



GENERAL PUBLIC SERVICE
SECTOR BARGAINING COUNCIL



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ARBITRATION

AWARD

Panellist/s: K. Z. GARIKUE

Case No.: GPBC1821/2022

Date of Award: 24 August 2024

in the ARBITRATION between:

PSA obo V.M.M. More

(Union / Applicant)

And

NORTH WEST DEPARTMENT OF PUBLIC WORKS

(Respondent)



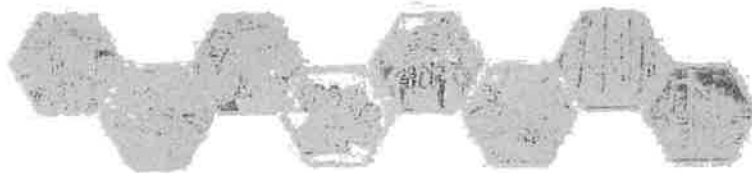
ARBITRATION AWARD

DETAILS OF HEARING AND REPRESENTATION

1. This is an arbitration award in terms of section 138(7) of the Labour Relations Act 66 of 1995 ("the LRA"), amended. This award is in relation to an alleged unfair labour practice dispute referred by PSA on behalf Ms Vallina Mmoni More ("the Applicant") to the General Public Service Sector Bargaining Council ("GPSSBC").
2. The arbitration proceedings were held on 19 April 2024 and concluded on 08 August 2024 at the Department of Public Works ("Respondent or Department"). The applicant was in attendance in all the days and was represented by Mr Albert Ramahoshi, a union official from Public Servants Association ("PSA"). The respondent was represented by Ms Gladys Malepa, its Labour Relations official in all the days.
3. The applicant's bundle of documents was marked as 'A' and the respondent's was marked as 'B'. B documents were admitted as evidence to the proceedings. Parties had agreed to send closing arguments on or before 16 August 2024 and they all complied. The proceedings were digitally recorded and the recording thereof will be retained by the Council.

ISSUE TO BE DECIDED

4. The issue turns on the alleged unfair labour practice (ULP) contemplated in section 186 (2)(b) of the LRA. I am required to determine whether or not the respondent subjected the applicant to an unfair labour practice relating to an alleged unfair disciplinary action short of dismissal. If I find in favour of the applicant, the applicant seeks the sanction to be withdrawn and to be compensated.



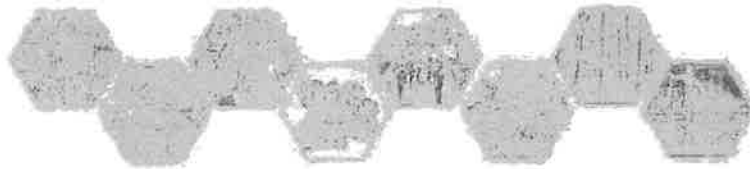
BACKGROUND TO THE MATTER

5. The applicant contends that the respondent treated her unfairly when she was issued with a final written warning for charges that were not clear to her. She wrote a letter seeking clarity from the respondent without any success.
6. The respondent contends that the final written warning was valid because the respondent was exercising its role with regard to discipline related matters. Accordingly, the reasons for issuing the applicant with a final written warning were validated.

SUMMARY OF EVIDENCE AND ARGUMENTS

Applicant's case

7. The applicant, **Ms Valentina Mmoni More** testified under oath and stated that she was called to receive a final written warning at about 17:00 here found on bundle A, pages 7 & 8 (A7&8). The HOD, Mr Kgantsi signed it on 22 September 2022 and the document was dated 13 September 2022. She read a paragraph as regards the allegations that were levelled against her on A7 as *..You, Ms V.M.M. More are being issued with final written warning for contravention of Supply Chain Management Policy.*
8. Subsequent receiving it, she started seeking for an advice because the allegations therein were not clear to her as it was for the first time that she experienced this kind of a thing. She submitted that she was then advised to appeal to the MEC about the final written sanction. Having received no response, she has referred a dispute to the Council.
9. She was surprised about the allegations because she does not even work at Supply Chain. She wanted to know what specifically she has contravened as per the allegation because the letter itself on A7, was lacking in detail. She confirmed that a document on A5 is a letter that she wrote to the

