

AT THE SOUTH AFRICAN ROAD PASSENGER BARGAINING COUNCIL

IN THE ARBITRATION

BETWEEN

TAWUSA obo Samuel J Pooe & PA Mofate

APPLICANT

AND

Bojanala Bus Services

RESPONDENT

ARBITRATION AWARD

CASE NUMBER:

RPNT889

DATE OF HEARING:

23 May 2011

DATE AWARD SUBMITTED:

29 May 2011

NAME OF PANELLIST:

Joseph Mphaphuli

South African Road Passenger Bargaining Council

Tel: 011 326 0473

Fax: 011 326 0465

First Floor, Sonsono Building

344 Pretoria Avenue

Randburg

2125



1. DETAILS OF THE HEARING AND REPRESENTATIONS

This is an award in terms of Section 138(7) (a) of the Labour Relations Act 66/1995 ("The Act") as amended. The arbitration hearing was held in terms of Section 191 of the Act.

The proceedings were conducted at the Respondent's premises in Rustenburg on 23 May 2011.

The proceedings were mechanically recorded.

2. ISSUE IN DISPUTE

Whether there was an unfair labour practice as contemplated by Section 186 of the Act, and the appropriate remedy, if any.

3. SUMMARY OF EVIDENCE

The Applicant Party applied for the payment of bonuses for the Applicants which the Applicants should have received on 30 November 2010.

4. SUBMISSIONS BY THE APPLICANT PARTY

Mr Mokobodi submitted that the Applicants were dismissed following a pre-dismissal enquiry. The dismissals were occasioned on 04 November 2010.

The Applicants appealed against their dismissals. The appeal hearings sat on 27 November 2010. The outcome of the appeal hearings were communicated to the Applicants on 02 December 2010.

To the best of his understanding the Applicants' dismissals took effect on 02 December 2010. Consequently the Applicants should have been paid their annual bonus as they had at that stage completed the twelve months qualifying period.

Reference to support his case was according to Mr Mokobodi the Respondent's policy and procedure manual.



It was also Mr Mokobodi's argument that the Respondent acted inconsistently in that other employees whose services were terminated earlier, that is October 2010 were paid their full bonuses following their dismissals.

Other employees whose dismissals were effected in November 2010 but before the end of the month were also paid their full bonuses.

5. RESPONDENT'S SUBMISSIONS

Mr Sibiya submitted that Mr Mofate was dismissed on 04 November 2010 and so was Mr Poee.

Mr Sibiya dismissed Mr Mokobodi's argument in respect of the date of termination of employment as unfounded and legally flawed.

Mr Sibiya argued that the bonus issue was regulated in terms of the employment contract whereby bonus was only payable on completion of a twelve months service period.

To the best of his understanding the Applicants did not qualify and were as such not entitled to a bonus at the time of termination of their services.

6. ANALYSIS OF EVIDENCE AND ARGUMENT

Clause 9.5 of the Applicants' employment contracts made the following provision

"At the discretion of the managing director bonus equal to one's salary may be payable at the end of November for each completed bonus year i.e. December to November the following year".

The employment contracts were supplemented by a Collective Agreement. Clause (16) 2 hereof provided that

"Employees who are in the service of the employer on the first day of December in any year shall be paid an amount equivalent to 8.333% of their annual basic pay"

Similarly Clause 1.1 of the Respondent's policy and procedure manual had a bearing on the matter.



Clause 1.1 read

“An annual bonus at the discretion of management be paid to permanent staff only if in the employment of the company on 30 November of each year”

Where it concerned the disciplinary code the Applicant Party only argued that the Applicants should be considered to have been in the service of the Respondent on 30 November 2010 as their appeal was not as yet determined.

The argument lacked credibility as it was not supported by the disciplinary or appeal code. Accordingly I could find no basis to arrive at the conclusion that indeed this was the case. Had this been the case the Respondent would have remunerated the Applicants from the date of their dismissals to the date of finalisation of the appeal hearings.

The Respondent's policy on bonus payment was written in a language that was clear and unambiguous. In terms hereof an employee must be in the service of the Respondent on 30 November of the year in question in order to qualify.

Failure by the Applicant Party to prove that the Applicants were employed at the critical date that is 30 November 2010 was on its own a factor favouring the Respondent's action not to pay the disputed bonus.

The Respondent did not however contest the Applicant Party's argument that other employees in a position similar to the Applicants' position were paid bonuses notwithstanding the fact that their services were terminated prior to 30 November 2010. There was no argument presented before me in respect of special considerations or independent and separate criteria that qualified the affected employees to receive bonuses. To this end I find that the Respondent's action amounted to an unfair labour practice in that there was no factual or legal justification to make a distinction between the case of the Applicant's and other employees in a similar situation.

7. AWARD

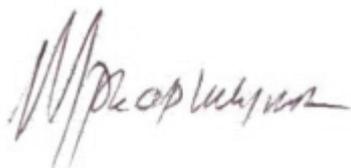
1. There was an unfair labour practice.
2. I order the Respondent to pay

2.1 Samuel J Poee a full bonus equivalent to his normal monthly pay.



2.2 Mofate P.A a full bonus equivalent to his normal monthly pay.

3. Payment must be effected on or before 30 June 2011.



Joseph Mphaphuli

Signed

CDR Arbitrator

