

# DEFAULT ARBITRATION AWARD

Case Number: **GPBC1490/2017**  
Commissioner: **Tiyani Makhubele**  
Date of Award: **21 July 2022**

In the **ARBITRATION** between

**PSA obo Thembi Nkosi**  
(Applicant)

And

**Department of Correctional Services**  
(Respondent)

## DETAILS OF HEARING AND REPRESENTATION

- [1] The matter was set down for arbitration in terms of section 191(5) (a) of the Labour Relations Act 66 of 1995 (the LRA). The matter was set down for arbitration on several occasions and the Respondent kept postponing the matter citing different reason. On 06 February 2018 the Respondent undertook to investigate the matter and to fix the problem.
- [2] On 8 April 2021, the Respondent requested for a postponement claiming that there was confusion as to who must handle the matter on behalf of the Respondent. The postponement was requested by Mrs. Mashigo. After the applicant's representative Mr. Benson did not agree with the postponement, The Respondent representative called a representative from Department of Correctional services, Mr Hlophe who arrived after eleven and pleaded for a postponement, citing that he was just assigned the matter, and he needed to familiarise himself with the matter. Furthermore the matter was postponed.

- [3] On 17 May 2021 another representative of the Respondent arrived, this was Mr. Mofokeng. An agreement was reached with the representative to correct the citation of the referral. Mr Mofokeng further called the HR office of Modderbee to come and explain what the real problem was and how it could be fixed. A lady by the name of Ms Conny came and explained that indeed the Applicant was being prejudiced since her scale was not growing the same way as of her peers. She explained that this problem started on 2009/07/07 this was when the applicant's salary code was changed. She explained that indeed the management area wrote a memorandum to the head office wherein permission was sort to fix the applicant's salary code, but head office did not respond. On the very same day Mr Mofokeng and Ms Conney undertook to write another memorandum and request head-office to rectify the applicant's salary code. Miss Conney explained that currently (on 17/05/2021) the applicant's scale was behind her peers with a difference of R62000.00 and this was increasing annually.
- [4] The matter was postponed on several occasions to allow the parties to engage in settlement talks and to attempt to resolve the matter. The parties failed to reach a settlement and PSA requested that the matter be reinstated. The matter set down for a virtual hearing on 28 April 2022.
- [5] There was no appearance by or on behalf of Department of Correctional Services (the Respondent) at the appointed time or after a half-hour grace period. There was no correspondence in file relating to the Respondent's absence, nor was there any communication from the Respondent to either the Council or myself on the day of the hearing. Having satisfied myself that the Respondent had been duly notified of the date, time and venue of the proceedings, the matter proceeded by default in terms of section 138(5)(b)(i) of the Labour Relations Act No. 66 of 1995, as amended ('the LRA').

## **ISSUE TO BE DECIDED**

- [6] I must determine whether the conduct of the Respondent constitutes an unfair labour practice in relation to benefit.

## **SURVEY OF EVIDENCE AND ARGUMENT**

- [7] The Applicant testified that she discovered when she did not get pay progression, that her salary was stagnant and that she has not been receiving 16 notches like all her other peers. She alluded that when she enquired she was informed that she is on the top notch and does not qualify for such. She compared her salary with her peers and indeed she was left behind in terms of her salary. The Respondent informed her that they have placed her on a different salary code as compared to her peers. She was never made aware of this nor did she ever consent to such. Up until now there is no explanation for this action. The Applicant explained that this has left her in an unfavourable financial position.
- [8] She further testified that she has been struggling financially since this problem started. The Employer promised to fix her salary code since 2017 but never succeeded to date. The Applicant expressed how it was her wish that her salary code be rectified, in order for her to be paid the same as her peers.
- [9] The Applicant submitted that her salary be adjusted, her salary code be fixed and that she must be awarded retrospective back pay.

## **ANALYSIS OF EVIDENCE AND ARGUMENT**

- [10] Section 186(2) of the Labour Relations Act, 66 of 1995, defines an unfair labour practise any unfair act or omission that arises between an employer and an employee involving inter alia unfair conduct by the employer relating to promotion. It must be stated that although the LRS is silent on the onus of proof in an unfair labour practice disputes, it is trite law that that he or she who alleges must prove the existence of unfair labour practice. The onus is on the Applicant to prove unfair conduct on the part of the Respondent in relation to failure to adjust her salary code constitute unfair labour practise relating to benefit.
- [11] In the absence of a rebuttal from the Respondent, I have no reason to disbelieve the Applicant's version. The Applicant submitted documentary evidence to support her version that the Respondent placed her on wrong salary code as a result she lost out on pay progressions, correct payment of annual bonuses and lost money because of incorrect payment of her salaries over the years .

## RELIEF

[12] I deem necessary to award the Applicant compensation with back pay calculated as follows:

In 2009 her peers moved to R109731.00, while she only moved to R100419.00, this created a loss of R9312.00

In 2009/07.01 her peers received pay progression, which she did not receive; this left her with a loss of R10428.00 since it was a 10 month loss.

In 2010 her peers moved to R132114.00 and she only moved to R120906.00, in this increase she lost R23500.126.

In 2011.05.01 her peers moved to R141099.00 while she only moved to R129129.00, this move cost her to lose of R21521.50.

In 2011 her peers received pay progression, which she did not receive; this amounted to a loss of R13502.50.

In 2012 there was only COLA, where her peers moved to R155505.00, while she only moved to R132114, again she lost R15318.00.

In 2013 her peers moved to R165768.00, she only moved to R147288.00, her peers only moved for 3 months since they once more received pay progression and she did not receive it. In 2013 alone she suffered a loss of R22215.00.

In 2014 the applicant moved to R158187.00 while her peers moved to R183384.00, the applicant lost a salary of R25197.00.

In 2015 we had COLA and pay progression, the applicant's loss is R23278.50 plus R6740.25, this combined loss is R30018.80.

In 2016 her peers moved to R221979.96 she moved to R182124.00 the loss was R39855.00.

In 2017 there was COLA and pay progression, she moved to R195420.00 while her peers moved to R245340.74, the applicant lost R48130.00.

In 2018 her peers moved to R262515.00 while she only moved to R209100.00, she lost R53415.00, this is the difference in notches, annually.

In 2019 she moved to R222063, and her peers moved to R278790.00, and also received pay progression in the same year, the applicant lost R56727.98.

Because in 2019 she received grade progression and moved to R242640.00, her loss decreased since her peers never received grade progression, the loss was R33385.50.

In 2020 there was no movement in terms of salary.

In 2021 the applicant moved to R246279.00, while her peers moved to, R309225.00, she is left with a loss of R52455.00 ( this is calculated at 10 months since it's not July yet)

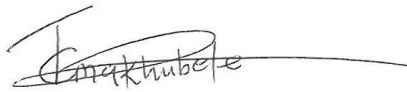
The total sum lost equals R361888.97.

## **AWARD**

[13] I find that the Respondent committed an unfair labour practice.

[14] The Respondent is ordered to pay the Applicant R361888.97 by no later 15 August 2022

Signature:

A handwritten signature in black ink, appearing to read 'Tiyani Makhubele', with a long horizontal line extending to the right.

GPSSBC Commissioner: **Tiyani Makhubele**