



ARBITRATION AWARD

Panellist/s: Lufuno Lawrence Ramabulana
Case No.: PSHS309-11/12
Date of Award: 20-Aug-2012

In the ARBITRATION between:

NEHAWU obo Moipolai, P.R and 2 Other
(Union / Applicant)

and

Department of Health & Social Development - Gauteng
(Respondent)

DETAILS OF THE HEARING AND REPRESENTATION

- 1 The arbitration hearing was finalised on the 27/06/2012 and an agreement was reached to file heads of arguments at a later stage. I received the last set of closing arguments on the 10/07/2012.
- 2 At the arbitration applicant represented was by Phillip Matjila from NEHAWU. Mpho Ramudzuli represented the respondent.

ISSUES TO BE DECIDED

- 3 The only issue in dispute was the dismissal of the applicant as alleged by him. At the hearing, the respondent argued that applicant was on a fixed term employment that expired and was not renewed.
- 4 As the dismissal of the applicant was in dispute, the applicant had the duty to establish the existence of a dismissal. Alternatively to prove the employer gave him expectations that his contract will be renewed.

COMMON CAUSE ISSUES

- 5 It was not in dispute that applicant was on a affixed term contract for the period,01/01/2010 to 30/12/2010.
- 6 Applicant was employed with a number of employees numbering about 25. Their employment was made especially considering their past association with the African National Congress as liberation activists.
- 7 Some of the employees were taken on a full time basis and some were not taken. Applicant does not challenge their employment but argues he expected his contract to be renewed. He initially argued that he expected it to be renewed on a full time basis but reneged from this claim arguing he expected it to be renewed on the same terms and conditions.
- 8 It also does not seem any of the employees were retained on a fixed term. Those who were successful in terms of a process followed were granted full time employment according to information submitted to myself.
- 9 A variety of assessments were used in order to determine the permanent employment of the 25 or so employees. There was no contestation on the validity of the process, the referral in any case is one of expectation to renew a contract of employment on similar terms and conditions

10 From the record, applicant appeared to have failed a number of assessments. This appears to have limited his chances of getting employment on a full time basis. He was reportedly absent for an excessive period amounting to a months. My duty was to make a finding on whether the expectations to have a contract renewed for another year have any basis.

ANSLYSIS OF EVIDENCE AND FINDINGS

11 A number of witnesses were brought up to testify for and against the claim made by the applicant.

12 The witnesses for the applicant and the applicant himself testified mostly on the expectation to another employment term and the well-mannered and natured person in the applicant.

13 The witnesses of the respondent spoke about the contract and in short arguing the contract was for the period mentioned and no expectation was created.

14 I find it inappropriate to repeat the evidence presented by the witness and preferred to deal with the claim of expectation for a fixed employment of a year.

15 The contract clearly states on clause 2 that it will terminate on the 01/12/2010 and it is not necessary that the employee be notified, however, it appears that the applicant was given a notice of or a reminder that his employment as agreed will terminate as per the contract.

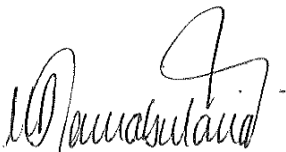
16 The applicant's reasons for expecting a renewal of his contract for another year was him not having been taken for EWP(Employee Wellness Programme), other employees having been absorbed and his general good behaviour.

17 It was not presented fully how and what exactly was the process followed in having other employees taken on a full time basis, it however appears that a process was followed. This process has not being challenged and for what it may have been, it appeared satisfactorily to parties.

18 I am unable to grasp why under these circumstances, applicant would have expected to have been employed for another term when the term was up to December 2010.

- 19 The General Good Conduct and reasons cited by the applicant cannot be taken as an expectation/s created by the respondent.
- 20 In as far as the claim of expectation is concerned, I am unable to find that the employer created an expectation to employ applicant on another fixed term period of a year.
- 21 The above findings conclude that applicant has not been dismissed nor was his employment terminated unfairly.
- 22 Given the above, the claim is dismissed.

Done and dated at Pretoria on this the 20th Day of July 2012.



Lufuno Ramabulana

Panellist: PHSDSBC