



PHSDSBC

PUBLIC HEALTH AND SOCIAL DEVELOPMENT
SECTORAL BARGAINING COUNCIL

ARBITRATION AWARD

Panelist: N.Bantwini

Case No: PSHS474-15/16

Date of award: 3 December 2015

In the matter between:

Mpumelelo Mfikili

(Union/ Applicant)

and

Department of Health-Eastern Cape

(Respondent)

DETAILS OF HEARING AND REPRESENTATIONS

1. This arbitration was scheduled for 30 November 2015 at the respondent's premises in Bhisho. It came before the PHSDSBC in terms of Section 191 (1) (5) (a) read with section 186 (2) (a) of the Labour Relations Act 66 of 1995 as amended (the LRA).
2. The applicant, Mr Mpumelelo Mfikili appeared in person and represented himself while Mr. Sibusiso Nxumalo appeared for the respondent.
3. Parties agreed to submit written closing arguments on 1 December 2015. The last set of arguments from the applicant was received on 2 December 2015.

ISSUE TO BE DECIDED

4. I am required to determine whether the applicant was entitled to travelling allowance/subsistence and travelling for the period of May 2015 or not. I am required to make an appropriate order in terms of the LRA.

BACKGROUND TO THE DISPUTE

5. The applicant Mr Mpumelelo Mfikili referred a dispute regarding the alleged unfair labour practice relating to benefits based on non-payment of travelling claims.

SURVEY OF EVIDENCE AND ARGUMENTS

6. According to the applicant's opening statement, the dispute relates to non-payment of benefits in that his immediate supervisor, Doctor Nogela refused to approve his travelling claims and this is based on the allegation that no pre approval was signed before he travelled.
7. **Mr Mpumelelo Mfikili** testified under oath as follows:
 8. He works for the respondent as a Deputy Director; Clinical Forensic Medicine. Doctor Nogela refused to approve his travelling claims for the month of May 2015. He (the applicant) had submitted reports in respect of the trips which he never challenged. The actions of Doctor Nogela are not consistent as June 2015 claims were approved and paid although the same procedure was followed. He perceives the actions of Doctor Nogela as an abuse of power
 9. The applicant seeks approval of his travelling claim for the month of May as a remedy,
 10. Under cross-examination, the applicant testified as follows;
 11. Only Mr Bottoman and he submit travelling claims in the directorate and there is no consistency in terms of the procedure followed. In June 2015, Doctor Nogela approved his travelling claims although he (the applicant) did not submit weekly reports/plans for pre-approval before travelling. After he was instructed to submit weekly plans before traveling and that the approval must be in writing, he complied with the instruction.

12. Reference was made to a memo written by Doctor Nogela reminding the applicant that no prior written approval was given to him to attend the meetings that are listed in the claim for the period of May 2015. The letter is dated 21 July 2015 and appears on page 58 of the bundle and reads:

“Even though these are in line with your functions, in the department, there is no approval from my office to allow you to go to the above stated meetings despite an instruction that you should not attend a meeting without prior written approval from my office. This is why I will not approve this claim until you show that this office has given approval to attend these meetings”

13. The applicant further testified that after having read the above letter, he had never travelled unless a prior approval was sought from Doctor Nogela. He does not have a weekly plan for May and he does not have the claims for May as this happened long time ago.

14. In closing Mr Mfikili argued that although he does not dispute having received an instruction regarding submission of a written approval before travelling, the instruction was not implemented immediately. He further stated that Doctor Nogela is inconsistent in dealing with his claims as he (Doctor Nogela approved April, June and July claims without him having submitted a weekly plan or seeking a written prior approval.

The respondent's case

15. According to Mr Nxumalo's opening statement, travelling claims in respect of May and September 2015 were not paid because the applicant did not follow the instruction of seeking a written prior approval before travelling.

16. Doctor Thobela Nogela, the respondent's witness testified as follows:

17. He works for the respondent as a Director: Specialized Directorate. The applicant is under his direct supervision. The procedure followed when an official submits a subsistence and travelling claim is that a weekly schedule/plan has to be attached and there must be a written approval attached prior taking the trips.

18. This is a requirement which applies to all employees in the directorate. He confirmed that he is the author of the memo that appears on page 58 of the bundle. The purpose of writing the letter was to explain and remind the applicant that no written prior approval was sought before travelling despite the instruction which was communicated to him on 3 December 2014 (page 93 and 94). He could not approve the claim for May 2015 based on the fact that the applicant did not seek a prior written approval from his (witness) office. The applicant is aware of the instruction and has complied with it before (sms dated 3 December 2014 from the applicant page 93 of the bundle).

19. Weekly schedules are submitted on Fridays and they indicate work that has been done and work that will be done from Monday of the following week. It is not the first time that the applicant's travelling claims were not approved and this is due to the fact that he (the applicant) does not follow the instruction of getting a written prior approval from his (witness) office.

20. Under cross-examination, the witness testified as follows:

21. He did not approve the travelling claim for the period of May due to the fact that no prior written approval was sought by the applicant before travelling and the applicant was aware of the instruction/rule.

22. In closing, Mr Nxumalo argued as follows:

23. The applicant failed dismally to prove on balance of probabilities that Doctor Nogela acted unfairly by not approving his travelling claims. He failed to submit any supporting documentation relevant to the claims in question and also did not dispute that he did not seek written approval before taking the trips he was claiming for.

24. Mr Nxumalo further stated that Doctor Nogela is the delegated and responsible official who approves financial related expenditure in the directorate. Doctor Nogela testified that at some stage he was cautioned by Doctor Maduna in the presence of Mr Mfikili and Doctor Matiwane not to sign claims that are not proper.

25. The respondent's representative finally stated that the applicant's claim must be dismissed as it lacks substance.

ANALYSIS OF EVIDENCE AND ARGUMENTS

26. It is common cause that the applicant referred a dispute relating to unfair labour practice based on non-payment of travelling and subsistence claims for the period of May 2015 (benefit).
27. It is the applicant's case that the respondent acted unfairly and inconsistent by refusing to approve his claims for the period of May 2015.
28. It is the respondent's case through the evidence of Doctor Nogela, the applicant's immediate supervisor that the applicant failed to adhere to the requirements which applies to all other officials in the directorate. The applicant failed to seek to a written approval or submit a weekly plan/schedule prior taking the trips he was claiming for.
29. It is undisputed evidence that the applicant is aware of the rule /instruction or is reasonable expected to be aware of the rule/policy. The applicant conceded to the fact that he did not submit a weekly plan/schedule and did not attach a written prior approval before taking the trips.
30. It is also undisputed evidence that the applicant did not include the claims in question or any supporting documents relating to claims for the period of May 2015 as evidence during the proceedings.
31. The applicant has failed furthermore to submit the relevant documents to prove that Doctor Nogela was inconsistent in dealing with his claims as other claims were paid without him having to adhere to the instruction/rule.
32. The applicant has failed to discharge the onus to prove the claim of unfair labour practice based on non-payment of benefits (claims for the period of May 2015).

AWARD

33. I therefore make the following award:

34. The respondent, **the Department of Health- Eastern Cape** cannot be compelled to approve/ pay claims relating to the period of May 2015 for the applicant, **Mr Mpumelelo Mfikili**.

35. The respondent's conduct did not constitute an unfair labour practice relating to benefits.

36. The applicant's claim is hereby dismissed and he is not entitled to any relief.

37. I make no order as to costs



Signature

Ncumisa Bantwini

PHSDSBC