



# ARBITRATION AWARD

Panelist: Asnath Sedibane  
Case No.: GPBC 2169/2025  
Date of Award: 04 May 2026

In the ARBITRATION between:

***PSA obo Frieda-Marie Rieger***

(Union / Applicant)

And

***Department of Education***

(Respondent)

**Union/Applicant's representative:** Ms P Letebele \_\_\_\_\_

Union/Applicant's address: \_\_\_\_\_

**1<sup>st</sup> Respondent's representative:** Mr G Mathebula \_\_\_\_\_

Respondent's address: \_\_\_\_\_

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## ARBITRATION AWARD

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### DETAILS OF HEARING AND REPRESENTATION

- [1] The Arbitration hearing between **PSA obo Frieda-Marie Rieger (the Applicant)** and the **Department of Education (the Respondent)** was held under the auspices of the GPSSBC on the 16<sup>th</sup> of April 2026 at the offices of the Department of Education in Mbombela, Mpumalanga Province. The Applicant, Ms Frieda-Marie Rieger was present, and she was represented by Ms Pamela Letebele an official of the Public Servants Association of South Africa (PSA). The Respondent was represented by Mr Glan Mathebula an official of the Department. The Applicant submitted a bundle of documents, which was marked as bundle "A". The Respondent did not submit any documents. The Applicant testified as the only witness in her case. The Respondent's representative testified as the only witness in the Respondent's case.
- [2] It was agreed between the parties and the Panellist that the parties would submit written closing arguments by no later than 24 April 2026. I have received closing arguments from both parties, and I have taken these into consideration when making this award.

### ISSUE TO BE DECIDED

- [3] I was required to decide whether the Respondent committed an unfair labour practice relating to benefits against the Applicant.

### BACKGROUND TO THE DISPUTE

- [4] The Applicant has been employed by the Respondent since 16 March 1992. She is currently the Deputy Director: Grievance and Dispute Resolution, earning a basic monthly salary in the amount of R56,027-25. She was appointed to act in the position from 01 April 2025 until 31 January 2026.

### Narrowing of issues

The parties agreed that the following issues were common cause:

- [5] The Applicant was paid acting allowance for acting in the position of Deputy Director: Grievance and Dispute Resolution.
- [6] A submission was made for payment of the acting allowance, and it was approved by key line managers.
- [7] The acting allowance was calculated by the Respondent on salary level 11.
- [8] Mr Mathebula was not on the line of signatories on the internal memorandum.

The parties agreed that the following were the issues in dispute:

- [9] Whether the acting allowance paid to the Applicant was calculated at the correct salary level.
- [10] Whether guidance from the DPSA was sought by the Applicant in her personal capacity or by Labour Relations.
- [11] Whether guidance from the DPSA was addressed to the Respondent's Chief Director: HR.
- [12] Whether there is a shortfall of R58, 376-30 on the acting allowance paid to the Applicant and if the Respondent committed an unfair labour practice relating to benefits against the Applicant.

## **SURVEY OF EVIDENCE AND ARGUMENT**

### **THE APPLICANT'S CASE**

***The Applicant, Ms Frieda-Marie Rieger testified briefly under oath as follows:***

- [13] Her supervisor had made a submission requesting her appointment in the acting position and she was issued with the acting appointment letter dated 04/07/2025. She was permanently appointed in the position from 01/02/2026. Initially when she inquired with HR about acting allowance, she was told that she would not be paid acting allowance as there was no difference between her level and the first notch of level 11. She was told that guidance would be sought from DPSA, but when she later inquired the submission to DPSA had not been made. Her Director asked her to prepare a letter to DPSA to request

guidance and to sign the letter on his behalf, which she did. DPSA responded to the letter by writing to the Chief Director: HR, Mr Ndala.

- [14] The DPSA explained that the GPSSBC Resolution 1 of 2002 provides for payment of acting allowance. The issue in dispute is whether the acting allowance paid to her was calculated accordingly and if the Respondent complied with its policies. Despite the DPSA directive of 04/08/2025 that the post be treated as salary level 12 by default pending the Regulation 40 process and despite approval by the Head of the Department (HOD) on 25/09/2025, the Respondent proceeded to pay the acting allowance based on a salary 11 calculation.
- [15] The previous incumbent in the position was on salary level 12 from 01 July 2018 until she retired in 2025. The Respondent downgraded the post on the structure to level 11 without any document. The DPSA confirmed in its letter that in terms of Circular 4 of 2014, Departments had to do job evaluation of posts and follow the correct process. The DPSA further confirmed that it has not been consulted for verification on the post of Deputy Director: Grievance and dispute resolution and that the post is therefore assumed to be on level 12. Three posts in Labour Relations have been evaluated, and the results are still outstanding. The status quo on levels should therefore remain.
- [16] After the guidance from DPSA, she and the Director: Labour Relations drafted a memorandum to clarify the interpretation received from the DPSA and to request for payment of the acting allowance. The memorandum went through the line functions, and it was approved by the HOD. She was however paid on the 6<sup>th</sup> notch of salary level 11. On inquiring with Mr Norman Ngwenya in the benefits component, she was referred to a document drafted by Mr Mathebula. The A4 document is not on the department's letterhead, and it is not authorised. Mr Mathebula does not have the authority to overrule the HOD.
- [17] Under cross-examination, Ms Rieger confirmed that she had accepted the acting appointment. She contended that the appointment says that it will be in accordance with the DPSA. She reiterated that the incumbent of the post before her was on level 12. She referred to the letter from DPSA and said that according to the DPSA, the post should be on level 12 pending job evaluation. She did not dispute that the post was advertised on salary level 11 and that she accepted the offer on salary level 11. She confirmed that the HOD did not make comments on the memorandum seeking payment of the acting allowance.

