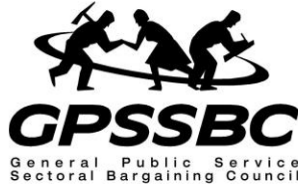


**IN THE GENERAL PUBLIC SERVICE SECTORAL BARGAINING COUNCIL HELD
AT CENTURION**



Case No. GPBC 2667/2015

In the matter between

PSA obo L P ROVANA

Applicant

And

**DEPARTMENT OF RURAL DEVELOPMENT AND LAND
REFORM**

Respondent

ARBITRATION AWARD

1. Details of Hearing and Representation

- 1.1 This award is rendered in accordance with the provisions of Section 138 (7) of the Labour Relations Act, 66 of 1995 (the Act).
- 1.2 The matter was scheduled for hearing at the General Public Service Sectoral Bargaining Council Offices, Centurion on 09 May 2019 at 9:00AM.
- 1.3 The applicant, **LP Rovana** was represented by Joel Ntwampe from Public Servants Association of South Africa (PSA), while the respondent, **Department of Rural Development and Land Reform** was represented by Mr. LM Makgato.
- 1.5 The parties agreed to send written heads of arguments to deal with this matter, because they believe that there was no need for oral evidence.

2. Issues to be decided

- 2.1 The dispute was about the respondent's failure to interpret or apply its Resolution

9 of 2009 correctly by not translating the applicant to the “OSD” position/rank of Candidate Construction Project Manager.

- 2.2 I must decide whether or not the respondent has interpreted or applied this Council Resolution 9 of 2009 correctly by not translating the applicant to the “OSD” position/rank of Candidate Construction Project Manager.
- 2.3 To determine an appropriate relief, if it is found that the respondent has interpreted or applied GPSSBC Resolution 9 of 2009 incorrectly.

3. Background to the dispute

- 3.1 The applicant has been employed by the respondent as Project Coordinator since 01 July 2011. The matter was initially scheduled for arbitration before Commissioner Martin Sambo. A Default award was issued and the respondent applied for rescission, of which it was granted. The matter was then re-scheduled for arbitration before me on 9 May 2019. During the hearing, parties agreed to send heads of arguments as they believe that there would be no oral evidence to be presented. In view thereof, the matter would be decided on papers of records.
- 3.2 The relief sought is that the applicant should be translated to the “OSD” position/rank of Candidate Project Manager with effect from 13 August 2013.

4. Survey of the Applicant’s evidence and argument.

The applicant submitted bundle of documents marked **RLP “A”**. The applicant submitted that:

- 4.1 The GPSSBC has on 18 August 2009 concluded Resolution 9 of 2009, which is an agreement on the implementation of an occupation specific dispensation for Engineers. The Department of Public Service and Administration (DPSA) issued a Directive on the implementation of the Occupation Specific Dispensation (OSD) in respect of Engineers. The DPSA Directive has elaborated the competencies

and statutory requirements for the different occupational classes, including Candidate Construction Project Manager.

- 4.2 The duties of the Project Coordinator and Candidate Construction Project Manager were the same. He held the following qualifications; National Diploma in Building, Certificate in Comprehensive Project Management for Built Environment Practitioners and registered with SACPCMP as a Candidate Construction Project Manager. Therefore, he met the academic requirements attached to the post of Candidate Construction Project Manager. He has always been performing the duties of a Candidate Project Manager in the Province. The responsibilities attached to Project Coordinator and Candidate Construction Manager were the same and he has been performing the duties attached to Candidate Construction Manager.
- 4.3 The Respondent has misinterpreted the GPSSBC Resolution 9 of 2009 by excluding the post occupied by him, when converting certain posts within the Branch to the OSD for Engineers and Related Professions. The Resolution was applicable to the employees who fell within the occupational category of Engineers, regardless of the area they were working. There was no clause in the Resolution stating that it was not applicable to the employees working at the national office.

5 Survey of the Respondent's evidence and argument.

There was no bundle of document submitted by the respondent. The respondent submitted that;

- 5.1 The GPSSBC Resolution 9 of 2009 was concluded to give effect to clause 4.14.3.3 of the PSCBC Resolution 1 of 2007. Clause 13 of Resolution 9 of 2009 was the only clause which catered for translation. The clause was specific on dates of translation, the first date being 30 June 2009 and the last being 01 July 2011. Translation was meant for employees who at the time of its implementation were in service. A person would have been employed and performing functions

associated with a specific Engineers and related professionals occupation as at 30 June 2009 to be translated to an appropriate OSD stream. The Applicant was appointed and assumed his employment and performed his duties on 1 July 2011. Had the Applicant been in the employ of the Respondent or any government department and performing duties of an OSD occupation as at 30 June 2009, he would qualify to raise a right dispute in the manner he did. Resolution 9 of 2009 does not apply to the Applicant by virtue of his appointment date, which fell outside the phase 1 of translation date.

