

EDUCATION LABOUR RELATIONS BARGAINING COUNCIL

Case: ELRC694-19/20EC

In the Matter Between:
PSA obo Mgaleli Africa

Applicant

And

Department of Higher Education & Training

Respondent

Report

Date of Hearing: 12 August 2020

Venue: Virtual Hearing
<https://zoom.us/j/92475472713?pwd=cnpTK2wrYm5BYnNKQjRuWXpqZGFzUT09>
Meeting ID: 924 7547 2713
Passcode: 291434

Attendance: As per attendance register / Screen shot of waiting room

Record: 2020-08-12 09.14.21 ELRC694-19_20EC
92475472713
The record will be forwarded separately

Applicant's Representative: Mr G Seakamela (PSA)

Respondent's Representative: Mr V Gidigidi

Nature of Hearing: Arbitration

Nature of Dispute: Unfair Labour Practice: S186(2) of LRA

Sector: Public: Higher Education

Outcome: Incomplete: Part heard.
The respondent raised an objection in limine as to jurisdiction and the nature of the dispute referred. After hearing the parties I issued an ex tempore ruling. Attached is my written ruling and reasons.

The matter then proceeded and the parties handed up documents Exhibit A1-A41 (Applicant) and R1-R30 (Respondent). Additional documents were also handed up.

NARROWING OF THE ISSUES

During opening statements, the parties narrowed the issues as follows:

Common Cause:

The applicant, Mr Afrika Mgaleli, PERSAL No. 11840013, is a post level 5 Educator appointed in terms of the Employment of Educators Act as Student Support Manager, Ikhala TVET College, Queenstown.

The applicant acted in the post of Deputy Principal: Registration, Ikhala TVET College, for the period 01 09 2015 to 30 12 2019. The post of Deputy Principal: Registration, Ikhala TVET College was vacant

In Dispute:

Whether the applicant is entitled to an acting allowance, as set out in ELRC Collective Agreement 8/2001, for acting in the post of Deputy Principal Registration Ikhala TVET College for the period 01 09 2015 to 30 12 2019

Whether the Council recommended the acting appointment¹

Whether the post in question was one level higher²

Whether the applicant was appointed to act in the post in question³

Whether the post was funded⁴

Whether the applicant acted for more than 6 weeks⁵

Whether the applicant's relief could extend to more than a Maximum period of 12 months⁶

Relief: The applicant seeks relief in the amount of R 257 437.00 as set out at A26. The respondent disputes that the applicant

¹ It is the applicant's case that there were extraordinary circumstances. The respondent disputes that there was any recommendation or that there were extraordinary circumstances

² It is the applicant's case that the post was one level higher. The respondent's case is that from 01 09 2015 to 30 08 2017, the post was at level 11 i.e. the same level as the applicant's post, and that as from 01 09 2017 the post was at level 12.

³ The applicant's case is that he was appointed in terms of letter dated 01 09 2015 from the Principal of Ikhala TVET College, Adv. N Tom (A29). The respondent's case is that the Principal Adv N Tom was not authorized to appoint and not delegated.

⁴ The applicant's case is that the post was funded. The respondent's case is that the post was never funded.

⁵ It is the applicant's case that he acted for more than 6 weeks and until the post was filled on 01 01 2020 (i.e. 01 09 2015 to 30 December 2019). The respondent disputes that the applicant was appointed to act in the post

⁶ The applicant claims entitlement to an acting allowance for the full period (01 09 2015-30 12 2019) as his case is that he was appointed until the post was filled. The post was filled on 01 01 2020. The respondent disputes this. The respondent's case is that the appointment of the applicant was not authorized and the Principal did not have any delegation to make such acting appointment. No appointment was ever renewed. It is further the respondent's case that from 01 09 2015 to 30 08 2017, the post was at level 11 and that no acting allowance would accrue and the post was upgraded to level 12 with effect from 01 09 2017

is entitled to any relief on the basis as set out above

The applicant requested the matter be adjourned for him to be able to peruse the respondent's documents, as these documents were only made available today. The respondent did not object and I adjourned the matter by agreement with the parties to 26 October 2020, the ELRC to furnish the necessary zoom link for the hearing.

Further Process:

Arbitration on 26 October 2020. Kindly forward the necessary zoom link to the parties.

Claim Invoice No.

Inv. No. 003572, Claim PORD011693 herewith

Date of Report:

12 August 2020

A handwritten signature in black ink, appearing to read 'J.C.R.', is positioned to the left of a vertical line that extends upwards from the signature area.

John Cheere Robertson
Panellist