



# ARBITRATION AWARD

Case No: **PSHS264-21/22**

Commissioner: **Jules McGillavray-Teale**

Date of award: **18 June 2022**

In the matter between:

**BOIKETLO MOTSHEGOA**

**Applicant**

and

**DEPARTMENT OF HEALTH – NORTH WEST**

**Respondent**

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## DETAILS OF HEARING AND REPRESENTATION

1. The applicant referred a dispute to the Public Health and Social Development Sectoral Bargaining Council (Council), in terms of section 191 of the Labour Relations Act 66 of 1995 (LRA) pertaining to a dismissal for reasons unknown. The arbitration took place on 18 November 2021, 1 March 2022 and 30 May 2022 at the Provincial offices of the Department of Health – North West (the respondent), situated in Mahikeng.
2. The applicant, Ms Boiketlo Motshegoa was present while Mr. Patrick Monyatsi and Advocate Monchusi appeared for the respondent.
3. The applicant and respondent submitted bundles of documents to be used during the arbitration proceedings.
4. The proceedings were electronically recorded, and the record filed with the Council's administration.
5. This award is issued in terms of section 138(7) of the LRA, which requires a commissioner to provide brief reasons for the outcome.

## **PRELIMINARY ISSUE**

6. The respondent disputed the existence of the applicant's dismissal. Mr Monyatsi argued that the applicant's contract had expired, referring to section 192(1) of the LRA which requires that the employee must first establish the existence of a dismissal before the employer is required to prove that that the dismissal was fair.

## **ISSUE/S TO BE DECIDED**

7. I must determine whether the applicant was dismissed by the respondent and, if so, if it was for a fair reason and within a fair process. The applicant is seeking retrospective reinstatement.

## **SURVEY OF THE EVIDENCE AND ARGUMENT**

8. The following constitutes a summary of the evidence of the parties and has not been captured *ad verbatim*. The fact that I have not captured all of it should not be misunderstood to suggest that I have not taken it into account. My findings are accordingly within the context of all the evidence proffered.

## **APPLICANT'S EVIDENCE**

### **Boiketlo Motshegoa**

9. Under oath, the applicant testified that she had worked as a receptionist to the respondent's Member of the Executive Council (MEC) at Mahikeng from October 2016 to December 2018, earning R17 599.50 per month.
10. She testified that she was aware that MECs were appointed by the Premier from amongst the members of the provincial legislature and that the Premier could also dismiss or move an MEC. The MEC for Health, Dr Masike's tenure ended in December 2018. The applicant confirmed that she was aware that when an MEC moves, they normally do not take the support staff with them. Her appointment to the office of the MEC was on a fixed term contract which ended in December 2018.
11. The applicant continued to work for the Department of Health in Mahikeng on a further fixed term contract from 14 January 2019 until 13 April 2019. Upon arriving for duty on 14 April 2019, the applicant was not allowed to enter the building since her contract had expired.

12. She returned on 15 April 2019 and submitted letters to all the listed executives as well as the HR Director Sam Lenong. She met the HR Director on the same day to seek advice. She then this she went to the Public Service Commission, where she was advised that they could not assist and referred her to the Provincial Commissioner, Dr Lebalwo, who heard her case, but offered no assistance. She followed up with his office, but nothing came of this either. Her next port of call was to the National Commissioner, Professor Somadoda Fikeni, who too advised her that his office was unable to assist. She then approached the Human Rights Commission, who advised her that it was a labour dispute so they too could not assist her. After this, she approached Chief Justice Mogoeng Mogoeng with whom she met for two hours and provided all her documentation, but again nothing was done to assist her. This was followed by approaching the Council of Churches where she also could not get any assistance. Her mother even approached Jeanette Hunter who made various offers but there was still no positive outcome for her.
13. She finally referred her dispute to the Council on 21 May 2021.
14. The applicant noted that she would not be calling any additional witnesses to support her case.
15. It was put to her that she was fully aware that her contract would end in December 2018, which she confirmed. It was further put to her that the respondent extended her contract until 14 April 2019. She acknowledged that she had worked and been paid for the period in question.

## **RESPONDENT'S SUBMISSIONS**

### **Dr Mmadipuo Thlogane**

16. Dr Thlogane testified under oath that she was the Chief Director of Corporate Services which included overseeing the following departments: Legal, Transport, Occupational Health and Safety, Human Resources and Security. She was familiar with the applicant who had worked in the former MEC's office as the Receptionist.
17. Dr Thlogane further testified that if an MEC is moved, their support staff are linked to the MEC's tenure, and their contracts expire with the MEC's contract. The new incumbent brings their own staff. The previous MEC had left in December 2018. The employees who previously worked for him were given fixed term contracts only until 13 April 2019. The witness referred to a letter from Jeanette Hunter dated 22 July 2019, wherein she

confirmed that the applicant's contract was linked to the tenure of the MEC and should have been given one month's notice but that as a form of "humanness" their contracts had been extended for three months, which included the notice period of one month. The applicant was not dismissed; her contract expired on 13 April 2019.

18. Under cross examination, it was put to the witness that she had appointed Mantele Mabale, to which the witness responded that she had not employed anyone, anywhere.
19. It was put to the witness that the applicant was not given a contract for three months. The witness responded that she had been given a contract, and she had been paid for the extra three-month periods.
20. The applicant then put it to the witness that a colleague had been employed again after the MEC had left, to which the witness responded that some of the affected staff had applied for vacant positions and been successful.

## **ANALYSIS OF THE EVIDENCE AND ARGUMENT**

21. The applicant referred a dispute regarding unfair dismissal, but her evidence overwhelmingly suggests that the actual dispute is around section 186(1)(b)  
*"Dismissal" means that –*  
*(b) an employee employed in terms of a fixed term contract of employment, reasonably expected the employer-*  
*(ii) to retain the employee in employment on an indefinite basis but otherwise on the same or similar terms and conditions as the fixed term contract, but the employer to retain the employee on less favourable terms or did not offer to retain the employee."*
22. The applicant conceded that she was well aware of the terms of employment within the office of the MEC and that his/her support staff were linked to the MEC's tenure and that their employment automatically ended when the MEC left office.
23. Effectively, the applicant was always employed on a fixed term contract, by her own admission and according to the signed contract included in the applicant's bundle.
24. While the applicant argued that the respondent dismissed her after she was advised by Dr Masike, the outgoing MEC, that she would be absorbed into the Department of Health in Mahikeng, she did call Dr Masike to verify her version.

25. The applicant could also not provide any documentary evidence of an offer of permanent employment to substantiate her claim.
26. There is no evidence led by the applicant to suggest that she was dismissed.
27. The respondent stood by the position that the applicant was employed on a fixed term contract tied to the tenure of the MEC, which was included in the bundle.
28. Upon the MEC leaving, her contract had been extended for three months as a gesture of goodwill but had then expired.
29. This was supported by documentary evidence in the form of the Administrator's letter addressed to all affected staff, confirming the extension of the contracts by three months until 13 April 2019. The applicant did not dispute this at any point, her claim that the respondent had therefore her claim of dismissed became even more improbable.
30. I accept the respondent's version of events as the most probable that the applicant's fixed term contract of employment expired on 13 April 2019.
31. The applicant has been unable to demonstrate any reasonable expectation that she would be "absorbed" or appointed to a permanent position by the respondent.
32. On this basis, she has failed to discharge the onus of proving that the respondent dismissed her.

## **AWARD**

33. The respondent did not dismiss the applicant.
34. The applicant's claim is dismissed.



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**Jules McGillavray-Teale**  
**Panellist PHSDSBC**