



PHSDSBC

PUBLIC HEALTH AND SOCIAL DEVELOPMENT
SECTORAL BARGAINING COUNCIL

ARBITRATION AWARD

Case No: **PSHS68-17/18**

Commissioner: **Anna Maria Fourie**

Date of Award: **27 June 2017**

In the matter between:

Lehlohonolo Winston Tau

(Union/Applicant)

and

Department of Health- Free State

(Respondent)

DETAILS OF HEARING AND REPRESENTATION

[1] The Applicant referred a dispute regarding an alleged unfair labour practice relating to benefits for arbitration in terms of section 186(2)(a) of the Labour Relations Act, No 66 of 1995, as amended (the LRA). The matter was set down for arbitration at Bophelo House, Bloemfontein, on 21 June 2017 at 10h00. The Applicant was present and conducted his own case. The Respondent was not present. Ms Rens, an Administrative officer of the Respondent sat in as an observer, although the case was not allocated to her. The Labour Relations Officer who had to represent the Respondent, Mr L Mapena, was not available and he did not apply for the arbitration to be postponed.

[2] The proceedings were recorded electronically and I also took notes by hand.

ISSUE TO BE DECIDED

[3] I had to determine whether the Respondent committed an unfair labour practice against the Applicant by not paying him according to a PDMS (Performance Development Management System) that commenced on 1 April 2008. The dispute specifically revolved around the 2014/2015 performance cycle. In the event that I find that there was an unfair labour practice, I must award the appropriate relief.

BACKGROUND

[4] The Applicant was employed by the Respondent as Assistant Director: Finance at Pelonomi Hospital since 1 May 2012. He was assessed in the 2014/2015 performance cycle in terms of the Respondent's PDMS and he qualified for a grade progression which should have been implemented on 1 July 2015. It was the case of the Applicant that the said grade progression was not implemented and that he suffered prejudice as a result. He sought an order that the said grade progression be implemented retrospectively with effect from 1 July 2015.

[5] The facts of the case were not in dispute. I need to determine whether the Applicant was entitled to any relief.

SURVEY OF EVIDENCE AND ARGUMENT

[6] The Applicant testified under oath and he submitted a bundle of documents in support of his case.

APPLICANT'S CASE

Lehlohonolo Winston Tau testified as follows under oath:

[7] He suffered prejudice in that the Respondent failed to implement his pay progression in terms of the PDMS for the performance cycle 2014/2015. He qualified for a grade progression to grade 3, which should have been implemented by 1 July 2015. However, to date, it was not done. In terms of the Respondent's PDMS Policy, the Department had to budget for notch progressions. The Policy provided for approval

by the Executive Authority in case the budget would be exceeded due to the implementation of notch progressions. He referred to a decision of the Labour Court, handed down on 5 March 2015 in the matter of **PSA and another v Director General: Office of the Presidency of South Africa and another**, where the Court held that a lack of funds did not justify a decision of the employer not to pay bonuses in terms of the PDMS to employees who qualified. Furthermore, the Public Finance Management Act provided for measures to deal with over-expenditure by departments, thus, should implementation of notch progressions and payment of performance bonuses in terms of the PDMS lead to over-expenditure, it can be managed in that provision is made for departments to request additional funds from the Treasury in an adjustment budget. However, the Respondent apparently did not make use of these options.

[8] As a result of the Respondent's failure, he was unduly prejudiced. He lost accrued interest on his pension fund. Furthermore, he incurred expenses in terms of interest as he could not settle all of his financial obligations timeously.

[9] In order to continue the furtherance of his studies, he had to take out a further education loan as the course he studies is not included in the list of courses for which he could apply for a bursary from the Respondent. Had the Respondent remunerated him as they should have, there would be no need for him to apply for an education loan.

RESPONDENT'S EVIDENCE AND ARGUMENT

[10] None presented.

ANALYSIS OF EVIDENCE AND ARGUMENT

[17] The question I need to determine was whether it was unfair for the Respondent not to implement the Applicant's pay progression for the financial year 2014/2015. There was no dispute that the Applicant was entitled to a pay progression for the said financial year and that it was not paid by the Respondent.

[18] The Respondent, in its absence, did not provide any reason for not implementing the pay progression that the Applicant was entitled to. No evidence was submitted to explain the non-payment of the pay progression. I thus had no factual basis on which to conclude that there was any justification for the Respondent's failure to implement the Applicant's pay progression in terms of the PDMS on the 1st of July 2015.

[19] I cannot simply ignore that the Applicant suffered a great deal of inconvenience as a result of the Respondent's failure. Although the Respondent is not liable for the Applicant's financial obligations, the failure to implement the pay progression caused the Applicant hardship in that he could not meet all of his financial liabilities timeously. He was thus inconvenienced as a result of the Respondent's conduct.

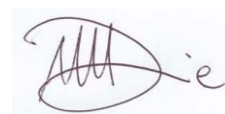
[20] In the absence of any evidence from the Respondent that a valid excuse exist for its failure to implement the pay progression as per the PDMS, I am of the view that the Respondent indeed committed an unfair labour practice against the Applicant.

AWARD

[21] The Respondent, **Department of Health- Free State**, committed an unfair labour practice relating to benefits against the Applicant, **Lehlohonolo Winston Tau**. The Respondent should implement the pay progression of the Applicant, from notch 2 to notch 3 retrospectively as from the 1st of July 2015. The said progression should be implemented by no later than 24 July 2017.

[22] I made no order as to costs.

Signature:



Commissioner: Anna Maria Fourie

