



ARBITRATION AWARD

Panellist/s: Aubrey B Ngcobo
Case No.: PSSS85-05/06
Date of Award: 7 December 2005

ARBITRATOR'S AWARD

H FOURIE / SAPS

CASE NO: PSSS 85-05-06

1. REPRESENTATION OF THE PARTIES

The arbitration was held in Durban at the Servamus Building on the 12th of July 2005 and on the 8th of September 2005. On each occasion the Respondent was represented by Mr S. S. Majola. On behalf of the Applicant appeared an official from her trade union Mr Kubheka.

2. ISSUE TO BE DECIDED

The Applicant accused the Respondent of committing an unfair labour practice in the sense that she was not appointed to the post of Chief Clerk in Newcastle. She wanted to be compensated.

3. BACKGROUND TO THE DISPUTES

The Applicant was employed in 1976 as a clerk and is currently based in Newcastle where she is a Senior Clerk Grade 3. It was common cause that the position for which she applied and is currently engaged in a dispute over is the post Chief Clerk which was awarded to Mrs Webber.

4. SURVEY OF THE EVIDENCE AND ARGUMENT

The Applicant testified that on one occasion she received a telephone call from the present incumbent to tell her that she, the incumbent, had been given the post. When she enquired into this matter at the office she was told to wait. In January 2004 she was told that she had not been successful. When she enquired into the reasons for her failure to be appointed in March such reasons were not forthcoming. She testified also that her name did not appear on the preferred name list. The Applicant testified as well that there was no ratification which was done by the area commissioner following the selection procedure as was required in terms of SAPS regulations. In her own evidence the person who was the most suitable candidate was S.M. Zwane and not Webber. He went on to say that whereas the incumbent has only grade 12 all the other candidates for the position had qualifications in addition to grade 12.

The Applicant also referred to the errors with regard to the addition of marks which were allocated to various candidates. For example the person who was ranked number 1 was given 94 marks when in fact she should have been allocated 90 marks. The incumbent who was given 90 marks should have been given 87 marks. The same applies to Ndlela who received 85 instead of 82.

During the proceedings the employee party demanded certain documents such as the post requirements, criteria, the questions which were put to the candidate as well their answers. Most of these documents were made available to the employee.

When the Respondent presented its own case it demonstrated that the ratification which the Applicant had complained about did actually take place on the 16th of January 2004. It transpired that the ratification panel did not concur with the recommendation made by the interviewing panel. The Respondent admitted also that the marks allocated to candidates were incorrectly added up.

In this regard it is important to point out that there were five panellist and each panellist was allowed to ask five questions. Therefore each panelist ought to have allocated, at a maximum, 5 marks. It appeared however that on page 141 of the bundle a certain S.M. Zwane allocated 6 scores instead of 5.

When the above consideration was taken into account it appeared that Zwane should have got 90 marks instead of 94, Webber should have got 83 and not 90, Ndlela's marks should have been 82 and not 85 while Joubert received 83 instead 80. Similarly Van Rooyen ought to have been given 78 marks and not 81 whilst Thabethe should have got 64 and not 76. Mthiyane received 77 and not the 80 that she was

allocated and finally Dlamini should have got 69 instead of 71. In this regard it was accepted that the marks which were allocated to the Applicant, following the adjustment which I have referred to above, would have placed her third on the list with 82 marks.

There was some argument as to whether previous experiences as well as affirmative action were considerations in this regard however none of this is relevant because a number of the candidates were African females just as the Applicant. The Respondent also disputed that marks were allocated for experience.

5. ANALYSIS OF THE EVIDENCE AND ARGUMENT

The Applicant is not suggesting that she was personally singled out for unfairness. She is not saying that she was the best candidate but was denied the position. She is also not saying that the person who is the incumbent was totally unsuitable for the position. Her argument seems to be that if the correct procedures had been followed to the letter and the scores had been added up correctly the position would not have been given to Webber. It seems to be common cause that the best qualified candidate was Zwane who was not given the job as a result of the ratification panel deciding otherwise. It appears that even if one takes into account the fact that marks had been adjusted in the absence of Zwane the Applicant would not have been the next in line. In other words she would not have been the automatic alternative.

I refer to the case of *Ndlovu vs CCMA* (2000) 21 ILJ 1653 (LC). In this case it was held that *"It can never suffice in relation to any such questions for the complainant to say that he/she is qualified by experience, ability and Technical qualifications such as university degrees and the like, for the post. That is merely the first hurdle. Obviously a person who is not so qualified cannot complain if they are not appointed. The next hurdle is of equal if not greater importance. It is to show that the decision to appoint someone else to the post in preference to the complainant was unfair...Certainly no evidential basis was placed before the arbitrator to suggest that in relation to any of the appointments there was not proper reason for the relevant departments to appoint the persons."*

In view of the above authority it is clear to me that even if one concedes that there were shortcomings in the procedure adopted by the Respondent the Applicant herself would not have been an automatic beneficiary if the shortcomings were corrected. Therefore the Applicant cannot receive the relief she is seeking.

6. **AWARD**

6.1 The application is dismissed.