



# ARBITRATION AWARD

Commissioner: **Mbuso Mbuli**

Case No: **PSHS476-22/23**

Date of award: **10 March 2023**

In the matter between:

**PSA obo Gcina Bhekuyise Bethwell Mchunu**

Applicant

and

**Department of Health- KwaZulu Natal**

Respondent

---

## **DETAILS OF HEARING AND REPRESENTATION**

1. This matter was placed on the roll before me for arbitration on 24 February 2023 at Injisuthu Clinic. The Applicant was represented by M.W. Ngcobo, a trade union official from the Public Servants Association of South Africa (PSA), and the Respondent was represented by S.T. Dlamini, from Labour Relations Department.
2. The proceedings were digitally recorded.

## **PRELIMINARY ISSUES, JURISDICTION AND ISSUES TO BE DECIDED**

3. No preliminary or jurisdictional issues were raised and Public Health and Social Development Sectoral Bargaining Council (PHSDSBC) has the required jurisdiction to hear the matter.
4. I was called upon to decide whether or not the Respondent committed an “unfair act or omission... involving unfair conduct...relating to the benefits” of the Applicant, as contemplated by section 186 (2) (a) of the Labour Relations Act 66 of 1995 (“the Act”), as amended.
5. I am also required to determine the appropriate relief, in the event that the award is in the Applicant’s favour.

## **BACKGROUND TO THE DISPUTE**

3. All the following issues are common cause and were agreed upon before the commencement of the arbitration process:
  - The Applicant was employed on 20 April 2020 as a Data Capturer, earning a salary of R12 106.75 per month. He is based at Injitsuthi Clinic.
  - The letter of his appointment confirmed that he qualifies for a housing allowance benefit.
  - In August 2021, his payslip reflected that he had received an amount of R23 135.00 Housing allowance in savings.
  - In August 2021, after buying a site, he applied for the withdrawal of a housing allowance in terms of PSCBC Resolution 7 of 2015. He needed money to buy building materials so that he could start building, and only received an amount of R1 605.80.
4. The Applicant referred the dispute to the Council, as he believes that he was supposed to be paid all his savings for the housing allowance as he met all the requirements in terms of PSCBC Resolution 7 of 2015. The dispute was not resolved at conciliation and a certificate was issued indicating that the dispute remained unresolved. Thereafter, the applicant requested that the matter be resolved through arbitration, hence this arbitration.

5. The Respondent handed in a bundle of documents which was marked "A", and I was enjoined by both parties to accept the documents for what they purport to be, and consider them to the extent that it may be required for the purpose of this award.

### **THE APPLICANT'S CASE**

6. The Applicant, Gcina Bhekuyise Bethwell Mchunu, testified under oath that he is employed as a Data Capturer and is based at Injisuthi Clinic. His appointment letter clearly indicate that he will receive a Housing Allowance as one of his benefits. After buying a piece of land to build his house, he completed and submitted all the necessary documents to withdraw his Housing Allowance savings which was an amount of R23 135.27 (page 18 of Bundle A). To his surprise, he only received an amount of R1 605.80. He contacted the Human Resources Department at Escourt Provincial Hospital on several times, to find out why he was not paid all his savings money, and was always promised it was going to be sorted out.
7. After waiting for some time, he decided to lodge an internal grievance, At the grievance meeting, he was informed that there was a problem with the Persal System and that his issue had been escalated to Head Office in Pietermaritzburg. He was advised that once everything had been sorted out, he would be paid, the balance of his savings money, which has not happened to date.
8. No cross-examination.

### **THE RESPONDENT'S CASE**

9. The Respondent's only witness, Mr. S.Q. Mbongwe, testified under oath that he is employed as a Human Resources Officer, and that he is based at Escourt Provincial Office. He confirmed that the amount of R23 135.27 (page 18 of Bundle A) is the amount that was calculated by the Persal System as the Applicant's savings for the Housing Allowance. The Applicant only received an amount of R1605.80.
10. The Applicant's issue was escalated to Head Office at Pietermaritzburg, as he was not the only one having this problem.

11. Under-cross examination, Mbongwe failed dismally to come with a clear answer as to why the applicant was not paid the whole amount of his Housing Allowance savings except that his case was referred to Head Office.

### **ANALYSIS OF THE EVIDENCE**

12. It is common cause that, as per the calculation done by the Persal System, the Applicant has an amount of R23 135.27 (page 18 of Bundle A) in his Housing Allowance savings. It is also common cause that in August 2021, after buying a site, he applied for the withdrawal of his Housing Allowance in terms of PSCBC Resolution 7 of 2015, as he needed money to buy building materials so that he could start building, and that he only received an amount of R1 605.80.
13. The Respondent failed dismally to provide any reasons as to why the Applicant was not paid the full amount of his Housing Allowance savings except that the matter was escalated to Head Office.
14. I therefore find that the Respondent committed an unfair labour practice when it failed to pay the Applicant the full amount of his Housing Allowance savings.
15. Having carefully considered all the factors and evidence before me, including the definition of an unfair labour practice in section 186(2) (a) of the LRA, it is my conclusion that the Applicant is entitled to be paid the outstanding amount of R21 529.47, which is calculated as follows: R23 135.27 (Total Housing Allowance savings) - R1 605.80 (amount already paid by the Respondent) = R21 529.47, as provided for in PSCBC Resolution 7 of 2015.
16. I make the following award:

## **AWARD**

17. The Respondent, Department of Health – KwaZulu-Natal, is ordered to pay the Applicant, Mr. Gcina Bhekuyise Bethwell Mchunu, the outstanding Housing Allowance savings in the amount of R21 529.47 by no later than 31 March 2023.



---

**Mbuso Mbuli**