



ARBITRATION AWARD

Commissioner: **Ncumisa Bantwini**

Case No: **PSHS533-22/23**

Date of award: **08 February 2023**

In the matter between:

PSA obo Thobela Gunuza

Applicant

and

Department of Social Development - Eastern Cape

Respondent

Details of hearing and representation

1. This arbitration was heard on 02 February 2023 in the offices of the respondent in King Williams Town. It came before the PHSDSBC in terms of Section 24 (2) 24 (5) of the Labour Relations Act, 66 of 1995, as amended (LRA) for interpretation or application of collective agreement (Resolution 1 of 2014).
2. Mr Anthony Kilian of PSA appeared for the applicant, Mr. Thobela Gunuza who was also in attendance while Advocate Anele Tsipa appeared for the respondent, Department of Social Development- Eastern Cape.
3. The referring party started to lead evidence and called the applicant to testify. The respondent also called one witness to testify. Parties agreed to submit oral closing arguments on 02 February 2023. The proceedings were digitally and manually recorded.

Issue to be decided

4. The issue in dispute in this matter is about the correct interpretation and application of Public Health and Social Development Sectoral Bargaining Council (PHSDSBC) Resolution 1 of 2014, in particular clause 4 of the Resolution.

Background to the dispute

5. The applicant, obtained Bachelor of Law Degree (LLB) in 2020. Paragraph 4 of Resolution 1 of 2014 makes provision for a 10% once off cash bonus to be paid to the employees for recognition of qualifications.
6. The applicant made an application of such payment but it was not approved by the respondent. The dispute was conciliated and it remained unresolved. The applicant, through his union requested arbitration.

Survey of evidence and arguments

Applicant's case

7. According to Mr Kilian's opening statement, the applicant is currently employed by the respondent as a State Accountant. He obtained Bachelor of Law Degree with the University of South Africa in 2019 but the respondent refused to pay him 10% cash bonus of his annual salary amounting to R29 443.20 in terms of Resolution 1 of 2014.
8. The applicant testified as follows:
9. He works for the respondent as a State Accountant in debt management unit /financial accounting unit. He enrolled with UNISA in 2012 to pursue LLB Degree in 2012 and he obtained the qualification in 2020 (pages 12 to 14). In 2020 he applied for the 10% cash benefit but the application was declined by the respondent due to the fact that he cited an incorrect collective agreement (Resolution 5 of 2014).
10. He re applied for 10% once off cash bonus on 22 June 2021 in terms of Resolution 1 of 2014 but his application was declined. He then consulted with Ms. Kolwana, the Deputy Director of Human Resource Development who advised him that he does qualify for the cash benefit but he was never paid until he lodged a grievance on 19 August 2022.
11. Clause 4 of Resolution 1 of 2014 provides:

4. "NOTING

4.1 Clause 7 of PSCBC Resolution 1 of 2012 provides that:

4.1.1 The Employer will recognise the attainment of an improved qualification which is related to the employee's scope of work and enhances the employee's performance and the service delivered by the employee;

4.1.2 Upon attainment of the said qualification, the employee will receive a once off bonus of ten percent (10%) of his or her annual salary notch, provided this does not exceed the minimum notch of salary level 8, payable with effect from 01 January 2013....". (Page 19 of the bundle A).

12. The applicant further testified that he does qualify for the once off 10% cash benefit in line with clause 5.1 to 5.3 of the Resolution as his qualification has been obtained through a recognized institution (UNISA) registered with the Department of Higher Education
13. Under cross examination, the applicant testified d as follows:
14. He decided to pursue studies towards Bachelor of Law because there is no growth in his section. When it was put to the applicant that the qualification is not related to the scope of his work and does not enhance his performance and service delivery, his response was that he wanted to develop himself as LLB fits in all areas in the department.
15. The applicant further stated that he works in debt management unit and he can advise his manager on how to recover monies from debtors.
16. Under reexamination, the applicant stated that there are legal issues to be dealt with in his unit.
17. In closing, Mr Kilian argued as follows:
18. The applicant's claim emanates from the provisions of clause 4 and 5 of the Resolution. He is employed in debt management section and there are legal issues that are being dealt with. It is incorrect for the respondent's representative referred to the applicant's secondment application as it is not relevant to his (the applicant's) claim.
19. Mr Kilian finally contends that the respondent incorrectly interpreted the Resolution as the applicant qualifies for the 10% cash bonus.

Respondent's case

20. According to Advocate Tsipa's opening statement, the applicant does not qualify for the cash bonus. His (the applicant) interpretation of the Resolution is selective and incorrect.
21. The respondent's witness, Advocate Anele Sinethemba Tsipa testified as follows:
22. The applicant is employed as a State Accountant and he does not qualify for the once off 10% cash bonus.
23. The witness referred to clause 4.1.1 of Resolution 1 of 2014 which specifies that the improved qualification attained by the employee should be related to the employee's scope of work and must enhance the employee's performance and the service delivered by the employee.
24. The witness stated further that the applicant does not qualify for the cash bonus benefit as he does not work in the Legal Department. The applicant falls within the Financial Management and Accounting section
25. The witness made reference to the applicant's request for secondment to do articles of clerkship with State Attorney/Department of Justice which is prerequisite for admission as an Attorney instead of pursuing such within his unit (pages 11 to 18 of bundle B.
26. Under cross-examination, the witness testified that the applicant is currently working as a State Accountant and the improved qualification is not related to his scope of work and does not enhance his performance and service delivered by him. Different Directors may interpret the Resolution differently and this is why the applicant was never paid the cash bonus.
27. In closing, Advocate Tsipa argued as follows:
28. It is strange the applicant made a request for secondment in order to do articles elsewhere (Department of Justice) but did not make a request to be transferred to legal department of the respondent.
29. The respondent's representative further argued that the applicant's qualification does not relate to his (the applicant) scope of work. He finally argued that the applicant does not qualify for the 10% cash bonus and that his case must be dismissed.

Analysis of evidence and arguments

30. It is common cause that the applicant is employed as a State Accountant in Debt Management/financial accounting unit.
31. This means that the applicant falls within the Financial Management and Accounting section in terms of ANNEXURE "A" of the said Resolution (page 34 of bundle A).
32. Although it is the applicant's contention that his LLB qualification is relevant in his unit, under cross examination, he stated that he decided to study towards LLB because there is no growth in his unit and he can advise his manager on how to recover monies from debtors in future.
33. This to me is an indication of the fact that the qualification is not relevant to his scope of work and does not enhance performance and service delivered by him (the applicant) as stipulated in clause 4 of the Resolution.
34. I concur with the respondent's representative's contention to the fact that the applicant could not have requested secondment to another department if the qualification is relevant to his current job functions.
35. Based on the evidence that has been placed before me, I am satisfied that the respondent correctly interpreted clause 4 and 5 of Resolution 1 of 2014.
36. The applicant therefore, does not qualify for 10% once off cash bonus in terms of the provisions of clause 4 of Resolution 1 of 2014. His claim therefore fails.

Award

37. In the circumstances, I deem it reasonable to make the following award:

38. The respondent correctly interpreted clause 4 of Resolution 1 of 2014.

39. The applicant's claim is hereby dismissed.

40. I make no order of costs.



Ncumisa Bantwini