

ARBITRATION AWARD

Commissioner: L. MARTIN
Case No.: PSES 390 -05/06 WC
Date of Award: 18 NOVEMBER 2005

In the ARBITRATION between:

S.A.D.T.U. OBO Z.S. MOLO

(Union / Applicant)

and

WESTERN CAPE EDUCATION DEPARTMENT

(Respondent)

Union/Applicant's representative: G. ABRAHAMS _____

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Respondent's representative: M. KNOETZE _____

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PARTICULARS OF PROCEEDINGS AND REPRESENTATION

The arbitration took place at the offices of the Department of Education Western Cape Cape Town on 4 November 2005. The applicant, Mr. Z.S Molo, was represented by Mr. G. Abrahams, an official with SADTU. The respondent, the Department of Education Western Cape, was represented by Mrs. M. Knoetze, an assistant director labour relations.

THE ISSUE IN DISPUTE

The applicant alleges an unfair labour practice regarding promotion.

THE BACKGROUND TO THE DISPUTE

Mr. Molo is an educator at Khanyolwethu Senior Secondary School and earns an income of R6,200 (six thousand two hundred rand) per month.. He was so employed since 1996. In he applied for vacancy 0087 for which he was shortlisted and interviewed. He was ultimately not nominated for the post.

The applicant contends that the conduct of the respondent was unfair in that it appointed two additional members to the school governing body and had them ultimately serve on the interviewing committee which then was responsible for shortlisting and interviews.

The applicant demands that the process be repeated from the stage of shortlisting and interviews

SUMMARY OF EVIDENCE AND ARGUMENT

Zolile Senedor Molo testified under oath. As a consequence of 2 members of the school governing body being interested in the post meetings were eventually held to discuss educators from other schools to take the place of the other member as Mrs. Landingwe from their staff filled the other vacancy. To his knowledge there were no further meetings held to identify the second educator. When the principal then announced the educators appointed the staff raised concerns regarding their co-option.

At the interviews the committee was introduced to him. One of the co-opted members was introduced as the secretary. He did not know the role of the other. He knew this was unprocedural but did not raise any questions. He did however write a grievance letter in which he indicated his unhappiness with the two co-opted members as they should have been observers.

Under cross examination he said he did not know why Mrs. Landingwe was not present at the shortlisting and interviews. He said she could have indicated at a meeting that she was not interested in being co-opted. The other and unidentified co-opted member did not say anything at the interviews.

With reference to various legislation and the government gazette and the Personnel Administration Measures (PAM) the applicant argued that there had been numerous instances on non-compliance and that this rendered the process flawed and consequently the conduct of the employer unfair.

ANALYSIS OF THE EVIDENCE AND ARGUMENT

It is clear from the evidence presented at this arbitration that an attempt was made to co-opt additional members to the school governing body from the staff at the school. It is clear too that at least one of the educators on the staff of educators was co-opted viz. Mrs.

Landingwe. It is evident further that Mrs. Landingwe did in fact not participate in the process. Notwithstanding this the applicant did not allege any sinister reason therefore. I therefore accept that there was a legitimate reason for her ultimate non participation in the process. In fact the applicant himself suggested that she may have withdrawn of her own volition.

Furthermore in respect of at least the unidentified co-opted educator at the interview the evidence shows that there was no participation in the process from that person other than as an observer.

In consideration of the foregoing I find that the respondent had in fact endeavoured to achieve a fair process by co-opting the additional members as it did. The fact that the staff of the school was first approached to fill the vacancies that had arisen clearly demonstrates the bona fides of the respondent. In fact the result thereof, the co-option of Mrs. Landingwe, attracted no objection from Mr. Molo. It would in fact not be improbable to conclude that he in fact approved of her co-option. Her ultimate non-participation was most likely due to her withdrawing of her own volition. In these circumstances I find that it cannot be said that the respondent has influenced the nominations of the two co-opted educators to the school governing body or that there was an ulterior motive therefore. All in all I find that there was no malicious intention on the part of the respondent and that there was no prejudice suffered by the applicant as a consequence of the manner in which the co-opted members were nominated. In itself therefore I find that this cannot be said to have been unfair conduct on the part of the respondent.

The question raised by the applicant is of course whether the fact that there was no proper adherence to procedures as set out in the various legislation and agreements and the PAM is itself sufficient to render the conduct of the respondent unfair.

It is clear from the legislation referred to by the applicant that the sections pertaining to the procedure that must be followed are peremptory.

In terms of the PAM however an aggrieved party must first lodge a grievance. The applicant's testimony regarding a grievance which he lodged clearly pertains to the allegation that one of the 2 co-opted members on the interviewing committee had performed the function of secretary.

There is no evidence before this arbitration of a grievance having been lodged in respect of any other alleged discrepancy. It is also the demand of the applicant that the process be repeated from the shortlisting stage. It is also his evidence that he had in fact been shortlisted. In respect therefore of the applicant's issue pertaining to the co-opted member's performing the function of a secretary instead of being only an observer, I am of the view that this does not constitute a procedural defect as contended by the applicant. I am of the view that being endowed with the status of an observer means only that one cannot vote. An observer thus performing the function of the secretary at the interviewing stage does not render the process flawed or the conduct of the respondent unfair.

Furthermore the procedures adopted at the interview stage cannot be said to be in conflict with the guidelines set out in Annexure B of Collective Agreement No. 1 of 2002 -A Common Understanding of ELRC Resolution 5 of 1998 and Guidelines for Interviews. In particular, this collective agreement specifically authorizes the chairperson at the interview committee to allocate tasks to the member of that committee.

Regarding the other issues argued by the applicant there is no evidence of the applicant's having lodged a grievance in respect thereof. In this regard I find that the applicant ought to have referred those issues into the respondent's internal grievance mechanisms to be dealt with there.

Having considered all the evidence and argument presented at this arbitration I find that the process and therefore the conduct of the respondent was fair and that no unfair labour practice had been perpetrated by the respondent.

AWARD

This application for relief in terms of the provisions of the Labour Relations Act 66 of 1995 as amended is dismissed.

COMMISSIONER : L. MARTIN