- 5.2 The Applicant was appointed into Project Coordinator position following an advertisement on 1 July 2011, a date after the end date of translation. Translation was a once-off measure and those appointed after 30 July 2009 would have been appointed straight into their OSD position without being subjected to a translation process.

6 Analysis of the evidence and arguments

- 6.1 This Council's Resolution 9 of 2009 states that "Should there be a dispute about the interpretation or application of this agreement any party may refer the matter to the Council for resolution in terms of the dispute resolution procedure of the Council". The applicant referred a dispute about the interpretation or application of this Council Resolution 9 of 2009. He alleged that the Respondent, Department of Rural Development and Land Affairs has misinterpreted the resolution by excluding the post occupied by him, when converting certain posts within the Branch to the OSD for Engineers and Related Professions.
- 6.2 The evidence of the applicant was that the respondent has the post occupied by him, Project Coordinator at National office should have been included when the Respondent was converting certain posts within the Branch, Rural Infrastructure Development (RID) to OSD for Engineers and Related Professions. He did not see any reason why his post was left out, because the responsibilities of his post and that of the post of Candidate Construction Project Manager were the same and he has been performing them. It was also the Applicant's evidence that

GPSSBC Resolution 9 of 2009 apply to all the employees in the engineering and related profession regardless of their station.

- 6.3 The Respondent's evidence was that the Applicant did not qualify to be converted to OSD, because he was appointed to an advertised post of Project Coordinator on 1 July 2011, which was after the end date of the translation. The Respondent testified that translation was a once off exercise applicable to employees who were in the employ of state department when Resolution 9 of 2009 was implemented.
- 6.4 It was common cause that the Respondent has during August 2013 converted certain posts within Rural Infrastructure Development (RID) Branch to OSD for Engineers and Related Professions. It was also common cause that the Applicant's post was left out. The conversion of those posts was informed by the provisions of the GPSSBC Resolution 9 OF 2009 concluded in August 2009 in view of giving effect to PSCBC Resolution 1 of 2007. PSCBC Resolution 1 of 2007 was concluded after studies showed that the remuneration framework then impacted negatively on State's ability to attract and retain sufficient number of employees with the requisite competences in certain occupations and to motivate such employees with a view to improve service delivery. The objectives of the GPSSBC Resolution 9 of 2009 was to introduce an OSD for Engineers, which provide for among other things a unique salary structure, career-path opportunities based on competencies, experience, performance and scope of work as well as the introduction of differentiated salary scales for different categories of Engineers. The resolution binds the Employer and Employees who fall within the occupational category, Construction Project Manager, including SMS members and are required to be registered with an appropriate professional council.
- 6.5 In summary the intension and the applicability of the resolution were to assist the State in recruiting and retaining of qualified and competent Engineers and related professions who would in turn improve service delivery. The resolution is applicable to all employees who are within the occupational class, Engineers and are registered with a professional council. The Applicant' submission that he was

performing the responsibilities similar to that of Candidate Construction Project Manager, possessed the required qualification and registered with SACPCMP was not disputed by the Respondent. From the submission of the Respondent, it has been deduced that the only reason for the exclusion of the Applicant's post for conversion to OSD was his station, being National office and not Provincial or District offices. The Respondent's reason has nothing to do with the responsibilities performed by the Applicant.

6.6 The question that one may ask is, Whether or not the decision for excluding the Applicant's post for conversion to OSD for Engineers, because he was not stationed at the Provincial or District offices was rational or consistent with the Resolution? It is my belief that OSD for engineers and related professions was meant for all the employees who were performing engineering work, regardless of their station. The determining factor for the post to be converted to OSD should be the responsibilities that the post carried. The conversion was done in August 2013, four years after the resolution was concluded. It was therefore unfair for the Respondent to exclude the applicant's post for conversion to OSD. The Applicant met all the requirements for the post like the other Project Coordinators whose posts were converted to OSD, Candidate Construction Project Manager.

6.7 In view thereof, it is my finding that the respondent failed to interpret or apply this Council's Resolution 9 of 2009 in consistent with its purpose and objectives by excluding the post of the Applicant from the posts which were converted to OSD for Engineers and Related Professions. The Applicant's post, Project Coordinator should have been included to those within the Branch, which were converted to OSD (Candidate Construction Project Manager) and the Applicant be translated into it.

7. Award

7.1 I find that the Respondent's interpretation or application of this Council Resolution 9 of 2009 was incorrect.

7.2 The Respondent, **Department of Rural Development and Land Reform** is hereby ordered to translate the Applicant, **L P Rovana** to the position of Candidate Construction Project Manager effective from 01 July 2011.

A handwritten signature in black ink, appearing to be 'V. Madula', with a large loop at the end.

V. Madula

Panelist