

ARBITRATION AWARD

Panellist/s: Francois van der Merwe
Case No.: PSSS244-03/04
Date of Award: 4-Aug-2004

IN THE DISPUTE PROCEEDINGS BROUGHT BEFORE THE SAFETY AND SECURITY SECTORAL BARGAINING COUNCIL

CASE NO: PSSS244-03/04

In the matter between:

F M KEKANA

APPLICANT

and

SOUTH AFRICAN POLICE SERVICE

RESPONDENT

PROCESS REPORT AND JURISDICTIONAL RULING

1. The matter had been set down for con-arb on 3 August 2004 at 09:00 at Johannesburg.
2. Both parties were present. I explained the nature and purpose of the proceedings to the parties.
3. The applicant was represented by Mr K Moabelo, a trade union representative, and the respondent by Ms Mahloromela, from the legal department.
4. The respondent handed up a bundle of documents.

Conciliation

5. The parties indicated that it would not be possible to settle the matter. With their agreement. I noted that attempts as settling the dispute through consultation had failed.

In limine

6. The respondent then raised a point in limine, saying that the dispute was not arbitrable, because it concerned a salary issue and not a promotion.
7. The applicant opposed the technical objection, saying the dispute had emanated from a promotion, although she was essentially dissatisfied over the employer's recovery of alleged overpaid salary.
8. I allowed both parties to fully state their case. In a subsequent discussion between the representative and myself the issue of jurisdiction was fully canvassed.
9. I reserved my ruling, and having again considered the documentation and the issued and arguments raised, I rule as follows:

Issue to be determined

10. The issue to be determined is whether the SSSBC has jurisdiction to arbitrate the dispute as referred by the applicant.

Analysis and reasoning

11. It is trite that I can only arbitrate unfair labour practice as define in the Labour Relation Act, 1995. One of these would be a dispute around benefits or promotion or demotion. It is trite furthermore that dispute purely or essentially about remuneration, salary due, ect, are not arbitrable they do not involve benefits.
12. In this present matter the applicant has referred a dispute about "unfair labour practice – benefits". In the written description of the dispute she state that once she applied for promotion to senior administration clerk grade 2 from senior administrator clerk grade 1, she was informed that there had been an earlier administrative error, and she had to repay an amount of some R17 052,00. to the employer.
13. From her explanations to me, it become clear that she was really aggrieved over the fact that the employer was recovering an alleged over-payment from her apparently the result of an earlier incorrect adjustment to her salary.

14. The standard referral form of the SSSBC makes it clear that an unfair labour practice around benefits excludes "salary issues/ leave pay/ transfers".
15. The question I need to determine really is whether the applicant's dispute concerns a benefits rather than a salary or remuneration issue. Alternatively whether the dispute for example concerned a promotion or demotion – there is reference to promotion in the handwritten portion of the referral form.
16. Having heard the explanations of the parties, and considering the common cause facts. I am of the view that the dispute essentially evolves around the overpayments of salary and what the applicant believe is the unfair recovery therefore by the employer. Moreover I have not been referred to any specific service benefits which the applicant is being denied, or which has been prejudice in one or the manner, because of the recovery of the over-payment.
17. In addition, should there be a causal connection between a promotion during 1998 or 1999 from administration clerk to senior administration clerk on the one hand and the over-payment on the other hand, it remains abundantly clear that the real dispute is not around unfair non-promotion or demotion, but rather an administration error which affected that salary paid to the applicant. In other words. Even if it can be said that the applicant's dispute/ grievance has to some extent arise from a promotion, the causality test would show that the "problem" or the cause of dissatisfaction arising was not the promotion, non promotion or demotion, but rather over-payment of salary.
18. Even if one bears in mind that the whole problem came to light, i.e. management realized the over-payment, when the applicant applied for promotion from senior administration clerk grade 1 to senior administration clerk grade 2, the parties were ad idem that moving from grade 1 to grade 2 in this instance was not a typical promotion, but rather a salary progression, as the duties and responsibilities of the post did not change.
19. My conclusion is that the dispute does not concern benefits, but rather remuneration, and also that there is no sufficient link or causal connection between the recovery of the over-payment and an unfairness around non-promotion or demotion.
20. In the foregoing, I am satisfied that I do not have jurisdiction to arbitrate this matter.

Ruling

21. The SSSBC does not have jurisdiction to arbitrate this matter

22. There is no order as to costs.