



# ARBITRATION AWARD

Case Number: GPBC775/2024  
Commissioner: Vusumzi Eugene Moyo  
Date of Award: 27 July 2025

In the **ARBITRATION** between

**PSA obo Vhutshilo Mutavhatsindi**

**APPLICANT**

And

**Department of Mineral Resources and Energy**

**RESPONDENT**

## DETAILS OF HEARING AND REPRESENTATION

1. This is an arbitration award issued in terms of Section 138(7)(a) of the Labour Relations Act 66 of 1995 as amended (hereafter referred to as "LRA"). The matter was set down for an arbitration process in terms of Section 191(5)(a)(iv) of the LRA. The arbitration hearing was held under the auspices of the GPSSBC.
2. The Applicant was represented by Mr Ololo Shiburi, PSA Official. The Respondent was represented by Ms Glory Mankgano, Labour Relations Official. These proceedings were conducted in English. Submissions were both digitally and manually recorded.

## ISSUE TO BE DECIDED

3. Whether the Applicant was subjected to an unfair labour practice related to promotion or not in the following terms:
  - 3.1 Whether the Applicant qualified to be upgraded to salary level 10 and backdated;
  - 3.2 Whether the Respondent committed an unfair labour practice by not upgrading the Applicant.



## RELIEF SOUGHT

4. The Applicant sought to be upgraded from salary level 8 to 10 with backpay with effect from 01 April 2020.

## BACKGROUND TO THE ISSUE

5. The Applicant is currently employed by the Respondent.
6. The Respondent is the National Department of Mineral Resources and Energy
7. Bundles of documents were exchanged by the parties. The authenticity and veracity of these documents was not disputed.

## SURVEY OF EVIDENCE AND ARGUMENT

8. As noted above in paragraph 3, these proceedings were digitally recorded, what appears hereunder constitutes a summary of the evidence deduced by the parties in so far as is relevant for the purpose of this arbitration; it is by no means a comprehensive minute of what transpired in the course of these proceedings.
9. The Applicant party called four witnesses to testify for its case whereas the Respondent led evidence of a sole witness for its case. In unfair conduct disputes, the Applicant bears the onus of proof thus its witnesses testified first.

### The Applicant's Case:

10. The Applicant, Ms Vhutshilo Mutavhatsindi testified under oath as the first witness for her case as follows:
11. Ms Mutavhatsindi started her career with the Department of Minerals (DMR) in October 2014. She holds an Honours degree in Economics. In 2020 the DMR was merged with the Department of Energy (DME) to become the Department of Minerals and Energy (DMRE). In line with the merger, the Applicant was transferred to the new department. She was placed in the Mineral Resources and Statistics Section as a Mineral Economist focusing on Precious and Ferrous Metals. In this section, she is one of three Economists that analyse trends in the mining sector.



12. The Applicant lodged a grievance on the 03<sup>rd</sup> of November 2023 and crystallised her case on papers as follows:

*“Before the merger between the Department of Mineral Resources and Department of Energy, I was working under the Directorate Economic Advisory, under Mineral Policy and Promotion Branch as an Economist on level 8. After the merger, the directorate was dissolved and was absorbed by the Directorate Mineral Economist and Statistics, as a Mineral Economist together with a colleague. One of the positive results after the merger was the fact that most posts on level 8 were upgraded to level 10 after a job evaluation. I was one of the employees who were to benefit from this positive development under the new DMRE.*

*A couple of months down the line, the colleague I was transferred with to MES Directorate got another post, in another branch, leaving the post vacant. To my surprise, when the post was advertised, it was on level 10. (Please see advert attached)*

*In August 2023, the HR Management team and Mineral and Economics Managers held a meeting [whereby] an agreement was reached with regards to an upgrade from level 8 to 10....*

