

IN THE GENERAL PUBLIC SERVICE SECTORAL BARGAINING COUNCIL

HELD AT THE GPSSBC

CASE NO: GPBC1869/2018

In the matter between:

PSA OBO S D NGOBENI

Applicant

And

NATIONAL PROSECUTING AUTHORITY

Respondent

JURISDICTIONAL RULING

INTRODUCTION

1.1 This matter was set down before me on the 13th of March 2019 at the offices of the GPSSBC 260 Basden Avenue Lyttelton. The respondent raised a preliminary point that Council does not have jurisdiction to arbitrate the applicant's matter as it was purely salary issue, I then ordered parties to submit written heads of arguments the respondent on the 1st April 2019, and the applicant responds on the 9th of April 2019 and the respondent reply on the 16th of April 2019.

BACKGROUND

2.1 After perusing the heads of arguments from both parties I am satisfied that facts that led to dispute are not in dispute. The applicant referred a dispute as unfair labour practice relating to a benefit after she was informed by the respondent in a letter dated 21 July 2017 that she was erroneously overpaid, she was erroneously granted a notch while her experience did not allow her to receive such a notch increase. It is the

contention of the applicant this amounts to unfair labour practice relating to a benefit if the respondent fails to apply pay progression in accordance with the rules.

- 2.2 It is however the contention of the respondent that the applicant dispute is pure salary issue and does not fall under a benefit, it is the respondent contention that applicant's matter relates to pay progression, hence the applicant cannot bring the allegation that OSD was not properly implemented into this dispute. Furthermore implementation of OSD is purely a salary related issue and not a benefit issue. The OSD attached to the applicant answering is a Ministerial Determination, which sets out salary structure for legally qualified professionals in terms of the NPA Act.

ANALYSIS

- 3.1 To enable me to determine whether the applicants dispute falls under unfair labour dispute I will start by what the LAC in Apollo said what is remuneration at para 25 of the judgement it provides:

"[25] The distinction that the Courts sought to draw between salaries or wages as remuneration and benefits is not laudable but artificial and unsustainable. The definition of remuneration in the Act is wide enough to include wages, salaries and most, if not all extras or benefits. Remuneration is defined as:- 'Remuneration means any payment in money or in kind made or owing to any person in return for that person working for any other person, including the State, and remunerate has a corresponding meaning.'"

- 3.2 The LAC went on at para 50 of the same judgement to interpret a benefit as follows: *"In my view, the better approach would be to interpret the term benefit*

to include a right or entitlement to which the employee is entitled (ex contractu or ex lege including rights judicially created) as well as an advantage or privilege which has been offered or granted to an employee in terms of a policy or practice subject to the employer's discretion. In my judgment "benefit" in section 186 (2)(a) of the Act means existing advantages or privileges to which an employee is entitled as a right or granted in terms of a policy or practice subject to the employer's discretion."

- 3.3 According to Apollo Tyres South Africa (Pty) Limited v CCMA & others (2013 5 BLLR LAC a para 25 what the respondent is trying to differentiate is not laudable. The respondent in his arguments clearly agrees that the applicant already has right to claim a notch in terms of policy and legislation. It clearly states:

" the OSD attached to the applicant answering statement is a Ministerial Determination, which sets out salary structure for legally qualified professionals in terms of the NPA Act. It is clear that the salary structure of the OSD is not a benefit as it legislated, compulsory, deals with the salary structure of Prosecutors and State Advocates and introduced career streams to enhance career pathing"

- 3.4 This is clearly explained by the LAC in the above decision at para 51 when the court said:

"On the other hand where an employee wants to use the same remedy in relation to the provision of benefits such an employee has to show

that he or she has a right or entitlement sourced in contract or statute to such benefit.”

3.5 When the matter is referred to Council, a Commissioner is required to determine whether the decision of the respondent to reduce the notch it had granted the applicant was fair or not. The LAC went on to define what unfairness at para 53 and it provides:

“[53] It has been said that unfairness implies a failure to meet an objective Standard and may be taken to include arbitrary, capricious or inconsistent conduct, whether negligent or intended.”

3.6 As result I am satisfied that the contention of the respondent clearly espouses facts that confirm that Council has jurisdiction to arbitrate the dispute as unfair labour practice relating to a benefit. It is my view also that Council has jurisdiction to arbitrate applicant’s dispute as unfair labour practice relating to a demotion, because applicant received a notch which is an upgrade in status an salary and when it is withdrawn the fairness or unfairness of such decision falls also under demotion.

RULING

4.1 As result respondent application that Council does not have jurisdiction to arbitrate applicant’s dispute is hereby dismissed;

4.2. I find that the dispute falls under Section 186(2) (a) as a benefit and/or a demotion;

4.3 There is no order as to costs

DATED AT PRETORIA ON THIS THE 30TH OF APRIL 2019

A handwritten signature in black ink, consisting of several overlapping, stylized strokes that form a cursive script. The signature is positioned above a horizontal line.

P M NGAKO (GPSSBC PANELLIST)