

**GPSSBC
ARBITRATION AWARD**

PANELIST: Dr R. McCann
CASE NO: PSGA 2836
DATE OF AWARD: 03 DECEMBER 2003

IN THE MATTER BETWEEN: Mr M.S. ZUMA
AND
DEPARTMENT OF CORRECTIONAL
SERVICES

UNION/EMPLOYEE REPRESENTATIVE: MR M.S. ZUMA REPRESENTED HIMSELF

APPLICANTS ADDRESS: MR M.S. ZUMA
DEPARTMENT OF CORRECTIONAL
SERVICES
C/O SEVONTEIN PRISON
ELANDSKOP, PIETERMARITZBURG

TELEPHONE: (033) 9261611
FAX: (033) 9261768

EMPLOYER'S REPRESENTATIVE: MR M.M. NDABA

EMPLOYER'S ADDRESS: DEPARTMENT OF CORRECTIONAL
SERVICES
ATTENTION: Mr MM NDABA
PRIVATE BAG X9126
PIETERMARITZBURG, 3201

TELEPHONE: (033) 3557345
FAX: (033) 3554274

DETAILS OF HEARING & REPRESENTATION

This matter was originally set down for as an alleged unfair labour practice for the 25th April 2003 at Sevontein Prison, Elandskop in Pietermaritzburg. An in limine ruling was then made in regard to this matter and it was then set down for a further arbitration hearing date on the 19th August 2003 at the same venue with the same representatives.

At this latter arbitration hearing date the respondent party requested a two-week period to determine whether this matter could be resolved as they had referred the issue to their Head Office for a ruling. Mr Zuma had concurred with this request. However taking into account the fact that this matter had already been going on for a considerable period of time and that there were some adjournments, I decided to hear the evidence-in-chief from both the parties. Thereafter I agreed to wait three weeks up to the 9th September 2003 to see whether the matter had been resolved between the parties. The parties had agreed to inform me if they had reached a resolution on or before this date. In the event of the parties not resolving the issue by the 9th September 2003 then I indicated that I would require both parties to submit written arguments to myself in order that the matter could be resolved through the completion of an arbitration award.

Subsequent to this there has been no significant progress in regard to this matter with the respondent's representative indicating to me that the matter is now with Head Office for their ruling. In the interim neither party has submitted written arguments as per the agreement and hence I have decided to proceed with this arbitration award in the absence of such written arguments because there has been more than ample opportunity time-wise for such written arguments to be forwarded to myself.

ISSUE TO BE DECIDED

The issue is one of alleged unfair labour practice with Mr Zuma claiming that he did not receive a notch increase after his Supervisor, Mr M.C. Mkhize, had told him that he had recommended him for a notch increase. Thus he is claiming that he was not fairly treated because of some administrative errors made by the Moderating Committee. Hence he is seeking that he be given his notch increase to the second notch retrospectively to the 11th May 1999.

The respondent party claimed that this is a matter relating to remuneration and hence fell outside of the definition an unfair labour practice as per the Labour Relations Act 66 of 1995. Hence the respondent party claimed that the GPSSBC does not have the necessary jurisdiction to hear this matter.

Therefore the issues to be decided are as follows:

1. whether the GPSSBC does or does not have the jurisdiction to hear this matter as an unfair labour practice; and
2. in terms of above if it is found that the GPSSBC does have the jurisdiction then to decide whether or not an unfair labour practice as defined in the LRA had been committed by the respondent party in regard to the applicant.

SURVEY OF EVIDENCE AND ARGUMENTS

EMPLOYERS SUBMISSIONS

The respondent's representative submitted that he had studied the documentation and had found that one of the highest Managers in the area had recorded that the applicant should be given a notch increase – this was Mr Stewart, the Area Manager.

The respondent's representative had then spoken to the Deputy Commissioner, Mr Taljaart, who is the Acting Director of Corporate Services. He had informed the respondent's representative that the matter had been referred to Head Office for final determination. In this regard he submitted that because years had gone by Head Office had the sole jurisdiction in dealing with issues pertaining to previous years. Hence he said that the matter was in the hands of Mr Fourie of Head Office Personnel at the time of this arbitration hearing.

He said he would be able to give the applicant a response in fourteen days and it was the respondents intention to settle this matter in the most amicable way. However because the one who recommended cannot sign the agreement the matter had to go to Head Office to get a final decision.