*Since then I have been waiting for the upgrade to be implemented...”*

13. The outcome of the grievance dated 21 February 2024 was as follows:

*“An investigation was conducted... The investigation revealed the following:*

- a) You were placed on the Directorate Mineral Economics and Statistics with your same level from the then DMR as per Resolution 1 of 2019.*
- b) No reasonable expectation was created that you will be upgraded to level 10 when you were placed;*
- c) The job evaluation process was put on hold while it was at an advanced stage;*
- d) A post of Mineral Economist (Non-Ferrous Metal and Energy Commodities) was advertised at level 10*

*Based on the findings revealed by the investigation, the grievance is found to be substantiated and the following is recommended:*

- a) The Directorate Organizational Development and Change Management is requested to obtain approval from the decision-maker based on the recommendations of the job evaluation panel by 31 March 2024;*



- b) *The Directorate Organizational Development and Change Management is requested to communicate the outcome of job evaluation results after approval by the decision-maker and their impact on you;*
- c) *You are requested to allow the Directorate Organizational Development and Change Management time to obtain approval of the recommendations of the job evaluation panel from the Director-General as recommended to them. ....”*

14. There was no communication from the Directorate, hence the matter was referred to the Council.
15. The Applicant submitted the advert of the position that was held by the colleague that left. It illustrated that the salary at level 10 was R527 298, 00 per annum whereas she is still on a level 8 salary of R393 612, 00 per annum. She emphasized that this was not fair as they were doing the same job. The only difference is the commodities that they were dealing with. The matter is also not about expectations created but to be treated fairly in terms of the job and salary level. The fact that the investigator agreed and said the grievance was “substantiated” also means that the Applicant should be upgraded to level 10.
16. In terms of PSCBC Resolution 1 of 2019 matching criteria, the Applicant argued that matching can only be done by placing at correct level. The job description of her erstwhile colleague was supposed to be used, accordingly at level 10. The actual job description of the Applicant was supposed to be upgraded or changed in terms of 6.5 of the resolution as there was indeed a change when she was transferred as her work was graded at level 10. To make matters worse, the Applicant is the only employee compensated at level 8 whereas the other 2 Mineral Economists are at level 10.
17. The Applicant articulated under cross examination that when her section was dissolved the team had to choose positions in relation to experience and qualifications. She conceded that she was not forced to state level 8 in the choice form and job description. At the time, the Mineral Economist position was at level 8 which is the equivalent of 0 – 1 year experience. Level 10 needs 3 – 4 years’ experience.
18. In terms of recommendations made after the grievance, the Applicant quoted an email dated 08 April 2024 by the Organizational Design Official, Mr Chris Ramoshaba, in which he stated as follows:

*“Please note that the Job Evaluation Submission for the Mineral Economist is en-route to obtain approval.*



*In terms of the possible outcomes the submission can either be approved or not approved, if not approved reasons will be provided by the Accounting Officer/ Delegated Authority. If it is approved, affected employees will be implemented in line with the Job Evaluation Policy. Either way, you will be informed of the outcomes."*

19. The Applicant never received the promised results of this Job Evaluation process but surprisingly the job was advertised at level 10.
20. The Applicant attested that she is due for an upgrade to level 10 because she now has more than 4 years of experience in the position. Both her Manager and OD wrote a memo for her to be upgraded. The memo was not approved and no reasons were provided. Hence, a grievance was lodged.
21. The Applicant conceded that she does not have minutes nor recordings of a meeting that she claimed happened in August 2023 between HR and Economics Managers. Another concession was made that the investigator did not state that she must be upgraded but rather a request must be made for approval. The Applicant further conceded that in her job description, there is no performance of managerial activities. The Applicant also conceded that 4.12 of the resolution, was also applied in her transfer. It states as follows, *"All affected employees will be transferred to the recipient departments on the same salary level and condition of service as the post they currently occupy."* 4.15 provides that, *"No automatic upgrades to higher level posts during the ring fencing and transfer process will apply – the normal post grading arrangements will remain in force."* While the Applicant understood this provision, she argued that the post was evaluated later according to the job advert that came out with a level 10 grading. She accepted that she moved at level 8 in line with 4.15. She did not understand 6.3, which provided that *"Where the function has been moved, the post(s) will follow such function, and the employee will follow the post."*
22. In re-examination, the Applicant clarified that as Mineral Economists, they do not have subordinates, thus the question about managerial activities was misplaced. She reiterated that the matter is not about expectations but entitlement as her colleagues are at level 10.
23. The second witness was Mr Tlatlane Raymond Masetlana, the Director of Mineral Economics and Statistics.
24. Mr Masetlana is responsible for four directorates, managed by four Deputy Directors. The Applicant is based in one of the directorates. The Applicant's Manager, Ms Malebo - Deputy Director, reports to Mr Masetlana. On the 17<sup>th</sup> of August 2023, Mr Masetlana penned an internal memo to request for the Applicant to be upgraded from level 8 to





