



GENERAL PUBLIC SERVICE
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DEFAULT ARBITRATION AWARD

Panellist/s: **Mandlenkosi Welcome Mini** _____
Case No.: **GBPS1268/2022** _____
Date of Award: **27 November 2023** _____

In the ARBITRATION between:

_____ **PSA obo Mandla Vincent Matsane** _____
(Union / Applicant)

and

_____ **Department of Correctional Services** _____
(Respondent)

Union/Applicant's representative: _____
Union/Applicant's address: _____

Telephone: _____

Telefax: _____

Respondent's representative: _____
Respondent's address: _____

ARBITRATION AWARD

DETAILS OF HEARING AND REPRESENTATION:

1. The arbitration hearing took place on the 23 November 2023 at the Department of Correctional Services, 66 De Beer Street, Lydenburg. The Applicant Mr. Mandla Vincent Matsane appeared, and was represented by Mr. JF Heyneke. The Respondent, Department of Correctional Services failed to attend the proceedings. The Applicant submitted a bundle of documents which was admitted and marked bundle "A".
2. The Respondent was notified of the set down for a Con/Arb process on the 18 October 2023 via the Respondent's email address. I was satisfied that Respondent was properly notified and therefore proceeded in default in terms of section 138(5)(b)(i) of the Labour Relations Act 66 of 1995 (hereinafter referred to as "the LRA"). The hearing was recorded manually and electronically.

ISSUE TO BE DECIDED:

3. I am required to determine whether the Respondent committed an unfair labour practice, by not promoting the Applicant and make an appropriate order.

BACKGROUND TO THE MATTER:

4. The Applicant was employed by the Respondent on the 13 March 2005, as a correctional officer at the Lydenburg Correctional services and was on a level 5 salary scale. He alleged that the Respondent failed to promote to a correctional officer II, that is a level 6 salary scale, and he was qualified at the time for a promotion. This matter was set down for arbitration and the Respondent was notified, however failed to attend proceedings and the matter proceeded in default.

SURVEY OF EVIDENCE AND ARGUMENT:

Evidence

Mandla Vincent Matsane's testimony

5. The Applicant testified that he was employed at Lydenburg correctional services as a security officer /or correctional officer III, and that he has a three year tertiary qualification, he referred to page 19 of bundle "A", which he identified as a copy of his qualification. He stated that his qualification was submitted to the department at the time of his appointment, and it appears in his personal details at the departments system. He referred to page 16 of bundle "A" and identified the document as verification of qualification document dated 31 January 2006, he then read paragraph 7 of the

document in page 18 into record. He explained that CO that is mentioned in the document refers to correctional officer which is also referred to as security officer.

6. The Applicant testified that he was not adjusted even though he qualified by virtue of his qualification, and he does not know why his qualification was not recognized for promotion from CO3 to CO2. He referred to page 53 and 54 of bundle "A", he explained the difference between correctional officer grade II and correctional officer grade III, as one being a salary level 5 and the other being salary level 6. Applicant referred to page 57 to 58 of the bundle "A" paragraph 8.1 (c), identified the paragraph as one that deals with appointment requirements to different grades in the department of correctional services and read it into record. He then stated that he was in possession of an RVQ 13 qualification and that he knows of a person that is in the same position him that he works with, that has a primary teachers diploma which is also a three-year tertiary course and referred to page 59 as proof of the other persons qualification. He identified the colleague that also has a qualification similar to his as Mr Andrew Phasha.
7. He further stated that Mr Phasha was employed on the 01/09/2004, and he was adjusted to salary level 6 scale, and he has a primary teacher's diploma, whilst the Applicant has a secondary teacher's diploma, and these qualifications are of same value. Mr Phasha is currently doing the same work as the Applicant, however he was promoted to correctional officer II. The Applicant submitted documents with calculations of the difference between what he was paid and what he was supposed to be paid.

Lizelle Kleinhans testimony

8. The witness testified that she was a personnel clerk at the department of correctional services Lydenburg. She stated that education diplomas are generally recognized by the department and Mr Phasha's diploma was recognized, hence he was appointed on a grade II position.