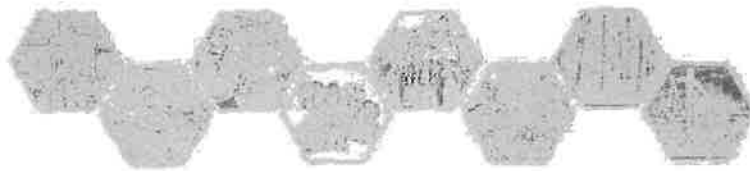


MEC seeking clarity about the allegation. She was then called to the head office and the Labour Relations officer asked her whether she received a final written warning:

10. Under cross examination, she confirmed that she did meet with Mr Tshekoesele, the investigator for her case. In their meeting, she was told that the investigation was about the Supply Chain. She could not understand her involvement in the investigation. She submitted that she is appointed as Deputy Director, Building Maintenance. Her department is the user of the allocated budget for infrastructure. They usually ask the supply chain to source a supplier.
11. In relation to this case, she submitted that there were complaints about snakes at a certain building and that they were instructed to fumigate that building. They then wrote a memorandum to request supply chain to source the service provider for that purpose. She submitted that the investigator spoke of 2 incidents during their meeting.
12. She denied that she was ever involved in the procurement proceedings. When she was told that she was involved in the procurement process in her capacity as an acting District Director at the time, she replied that those were news to her. She reiterated that she never received clarity about allegations that were levelled against her on A7.

Respondent's case

13. Gwendoline Maseng ('Maseng') testified under oath and stated that she is the District Director responsible for 7 key programmes. She submitted that she is the General Manager to give support to HR. Her understanding of the document about the applicant's allegation on R1 was that the applicant was reporting directly to her.
14. She further submitted that she was aware that the applicant was furnished that document in question, about the allegation. She was made to read the allegation as per para 2 of the document on A1. She explained the contravention that she had requested the supply chain to be investigated because it was malfunctioning.



15. She further submitted that they had received information that snakes were a problem at a certain building. They then had to deal with that problem. Supply chain process took place and was submitted to her for approval. She approved the payment after the service was rendered. Two months down the line, they experienced the same problem of snakes and she then had to approve like the last time.
16. When she was going through the approval process, she then realised that the service provider was still the same as the previous approval. She then called to check if the system was malfunctioning and found that the service provider who was approved was of the cheapest code. Her main problem was the same company being awarded a tender again.
17. She was asked by the applicant's representative as to how could the applicant be able to understand the supply chain policy. The response was that the applicant was the longest serving employee in the Ngaka Modiri Molema District. The witness added that the applicant has been a diligent employee who would pay attention to detail.
18. She submitted that the applicant have been serving in different supply chain committees. She confirmed that the applicant was a member of DBAC in 2020/21. She submitted that the applicant then left for quantity surveying. She further submitted that as the applicant was a DBAC member, she had attended training and workshops for all committees, therefore she was expected to be familiar with supply chain processes.
19. Under cross examination, she was asked to clarify the contravention as alleged on R1 and her response was that did not conduct the investigation. She submitted that she requested that the system be investigated because of malfunctioning. She clarified that their policy derives from the National Department.
20. The witness was made to read the letter addressed to the applicant from the MEC on R5 and asked whether it clarified the allegation against the applicant. Her answer was that the MEC would be better to respond to that because he signed on R6. She was made to read the hand written comments of



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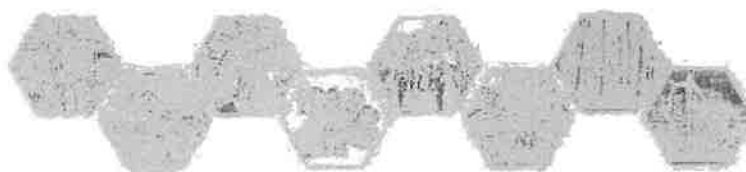
the MEC on R5 as...I need to be briefed on full details on the matter, signed and dated 08/12/22. She did not have a comment to that.