level 10. This was supported by Ms Mohale, the Chief Director: Economic Analysis and Statistics. This memo was ultimately not signed by the DDG because protocol dictated that it had to come from DDG to DG. This is where the process got stuck.

25. The request was part of the directorate's retention strategy for Mineral Economists emanating from 2013. The process was never finalised until the merger. Later, HR and OD advised that the job descriptions should be enriched for a re-evaluation. This was done, but the Director never received feedback. It was discovered later that re-evaluation was not necessary as Mineral Economist posts were already at level 10. This was confirmed when Ms Yolanda Malematja left because her post was advertised at level 10. The Director had a meeting with both Ms Mohale and Rapoo on teams whereby it was confirmed that posts were evaluated at level 10. This prompted the directorate to request that all the four affected Officials must be upgraded. This was inclusive of the Applicant. However, only one Official was upgraded, Kabelo.
26. On the 23<sup>rd</sup> of October and the 01<sup>st</sup> of November 2023, the Director authored an email the Director of OD about the matter. These communiques did not yield positive results. The Director testified that his interest in the matter was to ensure fairness and for employees to be rewarded in line with the work that they are doing. In all the engagements, the Director specified that he has never been provided with reasons why the Officials should not be upgraded to level 10.
27. The vacant Mineral Economist post was filled by Ms Iyanathi Tau at level 10. Mr Masetlana affirmed that this post is the same as that of the Applicant. They do the same work, the only difference is the commodities that they work on. As a remedy there are two options:
- (a) Upgrade the Applicant to level 10 with immediate effect
  - (b) Back pay the Applicant from date that she assumed the position, 01 April 2020.
28. Mr Masetlana attested under cross examination that the Applicant must be upgraded because the content of her work has changed drastically from where she was to her current work. In responding to 4.15 of Resolution 1, Mr Masetlana accepted that there are no automatic upgrades but explicated that there were already ongoing arrangements to upgrade Mineral Economists. It was only communicated to the directorate that the upgrades had fallen away when it was Mr Mosetlhanyane's turn to be upgraded. This was no man's land at the time of the merger as there were no rules. There was no information on the process, structure and so forth. The Director attested that



he was neither involved nor was he consulted. He denied that he was being untruthful when it was put to him that he is part of Senior Management and thus, had information at his disposal. This was enhanced by his statement that the communication with the Director of OD, Mr Ramoshaba, was sufficient evidence that there was an agreement to upgrade the Officials.

29. He accentuated that the employer failed to implement through actions such as:

- 29.1 One moment the posts were level 10, the next moment they are not;
- 29.2 Where must the memo come from and to whom must it be sent...

30. However, what was never denied was the content of the internal memo or submissions that there was an agreement to upgrade the Officials. What remained a thorny issue was the implementation thereof. Mr Masetlana averred that OD had agreed to compile the submission. However, when it emerged that the directorate was misled about the level of posts, the approach changed. All indications are that HR and the directorate were working on the upgrades. Mr Masetlana was clear in his response that he believes that the Applicant qualifies for an upgrade. In 2021, HR informed them that the upgrade process had fallen away but could not give an answer as to why this was never communicated all along. Mr Masetlana differed with the Respondent and retorted categorically that it is a wrong notion to hide behind the new department. He placed emphasis on the fact that the job description is in line with the organogram from Ms Mokone received in 2023.

