



ARBITRATION AWARD

Panelist: Terry Malgas

Case No: PSHS136-14/15

Date of award: 24 September 2014

In the matter between:

MZIWEKHAYA MEKUTO

APPLICANT

And

DEPARTMENT OF HEALTH- EASTERN CAPE

RESPONDENT

Background

1. The Applicant had referred an unfair labour practice dispute to the Public Health & Social Development Bargaining Council (PHSDBC) for arbitration. The dispute was described as the non-payment of travelling allowance. The matter was enrolled for arbitration on 18 September 2014.
2. Both the Applicant and Respondent relied on oral submissions made.

Issue to be decided

3. I had to decide whether the Applicant is entitled to the benefit of a travelling allowance and whether the Respondent committed an unfair labour practice as defined in section 186(2)(a) of the Labour Relations Act 66 of 1995.

Historical and common cause facts

4. The Applicant seek, through arbitration, having referred an unfair labour practice dispute relating to benefits to the PHSDBC, to be paid his travelling allowance as provided for by the Respondent's terms and conditions of employment. The Respondent agreed with the Applicant that the dispute concerned benefits as envisaged in section 186(2) (a) of the Labour Relations Act 66 of 1995 (the LRA), and that the Applicant is entitled thereto.

Applicants' submissions

5. The Applicant testified that he was employed by the Department of Health in the Eastern Cape, stationed in Bhisho. He testified that his work allows him to travel to East London on a daily basis and he gets a travelling allowance to do so.
6. The Applicant further testified that the Respondent failed since October 2013 to pay the travelling allowance due to him.
7. The Applicant submitted that the total amount owed to him amounted to R32417.40 (thirty two thousand four hundred and seventeen rand and forty cents) and he claimed interest at 15% per annum on the amount.
8. The Applicant was of the view that he was entitled to interest as he incurred costs such as loans and credit card debt in order to be able to do his travelling. The Respondent agreed to the amount of R32417.40 owed to the Applicant but disputed that any interest is owed to the Applicant.

Respondent's submissions

9. The Respondent submitted that the Applicant is owed an amount of R32417.40 and that this will be paid to the Applicant on or before 18 November 2014.
10. The Respondent was of the view that the Applicant was not entitled to interest of this amount as the Applicant's claim forms part of many accruals that the Respondent is busy paying to all employees.

Analysis of argument

11. The Applicant had referred an unfair labour practice dispute concerning benefits to the PSHSDBC. It is common cause that what is in dispute is the non-payment of the travelling allowance.
12. In his submissions the Applicant asserted a contractual entitlement to payment of the travelling allowance.
13. The real question to be determined however in this matter is whether or not the Applicant was entitled to be paid the acting allowance.
14. The meaning of the term "benefits" has been the focus of a number of cases and academic analyses, particularly in the context of deciding whether a dispute falls within the ambit of section 186(2)(a) of the LRA. Decisions of the CCMA and the Labour Court appear to favour a narrow interpretation of the term so as to exclude all payments that could be interpreted as falling within the broad ambit of "remuneration".
15. The LRA does not define 'benefit' and we have to rely on the meaning given to the concept by the courts and other authorities. The majority by far (save for one or two exceptions¹) consider a benefit as something which is given to an employee over and above remuneration, something which cannot be seen as a *quid pro quo* for services rendered.
16. In *Schoeman & another v Samsung Electronics (Pty) Ltd* [1997] 10 BLLR 1364 (LC) the Labour Court held that remuneration is not a benefit for the purposes of section 186(2)(a):

“Remuneration is different from benefits. A benefit is something extra apart from remuneration. Often it is a term and condition of an employment contract and often not. Remuneration is always a term and condition of the employment contract.”

17. The travelling allowance in the matter at hand is clearly an amount that is paid to a person for rendering services, to compensate that person for the services rendered. The CCMA and Bargaining Councils has jurisdiction to entertain disputes not only about unfair dismissal, but also in relation to ‘unfair labour practices’.
18. An unfair labour practice is defined in Section 186 (2) (a) of the Labour Relations Act as “unfair conduct by the employer relating to the promotion, demotion, probation or training of an employee or relating to the provision of benefits to an employee”
19. In the circumstances, I find with specific reference to the LAC decision in Appollo Tyres SA (Pty)Ltd vs CCMA and others that the Applicant is entitled to a travelling allowance that amounts to R32417.40.
20. The Applicant submitted that he incurred costs through loans and credit cards in order to travel to do his work and therefore is entitled to interest, however no proof to this effect was submitted.
21. I find that the applicant is entitled to be paid an amount of R32 417.40 by the Respondent.

Award

22. The Applicant, Mr.Mziwekhaya Mekuto proved that the Respondent committed an unfair labour practice as envisaged in section 186 (2)(a) of the Labour Relations Act.
23. The Respondent must pay the amount of R32417.40 to the Applicant on or before 15 October 2014.
24. The Applicant is not entitled to interest on this amount.
25. I make no order as to costs.

Signature: _____

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Adv. T Malgas