



ARBITRATION AWARD

Case Number: GATW 8786-12

Commissioner: Richard Byrne

Date of Award: 29 August 2014

In the ARBITRATION between

PSA obo MAPOGO, NHLANHLA & 200 OTHERS

(Employee)

And

SOUTH AFRICAN SOCIAL SECURITY AGENCY (SASSA)

(Employer)

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DETAILS OF HEARING AND REPRESENTATION

- [1] This matter commenced on 3 December 2013, and was heard over various days up to and including 11 August 2014. The Applicants were represented by Advocate Malan. The Respondent was represented by Advocate Mokutu. Closing arguments were to be concluded by 18 August 2014. I have read both sets of closing arguments.

BACKGROUND TO THE DISPUTE

- [2] The Applicants are all Level 7 employees at SASSA. Up until June 2012 their day-to-day activities comprised mainly of supervisory functions, most of which was supervising their juniors, the Level 5 employees. The Respondent, in 2011, formulated a "standardization" framework, which was to be implemented in 2012. There was also an outstanding "Delegation" from 2009, which It had not implemented yet, and so it decided to implement both the "standardization" and "Delegation" simultaneously. The "Delegation" briefly, is a form of subordinate legislation (which is not in dispute by the Applicants). This particular Delegation stated that verifications/approvals are not to be done by employees lower than Level 7. Up until that point, and indeed up until June 2012, verifications/approvals had been done by Level 5 employees. Thus, aside from sweeping changes brought about by virtue of standardization, the Level 7 employees took over the task of doing verifications/approvals from their juniors. The Applicants argue that this amounted to a demotion, and that it was an unfair demotion. As a remedy, they request to be promoted to Level 8, who now appear to be doing the job they used to do prior to July 2012. The Respondent argues that the changes do not amount to a demotion and that it would be improper to promote the Applicants.

ISSUE TO BE DECIDED

- [3] I have to decide whether or not the changes ("acts of the employer") to the Applicants' daily functions amount to a demotion. If so, I must decide whether or not it was unfair. If I find that it was unfair, I must decide on the appropriate remedy.

SURVEY OF EVIDENCE AND ARGUMENT

- [4] Due to the voluminous nature of the evidence presented, I will not be able to give a summary of each and every item raised and argued. Instead, I will simply refer to some of the most pertinent issues that make for "easy reading" and which were important for purposes of deciding this case.

THE APPLICANT'S CASE

- [5] The Applicants were previously titled: Supervisor(s): Grant Administration. This changed to: Senior Grant Administrators. Approximately 70 – 90% of their daily duties comprised of various types of

supervisory duties. Most of them operated from offices, whilst their juniors, the Level 5 staff, dealt directly with the Public and operated from cubicles. Whilst they cannot comment much on what consultation may or may not have happened with other staff and through other trade unions, they, through their union PSA, were only first consulted in March 2012 about the standardisation and Delegation. It was not proper consultation, but rather presented to them as a matter of *fait accompli*. Their job descriptions, job titles and performance contracts then changed with effect, for most of them, from 1 July 2012. Since they are now required to do the verifications/approvals, which is the final process of an application for a Government Grant, this task takes up so much of their time that they only have approximately 10-20% time left to do supervisory work. Doing work that was previously done by their juniors, in their minds, amounts to a demotion. They no longer operate from offices, but sit alongside their juniors in cubicles. In their view, their juniors no longer look up to them with the same amount of respect as before.

- [6] Although their remuneration packages have not changed at all, their status has diminished due to them doing work previously done by their juniors, and also because they have little time to do supervisory work. Their seniors, the Level 8 employees, do mainly supervisory and managerial work, which they believe was what they were doing prior to July 2012. It follows that to be returned to doing supervisory work that they should be promoted to the Level that does supervisory work.

