



# ARBITRATION AWARD

Panelist/s: A.N MAFA  
Case No.: PSHS 528-11/12  
Date of Award: 14 SEPTEMBER 2012

In the ARBITRATION between:

AM Carrim obo Madula

(Union / Applicant)

And

Department of Health and Social Development and M.I Semenya

(1<sup>st</sup> and 2<sup>nd</sup> Respondent)

**Union/Applicant's representative:** Mr A.M Carrim

Union/Applicant's address: P.O Box 1747

Polokwane

0700

Tel: (015) 295 0503

Fax: (015) 295 0505

**Respondent's representative:** Mrs. N. Mafunda & Mr. I Semenya

Respondent's address: Department of Health and Social Development

P.O Box 40

Cenespoort

0745

Tel: (015) 633 2450

Fax: (015) 633 7113

## **DETAILS OF HEARING AND REPRESENTATION**

- [1] This matter was scheduled for arbitration on the 23<sup>rd</sup> August 2012 at Morula Boardroom, 18 College Street, Old Capricorn Road, Polokwane at 10h00 am. Both parties attended the proceedings. The Applicant was represented by Mr. A.M Carrim, an admitted attorney and Mrs. N Mafunda represented the Respondent.
- [2] The proceedings were partly recorded electronically and handwritten notes were also taken, which forms part of the record.

## **PRELIMINARY ISSUES**

- [3] No preliminary issues were raised throughout the proceedings.

## **ISSUE TO BE DECIDED**

- [4] Whether the applicant should have been shortlisted or not?
- [5] Whether the criteria for short listing set by the short listing committee was in line with the Selection and Recruitment Policy ( Circular No. 25 of 2009) or not?

## **BACKGROUND TO THE ISSUE**

- [6] Before the matter proceed both parties requested the panelist to facilitate a pre-arb meeting in an attempt to curtail issues and also agree on a common bundle of documents to be used. Having done so, both parties were able to narrow issues as they appear hereunder.
- [7] The following issues are common between the parties:-
  - 7.1. There was an advertisement of a vacant posts by the respondent in terms of Circular No. 43 of 2011 dated 22 March 2011.
  - 7.2. The applicant applied for a position of a Manager: Corporate Services as per page 10 of the bundle and she was not short listed for the same post.
  - 7.3. The applicant met the requirements for the advertised post.
  - 7.4. The applicant lodged a grievance.
  - 7.5. The second respondent having being explained and warned of the implications indicated that he does not intend to participate in the proceedings and that he will stand by the decision of the Panelist.
  - 7.6. Both Parties indicated that in essence there is no dispute of facts in the matter and proposed that heads of arguments be filed. It was then agreed that in rendering the award the Panelist should take into account the written Head of Arguments submitted

by both parties, the issues identified as common between the parties and the common bundle of documents marked annexure A to F respectively.

## SURVEY OF EVIDENCE AND ARGUMENT

### [8] The essence of the Applicant case is as follows:-

- 8.1. The Applicant is employed by the respondent as a senior admin officer records management. .
- 8.2. She was acting in the position of manager corporate service for approximately two years. The position was advertised for the first time and she applied and was shortlisted and interviewed.
- 8.3. The position was not filled and re-advertised. She applied again and was not shortlisted.
- 8.4. The second respondent was appointed to the post.

### [9] The Essence of Respondent's Case is as follows:-

- 9.1. Departmental Circular No.43 Of 2011 states that the applications should be on the Z83 forms and accompanied by, amongst others, certified copies of required qualifications.
- 9.2. The applicant was no shortlisted on the basis that she did not follow the directive of the advertisement.

### [10] ANALYSIS OF EVIDENCE AND ARGUMENT

- 10.1. The factual matrix of this case is that the applicant applied for the position of Manager: Corporate Service advertised in the Departmental Circular No. 43 of 2011.
- 10.2. The applicant met the requirements for the post in dispute but was not shortlisted because she did not submit the certified copies of her qualifications.
- 10.3. In terms of Departmental Circular No. 43 of 2011 **“all applications has to be submitted on the Z83 forms obtainable from any government institutions and be accompanied by comprehensive CV and certified copies of required qualifications”**.
- 10.4. The applicant does not dispute the fact that her application was not accompanied by certified copies of the required qualifications.
- 10.5. In terms of Departmental Circular No. 25 of 2009 (Policy on Recruitment and Selection) the role of the Human Resource Division is to, amongst others:-
  - 10.5.1. Screen the applications on a separate schedule of applicants who do not meet the basic criteria to be eligible for consideration for the advertised post (s);