EMPLOYEE PARTY

Mr Zuma stated that he was a member stationed at Servontein Prison since 1979.

His complaint was in regard to his recommendation for a second notch increase which he said was due in 1999. Thus he said he was not satisfied about the way his assessment had been done concerning his recommendation of the notch increment.

In this regard he said Mr Mkhize together with Mr Walton had informed him that he was one of those recommended to be rewarded for a second notch during the year of 1999. In this regard he wanted to know whether he was recommended or not because no one had called him to sign any papers to make him clear of whether he had passed or failed to get his notch.

In this regard he also submitted the investigating report from Mr P.J.N. Bester, an Investigating Officer with comments by the Head of Management Services and the Area Manager Attached (see Exhibit A from the applicant party).

In closing he said he was a member working in the Prison and a taxpayer. Because he had a big family and some of his children were in University he required the notch increase.

ANALYSIS OF SUBMISSIONS

At the time that I made the original in limine ruling on the 28th July 2003 pertaining to the jurisdiction of the GPSSBC to hear this matter I made reference to a previous in limine ruling made by Mr N. Matthee, panelist of the GPSSBC where he ruled that the Bargaining Council does have the jurisdiction to arbitrate this dispute because it fell within the definition of a "benefit" as contemplated by the Labour Relations Act 66 of 1995.

However, subsequent to this ruling being made it has come to my attention from other cases dealt with that a merit award is in fact not a benefit but is in fact apart of remuneration. In this regard three previous cases have relevance. The first of these matters I refer to are Schoeman and another versus Samsung Electronics SA (PTY) Ltd heard in the Labour Court – Johannesburg, with the judgement date being the 10th June 1997 under case number J154/97. This matter was before Judge Revelas. In this matter Judge Revelas held that remuneration was different from "benefits" which was something extra apart from remuneration.

The second case was that of Nawa and another versus the Department of Trade and Industries, Labour Court – Johannesburg case number J343/97, before Acting Judge Landman. In this matter Acting Judge Landman set out that in regard to an unfair labour practice the new Act did not provide for a general unfair labour practice definition. Hence an employee alleging an unfair labour practice must show that it falls within the terms of a residual unfair labour practice definition. In this regard reference was made to the definition of an unfair labour practice which is found in Part B of Schedule 7 of the original Labour Relations Act 66 of 1995. Thus item 2(1)(b) reads "for the purpose of this item, an unfair labour practice means any unfair act or omission that arises between an employer and employee involving: (b) the unfair conduct of the employer relating to the promotion, demotion or training of an employee or relating to the provision of benefits to an employee".

The third case referred to in this regard is a GPSSBC (case number PSGA 2667), jurisdictional ruling made in regard to the case of FA Mbanjwa versus the Department of Correctional Services made by Advocate C.J. Rheeder on the 24th June 2003. In this ruling Advocate Rheeder, as the GPSSBC Panelist, ruled that the failure of the employer to grant an employee a merit award or increase in salary was in fact a matter of remuneration and hence fell outside the jurisdiction of the GPSSBC to arbitrate such a dispute.

In considering the above cases I conclude that a merit increase is not in fact a benefit but instead forms part of an employees remuneration. Remuneration in terms of the definition of an unfair labour practice in the Labour Relations Act 66 of 1995 is not part of such a definition. Hence consequently I have concluded that the GPSSBC does not have the jurisdiction to arbitrate the dispute referred to by the applicant as it has been referred as an unfair labour practice and a merit award does not fall within the definition set out by the Act in terms of what is included within such a definition of such an unfair labour practice. As a consequence it is therefore my finding that the GPSSBC does not have the jurisdiction to hear this matters. Consequently I therefore rescinder my previous ruling made on 28 July 2003 and am replacing it with the following ruling.

RULING

1. The previous in limine ruling made by myself in regard to jurisdiction pertaining to this matter dated the 28th July 2003 is rescinded with immediate effect.
2. The ruling referred for arbitration by the applicant to the GPSSBC does not fall within the definition of an unfair labour practice as per the current Labour Relations Act 66 of 1995.
3. The GPSSBC does not have the jurisdiction to arbitrate this dispute referred by the applicant.

DR RJT McCANN
PANELLIST