ARBITRATION AWARD

Commissioner:	***Kuvonakala Pretty Chavalala***
Case Number:	***GATW3595-24***
Date of Award:	***16 February 2025***

In the arbitration between:

Goodnam Fezile Gomba
(Applicant)

And

Exigent Security Group (Pty) Ltd
(Respondent)

DETAILS OF HEARING AND REPRESENTATION

[1] This is the arbitration award between Goodman Fezile Gomba (hereinafter referred to as "the Applicant"), and Exigent Security Group (Pty) Ltd (hereinafter referred to as "the Respondent"). The hearing concerned failure to pay amounts owing referred to the CCMA in terms of section 73A of the Basic Conditions of Employment Act 75 of 1997 (BCEA). It was held at Tshwane CCMA offices on various dates and was finalised on 28 January 2024.

[2] The only applicant represented himself. The respondent was represented by Ms Bender form SAUEO an Employer's organisation.

[3] The respondent submitted bundles of documents which we marked Bundle R and the applicant's Bundle were marked Bundle A. The arbitration was held in English and it was manually recorded. At the conclusion of the matter, the parties had to submit written arguments and they were to do so on or before 04 February 2025. Such arguments were considered if sent.

ISSUES TO BE DECIDED

[4] I am required to decide if there are any monies owed to the applicant and if the respondent failed to pay such monies.

BACKGROUND TO THE ISSUES TO BE DECIDED

[5] The applicant was employed by the respondent effectively 27 October 2018. He was employed as a security official, Grade C. He was last stationed at Prinsproes Site, Pretoria. He was dismissed effectively from 20 March 2024.

[6] The applicant alleged that for the three years preceding his dismissal, he was being paid less than the PSIRA/ Private Security Collective agreement rates he and wants payment of the difference for the three years as a relief.

[7] The following were agreed to be common cause issues:
a. There was an agreement to pay less than the PSIRA/ Main Collective Agreement rates.
b. The agreement was at the backdrop of the looming termination of employment for operational reasons (retrenchments).
c. The applicant received and signed acknowledgement of receipt of Section 189(3) notice on 22 February 2022.
d. The applicant received and signed mutual agreement to mutually change the working conditions on 04 March 2022.

[8] The following were issues in dispute
a. Whether or not the applicant was forced to enter into the agreement to mutually change terms and conditions of employment.

SUMMARY OF EVIDENCE AND ARGUMENT

Respondent's case: Two witnesses were called and they testified under oath as follows:-
First witness: Jan du Toit

[9] The respondent does not owe the applicant any monies. After the outbreak of Covid-19, the company suffered financial setbacks and this had been communicated to the officers. This was because most of its clients (City Property in this instance) could no longer afford to keep paying the respondent at the agreed rates because of the financial setbacks resulting from the Covid-19 pandemic. In 2022, it became apparent that retrenchments were inevitable since the respondent intended to terminate its services to City Property. Notices in terms of Section 189 of the LRA were sent to the employees and the applicant signed acknowledgment of receipt of section 189 notice on 23 February 2022 (pg. 189-1 Bundle R).

[10] Various meetings were held across all sites informing the employees of the possible retrenchments. The applicant was party to all relevant meetings. The result of the meetings was that employees suggested amongst others, that in order to avoid retrenchments, the monthly salaries of the employees be reduced to the National Minimum Wage Act rates applicable at the time. They also suggested redeployment of officers to other regions as an alternative. A letter was written to all employees (Bundle R page 189-17) summarising the outcomes of the meetings. The employees that chose reduction of salaries had to sign a Mutual Agreement to Mutually Change Working Conditions (Mutual Agreement). The applicant signed the Mutual Agreement as appears on page 189-2 of Bundle R. The employees' contracts at these sites were fixed to a year and would be renewed only if the client renewed the contract with the respondent. For the subsequent years, the applicant signed renewals of the contract in the same terms and conditions of employment.

