



In the

GENERAL PUBLIC SERVICE SECTOR BARGAINING COUNCIL

Held in Standerton

Date: 31 July 2023

CASE NO: GPBC252/2023

In the matter between

PSA obo VS Mthimkhulu

Applicant

And

Department of Correctional Services

Respondent

ARBITRATION AWARD

DETAILS OF HEARING AND REPRESENTATION

- [1] This is an arbitration award issued in terms of section 191(5)(a) of the Labour Relations Act of 1995. The hearing was scheduled under the auspices of GPSSBC heard before me on the 6th of June 2023 at the offices of the Respondent in Standerton. The Applicant was represented by Mr J. Roelofse of PSA and the Respondent was represented by Mr SD Mdluli.
- [2] Parties submitted their bundles which I labelled them as "Bundle A" for an Applicant bundle and the Respondent bundle was labelled Bundle R. Proceedings were in English and were recorded electronically.

ISSUE TO BE DECIDED

- [3] I had to decide whether the non shortlisting of the Applicant does constitutes unfair labour practice in terms of s186(2)(a) of the LRA pertaining to promotion.



BACKGROUND TO THE DISPUTE

- [4] The dispute emanated from a non-shortlisting of the Applicant for the position of the Education Specialist within the Standerton Correctional Centre facility where the Applicant is also stationed. The Applicant is the Correctional Officer Grade III of the Respondent is seeking compensation for the misdemeanour caused to him.

SURVEY OF EVIDENCE AND ARGUMENTS

APPLICANTS' CASE

- [5] The Applicant took the stand and testified under oath that he is appointed as the Correctional Officer since April 2021. He is responsible for assisting offenders with their learning programmes that are run by the Department. He said at about early 2022 the Respondent advertised the position of the Education Specialist which required an M+4 qualification in Education as a minimum requirements (Matric plus 4-year Qualification). He applied for this job as he felt he met the requirements.
- [6] Upon application he realised that the post was filled and people were invited for interviews including his colleague and friend Mr Zwane SR whom they applied together. Appalled by this decision he filed the grievance with certain Ms Thwala who did not sign the grievance but handed it to Ms Myeza. There was no hearing done but Mr Zulu informed him that the reasons he was not shortlisted it was because they were looking for a Maths teacher.
- [7] He further testified that he is a qualified teacher with a Diploma in Human Resources and Post Graduate Certificate in Education. He also said he has teaching experience as he is assisting offenders in their programmes like anger management courses and/or training that they are referred to and he volunteered as a teacher at school in Embalenhle which is shown to his CV.



RESPONDENT'S CASE

- [8] The Respondent led its evidence through testimony of Mr Timothy Mahlangu who testified that he is the Divisional Head: Development Programme of the Respondent. He stated that he is responsible for training and development interventions of the offenders' conduct and self-sustainability of the Correctional Centres whilst on the other hand are skilling the offenders to the level of artisans.
- [9] In order for the centre for sustain itself and skill the offenders, they chose to follow the TVET (Technical and Vocational Education and Training) methodology of training where maths and science are the core subjects in the institution. He stated that the advert in question was for an educational specialist with a Bachelor's Degree in Education with Maths and Science as per the requirements of the institution.
- [10] He didn't dispute that the Applicant had a Diploma in human Resources and PGCE in Education, however, he disputed that this is equivalent to M+4 in Education qualification as per the minimum requirements. He further said if the teaching syllabi was in soft skills and humanities not in TVET methodology with an aim of producing artisans, the Applicant would have been shortlisted. He disputed any knowledge of Mr Zwane SR who was shortlisted for interviews.

ANALYSIS OF ARGUMENTS AND EVIDENCE

- [11] Section 186(2)(a) of the Labour Relations Act prohibits unfair labour practice against an employee on issues pertaining to promotion. I am therefore required to make a determination if indeed the Applicant met requirements and his non-shortlisting is tantamount to unfair conduct. In so doing, I must apply my mind on what is provided before me, an advert and its requirements as the minimum and the qualifications and experience of the Applicant.



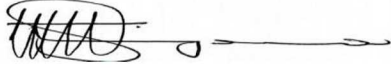
- [12] The minimum requirements of the post and the qualifications of the Applicant are common cause but the issue in dispute is that the qualifications do suffice for shortlisting to the position also, the issue of certain Mr SR Zwane who allegedly have similar qualifications with the Applicant but shortlisted. It is worth-noting that the alleged Mr Zwane's shortlisting was never backed by any kind of evidence or proof other than the allegations by the Applicant, in the absence of corroborating evidence to that claim I have no choice but to regard the claim as unfounded and baseless, as a result, the comparator or claim must then fall.
- [13] In the issue of the qualifications of the Applicant being equivalent to the minimum requirements, it will be indeed difficult for me to believe this as the advert was clear, without any ambiguity maybe something like "equivalent" in it. The Applicant didn't dispute that the school in the centre is technical and therefore whoever teaches there must have Maths and Science. Again, there is no way a Diploma and the Degree could be equal. Again, volunteering at a certain school with a Postgraduate Certificate in Education doesn't qualify anyone to be a Specialist.
- [14] The Applicant's assertion that he does some teaching in the centre on programmes where offenders are referred to like that of anger management also is not sufficient to make him Education Specialist. It is therefore my view that the Applicant didn't meet minimum requirements for this position and for that; his application of declaring his non-shortlisting as unfair labour practice must fall.

AWARD

- [35] In light of the above deliberations in make the following order:
1. The Respondent's action of not shortlisting the Applicant does not constitute unfair labour practice.
 2. The applicant's application of unfair labour practice relating to promotion is dismissed.
 3. The Council is ordered to close this matter on its case roll.
 4. No cost is ordered.



Sivuyile Tshingana



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GPSSBC Arbitrator