

A case Report on the Estimation of Contractual Damage Caused by a Health and Rural University, South Africa

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Abstract

Background: Contractual claims are mandatory for an employee who has either resigned/died or finished his or her contractual obligations. It is legally binding to an institution according to labor law.

Case History: BM was such a victim who has been admired nationally and internationally but dehumanized in his own university through the process of three malicious disciplinary enquiries, two suspensions, forensic auditing, and stoppage of salary and birthday bonus. He was not allowed to go to the forensic pathology laboratory despite of the fact that he was all along a forensic pathologist.

The harassment of BM became more rigorous in 2008, although he was victim long before that. The head of faculty was promoted later to a position of a university head. BM had an interest in research so he was publishing prolifically, but that disturbed the balance of the faculty staff as the rest of them contributed very little as per the report of the external assessor.¹ The harassment was not limited only to mental harassment but also at the same time financial losses to Mr. BM occurred. The Occupational Specific Dispensation (OSD) scale is supposed to be given to every health professional in South Africa who is working in the public sector and registered in Health Professions Council. The OSD scale started in 2009 but was not implemented for Mr. BM. Instead, Mr. BM, underwent a series of disciplinary enquiries. He was cleared all the charges and retired in 2018. The history of his research, contractual damages and other collateral losses are discussed in this report.

Conclusion: There is heavy contractual damage which the Department of health and rural university has to pay from 1996 to 2018. This damage refers mainly to the short fall of salary and bonuses along with financial losses related to research.

Keywords: *contractual damage, disciplinary enquiries, financial losses*

Introduction

Contractual damages can be calculated, and an estimation can be assessed as it is written in the contract of an individual as an employee. It is a black and white policy document of the University of Transkei.² Direct financial loss could be calculated by an accountant, but the loss in the form of pain and suffering caused by persistent malicious disciplinary

enquiries could only be assessed and estimated with the help of an actuarial consultant.³ Why does this rural university ranks so low on the list of institutions in South Africa ? The University of Cape Town is ranked 269 globally, followed by the University of the Witwatersrand at 292. Stellenbosch, KwaZulu-Natal, and Pretoria University are within the top five universities in South Africa. The University of

Johannesburg is ranked sixth. There are, however, no rural universities in the rankings in South Africa.⁴ The higher managers themselves are never serious enough about their work to fix the inherent problems of mal-administration at this rural university. There is a question mark against the functioning of this university administration.³ The usual answer they give is lack of funds.³

The heads of this university have displayed complete amnesia and turned a blind eye to ongoing corruption. An example of this corruption is where a Human Resources (HR) department clerk increased his own salary. The matter was put on the desk of the legally sound head of this rural university, but it was completely ignored. The issue was pointed out several times by a very professional senior HR manager to higher management, but nothing improved. The salaries of staff on the same rank varies from a one individual to another. The university is clearly working like a secretive society. In one case to HR about the salary of a professor who was less than a senior lecturer, but the letter remained unanswered. The breach in contractual obligation by the rural university led to serious damage for which compensated should have been paid. This case report is highlighting the contractual and non-contractual damages caused by the university and estimates the cost of these financial losses.

Case Report

This case report refers to BM who was employed jointly by both the health department as well as by the university with the former contributing more than 60% of his salary. He was under paid from 1996 as he served as a medical officer in the health department and an acting head of department in university.² He was appointed as a senior lecturer in the university in 2001, and then an associate professor leading up to the post of professor. He was running a department single-handedly as there was a scarcity of staff in this scare

skill specialty. He has undergone three disciplinary enquiries, two suspension, a forensic audit, stoppage of his salary and birthday bonus from 2008 to his retirement in 2018. He was a prolific publisher in his faculty and contributed almost 50% of the research articles all alone and 25% of the total university output.¹ This has generated professional jealousy and led him to face three malicious disciplinary enquiries.

The contractual losses were calculated with available and undisputable proofs. It is not easy to collect all the information as BM was working almost all alone in the Department without any secretarial help, but BM tried to collect as much as possible. Some claims were not a direct encashment in his contract such as the retracted or unsubmitted articles, but it could have generated more funds if this money was available to the researcher. The experience and productivity in research publications multiplied with age. The research office became a stumbling block to BM from 2010 onwards. It may be a verbal instruction from above and research office just followed it. A layer of permission started with the head of department, then went to the dean, then to the two clerks in the research office and then to the research director and to finance. Sometimes the physical distance between two clerks in the research office is hardly two meters but it takes almost two months to reach a claim. They also had some connection with a travel agent, so it became another way for blocking BM from attending a conference. A dozen letters were written to the research office and copies to higher management but there was no change.

