th quarter assessment), however scrutiny of the quarterly assessment was unable to provide substantive justification for the scores allocated to the Applicant by her good self and the supervisor in the light of the KPA, the performance measures/standards and the achievements outlined for all the quarters.

The Respondent submit that it is a fact that the first level moderation known as Sectional Moderation validated the nomination of the Applicant, and based on the outcome of the sectional moderation, the employee performance pack (assessment file) was submitted to the PMDMC for moderation and evaluation in line with the policy paragraph 10.10.3.4 of the PMDS Policy dated 4/04/2014 which provides as follows: "*PMDMC moderate overall assessment score and make recommendation for incentives*". The committee deliberated on the Applicant's case and could not find substantive reasons for the nomination of the Applicant for an incentive in the light of the commitment made by the applicant in the performance agreement concluded by the Applicant and her supervisor when they moderated the Applicant's case. This was done in the presence of the trade union representative of the Applicant, who was in attendance and did not raise any objection to the conclusion reached by the committee that the performance of the Applicant was satisfactory culminating in the awarding of the 1.5 % pay progression. (See Annexure C)

The Respondent submits that the Applicant has stated that the first level moderation has an inherent right in terms of the policy to upgrade the nomination from a category B to A, however the Respondent contends that the committee overstepped their mandate as such a provision is not there in the 2014 PMDS policy. The justification provided by the designated manager and the sectional level moderation for the nomination of the Applicant for an incentive bonus did not convince the PMDMC that the performance was exceptional performance, and deserved the awarding of the incentive. Paragraph 10.10.6 of the PMDS Policy dated 4/4/2014 state as follows "*The PMDMC must consider how the recommendations and/or comments provided, relate to, or support the scores on the Performance Assessment Form, i.e there must be substantiating reasons for the recommendation*".

The committee deliberated on the applicant's case, all committee members were in agreement that the applicant performed as expected and it was agreed that the performance was deemed to be satisfactory performance, and meant that she qualified for 1.5 % pay notch progression, which was paid to the applicant. The committee provided written reasons why they recommended for the pay progression in compliance with paragraph 10.10.7 of the PMDS Policy dated 4/4/2014 states as follows "*designated senior manager/immediate manager at the lowest executable level shall recommend for performance incentives within his/her section, moderating bodies at this level cannot change not withdraw a nomination of any individual without providing written reasons any scores or withdraw a nomination of any individual without providing written reasons per individual case*".(See Annexure A)

The Respondent further submit that in the quest to ensure fairness the Labour Relations Directorate recommended for the Applicant's case to be reviewed by the Departmental Grievance Committee. The case was reviewed on 24 July 2020, taking into consideration what Ms Manzini raised as issues that made her strongly believe that she qualified for the incentive bonus. The grievance committee again deliberated on the Applicant's case in the presence of the representative of her trade union and also concluded that the Applicant's case did not warrant granting her the recommendation for the payment of the incentive bonus, and that the performance was satisfactory and warranted the granting of 1.5% pay progression.(See Annexure B)

The Respondent submit that detailed reasons were provided by the two separate committees the first being the PMDMC and the departmental grievance committee, that the Applicant's performance did not warrant the recommendation for an incentive bonus as nominated and validated by the first level moderation committee. This is confirmed by the achievements listed in the Applicant's assessments for the four quarters as justification for the scores allocated, which do not reflect exceptional performance in the view of the committee. After receiving the complaint from the Applicant through the dispute that she has lodged, a recommendation was made for the case to be reviewed, by the committee set up to re-look at complaints arising out of the outcome of the central moderation committee processes.

The Respondent submits in conclusion that the PMDS policy was developed to recognize excellence while at the sometime ensuring that procedures were put in place to deal with poor performance, and employees are assessed on the basis of the commitment they have made with the department when they conclude their performance agreement with their immediate supervisors. We further submit that a recommendation by the first level moderation for the nomination for an incentive is not an end by itself, as such a nomination should still be subjected to moderation by the PMDMC which made the final recommendation that the Applicant's performance was satisfactory and they provided reasons for their recommendation which the trade union endorsed. The Respondent therefore prays that the Council dismiss the case.

ANALYSIS O EVIDENCE AND ARGUMENT

I am required to decide 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 not paying the Applicant her performance bonus.

The onus to prove the facts on which an allegation of such an unfair labour practice falls on the Applicant. The essence of the Applicant's case is that he has performed exceptionally deserving the scores of '5' and that this was confirmed by her line managers and the first level moderation committee which upgraded her nomination for bonus from category B given by line managers to category A incentive bonus. The Applicant contends that the second level moderation committee PMDMC reduced has scores seemingly without reading the minutes of the first level moderation committee or her motivation letter. The Applicant further claims that the first level moderation had a right to upgrade her incentive bonus from category B to A. The Applicant however does not indicate where in the policy is that power given to the first level moderation.

The Respondent on the other hand disputes that the Applicant is an exceptional performer and asserts that the Applicant was given two opportunities to prove her claim in the PMDMC and during the review when she had lodged her grievance. The Respondent further dispute that the first level moderation has the power to upgrade her bonus from category A to B.

I have considered the submissions of the parties. The onus to prove the facts on which an allegation of such an unfair labour practice falls on the Applicant. The Applicant in this case does not show or provide proof of how she performed exceptional to deserve her scores despite the fact that the Respondent is challenging her on that. The Applicant does not show which clause of the policy gives powers to the first level committee to upgrade her bonus status from category B to A despite the Respondent challenging her on that. The Applicant does not indicate how she dispute

the findings of the PMDMC that she is a satisfactory performer and not an exceptional performer. She does not even indicate how she disputed that assertion in the review of the Respondent's findings. The onus lies with the Applicant but she does not discharge.

From the circumstances detailed above, I find on a balance of probabilities that the Respondent has not 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.

AWARD

1. Application is dismissed
2. I make no order as to costs.

A handwritten signature in black ink, appearing to read 'M. Sambo', is written over a light blue horizontal line.

MARTIN SAMBO
PANELLIST
08 October 2020