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ARBITRATION AWARD

Panellist/s: Selolong Mosoma
Case No.: GPBC240/2024
Date of Award: 23 March 2026

In the ARBITRATION between:

PSA obo Tau and 02 Others
(Union / Applicant)

and

Department of Land Reform and Rural Development (1st Respondent)

Mr. Mainaakae P. (2nd Respondent)

Union/Applicant's representative: Neo Molefi
Union/Applicant's address: PSA
Telephone:
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Respondent's representative: Monare Malesela
Respondent's address: Department of Land Reform and Rural Development
Telephone:
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ARBITRATION AWARD

DETAILS OF HEARING AND REPRESENTATION:

1. This is an arbitration award of the abovementioned alleged unfair labour practice dispute referred to the Council in terms of section 191 of Labour Relations Act 66 of 1995 (the Act) was conducted on the 16 February 2026, at the offices of the Respondent in Bloemfontein
2. The employee party, PSA obo Tau and 02 Others (hereinafter referred to as Applicants), were represented by their union official of Public Servant Association Mr. Neo Molefi. The employer party, Department of Land Reform and Rural Development (hereinafter referred as the Respondent), was represented by its Employee Relations Manager Mr. Malesela Monare.
3. The matter was decided on written submission taking into account statement of case made during pre-arbitration meeting and minutes thereof signed by both parties.
4. The consideration, format and conclusion of the arbitration process was based on the written submissions received from the parties.

ISSUE TO BE DECIDED:

8. It must be decided whether the conduct or omission of the Respondent amounts to an unfair labour practice in relation to promotion. In particular whether the Respondent acted unfairly by advertising the vacant position of Deputy Director: Land Development Support in the Provincial Shred Services Centre: Northern Cape : Frances Baard/ John Taolo Gaetsewe District, and thereafter filing the position through transfer without conducting interviews or following its own Recruitment and Selection Policy.
9. If I find in the affirmative, I have to decide the appropriate relief the Applicants would be entitled to.
10. The Applicant sought compensation as a relief.

BACKGROUND TO THE MATTER:

8. The Respondent advertised a vacant position of Deputy Director: Land Development Support in the Provincial Shared Services Centre: Northern Cape: Frances Baard/John Taolo Gaetsewe district with reference number: 3/2/1/2022/360 with a notch of R 882 042.00.
9. The Applicants applied for the position, and they were all shortlisted together with other with other candidates including the second Respondent.
10. The Applicants were invited to the interviews which were scheduled for the 03 October 2023, however the interviews were postponed. The Respondent issued the Applicants with another invite for the interviews

which were scheduled for 14 November 2022, however the Applicant were informed that the interviews were postponed due to unavailability of the chairperson and new date will be communicated.

11. The first Respondent subsequently filled the position by transferring Mr. Mainaakae into the position.
12. In August 2023, the Respondent in a staff meeting announced that the second Respondent will resume duty in the advertised vacant position of Deputy Director: Land Development Support as the position has been filled in terms of the transfer policy.
13. The Applicants were aggrieved by the Respondent's decision and lodged individual grievances. Subsequent to the Applicants' grievances, the Respondent then took a decision to withdraw the advertised position of Deputy Director: Land Development.
14. Parties agreed that the filing of the advertised vacant position of Deputy Director: Land Development through a transfer was not in consistent with paragraph 2.5 of the Respondent's transfer policy. They further agreed that it was not in consistent with the provisions of the Respondent's Recruitment and Selection policy.
15. The Applicant sought 08 months compensation as a relief.
16. On the other hand, the Respondent sought as remedy, that the Applicants be awarded four months compensation..

SURVEY OF EVIDENCE AND ARGUMENT:

17. The provisions of section 138 of Labour Relations Act 66 of 1995 as amended, enjoins me to issue the arbitration award with brief reasons. I intend in this award to focus only on the issues that I perceive to be pertinent to the issues that were disputed by the parties.