31. Mr Masetlana repeated in re-examination that the current post of the Applicant is different from the prior position with regards to job content. His interpretation of “*no automatic upgrades*” in 4.15 does not mean that it will never happen. Besides, promises were already made to Officials by then. Mr Masetlana also highlighted that his email and memo were never rebutted nor were there any objections raised about them because the Respondent knows the truth about what happened.

32. The third witness was Ms Mathabo Ikaneng. She testified under oath as follows:

33. Ms Ikaneng is a Deputy Director: Non-Ferrous and Energy Commodities. She is one of the direct reports to Mr Masetlana, the Director of Mineral Economics and Statistics. On her part, she has four Economists reporting to her.

34. Ms Ikaneng testified on the “*request for the advertising of a vacant post*” on page 10 of bundle A. This is when she was required to fill a level 10 post. The previous incumbent was Ms Eulanda Malematja. This post was the same as



the Applicant's post. All duties are the same, the only difference was the sub-groupings of mineral commodities that they were responsible for. The Applicant was a Level 8 Mineral Economist for Precious and Ferrous Minerals. Ms Malematja was promoted from her previous role at level 8. Ms Ikaneng's expectation was that HR would conduct due diligence to place the team at correct salary levels. Ms Malematja's post went for job evaluation before it was advertised at level 10. The successful candidate was Ms Yanathi Tau and she was placed at level 10.

35. The job description for Ms Malematja at level 10 was received in July 2024. Be that as it may, the post was affirmed as always being at level 10. To substantiate the declaration, Ms Ikaneng affirmed that she once held this post. She further declared that all Economists in the department have been at level 10 but HR brought Economists at level 8. To her, this meant that something fell through the cracks. HR should have consulted the directorates but never did.
36. Ms Ikaneng quoted an email dated 4 April 2014, to confirm that a meeting was held to discuss options to develop job descriptions and to discuss levels of different Economists' positions. Previously, entry levels for Mineral Economists were level 8. In 2014, job grading was conducted and results showed that Mineral Economist positions should be at level 10, with a minimum of 3 years' experience. HR was then informed that there is a challenge in that there are incumbents that are purely from the mining industry and Economists with no mining industry experience. Such incumbents were allowed to gradually work their way up to level 10. However, when HR decided to place the Applicant and Ms Malematja, they did not consult the directorate on these internal arrangements. If that was done, the directorate would have been able to explain that the post is at level 10 and explained the history. In essence, HR phased out this internal arrangement without consultation. This is unfair on the Applicant as she is doing the same job as others but finds herself placed at an incorrect salary level. Therefore, the Commissioner must find in her favour and decide that Applicant should be paid at the appropriate level of 10 for the entire period worked from when she started, 01 April 2020.
37. Ms Ikaneng conceded under cross examination that there is nowhere in the transfer where it is stated that the Applicant will be upgraded from level 8 – 10. However, she asserted that the Applicant was not placed at the same level, instead, she was previously placed erroneously on level 8. There was an ongoing process to correct this. The Applicant came into the directorate through matching and placing, not through a recruitment process. She moved with level 8 from her previous post because she could not change it herself. Ms Ikaneng asserted that there is no level 8 for Mineral Economists. It was not disputed that there is no level 8 in the structure, thus the Applicant is placed unfairly in vacuum at level 8. The employer, embodied by HR, did not consult the directorate, hence there are holes in its process. They only came with letters in which placement was incorrect.





