



ARBITRATION AWARD

Panellist/s: Paul Kirstein
Case No.: PSHS133-10/11
Date of Award: 10-Nov-2010

In the ARBITRATION between:

D BOKABA

Applicant

and

DEPARTMENT OF HEALTH AND SOCIAL
DEVELOPMENT: NORTH WEST

First Respondent

DEPARTMENT OF PUBLIC SERVICE AND
ADMINISTRATION

Second Respondent

ARBITRATION AWARD

DETAILS OF HEARING AND REPRESENTATION

1.

The matter was set down for arbitration on 29 October 2010 in Mafikeng. The applicant was represented by attorney M Phokompe. The respondent was represented by LB Lesiga. The parties agreed to submit written heads of argument. A bundle of documents was presented at the arbitration. No oral evidence was presented. The indication is that the documents relied upon in the bundle of documents, are what they purport to be, except for letters that are not signed. The parties conducted a pre-arbitration meeting and the minutes thereof were submitted at the arbitration. The parties submitted written heads of argument as agreed.

ISSUE IN DISPUTE

2.

The applicant contends that the respondent committed an unfair labour practice relating to promotion, alternatively, the provision of benefits in terms of Section 186(2)(a) read with Section 158(b) of the Labour Relations Act, Act 66 of 1995 ("LRA").

ANALYSIS

3.

The factual background has been dealt with by both parties in their respective heads of argument. A number of factual disputes exist that cannot be determined

on the documents submitted. In paragraph 7.9 of the applicants heads of argument the dispute of the applicant has been set out as follows:

"Applicant contends that the employer, after conducting a job evaluation on his post in or about 2004 and acting in the manner that it did (failing to finalize the evaluation in terms of policy and without giving reasons for its failure) acted unfairly in that this conduct had the effect of denying the Applicant an opportunity to gain advancement in his position that could have resulted in an upgrade or a promotion."

It is the respondent's contention that the job evaluation policy was followed and the applicant's post was evaluated. The result of the job evaluation conducted was that the applicant's post was graded to be between levels 10 and 11. The indication is that the applicant is not content with the outcome of the job evaluation.

4.

There is no factual basis upon which it can be determined that the job evaluation conducted by the respondent on the applicant's post was conducted irregularly or incorrectly. Even if the job evaluation was conducted irregularly or incorrectly there is no factual basis to determine that the applicant's post would have been evaluated to be beyond levels 10 and 11. Job evaluation is used as an objective process to determine the relative size or weight of jobs within an organisation. A job evaluation *inter alia* provides the framework within which decisions on salaries and

grading can be made. A job evaluation is not created or executed to grant an employee promotion. Increased remuneration may follow a job evaluation. The remuneration is however not regarded as a “benefit” in terms of Section 186(2)(b) of the LRA. The applicant’s remedy lies as stated by the respondent in an internal process and once the internal process has been executed the applicant may elect to compel the respondent to conduct a job evaluation correctly or to review the respondent’s decision following the job evaluation exercise. If the applicant is of the view that all internal remedies were executed the applicant is at liberty to approach the Labour Court for assistance. On the available information it cannot be determined that the issue in dispute relates to promotion and/or benefits. The dispute relates to the applicant’s dissatisfaction with the outcome of a job evaluation process. The dissatisfaction with the outcome of a job evaluation process is not an issue that falls within the ambit of an unfair labour practice in terms of Section 186(2) of the LRA. The applicant may have a legitimate reason to be frustrated about the manner in which the respondent executed the job evaluation process but even if the job evaluation process was executed according to what the applicant expected, there is no guarantee or confirmation that the job evaluation process would have determined that the applicant’s post be upgraded to the extent the applicant expected. The applicant has failed to show that the respondent committed an unfair labour practice relating to promotion and/or benefits.

AWARD

5.

1. The application is dismissed.
2. No order as to costs.

SIGNED AT PRETORIA ON THIS THE DAY OF NOVEMBER 2010



PH KIRSTEIN

ARBITRATOR