APPLICANT'S SUBMISSION

18. The Applicants submitted that the Respondent has committed an unfair labour practice relating to promotion and the Respondent has conceded that the appointment of the second Respondent was irregular. This irregular act was in bridge of the Respondent's own Recruitment and Selection policy.
19. The y submitted that the Respondent appointed the second Respondent through a transfer whilst the recruitment ad selection process was not concluded and the post not having been withdrawn. The first Respondent failed to follow the provisions of its own Recruitment and Selection policy
20. The first Respondent wrongly relied on the provisions of the internal transfer policy to fill the position, thus resulting in an unfair labour practice, denying the Applicants an equal opportunity to compete for the promotional position of Deputy Director: Land Development.

21. The reasons advanced by the first Respondent for not filing the position through the normal recruitment and selection process which was already underway were capricious and cannot be accepted.
22. The Applicants further submitted that the appointment of the second Respondent by way of irregular transfer shows that there was favouritism towards him by the Respondent's Chief Director, which resulted in bias on the part of the Respondent's Chief Director against the Applicant.
23. The Applicant contended that the first Respondent cannot provide a rational explanation as to why the Applicants were overlooked, let alone the reason for so many postponements after the interview dates were set.
24. They averred that it is trite law any conduct that deprives an employee a fair opportunity to compete for a post constitutes an unfair labour practice. They contended that the appointment of second Respondent through transfer policy instead of normal recruitment and selection process had an element of bias and that the unlawful deviation from the guidelines set out in both the Recruitment and Selection policy and Transfer policy could not be substantiated.
25. Lastly, they submitted that the actions of the first Respondent in this entire process constitutes an unfair labour practice. Therefore, each Applicant should be awarded 08 months compensation.

RESPONDENT'S SUBMISSION

26. Mr. Monare, on behalf of the Respondent submitted that the Applicants applied for a vacant position of Deputy Director: Land Development and met the inherent requirements of the post. He further submitted that the Applicants were shortlisted together with the second Respondent.
27. He submitted that the Applicants together with the second Respondent were invited to the interviews twice and the interviews were postponed on both occasions. All the candidates were informed that a new date of the interviews will be communicated to them. He averred that he first Respondent never communicated a new date since the last postponement of November 2022.
28. On or about August 2023, the first Respondent Chief Director announced in a staff meeting that the second Respondent will resume duties on the post of Deputy Director: Land Development that was advertised and they were still waiting for a new date of the interviews, effective September 2023.

29. In closing , he submitted that the Applicants may have submitted a compelling case, however, the first Respondent is of the view that the Commissioner should award a just and equitable remedy in all circumstances, should the Commissioner be convinced that the Applicant have a case.
30. Lastly, he submitted that it is the first Respondent's prayer that the Applicant be awarded remuneration of four months each which will thus amount or be equivalent to 12 months remuneration.

ANALYSIS OF EVIDENCE AND ARGUMENT:

31. The Applicants referred a dispute in terms of section 186 (2) (a) of the Labour Relations Act, 66 of 1995 relating to unfair labour practice.
32. Section 185 of the LRA reiterates the right not to be unfairly dismissed or subjected to unfair labour practice.
33. The Labour Relations Act 66 of 1995 as amended (LRA) under section 186 (2) (a) defines unfair labour practice as a meaning "any unfair act or omission that arises between an employer and an employee involving an unfair conduct by the employer relating to the promotion, demotion, probation..."
34. The issue to be determined was whether the Respondent has committed an act of unfair labour practice against the Applicants in relations to promotion and if my finding to be in the affirmative, what would be the appropriate relief to her.
35. In this matter is upon the Applicants to prove on the balance of probabilities that the Respondent committed an act of unfair labour practice in relations to promotion by advertising the vacant position of Deputy Director: Land Development Support in the Provincial Shred Services Centre: Northern Cape : Frances Baard/ John Taolo Gaetsewe District, and thereafter filing the position through transfer without conducting interviews or following its own Recruitment and Selection Policy.
36. The onus to establish that conduct complained of constitutes an unfair labour practice within the meaning of section 186(2) of the LRA rests on the employee, see *City of Cape Town v SA Municipality Workers Union obo Sylvester and others* (2013) 34 ILJ 1156 (LC). The employee must therefore be able to lay the evidentiary foundation for his or her claim of an unfair labour practice.
37. It is the employer's prerogative to make appointments. The exercise of that prerogative is nonetheless not immune from scrutiny, as instances of gross unreasonable in its exercise may lead to drawing of inferences of bad faith. It is trite that courts and Commissioners alike should be reluctant, in the absence of good cause, to interfere with the managerial prerogative of employers in making such decisions. Any form of interference should be with the objective of dispensing fairness to both parties.
38. It is common cause that the Applicants were shortlisted and invited to the interviews for a vacant position of Deputy Director: Land Development. It is further common cause that the interviews were postponed twice and subsequently did not proceed.