38. The Applicant does not report to Ms Ikaneng. Thus, it was put to her that the document she presented was in fact not job evaluation results. From the disputation, she responded that her evidence was based on her assumption that it was the correct document for job evaluation.
39. The fourth witness was Ms Lesego Malebo. She testified under oath as follows:
40. Ms Malebo is a Deputy Director with four Economists reporting directly to her, inclusive of the Applicant. Ms Malebo proffered an example with one of her Mineral Economists, referred to as Pieter. He is at level 10 and is responsible for PGMs (Platinum Group Metals) and Diamonds whereas the Applicant is at level 8, responsible for Gold and Silver. They both do the same job, the only difference is the minerals they deal with. Mineral Economists are graded at level 10 as it came out from job evaluations. The Applicant's old job description is no longer applicable to the current position.
41. Ms Malebo asserted that it is not fair to do the work of a level 10 post when she is placed at level 8. She corroborated the evidence of prior witnesses.
42. Cross examination was similar, followed by similar responses. What was novel is that Ms Malebo brought it to light that Mineral Economics is a subject that is not offered by any University in the country. It is therefore unique. Hence the directorate had to develop a career progression arrangement to develop Economists from an intake at level 8 to develop them to level 10. At the time, the directorate was confident that HR understood this career progression of candidates at level 8 being developed into level 10. This is a process that was started in 2014, therefore before the Applicant joined the Respondent. The assumption at the time was that they would go through the same process effected when she started at level 8. This was before the merger. Hence, job re-evaluations had to be redone afterwards. There were numerous meetings and communiques between the Director of Mineral Economics and HR about this matter.

### **The Respondent's Case:**

43. The Respondent's sole witness was Mr Chris Ramoshaba, the Director of Organizational Development and Change Management. He testified under oath as follows



44. In 2019, there was a configuration of government departments. The Department of Mineral Resources was merged with the Department of Energy. Mr Ramoshaba's unit designed the start-up structure. The Applicant was also grouped into the structure. Resolution 1 of 2019 was an agreement that guided how the reconfiguration should be done. A number of functions were identified and transferred or grouped together. Criterion for both ring fencing as well as matching and placing were also developed. The transfer letter that was furnished to the Applicant is borne of this process.
45. Mr Ramoshaba averred that the Applicant was not forced to write level 8 in her choice form. He testified that job evaluations were initiated under the DMRE after the merger. This is a process that was started in 2021 but was never finalised. In March 2022, the post was presented to the panel. The process of restructuring started and affected this process. The Job description and job evaluation policy, provides that:
- "6.2.3 If a Branch/ Component is in the process of restructuring, individual/ group requests for job evaluation can only be considered after the restructuring has been finalised."*
46. The restructuring process took longer than expected and there was a new macro-economic plan by the President. To Mr Ramoshaba that meant that his team had to embark on a new process that was concluded in March 2025.
47. Mr Ramoshaba testified that the job evaluation process for the Applicant was never finalised for approval. Her placement at level 8 was compiled in line with Resolution 1 of 2019. Thus, he attested that the Applicant was not placed incorrectly. The post follows the functions. The functions were transferred, followed by the post. In conclusion, the incumbent follows last. Throughout, the salary level remained the same.
48. In cross examination, Mr Ramoshaba conceded that the posts of Mineral Economist: Non-Ferrous Metals and Energy and Mineral Economist: Precious and Ferrous Minerals and Metals have been graded at level 10.
49. Closing arguments were presented in writing by both parties.

## ANALYSIS OF EVIDENCE AND ARGUMENT

50. In ***Mathibeli v Minister of Labour* [2015] 3 BLLR 267 (LAC)** the Labour Appeal Court concluded that the failure to upgrade an employee's salary after an upgrade was done in terms of the Public Service Regulations does constitute



an unfair labour practice dispute relating to promotion. The dispute was one of right and not merely of interest. The Bargaining Council therefore has jurisdiction to consider similar matters.

