



# ARBITRATION AWARD

Panelist: Mashooda Patel \_\_\_\_\_  
Case: GPBC 2049/2018 \_\_\_\_\_  
Date of Award: 15<sup>th</sup> March 2019 \_\_\_\_\_

In the ARBITRATION between:

**PSA obo Mabena & 1 other** \_\_\_\_\_  
(Union / Applicant)

And

**Department of Water and Sanitation** \_\_\_\_\_  
(Respondent)

**Union/Applicant's representative:** Vally Mashao \_\_\_\_\_  
**Union/Applicant's address:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
**Telephone:** \_\_\_\_\_  
**Telefax:** \_\_\_\_\_

**Respondent's representative:** Prince Ngobeni \_\_\_\_\_  
**Respondent's address:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
**Telephone:** \_\_\_\_\_  
**Telefax:** \_\_\_\_\_

## **PARTICULARS OF PROCEEDINGS AND REPRESENTATION**

1. The arbitration hearing was held at the GPSSBC offices in Pretoria on the 19<sup>th</sup> February 2019.
2. The Applicants were present and represented by Mr. V. Mashao, a trade union official from the PSA. The Respondent was represented by Mr. Ngobeni, a Deputy Director: Employee Relations.
3. The Respondent handed in a Bundle of documents referred to as Bundle "A" (27pages). The Applicant handed in a Bundle of documents referred to as Bundle "B" (27pages).
4. The proceedings were digitally recorded and no interpretation was required.

## **ISSUE IN DISPUTE**

5. I must decide whether the Respondent committed an unfair labour practice by not elevating the Applicants from a Salary Level 9 to a Level 10 as per the Respondent's structure.
6. I must further decide whether the Respondent was inconsistent in not elevating the Applicants from a Salary Level 9 to a Level 10 as compared to their colleague, Ms. Mila.
7. Should I find that the respondent committed an unfair labour practice; the Applicants seek to be translated from a level 9 to a level 10.

## **BACKGROUND TO THE DISPUTE**

8. The Applicants held the positions of Assistant Directors: Education and Awareness at a salary level 9.
9. The Applicants' colleague, Ms. Mila holds the same job title with the same duties but is remunerated on a Salary level 10.
10. The Respondent's organization structure provides that the Applicants positions are at a Salary Level 10.

## **SUMMARY OF THE EVIDENCE AND ARGUMENT**

11. In terms of section 138(7) (a) of the LRA, I am required to issue an award with "brief reasons". I do not propose to offer an exhaustive survey of all the evidence and argument led at the arbitration hearing. What follows is a summary of the evidence relevant to my findings only.

## **APPLICANT'S VERSION**

12. The Applicant, Mr. Mabena testimony is summarized as follows:
13. It was discovered by him that in terms of the Respondent's organization structure as reflected on page 19 "B", the position of a Assistant director is graded on a Level 10.

14. It was further stated by him that his counterpart, Ms. Mila is remunerated on a Salary Level 10 and she is performing the same duties as him and the other applicant.
15. It was argued on behalf of the Applicants that it is irregular for Ms. Mila to benefit from a post that she is not an incumbent of. The benefits attached to the post of Chief Development Expert, which she occupied prior to being appointed Assistant Director: Education and Awareness, remain with that post.
16. It was further argued that the Applicants qualify to be on salary level 10 by virtue of the Organizational Structure approved by the Department. The Respondent never disputed same and the same structure referred to was never withdrawn by the Respondent.

### **RESPONDENT'S EVIDENCE**

17. **Mr. Tebogo Kekana**, an Assistant Director: Organization testified on behalf of the Respondent:
18. It was indicated by him that the Organization structure of the Respondent had been amended incorrectly and the correct structure had been given to the Applicants. The structure is informed by the job evaluation results as reflected on page 27 "A" which indicates that the Applicants position is on a level 9.
19. It was further stated by him that Ms. Mila was appointed as a Chief Development expert as of 2011 and as per the PSCBC Resolution 3 of 2009, Ms. Mila's position was to be upgraded to a level 10. The upgrading in terms of the Resolution was to be effected on the 1<sup>st</sup> August 2012. Ms. Mila was only appointed in the position of a Assistant Director on the 1<sup>st</sup> August 2012 and had to benefit from the Resolution.