39. What is at the center of this dispute is the Respondent's decision to abandon the recruitment and selection process which was already underway and fill the position through a transfer.
40. It is worth mentioning that the first Respondent did not formally withdraw the advertisement of the position of Deputy Director: Land Development prior filling the position through a transfer. The withdrawal only took place after the position was filled through a transfer.
41. The first Respondent's Recruitment and Selection Policy provides that the recruitment and selection process shall be an open process, affording all potential candidate the opportunity to apply and compete for position. It further provides that the recruitment process shall be free from practices that are likely to prejudice any applicant and candidates shall be assessed against consistent selection criteria at every stage. It further provides that the recruitment process must be lawful and not favour or prejudice any prospective candidate.
42. In these circumstances, the first Respondent's decision to fill the position through a transfer undermined the integrity of the recruitment process which was already unfolding.
43. The conduct or omission of the first Respondent to fill the position through a transfer was therefore arbitrary and denied the Applicants an opportunity to compete for the vacant position of Deputy Director" Land Development.
44. There was no evidence tendered by the first Respondent that reasonable explanation was provided for abandoning the interviews which were already postponed twice. Further to that, there was no evidence placed before me to suggest that the first Respondent did comply with the provisions of its own Recruitment and Selection policy. Last but not least , there was no evidence to suggest that the deviation from the recruitment and selection process was justifiable in the circumstances.
45. The process followed by the first Respondent when filling the position though a transfer lacked fairness and transparency.
46. The Applicant were denied an opportunity to fairly compete for the position which was not consistent with the provisions of the first Respondent's Recruitment and Selection policy.
47. In **Monyaki v SSSBC and others (JA 64/13) [2015] ZALAC 17** (handed down on 19 March 2015) the Labour Appeal Court stated that there are two components to a complaint regarding a failure to promote an employee as an unfair labour practice. The one relates to procedure followed by the Employer. The other relates to the substantive merits and it concerns the suitability of the candidate for promotion.
48. Overwhelming evidence suggest that the Applicants would have been interviewed had it not being the decision of the first Respondent's Chief Director to fill the position through a transfer. Most surprisingly the first Respondent filled the position through a transfer of the second Respondent who was also shortlisted and invited for the interviews together with the Applicants without any justification or whatsoever. In considering the provisions of the first Respondent's Recruitment and Selection policy, it is apparent that the Applicants did establish that they were entitled to be shortlisted and interviewed for the position. It follows

that the Respondent conduct or omission was unfair. There is, therefore, a merit to the Applicants' contention that the Respondent has committed an unfair labour practice in relations to promotion.