51. Section 185 of the LRA stipulates that every employee has the right not to be subjected to an unfair labour practice.
52. *In casu*, the Respondent's own witness conceded that the Applicant's post is graded at level 10. This closed the argument regarding the appropriate salary level of the Applicant.
53. It is clear that the Respondent has no sensible justification to ignore the entire management team of the directorate. There is consensus internally that level 8 is indefensible for the Applicant and the work she performs. The Respondent failed to rebut the comprehensive evidence led by the Applicant's management team.
54. For years, the Respondent failed to implement the salary increase. There was no coherence in actions taken by different Officials. The Respondent's own investigator declared the grievance of the Applicant to be "substantiated".
55. Relevant considerations in deciding fairness in an alleged unfair labour practice related to promotion can be found in ***City of Cape Town v SAMWU obo Sylvester and others (2013) 34 ILJ 1156 (LC); [2013] 3 BLLR 267 (LC)***. The Court held, with reference to the ***Aries*** case (*infra*), that the overall test is one of fairness. In deciding whether the employer acted fairly in failing or refusing to promote the Employee it is relevant to consider the following:
- a) *whether the failure or refusal to promote was caused by unacceptable, irrelevant or invidious consideration on the part of the Employer; or*
  - b) *whether the Employer's decision was arbitrary, or capricious, or unfair; or*
  - c) *whether the Employer failed to apply its mind to the promotion of the Employee; or*
  - d) *whether the Employer's decision not to promote was motivated by bad faith;*
  - e) *whether the Employer's decision not to promote was discriminatory;*
  - f) *whether there were insubstantial reasons for the Employer's decision not to promote;*
  - g) *whether the Employer's decision not to promote was based upon a wrong principle;*
  - h) *whether the Employer's decision not to promote was taken in a biased manner.*
56. The Respondent flouted the above considerations from (a) to (h).



57. In **De Nysschen v GPSSBC and others (2007) 28 ILJ 375 (LC)** the Court held that the discretion not to promote should be exercised in a way which does not constitute an unfair labour practice and does not fall foul of the balanced approach called for by the Constitution, which provides for a balanced approach. On the one hand, fair labour practices and affirmative action must be observed. On the other hand, effectiveness, efficiency, high ethical standards and progressive human resource policies are crucial and the question at hand had to be interpreted in that context. To determine whether the discretion is fairly exercised will always depend on the facts of the matter. In the current matter, there was no fairness applied in this upgrading process. As a consequence, the Applicant was certainly subjected to an unfair labour practice.

58. *In casu*, the Applicant party sought backpay from the date of appointment. Unfortunately, there is no legal provision for backpay in unfair labour practice matters. In terms of Section 193(4) of the LRA, remedies to an unfair labour practice are limited to terms that the Arbitrator deems reasonable, reinstatement, re-employment and compensation. Section 194(4) provides that compensation is limited to a maximum of 12 months.

59. Under the circumstances, I order just and equitable compensation on a maximum scale. There is no reason why such a remedy would be untenable especially given the years of underpayment suffered by the Applicant.

60. In the premise, I render the award as follows:

## **AWARD**

61. I find that the Applicant, Ms Vhutshilo Mutavhatsindi, was subjected to an unfair labour practice by the Respondent.

62. To remedy the unfair labour practice, I hereby order the Respondent to upgrade the Applicant to salary level 10 effective 01 September 2025.

63. Furthermore, I order the Respondent to pay compensation of R393 612, 00 to the Applicant by no later than 30 August 2025.

64. I make no order as to costs.





GENERAL PUBLIC SERVICE  
SECTOR BARGAINING COUNCIL



**Physical Address:**  
260 Basden Avenue,  
Lyttelton, Centurion,  
Pretoria

**Postal Address:**  
PO Box 16663,  
Lyttelton, 1040

**Tel:** 012 644 8132

**Web:** <http://www.gpssbc.org.za>

Dated and signed on the 27<sup>th</sup> of July 2025.

Vusumuzi Eugene Moyo  
GPSSBC Commissioner