ANALYSIS OF EVIDENCE AND ARGUMENT

21. This is an arbitration award issued in terms of section 138(7) of the LRA with my brief reasons. All the evidence including the closing arguments as submitted by parties were considered when writing this award. Section 185 of the LRA states that every employee has the right not to be subjected to unfair labour practice. Section 186 of the LRA goes on further to explain what conduct by the employer constitutes an unfair labour practice.
22. It is common cause that the applicant had received a final written warning for an allegation as stated, *You are being issued with final written warning for Contravention of Supply Chain Management Policy* dated 13 September 2022. It is further common cause that the applicant had written or appealed to the MEC seeking clarity about the allegation. What is in dispute is that the applicant has not received clarity about what exactly she had contravened.
23. It then follows that the applicant had a duty to discharge the onus of proving that indeed there was an unfair conduct towards her when she was given a final written warning. The respondent had a duty to rebut any evidence tendered by the applicant. The applicant relied on how everything unfolded until she ended up referring her case to the Council and in summary is as follows:-
24. After receiving the final written warning, she was advised to appeal to the MEC to seek clarity about the allegation. She did not get any feedback from the MEC. The investigator with whom she met, did not explain her involvement in the procurement process. The investigator spoke of 2 incidents. The investigator was not even called by the respondent to explain or clarify the applicant's involvement.



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25. She did not deny that the respondent and herself as the Deputy Director, Building Maintenance were involved in the fumigation of a building because of snakes. She explained that their involvement was to ask the supply chain to source the supplier and it ended there.
26. The respondent in rebutting the applicant's allegation brought the direct supervisor of the applicant, Maseng to testify. It is my considered view that the respondent did very little to rebut the applicant's allegation of the alleged unfair conduct towards her in this instance. Her evidence in summary follows hereunder;
27. Maseng, the direct supervisor testified that she was aware of the applicant's allegation. She explained that the allegation was when she suspected that the procurement system was malfunctioning because she had found that the same service provider was used for the snake problem. To me, this does not explain the applicant's involvement in relation to the supply chain process.
28. The only thing she could say was that the applicant was the longest serving employee of the respondent. According to her, the applicant was supposed to be familiar with procurement procedures as she had served in DBAC committees and had attended training to that effect. This, again does not clarify the allegation in question.
29. Maseng further could not even clarify the contravention as stated on the allegation when she was asked to do so. She just submitted that she was not the one who did the investigation. She even referred to the MEC to be in a better position to answer whether his letter did clarify the applicant about the allegation.
30. It is tripe law that employees must be presented with charges that are clear to them so that they can be able to can respond thereto accordingly. In this case, I have found the allegation was not clear and the applicant went to a great extent of ascertaining clarity without success.
31. Based on all the above, it seems that there was no direct evidence implicating the applicant to justify the issuing of a final written warning. It is therefore my considered view that on a balance of



probabilities, the applicant has discharged the onus of proving the unfair conduct towards her. Even the MEC was not clarified, if you read his comment as, *I need full details on the matter.*

Relief

32. A relief sought by the applicant is that the final written warning be withdrawn and she be compensated for the unfair conduct towards her. In *NUMSA obo Masina v Cobra Watertech (2009 2 BALR 140)* the employee requested clarity of the charges given to him in advance of his disciplinary hearing. However, the employer refused to provide clarity. The arbitrator in that case therefore decided that, although disciplinary hearings are not required to conform to the procedures of criminal trials, accused employees are at least entitled to be informed of the charges against them with sufficient clarity. Due to the scantiness of the information concerning the charges that had been given to the accused employee, the arbitrator ruled that the employee's dismissal was both unfair and ordered the employer to pay compensation to the employee.

33. I am aware that given how much time has passed by since the final written warning was issued towards the applicant, that warning is no longer existing, however the respondent must expunge it from the applicant's employment records. Since the applicant did not suffer any direct loss when she was furnished with a final written warning, I find one month of her basic salary to be a just equitable compensation in this instance as a *solatium*. (R785 267.00 per annum) – R65 438.92.

AWARD

34. The respondent, Department of Public Works – North West, to pay the applicant a compensation equivalent to R65 438.92.

35. The amount thereof should be paid into the applicant's known bank account by the respondent on or before 15 October 2024.



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36. The respondent is ordered to expunge the final written warning from the applicant's employment records.

37. In the event of non-compliance with this award, the applicant may invoke the prescripts of section 143 of the LRA.

Name: K. Z. GARIKUE

(GPSSBC) Arbitrator