## **THE RESPONDENT'S CASE**

***The respondent's witness, Mr Glan Mathebula testified under oath as follows:***

- [18] The structure in terms of post allocation explicitly puts the post of Deputy Director: Grievance and Dispute Resolution on salary level 11. That is why the post was advertised on salary level 11. Candidates applied for the post on that salary level and the Applicant was appointed on the salary level. Until there is an outcome of the job evaluation process, the post will remain at salary level 11.
- [19] Under cross-examination, Mr Mathebula said that the previous incumbent of the post was on level 12, not the post. There are instances where people are on personal notches for whatever reason. It is possible that the post was at one stage downgraded, so only the post would have been downgraded and not the incumbent. The office of the Premier found out that some posts were wrongly placed on salary levels 11 and 12. When the post was created it was on level 11.

### Closing arguments

- [20] In closing, the Applicant submitted that when she was faced with the prospect of not being compensated whilst performing duties in the higher position, based on what the Respondent had informed her, she and her supervisor had sought clarity from the DPSA. The response from the DPSA confirmed that in light of the post not having been subjected to a job evaluation, it was assumed to be on level 12 until it is evaluated through Regulation 40 of the Public Service Regulations process. The Respondent however elected to only rely on paragraph 5 of the DPSA's letter and ignored paragraph 6 of the same letter. It was further demonstrated through evidence that an internal memorandum aligned to the DPSA guidance was approved by the HOD. The Respondent however implemented the acting allowance, based on an unauthorised document. The Applicant seeks payment of the shortfall of the acting allowance, in the amount of R58,376.30 and compensation equivalent to two or three months' salary, for the financial prejudice she suffered as a result of the Respondent's deliberate deviation from lawful processes.
- [21] The Respondent in closing raised a jurisdictional point that the Applicant referred the dispute outside of the prescribed time frame, and without an application for condonation. I have not considered this point since it was not raised properly, at the start of the proceeding where the Applicant would have afforded the opportunity to respond to it. Based on the issue in dispute being the incorrect calculation of the acting allowance and not whether or not the Applicant is entitled to the benefit, I was satisfied when dealing with the arbitration that the dispute was properly referred within the prescribed time frame.

[22] The Respondent submitted that the post in question has always been on salary level 11, the Applicant was well aware of this hence she had accepted the acting appointment, and the permanent appointment offers on salary level 11. The Applicant wrote a request for guidance to the DPSA, stating that the post was on salary level 12 and was earmarked to be on salary level 11, without providing a shred of evidence to the DPSA. The DPSA's response indicates that the department must pay the Applicant the difference between her salary notch and the next high notch applicable to the post. This means that the department must compare such notches of salary level 11 until there is a positive balance. Paragraph 6 of the DPSA letter says that the assumption that the post is on salary level 12 was not consulted with the Minister of DPSA. The DPSA further advises that in the event such posts are assumed to be graded higher whereas circular 4 of 2014 must apply and can only be amended through a legislative process. The Applicant has not shown anything to prove that the previous incumbent of the post was remunerated on salary level 12 in compliance with circular 4 of 2014. Regulation 40 deals with the creating and filling of posts and does not apply to the Applicant as she is arguing acting allowance and not the filling of the post. The Applicant failed to prove her case, she sought to interpret DPSA documents without relying on an expert from the DPSA.

### **ANALYSIS OF EVIDENCE AND ARGUMENT**

[23] The Applicant has declared a dispute relating to the provision of benefits, in terms of section 186(2) (a) of the Labour Relations Act 66 of 1995, which provides as follows:

#### ***186 Meaning of dismissal and unfair labour practice***

(2) ***'Unfair labour practice'*** means any unfair act or omission that arises between an employer and an employee involving-

(a) *unfair conduct by the employer relating to the promotion, demotion, probation (excluding disputes about dismissals for a reason relating to probation) or training of an employee or relating to the provision of benefits to an employee;*

[24] The Applicant testified that the Respondent acted unfairly against her by calculating and paying her acting allowance on notch 6 of salary level 11 when for her acting in the position of Deputy Director: Grievance and Dispute Resolution for the period 01 April 2025 to 31 January 2026. According to the Applicant, she and her supervisor had sought guidance from the DPSA on the issue of the acting

allowance, following her engagements with HR and when she was advised by HR that her acting would be without remuneration.

