

NTEU and UVPERSU

Members of the BEC met with Branch Executives from the majority union at the Free State University yesterday. The Free State University also has a multi-campus set-up. They are an independent union and functions at this university only. They are not militant, but aims to improve the interests of their staff in a constructive manner. They negotiate annually in a Joint Bargaining Forum. They have a sole agency shop agreement with the university. They have a performance management system on the cards, which is linked to workloads (academics) and a competency policy (professional staff). They face similar challenges of sustainability and lack of transparency.



23 Sept 2015




Is an employee on a fixed term contract entitled to a 13th cheque?

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Issue ~ Whether an employee employed on a fixed term contract is entitled to be paid a 13th cheque where his contract does not provide for one but there is a practice and procedure of paying a 13th cheque to all other employees?

Summary ~ The law does not tolerate differentiation between employees performing the same or similar work unless there is a lawful justification for this differentiation. Where an employer has adopted a practice of paying all employees a 13th cheque, it is unfair to refuse to pay a 13th cheque to an employee simply because he / she is employed on a fixed term basis.

IMATU obo Sebesho / Greater Tubatse Local Municipality (2015) 24 SALGBC 6.7.20, ~ Sebesho was employed by the Greater Tubatse Local Municipality as a VIP driver on a fixed term contract. The employee referred a dispute regarding an unfair labour practice to the relevant bargaining council contending that the municipality's failure to pay him a 13th cheque amounted to an unfair labour practice. The employee argued that even though he was a fixed term employee, he still enjoyed the same benefits as other employees of the municipality such as medical aid and pension fund contributions, a housing subsidy and travel allowance. The employee argued that the payment of a 13th cheque was an implied condition of service as it has been a long-standing practice of the municipality to pay all employees a 13th cheque. It was common cause that all other employees received a 13th cheque as provided for in their employment contracts. It was submitted that the employee ought to have received a 13th cheque as the municipality had, on previous occasions, extended such benefits to former VIP drivers.

Arbitrator decision ~ The arbitrator relied on section 198B(8)(a) of the Labour Relations Act 66 of 1995, as amended which provides that:

"An employee employed in terms of a fixed term contract for longer than three months must not be treated less favourably than an employee employed on a permanent basis performing the same or similar work, unless there is a justifiable reason for different treatment." The arbitrator held that "the law does not tolerate differentiation in the treatment of employees performing same or similar work." He held that the municipality had adopted a practice of paying its employees a 13th cheque, which practice had turned into policy. By refusing to pay the employee a 13th cheque, the municipality had committed an unfair labour practice. The arbitrator ordered that the employee be paid a 13th cheque.

Importance of this case ~ This case makes it clear that even if an employee's contract does not provide for the payment of a 13th cheque an employee may still be entitled to such payment. While the arbitration award does not make reference to the Employment Equity Act 55 of 1998, as amended ("EEA") its decision is bolstered by the fact that the recent amendment to the EEA provides that "A difference in terms and conditions of employment between employees of the same employer performing the same or substantially the same work of equal value... is unfair discrimination."

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