



GENERAL PUBLIC SERVICE
SECTOR BARGAINING COUNCIL



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ARBITRATION AWARD

Panellist/s: Mr Martin Sambo _____
Case No.: GPBC1043/2021 _____
Date of Award: 14 August 2023 _____

In the ARBITRATION between:

PSA obo SIGUBA & 1 OTHER

(Union / Applicant)

AND

DEPARTMENT OF AGRICULTURE, LAND REFORM & RURAL DEVELOPMENT

(Respondent)

Union/Applicant's representative: Mr Arhie Sigudla _____

Union/Applicant's address: PSA _____

Union Official _____

Telephone: _____

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Respondent's representative: Mr John Masilela _____

Respondent's address: DEPARTMENT OF AGRICULTURE, LAND REFORM &
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ARBITRATION AWARD

DETAILS OF HEARING AND REPRESENTATION

This matter was scheduled for arbitration on 21 January 2022, 14 April 2022, 05 & 06 September 2022 and 08 June 2023 at the Offices of the Department of Agriculture, Land Reform and Rural Development, 184 Jeff Masemola Street, Pretoria Central.

The employee party, Mr M Siguba & 1 Others (hereinafter referred to as the Applicants), were represented by their union official of PSA Mr Archie Sigudla. The employer party, Department of Agriculture, Land Reform and Rural Development (hereinafter referred to as the Respondent), was represented by its Labour Relations Officer Mr John Masilela.

The matter was electronically recorded

ISSUE TO BE DECIDED

I have to decide whether, in the circumstances detailed hereunder, the Respondent interpreted or applied resolution 3/2009 correctly when it translated the two Applicants to the positions of Production Scientists Grade C instead of Scientific Manager positions.

BACKGROUND TO THE ISSUES

The Applicants, are employed by the Respondent and are currently holding the positions of Production Scientist Grade C. The Respondent is a government department responsible for Agriculture, Land Reform and Rural Development.

The Applicants case is that they were appointed by the Respondent on 01 November 2010 and 10 December 2010 respectively. During their appointment the Respondent translated their positions or aligned their position in terms of resolution 3/2009 to OSD. Both Applicants OSD positions were that of Production Scientists. The Applicant believes that had the Respondent interpreted or applied the resolution correctly they would have been translated to the positions of Scientific Managers instead. The Respondent indicated in opening that their version is that the post of Scientific Manager is not a post where one can be upgraded into. The Respondent alleges that such position has to be created and advertised first. The Respondent contends that the positions for Applicant to be upgraded into are those of Production Scientists

The Applicants lodged a grievance and were not satisfied of the outcome. The Applicants then referred the dispute to Council, but could not be resolved through conciliation. The Applicant seeks the Respondent to properly translate them in terms of resolution 3/2009 to the positions of Scientific Manager.

The parties submitted bundles of documents and indicated that they had no point in limine to raise. Both Applicants gave testimony to their case. The Respondent called two witnesses to testify on its behalf.

SUMMARY OF THE APPLICANT'S CASE

Ms Pulane Charity Modisane testified that:

She was appointed on the 10 December 2010 by the Respondent as Agricultural Management Advisor at salary level 11. In November 2011 the Respondent gave her a letter translating her position to OSD with retrospective effect. Her position was translated to that of Scientific Production Grade C. In terms of the resolution 3/2009 (page 64 bundle A) a Scientist at salary level 10 could be translated to Production Scientist at Grade A or B or C. Then on page 65 bundle A it indicate that Scientists at salary level 11 could be translated to Scientific Manager Grade A or B. She was appointed in a non-OSD post at salary level 11 but when the Respondent translated the position she it was translated to Production Scientist Grade C. The Respondent did not translated her position to Scientific Manager which is the equivalent of salary level 11. Although she was translated to the last grade of Production Scientists and her salary was improved, the Respondent erred by not translating her to Scientific Manager Grade A which is the equivalent of salary level 11. The Respondent has therefore not interpreted or applied resolution3/2009 correctly when it translated her position to that of Production Scientist Grade C instead of Scientific Manager Grade A.

Mr Maxhobondile Siguba testified that:

He has been translated from the post of Agricultural Management Advisor to that of Scientist Production Grade C on 08 November 2010. He was at salary level 11 when appointed as Agricultural Management Advisor. His situation is the same as that of Ms Modisane. He has suffered a lot as a result of this incorrect translation of his position. It was translated closer to where he would quickly reach the salary ceiling and cannot get salary progression even if he worked harder. If he was correctly translated to Scientific Manager it would take him 20 years to reach the ceiling. He concedes that most of the competencies of Scientific Managers are not in his job description but claims that they are there in the workplace and that he performs some of them.

SUMMARY OF THE RESPONDENT'S CASE

Mr Maluta Jonathan Mudzunga testified that:

He is the Director of Agriculture Inputs Control. His directorate has 3 divisions being Registration, Compliance and Technical Services. The two Applicants falls under Technical Services division where they deal with scientific applications. All three divisions reports to him. The Technical Services is led by the Scientific Manager who had 4 components of subordinates (Fertilizer consisting of 2 Production Scientists, Animal Feed with 2 Production Scientists, Pesticides and Stock Remedy with 2 DDs not covered by OSD).The people who reports to the Scientific Manager are Production Scientists and this includes the Applicants. They do not make decisions but recommends to the Scientific Manger who then decides. Prior to translation there were various

posts and Production Scientists were called Agricultural Management Advisors. They were at salary level 11 with various notches. At the time of translation they would be translated to OSD posts with different notches and grades. One would not be translated to a salary lower than the one they got before OSD. The structure has one Scientific Manager and several Production Scientists. He believes therefore that the Applicants were correctly translated. He argued that in a translation employees are not moving from one post to the next but are moving to a specific dispensation.