Results

There are two research accounts in the rural university finance department. One is a personal research account (cost code 5565) which is in the name of the researcher and 60% of the amounts deposited come from DoE recognized publications. No funds can be released from this account without

his permission. This has been a practice going on since he joined the university since 2001. Second account is a departmental research account (cost code 5230: Publication FM), where 15% of the funds are deposits from publications as per the research policy documents.

The basic tool is banks statements, a copy of income and expenditure statements and research policy documents. Both bank account statements from 2011 to 2018 are available, and one can see all the deposits from university reflected in these accounts. All the expenditure supposed to be sign for by BM for his personal use and by the HOD before April 2015. In 2015 two new Heads of Department (HODs) were appointed after a merger with three other departments to become the Department of Laboratory Medicine and Pathology. Both the HOD were clearly told in their letter that the Department funds belonged to BM, as funds were generated by him. Therefore, BM has entitlement on all his Departmental funds.

When BM retired in 2018, he has entitlement to get cash funds as per the minutes of the senate. BM received a statement from finance which showed that they had misused his personal research funds without his knowledge. BM has only attended conferences and meetings, and purchased computers, books, and other electronic devices for his research activity. One hand the mangers were frozen research fund of BM, and other side utilizing his money without his permission from his personal research account. He has never paid for printing, and research material. If it is so, it requires his signature before it gets processed, and then this fund must be deposited into his account, which is not visible in his bank statements. BM informed the auditor of the university and a copy was sent to the head of the university. It was surprising that he did not care enough to investigate such a serious financial misappropriation.

Results

Table 1. Contractual damage

No.	Type of damage	Amount	Proof
1.	VC award 2006	R 10 000.00	1,2,3,4,8 also para 29
2.	Research cash payment	R467991.00	5,6,7 also paragraph 29
3	Unauthorized funds taken out from personal research account before BM retired	R628363.17	9
4.	60% of retraction of 12 articles (R 858 960)	R 515376	10, Bundle 10
5.	5 articles unsubmitted of R 357 900.00	R214740	11
6.	International Humanitarian award	USA \$ 5000 (R75000)	12 (buddle 6 research awards)
7.	CSIR	R80 000	13, bundle 10
8.	Unpaid claims by the research office (Table 2)	R738574.08	14,3 and 4 (Bundle)
9	Unpaid Departmental research claims 6 processed (Table 3).	R61018	15 (Bundle grievances)
10.	Departmental research	R113776.7	9,6
11.	Research awards pending 2007, 2008, 2009	R75000	1,9, bundle 12
	Total	R2979838.95	

Table 2. Unpaid claims submitted to research office between 2013-2018 (14 Bundles)

Date of submission	Amount	Proof
14.04.2013	R50 735	Lost, Bundle 10, 14
18.09.2013	R63464	Lost, Bundle 10,14
05.12.2011	R8622	Bundle 14
27.08.2014	9099.87	Bundle 14
11.10.2015	R13377*	Bundle 14
19.01.2016	R7315	Bundle 4
29.09.2015	42977.36	Bundle14
29.01.2013	4736.00*	Bundle 14
01.02.2017	24051.71	Bundle 14
13.02.2018	16000	Bundle14
03.02.2011	27183	Bundle 3
29.08.2011	55918	Bundle 3
26.01.2011	30249	Bundle 3
30.03.2012	34994.61	Bundle 3
26.05.2011	64922	Bundle 3
21.07.2007	11920	Bundle 4
29.01.2013	38401	Bundle 4
14.10.2013	46456.11	Bundle 4
17.10.2013	47737.67	Bundle 4
25.11.2013	46799	Bundle 4
04.08.2014	6859.04	Bundle 4
28.07.2015	1500	Bundle 4
27.07.2015	21833	Bundle 4
27.07.2015	2892.40	Bundle 4
27.7.2015	2892.40	Bundle 4
27.07.2015	20529	Bundle 4
16.03.2016	7315	Bundle 4
	R738574.08	

Table 3. Departmental research six claims processed but not paid 2014-2015

Date	Refunded department account	Comment
07.08.2014	R6859.04	Not visible in bank acc
28.07.2015	R1500	Not visible in bank acc
25.08.2015	R21833	Not visible in bank acc
29.07.2015	R2982.40	Not visible in bank acc
25.08.2015	R20529	Not visible in bank acc
16.03.2015	R7315	Not visible in bank acc