Argument

9. The Applicant argued that he was qualified to be promoted to correctional officer II, as he was in possession of three year tertiary qualification. Further stated his colleagues were promoted due to their qualifications that are equivalent to his qualification. The Respondent had a policy that employee was to be promoted if they were in possession of a tertiary education RVQ 13 qualification. The Applicant should be promoted with backpay. The Applicant submitted documents with calculations of the amount of backpay to be paid.

ANALYSIS OF EVIDENCE AND ARGUMENT:

10. This matter is an application relating to an alleged unfair labour practice, every employee has the right not to be subjected to unfair labour practice. Section 186 (2)(a) of the LRA stipulates that unfair labour practice means any unfair act or omission that arises between an employer and an employee involving unfair conduct by the employer relating to the promotion, demotion, probation (excluding disputes about dismissals for a reason relating to probation) or training of an employee or relating to the provision of benefits to an employee.
11. The Applicants case was that the Respondent was supposed to promote him on the 13 March 2005 as he qualified by him being in possession of a three year tertiary qualification. He further referred to a document that he stated was addressing the issue of verification of qualification, which was signed by Human Resource manager being LR Bond. The document stated in paragraph 7, Recognition of qualifications can be divided into two categories, firstly; The first category is recognition through the adjustment of salary, where the person submitted a higher qualification which can put him in a better salary position (e.g. A CO3 who submitted an applicable RVQ13/NQF 5 or 6 qualifications can be adjusted to CO2).
12. It was the Applicant's case he submitted a qualification that was an RQV13, which ought to be recognized and that he was a CO3, therefore he qualified to be adjusted to CO2 as per the abovementioned category. He further stated that he submitted his qualifications and that on the Respondent's system it appears however he was never promoted. He called a witness that corroborated his version that his qualification is one of the qualifications that are recognized by the department of correctional services. Considering the above I am convinced that the Applicant has discharged the onus of proof that he was supposed and should be promoted to CO2.
13. In ***Monyakeni v SSSBC and others (JA 64/13) [2015] ZALAC 17*** (handed down on 19 May 2015) the LAC stated that there are two components to a complaint regarding a failure to promote an Employee as an unfair labour practice. The one relates to the procedure followed by the Employer. The other relates to the substantive merits, and it concerns the suitability of the candidate for promotion to the post in question.
14. In consideration of the above this matter relates more to the procedure of the Employer, as there was no vacant post, however the appointment requirements clearly states that a person with an RQV13 qualification qualifies to be appointed on a correctional officer grade II, and the Applicant was not

adjusted accordingly. The Applicant was supposed to be appointed as a correctional officer II, on the 13 March 2005, therefore this results in the implementation of the promotion to have retrospective effect, as he was qualified by then already. The Applicant was paid on a level 5 salary scale instead of a level 6 salary scale, therefore the Respondent owes the Applicant the difference in salary since his qualification to be on level 6 salary scale.

15. The Respondent was given an opportunity to present and defend this matter, however it failed to appear, which resulted in me being placed with only one version being that of the Applicant. The Applicant version went unchallenged, therefore I had no reason to not accept it as probable, as it was corroborated. The Applicant submitted calculations of the backpay since 13 March 2005 to December 2023, stating that the Respondent owes him R 962,705.65 (nine hundred and sixty-two thousand seven hundred and five rand sixty-two cents) calculated as R 887,845.74 (eight hundred and eighty-seven rand eight hundred and forty-five seventy-four cents) being the salary the Applicant was supposed to be paid plus R74,859.90 (seventy-four thousand eight hundred and fifty-nine rand ninety cents) being his bonuses difference that he was entitled to.

AWARD:

1. The Respondent's failure to promote the Applicant was an unfair labour practice.
2. The Respondent is ordered to retrospectively promote the Applicant to the position of correctional officer II position from the 13 March 2005, with effect from the 02 January 2024 and to place the Applicant on level 6 salary notch.
3. The Respondent is further ordered to pay the Applicant backpay of R 962,705.65 (nine hundred and sixty-two thousand seven hundred and five rand sixty-five cents) the difference between the level 5 salary scale and level 6 salary scale from 13 March 2005.
4. The abovementioned payment is to be calculated and paid not later than the 15 February 2024 into the Applicant's bank account as per the Respondent's records.



Name: Mandlenkosi Mini

(General Public Bargaining Council) Arbitrator