Mr Kulani Shibambo testified that:

He is an Assistant Director Organizational Development. In relation to OSD they are custodians of the grading system. Their section was involved in the translation of positions. A person could only be translated to a post of Scientific Manager if they were performing the duties of the Scientific Manager. The Applicants' positions were already OSD positions when they were appointed. They qualify to apply for Scientific Manager positions if advertised. The Applicants needed to be managers to be translated as Scientific Managers. Structurally one would find one manager and several subordinates. You will not normally find many managers.

ANALYSIS OF EVIDENCE AND ARGUMENTS

I have to decide whether, in the circumstances detailed hereunder, the Respondent interpreted or applied resolution 3/2009 correctly when it translated the two Applicants to the positions of Production Scientists Grade C instead of Scientific Manager positions.

The Applicant's case is that the Respondent has not applied or interpreted resolution 3/2009 correctly when the Respondent translated their positions of Agricultural Management Advisors at salary level 11 to Production Scientists Grade C. The Applicants contend that since their positions were at salary level 11 when they were appointed, they should have been translated to Scientist Managers' position. The Applicants submit that this is provided for in terms of page 65 bundle A which indicate that employees at salary level 11 could be translated to Scientific Managers Grade A or Grade B. The Applicants contend that the Respondent has instead used page 64 of bundle A that dealt with translation of scientists at salary level 10 to Production Scientists to translate them.

The Applicants did not refer me to any specific clause in the resolution that states that an employee at salary level 11 must be translated to Scientific Manager. The Applicants contend that the correct interpretation should be deduced from pages 64 and 65 of bundle A which are not clauses but only Annexures to resolution 3/2009.

In deciding upon the correct interpretation or application of this resolution, I did not only look at the Annexures but at the resolution as a whole. I have considered its historical background, purpose, objectives and principles in the collective agreement. I have considered that in its quest to retain special skills that were lost to the private sector, government introduced this Occupational Specific Dispensation. Among its objectives resolution 3/2009 was to introduce OSD, for Scientists and other professionals, which provides for, inter alia, a unique salary structure, adequate pay progression and accelerated pay progression, and the introduction of differentiated salary scales for different categories of Scientists and other professionals. Under translation measures I have considered the principle that no person will receive a salary (notch or package) that is less than what he/she received prior to the implementation of OSD. I have also considered the witness testimony and evidence of the parties.

On my perusal of the resolution it is clear that there are in the main two ways to benefit from the resolution. One could benefit through a once off translation (in terms of clause 13) if they were permanently appointed and were performing the duties of the identified post as at 30 June 2009.

Other requirements like qualifications or registration with a professional council were overlooked. I call this the translation route. This is the route where both the employee and the position are translated. If one has missed this once off benefit, they could benefit through being appointed into the translated position if they meet appointment requirements in terms of clause 5 of resolution 3/2009. I call this the appointment route. This is where the employee is appointed into a translated position.

From the evidence before me, both Applicants falls within the appointment route as they were not in their positions as at 01 July 2009. Therefore the contentions raised by the parties as far as clause 13 (translation route) is concerned are not relevant. In dealing with the appointment route, it is common cause that the parties have been appointed into translated positions and it can therefore be accepted that they have met the appointment requirements. The Applicant's case is however that they have been appointed into an incorrectly translated position. According to them they should have been appointed into Scientific Manager Grade A position and not into Production Scientist Grade C positions as is the case. Their case is mainly based on the Annexure to the resolution that indicates that the if a position was at salary level 11 prior to the new dispensation, it will be at Scientific Manager position in the new dispensation.

This interpretation by the Applicants cannot be correct. The Annexure does not only show scientific Manger at salary level 11. It also show same at salary level 12 and salary level 13. This indicates that there could be a Scientific Manager at salary level 13 and Production Scientists below him/her at salary level 12. It can also mean a Scientific Manager at Salary level 12 and Production Scientists at salary level 11. Therefore it cannot follow that if a position is at salary level 11 is automatically translated into Scientific Manager.

The resolution indicates scientists from lower level (candidates), production level, supervisory level and managerial level which means the resolution anticipates a structure where there will be a manager at the top to manage the lower level scientists. The testimony of Mr Maluta Jonathan Mudzunga, who is the Director in the section which the Applicants works, which stated that there is a position of Scientific Manager who heads the Applicants remained uncontested. Therefore the testimony of the Applicants that they could all be Scientific Managers by virtue of being at salary level 11 cannot hold. That interpretation will defeats the object of the resolution.

Further, the Applicants claims that they were prejudiced in that their position was translated backward when translated to Production Scientist instead of Scientific Manager. I do not agree with this submission. There is no clause in the resolution that indicates that a position at salary level 11 is automatically a scientific manager position. The principles in the resolution is that of translation into appropriate position and appropriate grade and that the person' salary should not be worse off in the new dispensation. The Applicants were translated appropriately and were not made worse off in terms of salaries. Finally, the Applicants does not show the duties of the Production Scientists vis a vis those of a Scientific Manager and how they could have met the requirements of those duties. Instead their Director Mr Mudzunga's testimony that they performed production duties under a Scientific Manger remained uncontested. This negates the Applicants' interpretation that they should all be translated to scientific managers. Clause 5 of the resolution requires that the post one is appointed into must be available.

From the circumstances outlined above I find on a balance of probabilities that the Respondent has interpreted/implemented resolution 3/2009 correctly when they translated the Applicants to Production Scientists Grade C.

AWARD

- Application is dismissed
- I make no order as to costs.

A handwritten signature in black ink, appearing to read 'M. Sambo', enclosed within a thin black rectangular border.

MARTIN SAMBO
PANELLIST
14 August 2023