THE RESPONDENT'S CASE

- [7] The employer initiated the standardisation programme due to the variety of practices and differences between the different Provincial Offices and Departments. In order to enhance efficiency and good governance, they embarked on a project to standardise their operations and how the various Offices function. The Delegation that they had forced onto themselves in 2009 could not be implemented in 2009 due to a lack of resources. A recruitment drive took place in and around 2011. A number of Level 5 and Level 7 positions were advertised and filled. A number of Level 5 employees applied for, and were promoted to Level 7. Level 8 posts were advertised. In like fashion, a number of existing Level 7 employees applied for, and were promoted to Level 8. Once they had worked out their plan to standardise the organisation, they embarked on a Countrywide consultation process. Representatives from all Levels attended the various workshops where the standardisation plan was explained. The employer also decided to implement the Delegation at the same time, as they now had capacity to do so. Level 7 employees were accordingly instructed that they now had to do the final step in the Grant application process, the verification/approval. Level 5 employees were no longer authorised to take the final step and "press the button", thus committing the State to pay such Grants to applicants. This was now entrusted to employees of Level 7 and upwards.

- [8] By giving that task to Level 7 employees, their status was not diminished. In fact, Level 8 and upwards sometimes do verifications. Sitting in cubicles does also not diminish their status. The policy of the Organisation changed in favour of open-plan work areas. This was in order to increase visibility so that fraud and corruption became more difficult to carry out. Even Level 8 employees now had an open-plan working arrangement. The Applicants' career paths were not detrimentally affected, as their next level of progression was Level 8. Supervisory tasks were still part of their job description, and they could still validly state in any application for promotion that they were supervisors. They could not promote the Applicants unless there were posts advertised and they went through the normal recruitment and selection processes.

ANALYSIS OF EVIDENCE AND ARGUMENT

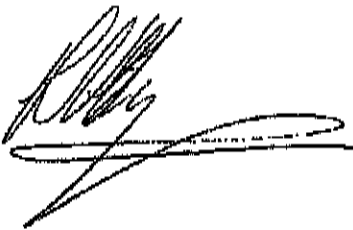
- [9] I am not convinced that a demotion has occurred at all. The reasons for this appear hereunder.
- [10] The Applicants are still Supervisors. Their new job title still bears the same connotation – that of being a supervisor over the Level 5 employees. Essentially what has changed is that they are doing less of their supervisory work and more of the practical work.
- [11] It can also be said that the Delegation has in fact enhanced the status of doing verifications/approvals. Only more senior staff was now allowed to do this particular job because of the serious Implication it has for State Funds. Since it was taken away from Level 5 employees, as they were deemed too junior to deal with this task, it can be said that the difference in status between Level 5 and Level 7 was more formalised.
- [12] I cannot see how working in cubicles detrimentally affects the status difference between Level 5 and Level 7 employees. Open-plan work areas are common in many Organisations. An employer is entitled to change the physical structure of its working areas in order to give effect to its organisational policies. According to the Respondent, the open-plan system even applies to employees more senior than Level 7.
- [13] Part of the Applicants' previous duties was to do Quality Assurance. They would randomly select a few completed verifications and check them for quality and compliance with legislation and the employer's standards. By them now doing the verifications themselves, they were now also doing quality assurance of these verifications. Whereas they would only check a few for quality in the past, they now quality

check every single one of them. If their juniors had not presented the files to them with the required quality, they could still approach them and have them rectify the problems.

- [14] The Delegation was legal authority for the employer to require Level 7 employees to do the verifications. The Applicant party accepted that the Delegation was legitimate legal authority. If that is the case, one should ask the question: Who else do the Applicants think must now do the verifications? It does not help to say that "other Level 7's" must do it, but not the Applicants.
- [15] Since I have concluded that there was no demotion, there is no need for me to decide on whether or not the Respondent's consultation process was fair. There may be a case to be made for lack of sufficient consultation and/or agreement between the parties prior to implementation of the changes. However, that would need to be challenged outside of section 186 of the LRA.
- [16] There is no basis to make any order for costs in this matter as the matter was important to both parties and the conduct of the parties was of a high standard.

AWARD

- [17] The changes effected by SASSA to the Applicants on 1 July 2012 do not amount to unfair acts in relation to demotion. The Applicants were not demoted.
- [18] There is accordingly no relief for the Applicants.
- [19] There is no order as to costs.



RICHARD BYRNE
SENIOR COMMISSIONER