



ARBITRATION AWARD

Case No: PSHS1177- 17/18

Commissioner: Christopher Mannde

UNIPSAWU obo MESHACK KHONGELANI CHAUKE

Applicant

and

DEPARTMENT OF SOCIAL DEVELOPMENT- LIMPOPO

Respondent

DETAILS OF THE HEARING AND REPRESENTATION

- [1] This is the arbitration award in the dispute between Meshack Khongelani Chauke (hereinafter referred to as the Applicant) and the Department of Social Development in Limpopo Province (hereinafter referred to as the Respondent)
- [2] The arbitration hearing was held at Nkowankowa in Limpopo Province on the 08th February 2019 at 10h00. The Respondent was represented by Mr. ME Mohlalo. The Applicant was represented by Mr. D Maselesele.
- [3] The parties adduced oral evidence to dispense off this arbitration. The parties further agreed to submit written heads of arguments. The heads of arguments were submitted as agreed.

[4] The parties submitted written heads of arguments. I shall not repeat the written submissions and arguments in this award but I shall make reference to relevant submissions and arguments.

[5] The Labour Relations Act 66 of 1995 as amended shall be referred to in this award as the 'Act'. The proceedings were recorded digitally.

ISSUE TO BE DETERMINED

[6] The dispute concerns the non- payment or approval of PMDS for the year 2016/2017.

OPENNING STATEMENTS

[7] The Applicant's representative submitted that the Applicant was of the view that he was not fairly or correctly rated regarding the PMDS depriving him of the pay progression and the cash bonus. The Applicant's prayer was that the rating should be reversed to the closest one.

[8] The Respondent's representative submitted that there was no unfair labour practice perpetrated by the employer.

SURVEY OF EVIDENCE AND ARGUMENTS

THE APPLICANT'S EVIDENCE

The Applicant testified as follows:

[9] The rating which he agreed to with his supervisor was changed. The changes affected part of the report. The change affected the pay progression and the grading. He was given a letter to the effect that he did not qualify to be paid PMDS.

He was not told of the discrepancies. The letter did not show the areas which needed corrections. After the news that he'd not qualify he lodged a grievance. The ratings were mostly affected on the generic assessment. See pages 8 and 9 of the bundle. They were expected to be rated in two terms but he was not rated in the first term. In the second term the scores were confirmed. The supervisor rated him 4 and the moderating committee changed to 3. He read the ratings comparing the first and the second term. The moderating committee changed one aspect only. He was not satisfied with the changes. In some aspects he went an extra mile.

[10] There was no evidence that he went an extra mile. His supervisor could attest that he was working extra work. The employer should review the PMDS assessment and retain the score of 2.

[11] He testified during cross examination that the score between the supervisor and himself was final. He did not comment when it was put to him that the core between him and the supervisor was provisional. The moderating committee identified mistakes to be rectified. He was supposed to rectify but there was no indication what to rectify. He did not do any change to the file. To show that he did not agree with the score allocated he wrote a motivational letter. The role of the moderating committee was to moderate and recommend but in his case they changed the score but did not give the reason why the score was changed. He was challenging the moderating committee.

The Respondent's witness Mr. Harry Bopape testified as follows:

[12] He was the Personnel Practitioner. The letter was issued to remind the staff about the date of submission of files. In the moderation committee all the sections were represented. The Applicant belonged to programme 2 whose moderation committee was chaired by the manager of social services. The moderation criterion was set down. The rules were returned to the employees after the moderation to

be rectified. The moderation committee met the employees in the hall and returned the files alerting the employees that the areas of concern were not marked and that the employees were supposed to check the files with their supervisors.

[13] The moderation committee did not change the score but recommended the score. The files were sent back to the Applicant with the letter that noted what to rectify. In the event the applicant did not respond to the letter, the recommended score stands. The score between the applicant and the supervisor was not final.

[14] He testified during cross- examination that the letter was the outcomes of the moderation committee. The Applicant was present when the employer presented the outcomes of the moderation. He played the secretariat role in the moderation committee. The employees were trained regarding the PMDS. The moderation committee did not have powers to change the score.

ANALYSIS OF EVIDENCE AND ARGUMENTS

[15] In this matter it is upon the Applicant to prove on the balance of probabilities that the Respondent committed an act of unfair labour practice. In the main, it was the Applicants dispute that the moderation committee changed his score from 4 to 3. It is the Applicants testimony that the role of the committee is to recommend a score not to change it. It is not in dispute that the files were sent back to the Applicant after moderation to rectify or otherwise. The Applicant testified that he did not rectify but wrote a letter to the moderation committee. According to the note submitted to in arbitration as evidence the moderation committee recommended a score of 3 instead of retaining the score of 4 which was agreed upon by the Applicant and his supervisor.

[16] It is my findings on the balance of probabilities that the moderation committee played its role by recommending the score. My finding is supported by the Applicant's testimony that the role of the moderation committee is to recommend. The score stood because the Applicant admitted that he did not rectify the file. The Applicant should be reminded that he bares the onus to prove and not the Respondent to prove that it did not commit an act of unfair labour practice. The duty of the Respondent was to rebut. The Applicant failed to discharge the onus bestowed to him by the Act.

[17] It is my findings on the balance of probabilities that the Respondent did not commit an act of unfair labour practice.

[18] The application falls to be dismissed.

AWARD

[20] The Respondent did not commit an unfair labour practice.

[21] The application is dismissed.

[22] I make no order as to costs.



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Christopher Mannde