[11] The company did not impose the new terms and conditions but they were mutually agreed as a result of the section 189 process. The applicant worked for three years without even raising an issue because he understood the background of the salary changes. No one forced the applicant

to sign all documents shared, he did so in his free will and understanding in order to save his job just like all the other 78 security officials.

Second Witness: Josiah Lefaladi

[12] The applicant was involved in the section 189 LRA retrenchment process which was underway at the company. All employees received notices in terms of section 189 and were all invited to information and consultative meetings. Employees came up with suggestions to cancel Sunday and Public holiday rates, pay a lower rate or redeploy employees that were willing to move to other sites. Some employees did not agree to any of the terms and were retrenched. Those who remained signed mutual agreements or redeployment agreements. He was there in the meetings and would explain any complex issue in the employees' languages if the need arose.

[13] The applicant was present in the meetings and he willingly signed all documents. The people who did not want to sign any of the agreements did not do so. He denied that informing employees of a possible retrenchment is a threat.

The applicant's case

[14] He was not paid according to PSIRA rates and as a PSIRA registered guard, he is entitled to be paid according to PSIRA. The company is allowed to retrench employees but it can never be fair that the company be allowed to underpay its employees. There was no real need for retrenchment, this was used as a strategy because the respondent was initially not paying according to PSIRA rates, way before Covid-19. The employees fought this issue and they were paid according to PSIRA rates for a while. In 2022, the low rate payments reverted under the guise of retrenchments. Looking at his calculations, the company owes him around R110 000.00.

[15] He agrees that he signed all the documents already referred to by the respondent's witnesses and that there was indeed a retrenchment process that the employer was embarking on.

[16] He did not raise any objections because he was an obedient employee and respected his managers and he wanted to please them. He was threated because he was told of a possibility of losing his job.

[17] It was possible for him to work 2 (two) more years being unhappy with the salary, same as rape victims who keep quiet for years of abuse and only speak up later. He also saw that there are growth potential in the company and wanted to appease the employer so that he could be considered for the growth at the company.

ANALYSIS OF EVIDENCE AND ARGUMENT

[18] Section 189 of the LRA encourages engagement between employers and employees, facilitating the creation of alternatives to retrenchments. The employer and employee can change (by mutual agreement) the terms and conditions of an employment contract at any stage when the need arises. These changes cannot be implemented unilaterally (without the consent of the employee).

[19] In an ever-changing economic climate, operational reasons do not only relate to downsizing of the workforce, but also to restructuring the manner in which an existing workforce carries out its work. Restructuring entails a number of possibilities, including shift system duties; **adjusted remuneration**; and merging of jobs or duties. Generally, businesses that adapt quickly will survive and prosper. That is why the employer must consult with employees to arrive at some agreement to salvage jobs.

[20] It was agreed during narrowing of issues and testimonies of both parties that an agreement was reached by the respondent from a section 189 process to reduce the salary of the applicant and other 78 employees. The applicant's contention was that he did not enter into the agreement wilfully but was forced to do so. The respondent denied this contention.

[21] The applicant stated that telling someone that 'they may lose their jobs' amounts to threat. I do not agree with the applicant's version. From the testimonies of the two witnesses of the respondent, retrenchments were looming and the respondent was obligated to disclose a possibility of a dismissal in terms of section 189. This does not amount to a threat. The applicant also argued that he agreed to the new terms because of growth potential at the work place and worked under those newly changed conditions to appease the employer. In other words, the applicant confessed that he gave the employer the impression (pretended) that he was fully agreeing to the new terms without reservations. It thus cannot be correct that the applicant agreed to the new terms under duress.

[22] It is my finding the applicant was not forced to enter into the mutual agreement, he did so on his free will and not under duress. This agreement was necessitated by the impeding retrenchment. It is my finding that the applicant has not proven that he is entitled to any money. The applicant was paid according to the mutual agreement that was signed willingly between the parties.

AWARD

1. The respondent does not owe the applicant any monies.
2. The case against the respondent is dismissed.

Signed and dated at Pretoria on this 17 day of February 2025.

Kuvonakala Chavalala
CCMA Commissioner