49. In **Pamplin v Western Cape Education Department (C 1034/2015) [2015] ZALCCT** (handed down on 09 May 2018) the Court emphasized that whilst in unfair labour practice disputes relating to promotion the onus is on the Employee to demonstrate that the failure to promote was unfair, the employer, is in the same token, obliged to defend challenges on the substantive and procedural fairness. If it wishes to avoid a negative outcome. According to the Court, there is obligation on the Employer to place evidence that it acted fairly and in good faith during the promotion exercise. In the absence of such evidence, it would be irrational and unreasonable to conclude that the Employer acted fairly, regardless of where the onus lies.
50. Equally so, the Respondent was also saddled with the onus to place evidence that it acted fairly and in good faith when filling the position through a transfer.
51. It is trite law that there is no right to promotion in ordinary course, only a right to be given a fair opportunity to compete for a post. Any conduct that denies an Employee an opportunity to compete for a post constitutes an unfair labour practice. If the Employee is denied the opportunity of competing for a post, then the only justification for scrutinizing the selectin process is to determine whether the appointment was arbitrary or motivated by an unacceptable reason.
52. While I note the Applicants' case, I have also considered the Applicants' case so as to establish whether there was any unfair conduct or omission by the Respondent during the recruitment process.
53. I conclude that the Applicants managed to provide solid substantiation considering that the Respondent could not provide any justifiable reasons considered when filling the position through a transfer.
54. The Respondent in the current matter does not encourage a culture of accountability, openness, and transparency in the exercise of Public power and not protecting the integrity of recruitment and selection process. The Recruitment and Selection Policy exists to ensure that there is transparency, equal opportunities, consistency and protection against favoritism and arbitrariness.
55. The crux of the matter is that the Applicants managed to substantiate their claim that they were subjected to an unfair conduct or omission by the first Respondent by filing the post through a transfer while the recruitment was still underway . In the circumstances, the Applicants had demonstrated and proved that the first Respondent has committed an unfair labour practice in relation to promotion and they are entitled to the relief sought.

REMEDY

56. The Applicants sought compensation. In terms of section 193 (1) (c) of the LRA as amended, I am empowered to order the Respondent to compensate the applicant as a relief.

57. Section 194 (4) of the LRA provides that the compensation awarded to an employee in respect of an unfair labour practice must be just and equitable in all circumstances but not more than the equivalent of 12 month's remuneration.
58. While I note the Applicant's case, it is my considered view that the compensation should be six month's (06) which is just and equitable in these circumstances. This is because I take into consideration that the compensation constitutes a solace to provide satisfaction to an employee who's constitutionally protected right to fair labour practice has been violated. There was no basis for the Respondent not to afford the Applicants fair opportunity to compete for the position. The conduct or omission of the Respondent did not only disadvantage the Applicant but also prejudiced them to participate in the interview process of the advertised position.
59. The Applicants earned a gross monthly salaries were as follows at the time of the dispute;
- a. Mr. Tau- R 575 725.00
 - b. Mr. Manyapelo- R 575 725.00
 - c. Mr. Mautlwa- R 600 078.00
60. The compensation should be calculated at their gross monthly salaries during the time of dispute.
61. Compensation should be as follows;
62. In respect of Mr. Tau (R 47 977,83 x 6 months) R 287 866,98.
63. In respect of Mr. Manyapelo (R 47 977,83 x 6 months) R 287 866,98.
64. In respect of Mr. Mautlwa (R 50006,50 x 6) R 300 039,00.

AWARD

65. The following competent award for the payment of compensation.
66. The Respondent, Department of Land Reform and Rural Development , is ordered to pay the Applicants as following amounts;
- a. Mr. Tau- R 287 866,98
 - b. Mr. Manyapelo- R 287 866,98
 - c. Mr. Mautlwa- R 300 039,00
67. The aforementioned amounts will be subjected to statutory deductions.
68. The amounts in paragraph 66 to be paid to the Applicants on or before 15 April 2026, into the Applicants' bank account known to the Respondent.

69. Failure to comply with the award the amount will accrue interests in line with the provisions of section 143(2) of the Labour Relations Act, act66 of 1995 as amended.

A handwritten signature consisting of a vertical line intersecting a horizontal line that has a slight curve at its right end.

Name:

GPSSBC Arbitrator