



ARBITRATION RULING

Panellist/s: P M Ngako
Case No.: GPBC1835/2024
Date of Award or Ruling: 13 May 2025

In the ARBITRATION between:

PSA OBO PJ MPETLE & 08 OTHERS
(Union / Applicant)

and

DEPARTMENT OF WATER AND SANITATION

Union/Applicant's representative: Archie Sigudla
Union/Applicant's address: _____

Telephone: _____
Telefax: _____

Respondent's representative: Ketseletso Johannes Mokoena
Respondent's address: _____

Telephone: _____
Telefax: _____

JURISDICTIONAL RULING

DETAILS OF HEARING AND REPRESENTATION:

[1] This matter was set down on 8 April 2025 at the Department of Water and Sanitation, 285 Continental Building, Pretoria. The applicants were present and were represented by Archie Sigudla, an official from the trade union PSA. J Mokoena, an employee in the respondent's employment, represented the respondent. The respondent has raised two preliminary points: that the dispute is discrimination, and it was referred outside the 90 days. The matter was decided on written submissions from the parties.

ISSUE TO BE DECIDED:

[2] I am required to decide whether the Council has jurisdiction to adjudicate the applicants' dispute

RESPONDENT'S SUBMISSION:

[3.1]. The respondent contends that the applicants, who are all employed by the respondent as Assistant Directors under the Internal Audit unit, and their posts are graded at salary level 9, while their counterparts in the department and sister department posts are on salary level 10. The applicants in their referral respondent's submit that the applicants when they referred their dispute says the respondent unfairly discriminate against them, it is treating them differently from their counterparts in other departments. The respondent contends that this falls under section 9(3) of the Constitution and Section (6)(4) of the Employment Equity Act, the respondent contends that that the applicants dispute because they are saying the employer does not treat its employees equally the matter fall under the auspices of the CCMA not the GPSSBC.

[3.2]. The respondent contends that para 10.3.2 of the applicants' response states, "they want to be remunerated at the same salary level as their counterparts in the department and sister department, and they further view that their posts were not fairly evaluated to remain on salary level 9". The above paragraph confirms the respondent's

position that they are alleged to be treated differently from others, and the same is within the provisions of the employment Equity Act section 6 (3) which direct that people performing same or similar job should not be discriminated on the listed above the section including other unlisted grounds. The respondent, therefore, prays that I dismiss the applicants' application and advise them to apply to the CCMA.

APPLICANTS SUBMISSION:

[4.1]. The applicants contend that the matter falls within the jurisdiction of the GPSSBC in that they contend that the Minister of Public Service and Administration issued a determination and directive on the automated Job Evaluation and Job Grading System for Public Service (Compensate-Evaluate Job Evaluation System dated June 2024 and the directive was to take place effective from 1 August 2024, and the applicants positions falls within those that were determined by MPSA and such are OSD positions (Coordinated posts). The applicants contend that the respondent failed to implement the said determination and directive as directed by the MPSA, as a result depriving the applicants of the benefits attached to the salary level (SR-10) and keeping the applicants on salary level (9R-9). The applicants lodged a grievance, and it was dismissed.

[4.2]. In response to the respondent, submission the applicants hereby vehemently rejects the assertion that their dispute falls within the provisions of unfair discrimination as alluded by the respondent in their submission because neither the referral form to the bargaining council nor the notice issued by the bargaining seeks to suggest that the dispute is in terms of Section 3 of the Constitution and Section 6(4) of the Employment Equity Act. The applicants contend that their dispute is very clear in that they are stating what the MPSA, through the determination and directive issued, issued their counter parts are enjoying as such they are deprived of such benefits comparatively speaking which does not make the dispute to be job of equal pay or same work of equal value. As a result, the applicants pray that the point in limine raised by the respondent is ill-advised and should be dismissed accordingly.

ANALYSIS

[5.1] I am required to take into consideration the referral to determine what is the dispute that has been referred by the parties and the LAC clarifies this as follows: “ in *Janies and Another v Eskom Holdings SOC Limited and others* (CA8/16[2017] ZALAC

39 (2017) 38 ILJ 2269 (LAC [2017] 10 BLLR 979 (LAC) (handed down on 13 June 2017) the court considered the referral form as a starting point in such a determination. It confirmed that where a dismissal in terms of the Labour Relations Act is alleged, the Commissioner will most likely be clothed with the necessary jurisdiction to arbitrate. Therefore, while a commissioner is not bound by the description of a dispute in 7.11 form he ought to consider the detailed description or summary of the dispute contained therein, and in the event that same falls short in revealing the true nature of the dispute, then the Commissioner may assume provisional jurisdiction and consider the evidence in a bid to determine the true nature of the dispute and his/her power to pronounce on the same.”

[5.2] The respondent contends that the dispute applicants' referred falls under Section 6(4) of the Employment Equity Act. In the referral, they are stating that the respondent is treating them differently from their counterparts. They are not equally treated as Assistant Directors: Internal Audit in different departments. However, the applicants disputes that their dispute falls under the Employment Equity Act and state that “they are stating what the MPSA through the determination and Directive issued their counterparts are enjoying as such they are deprived of such benefits comparatively speaking which does not render their dispute to be job of equal pay or same work of equal work of equal value.

[5.3] The applicants in their referral it is correct that they are referring to their counterparts remunerated at level 10 while they are remunerated at level 9, they went further and said “3 Basis used to evaluate the job of an Assistant Director: Internal Audit by Department of Public Service and Administration, Circular 19 of 2018 signed on July 2018, was not in line with or job description, the following were indicated on the job evaluation report:”. The version by the applicant which was not disputed by the respondent states “the Minister for Public Service and Administration issued a determination and directive on the automated job evaluation and job grading system for the Public Service (Compensate- Evaluate Job Evaluation System dated 2024. The said MPSA determination and directive was to take effect from 1 August 2024; as a result thereof, the applicants' positions fall within those that were determined by MPSA, as such are OSD positions. The respondent failed to implement the said determination and directive as directed by the MPSA, as a result, depriving the

applicants of the benefits attached to the salary level (SR-10) and keeping the applicants on the salary level (SR-9)."

[5.3]. When you take what the applicants are saying in the above paragraph, their dispute relates to a determination and directive by the Minister of Public Service and Administration whether its implementation or omission by the respondent was fair or, it does not matter that they referred to counterparts in that they are saying this policy should have been implemented the same way it was implemented on their counterparts, see in this regard the LAC what is a benefit: Apollo Tyres South African (Pty) Ltd v CCMA & others (DA/11) [2013] at para 51 clarifying what is a benefit held:

"...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. In as far as Hospersa, GS4 Security, and Scheepers postulate a different approach they are, with respect, wrong."

[5.4] Taking into consideration the referral by the applicants that I have referred above, and the LAC in the above judgements it is my view that the dispute the applicants have referred to the GPSSBC is not discrimination, but an unfair labour dispute as they are aggrieved by implementation of a directive by the MPSA which is a benefit as a result on a balance of probabilities I find that the disputes referred by the applicants is an unfair labour disputes and rule as follows:

RULING

[6.1] I find the applicants' dispute to be an unfair labour dispute, and the Council had jurisdiction to adjudicate their dispute.

[6.2] Respondent's point in limine that the dispute falls under section 6 (4) of the Employment Equity Act is found not to have merit, and it is therefore dismissed.

[6.3] Council is requested to set this matter down for arbitration.

[6.4] There is no order as to costs

A stylized, handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Name: P M NGAKO

(Council name) GPSSBC Arbitrator