

SOUTH AFRICA / JUDGMENT

NEHAWU obo Mpho and Others v Northern Cape Provincial Legislature and Others (C199/2021) [2024] ZALCCT 11; (2024) 45 ILJ 1037 (LC) (22 February 2024) [2024] ZALCCT 11

COURT

Labour Court Cape Town

BEFORE

Rabkin-Naicker

CASE / FILE NUMBER

C199/2021

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THE LABOUR COURT OF
SOUTH AFRICA, CAPE TOWN

Not Reportable

Case

no: C199/2021

In

the matter between:

NEHAWU obo MERRIMAN
MPHO & 54 OTHERS
Applicant
NORTHERN
CAPE PROVINCIAL LEGISLATURE
First Respondent
COMMISSION
FOR CONCILIATION MEDIATION
AND
ARBITTATION Second
Respondent
LEON
JOUBERT
N.O. Third
Respondent

Heard:

15 November 2023

Delivered: 21 February 2024
(This judgment was handed down electronically by emailing a copy to the parties. The 22nd February 2024 is deemed to be the date of delivery of this judgment).

JUDGMENT

RABKIN-NAICKER J

[1] This is an opposed application to review an arbitration award under case number NC1165-2020. The Award made by the Commissioner was as follows:

“AWARD

61. The discretion of the speaker to grant management a once-off bonus of 8% is fair and justifiable. The speaker did not commit an Unfair Labour Practice against the respondent’s (sic) (NEHAWU’S) members, by not granting them the same bonus.”

[2] The Award records that at a pre-arbitration conference, the parties had agreed the following:

“3.1 Collective agreement with NEHAWU FOR 2019/2020 was concluded and implemented;

3.2 Management did not receive an annual increment for the financial year 2019/20;

3.3 The Speaker decided to give Management a once of (sic) of payment equivalent to 8% on the total package;

3.4 The basis of the determination of the Speaker was based on the fact that management did not receive a cost-of-living increase;

3.5 NEHAWU is the only recognised trade union at the Northern Cape Provincial Legislature through a recognition agreement entered into between the Northern Cape Legislature and National Education, Health & Allied Workers Union in 2002.”

[3] The following facts were put in dispute by the parties at the pre-arbitration conference:

“4.1 Was the determination of the Speaker to give employees on Band A to C a R10 000 once-off bonus and employees on Band D-E 8% of the total package, a once-off bonus; fair. In other words, did the Speaker exercised his/her discretion fair or unfair and arbitrary?

4.2 Did the employees B2-C5[1] received an annual increment for the financial year 2019/2020”. (sic)

[4] The union’s witness at the arbitration referred to the following letter which was sent to all employees below management:

“To: All employees below management

From: Ms. FP Ntsiko

Manager: Human Capital

Ref: 4.5.1

Date: 07 January 2020

ONCE OFF PAYMENT OF R10 000.00

The above-mentioned bears reference.

Subsequent to the conclusion of the collective agreement for 2019/20, the Speaker in consultation with the mandating committee took a resolution that a once off payment of R10 000.00 should be paid to all staff members below management, as an augmentation to the wage agreement concluded for 2019/20 financial year.

This was greatly informed by the fact that the wage agreement in its form resulted in different levels and means of salary benefits to employees across the board in Legislature.

This also serves to inform you that the R10 000.00 was paid with your December salary on the 13th of December 2019.

Should you require any further information or clarity, please do not hesitate to contact Ms FP Ntsiko the Manager Human Capital.

Yours faithfully

Manager: Human Capital”

[5] The Wage Agreement for 2019/2020 was signed and dated the 2 December 2019 before the above letter was dated, and was referred to in evidence (both oral and documentary) before the Commissioner, and includes the following clauses:

“3. *INCREASE*

3.1 Benefits of employees below management (A-C Bands) shall be increased to 40% of remuneration using the 60/40% (total cost to company) principle.

3.2 Employees from the A to B1 Band shall in addition to par 3.1 above, receive an increase of 5% cost of living on total cost to company.”; and

“5. *BENEFIT*

The Employer shall red circle benefits of employees who are beyond 40% of their benefit until equal to the other employees in the same sub-band”.

[6] As the evidence before the Commissioner reflects, the Management and Executive Management did not receive a salary increase for the 2019/ 20 Financial Year. A submission to the Speaker by the Manager of Human Capital entitled “Cost of Living Salary Increase

Adjustment for Employees and Management 2019/20” dated the 4 December 2019, (two days after the Wage Agreement with NEHAWU was signed), recommended that the cost-of-living increase be implemented retrospectively for all employees below management from the 1 April 2019, as well as the once off 8 % payment to management.

- [7] The Award and transcript reflects that the one Monmapule Norman Nosi for the applicant testified that the Speaker had not acted fairly and that some workers did not get the 5 per cent increase. He did however acknowledge that some employees were previously over remunerated in terms of benefits and for that reason did not receive a salary increase when the 60/40% principle was applied.[2] This was to align structures and create uniformity. The second witness for the applicants testified that he considered the

determination

by the speaker as biased and arbitrary. The synopsis of applicant’s case at the arbitration in the Award deserves recording:

“50. The employees represented by the applicant were all part of the 60/40% wage principle that was the result of wage negotiation between the union and respondent during 2019/20. The consequences of the enforcement were that some employees receive a more gracious increase than others. Those that were previously in advantage positions, and who received a higher salary than their counterparts, did not receive any increase at all because they were historically in a better salary position. The lowest -paid workers received an additional 5% increase, they were on A band to B1. All the workers below management received a R10,000.00 additional bonus.

51. Management did not receive an increase at all as there was not enough funds available in the budget. To accommodate management the speaker awarded to management an 8% once-off bonus.
52. It was contended that the speaker acted unfairly and in a capricious manner by awarding management the 8% bonus. It was further advanced that that all employees below management who did not receive the 5% were unfairly treated and that they are entitled to an 8% bonus, the same as management received...”
- [8] It is stated in the award that from the evidence of the two witnesses for the respondent, as well as the documentation that was presented, that the speaker made her decision “after the whole conglomerate of information supported by recommendations was tabled.” The documents before the Commissioner reflect this to be the case.
- [9] It is the Court’s view that given the contents of the Wage Agreement and the detailed submissions and recommendations made to the Speaker in the wake of same, the Commissioner’s decision must be upheld. The conduct of the Speaker cannot be considered arbitrary and/or unfair on the evidence at arbitration. I say this despite the myriad of review grounds submitted on behalf of the Union and its members. These included that the Commissioner misconstrued the evidence, the law on weighing the probabilities, the nature of the enquiry et al. None of these grounds stand up to scrutiny. While it is the case that the

award is not the most elegantly written, it deals with the evidence before the Commissioner and reflects that his ultimate decision was one of a reasonable decision-maker.

[10] In addition, the submission on behalf of the union that the decision by the Speaker was made before the collective agreement was concluded, is factually wrong, as reflected in my judgment above. In all these circumstances the review stands to be dismissed. Given the relationship between the parties I will not award costs.

Order

1. The review application is dismissed.
2. There is no order as to costs.

HRabkin-Naicker

Judge of the Labour Court of South Africa.

Appearances:

For the Applicant:

Marais Muller Henricks Inc

For the Third Respondent: State Attorney Northern Cape

[1] Referred to as Patterson Grade

[2] i.e. those positions 'red circled' as per the Wage Agreement

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Prepared on 14 October 2026 · Esheria