



ARBITRATION AWARD

Panellist: **Minette van der Merwe**

Case No: **PSHS1323 -16/17**

Date of award: **23 May 2017**

In the matter between:

E van Wyk & 2 others

(Union / Applicant)

and

Department of Health – Free State

(Respondent)

DETAILS OF HEARING AND REPRESENTATION:

- [1] The arbitration took place on **16 May 2017** at the Bophelo House in **Bloemfontein**.
- [2] The Applicants elected Ms Elizabeth van Wyk (the 1st Applicant) to represent them. The Applicants submitted bundles “A” and “B” into evidence and the contents thereof were not disputed by the Respondent.
- [3] The Respondent was represented by Mr Gumede, who was also its only witness, and it submitted bundle “C” into evidence and the contents thereof were not disputed by the Applicants.
- [4] The proceedings mechanically recorded and copious notes were taken. No interpretation was required.

BACKGROUND TO THE DISPUTE:

[5] The matter was scheduled for arbitration in terms of section 186(2)(a) in respect of a claim for unfair labour practice related to **demotion**.

ISSUE TO BE DECIDED:

[6] I was called to determine whether the Applicants were demoted, as alleged, by the Respondent. If so, the Respondent bore the onus to prove whether such a demotion was fair or not. The onus vested in the Applicants to prove that they were demoted.

[7] The Applicants sought an order that their positions and status be re-instated as it was prior to the alleged demotions.

SURVEY OF EVIDENCE AND ARGUMENTS:

[8] I wish to state from the outset that this is a summary of the evidence led, and not a *verbatim* reflection. Only such evidence that assisted me in reaching my conclusion will be summarized hereunder.

Evidence of the Applicants:

The 1st Applicant, **Ms Elizabeth van Wyk**, testified under oath as follows:

[9] "A" was issued during 2015, which in effect demoted her from a District Manager to a Sub-District Manager. That change was a clear demotion as it was a change in title and a change in status, as her geographical area of responsibility was reduced. New job descriptions were not issued pursuant to "A". Her salary was not affected, only her responsibilities and her seniority.

[10] Under cross-examination she testified that the sizes of the districts, as per "A" were irrelevant, but testified that the circumstances in each district indeed differed. She testified that, if the Respondent's decision to streamline its operations to become more efficient affected her initial appointment, it was a problem. Her seniority was affected as she was the most senior individual in the district as the District Manager, yet with the approval by the MEC of "A" she was demoted and was no longer the decision maker, and her decisions were overruled by Mr Basson. She elaborated that she had 1 local area of responsibility whereas Mr Basson had 3 local areas of responsibilities, which gave him the power to overrule her. She testified that Mokoena (3rd Applicant) were the most senior in the district, and he now had to share the roll with another

individual, which amounted to a demotion. The Respondent never consulted with the affected Employees prior to the proposed structure changes of “A”, and new job descriptions were never issued. She confirmed that the process as set out in “A” was on hold due to the dissatisfaction of affected Employees, but she considered it as having been implemented. She confirmed that her job description had, indeed, not changed, and confirmed “C”. She maintained that despite the process as per “A” having been on hold, they were working in terms of it in her district, Xhariep.

[11] The 2nd Applicant, **Mr N Khoele**, confirmed the evidence of the 1st Applicant and elected not to testify.

The 3rd Applicant, **Mr Generation Thakabanna Mokoena**, testified under oath as follows:

[12] He was not aggrieved about his title, which was not changed. He considered himself demoted because his responsibilities and functions were taken away.

[13] Ms Seabelo, referred to in “A”, has moved into his office and has taken over his duties.

[14] Under cross-examination he testified that he refused to function in terms of “A” because he did not accept the process. He was not performing any duties at the current time. He confirmed that no job description was received that confirmed that the new structure in terms of “A” was implemented. He referred a grievance in November 2016 regarding the proposed structure change as per “A”.

Evidence of the Respondent:

Mr Maqala January Gumede, testified under oath as follows:

[15] The proposed structure change in terms of “A” was approved by the MEC but never implemented; as such there was no demotion. The reason was that the Respondent saw that it would have affected Employees adversely, and reconsidered the restructuring.

[16] Under cross-examination he testified that it was possible for the MEC to approve a submission, and for that submission to not be implemented. The discretion lied with the Provincial Manager, who made the submission to the MEC, to implement if same was approved. If “A” had been implemented, the necessary changes would have been made on the persal system “C” and the Applicants’ job descriptions would have been changed accordingly.

ANALYSIS OF EVIDENCE AND ARGUMENT:

- [17] Brief closing statements were made by both parties, which were recorded.
- [18] The 1st Applicant worked in the Xhariep district, the 2nd Applicant worked in the Thabo Mofutsanyana district and the 3rd Applicant worked in the Fezile Dabi district. As such their evidence could not corroborate each other's as they were not privy to the day-to-day workings of the districts, and whether in fact the proposed structure changes in terms of document "A" were implemented. It amounted to hearsay evidence, as the Applicants told each other of what were taking place in their respective districts.
- [19] The authenticity of the bundles was not disputed. The 1st Applicant claimed that none of the Employees were consulted in terms of the proposed structure changes of "A", yet the document made mention of consultation, with minutes and registers.
- [20] The Applicants confirmed that their titles had remained unchanged, and were not changed as per the proposed structure changes of "A". This was further confirmed by "A", a printout from the persal system dated 2011 – 2017. The Applicants confirmed that their salaries had remained unchanged as well.
- [21] The Applicants' grounds for the claim for demotion were that their status, areas of responsibilities and functions had been reduced, and as such that amounted to a demotion.
- [22] The Applicants did not call any witnesses to support their versions that the changes proposed in document "A" were in fact implemented, for example Mr Basson from Xhariep district or Ms Seabelo from the Fezile Dabi district. In fact, the 1st Applicant testified that the entire process of implementing the proposed structure changes as per "A" was halted due to the dissatisfaction of the Employees who would be affected.
- [23] In the case of ***Solidarity obo Kern v Mudau & others*** [2007] 6 BLLR 566 (LC) the Court quoted with approval the following passage from Du Toit et al Labour Relations Law (4thed at 465):
- "...in law, demotion could also mean a reduction or diminution of dignity, importance, responsibility, power or status even if salary, attendant benefits and rank are retained."*
- [24] The Applicants failed to discharge the onus vested in them to prove that they were demoted in terms of dignity, importance, responsibility, power, status, salary, benefits or rank. Their evidence was uncorroborated, and rebutted by the Respondent.

[25] As such the claim for unfair labour practice related to demotion thus stands to be dismissed.

AWARD:

[26] The Applicants, **E van Wyk, N Khoela and GT Mokoena**, failed to prove that the Respondent, **Department of Health – Free State**, committed an unfair labour practice related to demotion in terms of section 186(2)(a).

[27] The claim for unfair labour practice related to promotion is hereby dismissed.

[28] I make no order as to cost.

Signature:

A handwritten signature in black ink, appearing to read 'M. van der Merwe', is displayed on a light green rectangular background.

Panellist: **Minette van der Merwe**