Discussion

The rural university inherited staff from the University of Transkei in a dual employment system which was complicated and seriously affected the lives of staff in both institutions in terms of pension and the morale of retired individuals. Pension is the pride of a retired person. It is linked to the salary, and if half the salary gets paid then the pension is reduced to half.⁵ Financial losses as a result of professional jealousy are under researched and therefore under-estimated. It happens in all professions and institutions. It manifests in different forms and patterns, ranging from simple hate to severe punishment such as disciplinary enquiries, suspension and ultimately termination. Universities have policies and protocols in place to deal with researchers and they are protected by the higher management but there are rural universities in South Africa that either do not have policy and protocols or do not adhere to them. In fact, they are getting benefits because of the absence of policy as there is no barrier to the university swallowing the funds.

BM was working hard thinking that research would lead to his promotion, but this was not the case in WSU. Most of the time people hardly get promoted.

It was very well conceded by the head of institution that the research award of 2006 was not handed over to Mr. BM, but no action was taken (Table 1). He was surprised by the fact that Mr. BM was also not paid cash payment of his personal research funds, and later these funds were utilized without his permission. It was unbelievable the head of the institution was claiming that nothing had happened. There were all kinds of misuse of Mr. BM's funds including research awards and other research money either not paid or it was used without his permission (Table 1). The assessor's report, issued in 2011, which made some recommendations, were put on the back burner.¹ Most of the staff who were appointed from the outside did not have the courage to speak out and this created a difficulty for those who raised their voices against the justice.

BM was appointed under the University of Transkei policy document as an acting head of department which state under section 9 (subsection 2a) the amount of additional remuneration that may be granted under this sub-rule shall in no case exceed the amount representing the difference between the salary actually drawn by the acting officer and the minimum salary of the post in which he has been appointed

to act.² The shortfall of salary must be paid by the health department as well as by the WSU in dual employment.⁶ Mr BM was running the department all alone except few years when some working assistance was given to him.

There is the payment of leave salary which was also very discriminatory.⁷ HR provided full leave salary to a few people but not to others. This fact only can be verified from the HR; the author does not have any proof of this. This kind of proof is not easy to get but it was told to the author by a responsible person in HR. It is complex and another report is needed to write about it. When someone is asked in HR about this discrepancy, they reply as per the instruction from above. HR is weak as was also highlighted by the external assessor during his inspection report submitted to the Department of Higher Education in 2011.¹ The HR has lost the personal file of BM. It is difficult to understand whether it was done purposefully, or it was simply a mistake, but the matter needs to get investigated by the higher management of the university. This is in fact an issue of serious negligence but still the higher management remains silent, and no action has yet been carried out.

All the claim and payments have gone into the bank account of Mr. BM. It is easy to find this out as Mr. BM can readily show all the bank accounts (Tables 2 and 3). There was a long witch-hunt against Mr BM regarding his accounts and payments, including establishing a forensic audit against him. The university appointed an agent from an audit company, and he looked everywhere to get some clue against Mr. BM but failed to confirm any misdoing by Mr. BM. Surprisingly, that agent has not even submitted any report as per now despite being asking by the research office.

This rural university is covering a wide area and is the only university for these students, who come from a poor economic background. These students

are very talented, and need a good medical school to complete their studies. It is unfortunate that those who need education the most get very little. The university managers must intervene and improve the system so that the university does not remain like Afghanistan with multiple organ failure as was stated by the external assessor in 2011.¹

Conclusion

Mr. BM was appointed under the university of Transkei (Unitra); therefore, he must abide by the rules of service. He is eligible to get his shortfall of salary from 1996, the day of his appointment as an acting head, until the day he retired from his job in the year 2018. This is a contractual legal requirement to pay his salary and bonuses as per the law. The health department is number one in this dual employment for the occupational specific dispensation (OSD) and overtime payment.⁷ The university is mainly liable for the damages cause by malicious disciplinary enquires, financial damaged caused by stoppage of salary, stoppage of birthday bonus, non-payment of leave salary and payment related to research funds which were generated by or awarded to Mr. BM. Because of the underpaid salary, his pension has also been calculated at a lower rate, and therefore in this regard he has been underpaid since his retirement, and thus this needs to be revised.

Ethical issue: The author has ethical permission for this research publication (approved project No. 4114/1999) from the Ethical Committee of the University of Transkei, South Africa.

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