- 10.5.2. Screening criteria must be in line with the job content and appointment as well as advertised requirement so that applicants screened are clear on the criteria that apply. The following shall amongst others form the basis of criteria for screening:-
- a. Applications that do not meet the basic entry level requirements (contained in section 10 of the public service 1994, as amended) as those advertised;
  - b. Applications that are incomplete or do not meet the basic appointment criteria for the advertised post (s).
- 10.6. In *casu*, Departmental Circular No. 43 of 2011 makes it a requirement that all applications must be accompanied by, amongst others, certified copies of required qualifications.
- 10.7. Informed by an avalanche number of applications received and in line with the Recruitment and Selection Policy all applications will be sifted go through which includes the screening of all applications. The rationale behind these process and as a standard human resource practice will be to identify all applications that meet the requirements of the advert and eliminate all those that does not comply.
- 10.8. The respondent contends that about 175 candidates applied for the post in dispute and some of them were not shortlisted because their applications did not comply with the requirements of the advertisement. In essence the screening of all applications will therefore in my view be the first step to be taken in the Recruitment and Selection process. The exclusion of applications which does not comply with the requirements of the advert therefore makes it a compliance issue.
- 10.9. It cannot be excluded that most of the applicants to the post in dispute met the requirements in terms of relevant qualifications, knowledge and experience and were not shortlisted. It is a known fact in Human Resource Practice that the importance of the sifting process is to screen applications and eliminate those that do not meet the requirement of the advert for short listing purposes hence in most instances only a manageable number of candidates are interviewed.
- 10.10. Furthermore, I am battling to establish relevance to the applicant's argument that the 2<sup>nd</sup> respondent did not meet the requirement for the post and that the selection criteria used by the short listing committee was contrary to the advert and unfair. The basis of my submission is premise on the fact that the short listing committee considered people who were on Level 9 (Deputy Managers; HRM/Corporate Services) and the 2<sup>nd</sup> respondent falls within the same category.
- 10.11. In as much as applicant argues that the 2<sup>nd</sup> respondent only has a diploma but not a degree, no further explanation is given as to why the 2<sup>nd</sup> respondent's qualifications which includes other certificates cannot be regarded as equivalent qualification as described in the advert.
- 10.12. Even if I were to find that the selection criteria was contrary to the advert and that the 2<sup>nd</sup> respondent did not meet the requirements for the post, I do not see how these argument would have come to the rescue of the applicant to be shortlisted.

10.13. In essence, the short listing of the applicant has no bearing on the appointment of the 2<sup>nd</sup> respondent in that his appointment is not challenged.

**[11] FINDINGS**

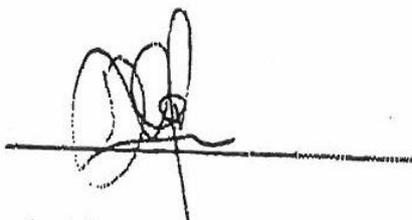
11.1. I am therefore persuaded in the light of the above that the 1<sup>st</sup> respondent followed a reasonable and fair process in the short listing of candidates to the post in question. The applicant was not shortlisted simply because she did not comply with requirements for the advertisement by not certifying her qualifications. Short listing applicant under the circumstance would be prejudicial to other candidates who met the requirements for appointment but were excluded for not complying with the requirements for the advertisement.

11.2. Consequently, I find that the 1<sup>st</sup> respondent was fair in not short listing the applicant and that there was no material deviation by the short listing committee with the Recruitment and Selection Policy (Departmental Circular No. 25 of 2009).

**AWARD**

1. The 1<sup>st</sup> respondent's conduct by not short listing applicant was fair and reasonable under the circumstance.
2. The criteria for short listing as set by the short listing committee was in line with the Recruitment and Selection Policy ( Departmental Circular No.25 of 2009)
3. The Applicant's case is hereby dismissed.
4. I make no order as to costs.

**DATED AT PRETORIA ON THE 25<sup>TH</sup> SEPTEMBER 2012.**

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the bottom, positioned above a solid horizontal line.