### **ANALYSIS OF EVIDENCE AND ARGUMENT**

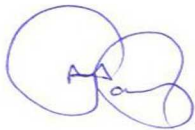
20. 'Section 186(2) (a) of the Labour Relations Act defines "**Unfair labour practice**" as any unfair act or omission that arises between an employer and an *employee* involving—
- (a) unfair conduct by the employer relating to the promotion, demotion, probation (excluding *disputes* about dismissals for a reason relating to probation) or training of an *employee* or relating to the provision of benefits to an *employee*;
21. The two issues placed in dispute:
- Was whether the Respondent committed an unfair labour practice by not elevating the Applicant from a Level 9 to a Level 10 in terms of the Respondent Organization structure.
  - Whether the Respondent was inconsistent in not elevating the Applicants from a Salary Level 9 to a Level 10 as compared to their colleague, Ms. Mila.

22. One has to note that the onus to prove an unfair labour practice lies with the Applicant in this regard, thus all documentation and evidence required to prove same has to be furnished and be made available to the Commissioner to arrive at an informed decision.
23. Moving to the first issue in dispute: The crux of the Applicants submission is that their salary level was not translated from a level 9 to a level 10 as per the Organization structure provided for on page 19 "B". The organization structure which is not in dispute indicates that the Applicants positions are at a Salary Level 10. The Respondent contended that there was an error made on the structure which was indicated to the Applicants and they were given the amended structure. However it was further contended that irrespective of the error made on the Organization structure, same is always informed by the Job evaluation results which is reflected on page 27 "A". The Job evaluation results indicate that the position of the Applicants is graded at a level 9 and not 10 and same has not been reevaluated.
24. The Respondent indicated that there was an error on the Organization structure, however it was common cause that the Structure indicated that the Applicants' position of Assistant Director is on a Salary Level 10. Though the Respondent contended that the Organizational structure has been amended and the Applicants had been provided with same, the Respondent failed to provide such amended structure to corroborate their evidence. I thus find that the Applicants salary is to be upgraded to a level 10 as per the Organized structure.
25. Moving to the second issue in dispute the following issues are common cause :
- Ms Mila holds the same job title and performs the same duties as the Applicants;
  - Ms. Mila is remunerated on a Salary Level 10 as opposed to the Applicants' who are remunerated on a salary level 9.
26. There is clearly a disparity between the Applicants' salary level and their equal counterpart. The question thus remains why is there an inconsistency and is same fair?
27. It was contended on behalf of the Respondent that Ms. Mila held the position of a Chief Development Expert as from 2011 on a Salary level 9. In terms of the PSCBC Resolution 3 of 2009 her post was to be upgraded to a salary level 10 in that all posts after 1 July 2010 were to be upgraded. The upgrading of the salary level in terms of the Resolution was to be effected on the 1<sup>st</sup> August 2012, thus Ms. Mila benefited as a result of the Resolution and the Respondent had to comply with same. It was contended on behalf of the Applicants that Ms. Mila was appointed as an Assistant Director as of the 1<sup>st</sup> August 2012 and her salary level should not have been upgraded. Further to that the Applicants and Ms. Mila hold the same position and should be remunerated equally.

28. On perusal of the PSCBC resolution it indicates that all employees that were graded on salary level 9 and 11 between 1 July 2010 and 31<sup>st</sup> July 2012 be upgraded accordingly to level 10 and 12. It had been indicated through viva voce evidence and through documentation that Ms. Mila held the position from 2011 and thus had to be upgraded to a salary level 10 as per the PSCBC Resolution 3 of 2009. Although the Applicants' argued that Ms. Mila had been subsequently appointed as a Assistant director on the 1<sup>st</sup> August 2012, it must be noted that the Resolution indicated that the effective date for upgrading was 1st August 2012. The PSCBC Resolution had already been implemented prior to this date and had made specific reference to categories of employees, it would have only been fair to upgrade Ms. Mila in accordance with the Resolution. I thus find that it was fair for Ms. Mila to have been on a higher salary scale than the Applicant on account of the previous position held by her.

#### **AWARD**

29. The Applicants be upgraded from salary level 9 to salary level 10 as of September 2014 and be remunerated accordingly.



GPSSBC Panelist  
Mashooda Patel  
North West