



ARBITRATION AWARD

Case No: **PSHS399-22/23**

Commissioner: **Mr Anand Dorasamy**

Date of award: **30 September 2022**

In the matter between:

PSA OBO THOKOZA REAGIA ZULU

(Union/ Applicant)

and

DEPARTMENT OF HEALTH- KWAZULU NATAL

(Respondent)

DETAILS OF HEARING AND REPRESENTATION

1. The arbitration proceedings was scheduled for the 20 September 2022 and commenced at 10H00 at the St Appollinaris hospital in Creighton. After the evidence was completed the parties were to submit written closing arguments on the 27 September 2022. The proceedings were mechanically recorded. The applicant lodged a dispute in terms of section 186(2) (a) of the Labour Relations Act (LRA) in respect of non-payment of EPMDS/ Pay progression or production bonus.

ISSUE TO BE DECIDED

2. I am required to determine whether the Respondent (employer) had perpetrated an act of unfair labour practice against the applicant in respect of her not being paid EPMDS/ Pay progression or production bonus. Should I find in favour of the applicant, I am to determine what relief should be granted to her.

BACKGROUND TO THE DISPUTE

3. The applicant's dispute is about not being paid the pay progression for the financial years 2012-2013 and 2014-2015. The respondent/ employer contends that she submitted her assessment after the due date. The applicant contends that she submitted her assessment on time.

SUMMARY OF EVIDENCE

APPLICANT'S CASE

ZULU THOKOZA REMAGIA

3. The salient aspects of the witness' testimony are recorded below:
4. The applicant stated that she did not receive the document on page 12 of bundle A.
5. She was not paid EPMDS because she submitted her documents late.
6. The employer did not provide training when she started.
7. Her Operations Manager (OM) her supervisor helped her fill the form.
8. She submitted late because she was not aware and not trained on EPMDS.
9. On pages 19-41 are documents for 1 April 2013 to 2014 and is dated 02 April 2014. Her supervisor did not sign or date the document.
10. The employer did not sign the documents for the 2014-2015 period and it was submitted late. Her OM made a mistake by not signing and submitting it. On page 22 her supervisor did not sign or date the document and the applicant did not date the document.

Under cross examination she stated as follows:

11. She knows the documents on pages 13-37 because her OM gave it to her. The OM called them together and told them about the document and how to fill it by filling the gaps. It is her handwriting and the document was explained to her. She does not know the document on page bundle B on pages 21-22 but she signed the register on the 21 January 2022 and walked out.
12. She filled her rating and the supervisor took the form away.
13. On bundle B page 33 the supervisor did not sign the form.

RESPONDENT'S CASE

DLAMINI MICHAEL THULANI

The salient aspects of his testimony are recorded below:

14. On page 21 he explained to the applicant about her alleged underpayment.
15. At the grievance meeting on the 21 January 21 he met the applicant with the intention to give her the letter on page 21. She refused to take the letter. She walked out before the meeting could finish.

Under cross examination he stated as follows:

16. He is the HR manager.
17. The documents did not have the signatures of witnesses.
18. Her supervisor must complete and submit the document by the 31 May.

CLOSING ARGUMENTS

19. The parties submitted written closing arguments that were considered when I made my determination.

ANALYSIS OF EVIDENCE AND ARGUMENT

20. The matter is fairly simple in that the application for consideration for EPMDs or pay progression required the supervisor and supervisee (applicant) to submit the completed documents before the 31 May.
21. The respondent contends that documents were submitted late.
22. The onus to prove that the documents were not submitted late rested with the applicant. In any event either the applicant or supervisor did not sign and date the documents that had to be lodged with HR. The policy directs that should the documents not be submitted on time the employee would not qualify for the benefit.
23. Even if the applicant qualified for EPMDs or pay progression it was crucial that the necessary documents were submitted before the deadline. Further even if the applicant and her supervisor signed the document before the 25 May the onus rested with the supervisor to submit the document to HR before the deadline.
24. The HRM Circular directs that disciplinary action be taken against the supervisor or supervisee should they not comply with the provisions of the Circular.
25. In a nutshell the documents had to be completed and handed to HR before the 31 May of the year. The document was not submitted in time and the applicant was not considered for the benefit. The applicant was accordingly not granted the benefit.
26. The respondent scheduled a meeting to explain to the applicant the reason for not being granted the benefit but the applicant signed the register but walked out without affording the respondent the opportunity to explain its action.
27. I am inclined to favour the submission by the respondent that the documents were not submitted in time and that she therefore does not qualify for the benefit.
28. As a consequence of the above the applicant should not be granted the relief he sought and the application is dismissed.

AWARD

- 29. The respondent did not perpetrate any act of unfair labour practice against the applicant.
- 30. The application is dismissed.

A handwritten signature in black ink, appearing to read 'a.s. Dorasamy', with a large, stylized flourish at the end.

Arbitrator: Anand Dorasamy