



IN THE GENERAL PUBLIC SERVICE SECTORAL BARGAINING COUNCIL

Held in Mthatha

Commissioner: JR Mopp

Case No.: GPBC 2458-2018

Date of Award: 07 December 2023

In the Dispute between:

PSA obo. CB. George

(Union/Applicant)

And

Dept. of Rural Development and Agrarian Reform (EC)

(Respondent)

Applicant's representative: G Seakamela

Respondent's representative: VG. George



ARBITRATION AWARD

PARTICULARS OF PROCEEDINGS AND REPRESENTATION

- [1.] This matter was set down before me at the Respondent's premises in Mthatha on the 01 August 2023 on the basis that there were prospects for the parties to settle the matter, on the day of the hearing prospects of the settlement broke down and proceeded with arbitration on the 04 October 2023, the parties closed their cases after evidence and arguments were presented and natural justice was dispensed and the matter was subsequently concluded.
- [2.] The Respondent who was represented by V. George had no witnesses to call because almost all of them had left the department, some had already retired and some were even deceased, she only presented documentary evidence to substantiate her case. The Applicant was represented by G.Seakamela from the trade Union PSA. She had testified under oath to substantiate her claim and also had a bundle of documentary evidence that was led.

THE ISSUE IN DISPUTE

- [3.] I have to determine whether the Respondent has committed an Unfair Labour Practice concerning benefits in terms of section 186 (2) of the LRA.

BACKGROUND TO THE DISPUTE

- [4.] In the previous dispensation prior to 1994, there was what can only be described as a job evaluation called Human Resources Operations Project Team (**HROPT**) and as a result of that in a meeting, a resolution was taken named circular **HRM 9/11/2/1** that the salary positions would be revised and



arrears calculation of the salary was made and implemented and there would be an increase in salary.

[5.] The suspension of the implementation of the HROPT / Judge Browde-White Commission findings where an audit of the job evaluation and an interim court order findings indicated on the 18th of April 2011 by the Office of the Premier (EC) throughout the Province, in the spirit of uniformity pending finalisation of the litigation within the Department of health be supported,” as stated by the memorandum that was sent out by the Director General of the Department at the time.

[6.] The Applicant wrote to the Respondent on the 12 November 2013 to intervene in the rank promotion that was not affected. The Respondent replied to the letter on the 11 September 2014 and indicated that after extensively analysing the Applicant's personal file and thereafter further audit was conducted through the HROTP on her rank and position and the findings were that she was overpaid and that she was not due for any further rank promotion and that is how the dispute commenced.

[7.] It is also worth noting that the Applicant is no longer in employment, she retired in December 2022 and at the time of retirement held the position of a Chief Industrial Technician.

SUMMARY OF EVIDENCE AND ARGUMENT

The Applicant's case

[8.] The Applicant argues that she was promoted to the rank of Senior Draughtsman, but her promotion was not implemented since there were some investigations which were conducted by the Commission into irregular promotions which were found by the Department.

[9.] The evidence that was led by the applicant was an amendment to the P.S.C. circular NO.7 of 1993 promoting her from Draughtsman to Senior Industrial Technician and recalculating her salary upwards, revising her salary and designation.



- [10.] Furthermore, there has been a recalculation of arrears salary in another circular dated 17 December 1997 namely HRM 9/11/2/1 confirming the promotion, but it was never implemented throughout her time within the Public service.
- [11.] The Applicant further testified under oath that there had been prior approval from Treasury obtained in a document dated 24 April 1994 that should have effected her promotion, but it was never implemented.
- [12.] When the job evaluation was conducted which is called HROTP, job qualifications were not a deciding factor in whether one can be promoted but the purpose was for the public servant employees from the Bantu stance areas be put on par with its R.S.A counterparts.

The Respondent's case

- [13.] The Respondent argues that the Applicant is not due for any promotion because she was appointed as a draughtsman and later promoted as a senior draughtsman and that her rank and salary progression thereafter was overtaken by the events of the establishment of a new Eastern Cape administration in May 1994.
- [14.] A further audit was conducted by the HROPT and it was found that the Applicant was overpaid because her rank should have been that of a Specialised Auxiliary Service Officer with effect from May 1994 based on her qualifications of Matric and 1 year certificate in civil Draughtsmanship.
- [15.] The Respondent contends that her job title of Chief Industrial Technician was not of their own making, but it was programmatically allocated to her by the PERSAL system in 1996 when that system went live and based on salary positions at the time and that position was not on the organogram of the Department.

Closing arguments

- [16.] Both parties submitted the closing argument on time.

ANALYSIS OF EVIDENCE AND ARGUMENTS



- [17.] I am required as a Commissioner in this arbitration proceedings to substantiate with brief reasons as to how I came to my conclusion in terms of **Section 138 (7) (a) of the Labour Relations Act**
- [18.] In making a determination I have to grapple with the evidence put before me, with the **law of evidence** is that part of the law that determines how facts are proven in a court of law or (in this case) a tribunal. Evidence as such refers to information that is available to ascertain the events that occurred.
- [19.] The above is fundamentally important because an arbitration is **de novo** proceedings and as an arbitrator, we have to weigh up the evidence that is presented before us. In this case, the Respondent chose to lead her case with documentary evidence without calling witnesses.
- [20.] Although documents have some value they are dead things and cannot be spoken for and there is not always proper context and the spirit for which they are drafted is not always known, I cautioned the Respondent about this and she indicated that she does not have anybody to testify to the documents she presented in aid of her case.
- [21.] The Applicant however testified under oath with an oral submission together with documentary evidence in aid of her case and I have given much more weight to that evidence for two main reasons,
- The oral evidence is in the form of a witness who was given “ **viva voce** “ testifying personally in the presence of all parties.
 - Everything that was said can be tested under cross-examination.
- [22.] In the case of **Assmang Ltd (Assmang Chrome Dwarsriver Mine) v Commission for Conciliation, Mediation and Arbitration and others [2015] 6 BLLR 589 (LC)** the Labour Court has considered what it means to discharge an onus on a balance of probabilities, the documentary



evidence was not enough that therefore the employer had not discharged its onus and did commit an unfair labour practice and was in direct contravention of the **Sect 186 (2) of the LRA**.

[23.] In light of the evidence that was presented before me, on a balance of probabilities I make the following Award in terms of **Section 193 (c) of the LRA**

AWARD

[24.] I order the Provincial Department of Rural Development and Agrarian Reform based in the Eastern Cape to pay the Applicant a once-off payment of the sum total of R 35 694.00 (thirty-five thousand six hundred and ninety-four rands) as compensation on or before the 28 February 2024 subject to all statutory deductions.

GPSSBC Commissioner: **JR. Mopp**

Signature:  _____