- [25] The Applicant referred to a letter from the DPSA, addressed to the Respondent's Chief Director: HR in response to the request for guidance. The DPSA letter advises the Respondent to consider the Policy on Acting Allowance for personnel on salary levels 1 to 12 in the Public Service, in terms of which the employer can pay acting allowance beyond the minimum notch if there is no difference between the employee's current notch and the maximum notch of the vacant post. The employer may continue with the process up to the grade of the vacant post until the employee receives a difference. The DPSA further advises that as per the DPSA Circular 4 of 2014, the post of Deputy Director: Grievance and Dispute Resolution, which has not been consulted with the DPSA for verification and is assumed to be graded at salary level 12, remains the prescribed condition that can only be amended through the legislative processes. It further advises that in this case, regulation 40 of the Public Service Regulations, 2016, is the appropriate mechanism for addressing such matters.
- [26] The Applicant further testified that Ms Madonsela, the previous incumbent of the post was on salary level 12 before she retired in 2025. This was not disputed by the Respondent. The Respondent however contended that there could be various reasons why Ms Madonsela was on salary level 12, one of which could be that she was on a personal notch.
- [27] Both parties agreed that the post of Deputy Director: Grievance and Dispute Resolution was one of the posts that were awaiting the results of job evaluation, which will determine whether the post is on salary level 11 or 12. The Respondent contended that in terms of its own structure, the post is on salary level 11 hence it was advertised on that level and the Applicant is currently remunerated on salary level 11 since her permanent appointment in the post and her acting allowance was therefore calculated at salary level 11, being the correct level of the post in terms of the department's structure.
- [28] It is not in dispute that following the letter from the DPSA, the Applicant and her supervisor prepared a memorandum for the approval of the HOD and that the purpose of the memorandum was to clarify the interpretation of the guidance received from the DPSA regarding the payment of the acting allowance and the grading of the post of Deputy Director: Grievance and Dispute Resolution and to request that the Applicant be paid acting allowance from the date of her appointment to act in the post.
- [29] The dispute between the parties is centred on the correct interpretation and implementation of the guidance from DPSA in relation to the payment of acting allowance to the Applicant. The Respondent's

argument is that the DPSA's assumption of the post being on salary level 12 was based on the Applicant's averment that the incumbent of the post was on salary level 12 and that she should therefore be paid the acting allowance at the same level. According to the Respondent, the Applicant's assertion was not supported by any evidence and the correct position is therefore that she should be paid at a notch of the higher level where a positive difference between her salary notch and the notch of the higher post, and this according to the Respondent is the 6<sup>th</sup> notch of salary level 11.

[30] The Applicant has argued that the Respondent's interpretation is not the only interpretation of the DPSA's guidance. The other interpretation, which the Applicant believes should be the one implemented, is that, assuming that the post which has not been consulted with the DPSA for verification is assumed to be on salary level 12, remains the prescribed condition that can only be amended through the legislative process.

[31] The Applicant's argument is based on the letter from the DPSA the authenticity of which has not been challenged by the Respondent. The Respondent on the other hand has argued that the post is at salary level 11. There was however no corroborating evidence adduced to support this argument. The Respondent referred to a departmental structure which was not produced as evidence, and the Respondent's single witness' evidence was not corroborated by either oral or documentary evidence.

[32] The Labour Court in **Aries v CCMA and others (2006) 27 ILJ 2324(LC)** when considering an unfair labour practice dispute held that an employee can only succeed in having the exercise of a discretion of an employer interfered with if it is demonstrated that the discretion was exercised capriciously, or for insubstantial reasons, or based upon any wrong principle or in a biased manner. The Applicant in this case has argued that the decision by the Respondent to pay her acting allowance on the 6<sup>th</sup> notch of salary level 11, instead of on the entry notch of salary level 12, which would be in line with the Policy of acting allowance and based on the correct level of the post when considering that the previous incumbent of the post was at salary level 12.

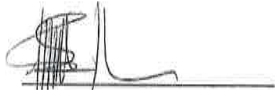
[33] I have considered the arguments by both parties with regards to the correct interpretation and implementation of the guidance letter from the DPSA, read with the approved submission by the Director: Labour Relations that sought the correct interpretation and implementation of the DPSA guidance on the payment of the Applicant's acting allowance. The Applicant led oral evidence, supported by documentary evidence and she has proven on a balance of probabilities that the Respondent has failed to properly interpret and apply the recommendations of the DPSA when calculating the acting allowance due to her.

- [34] The Respondent failed to produce any evidence to disprove the Applicant's claim of unfair labour practice. The Respondent, despite stating that the post of Deputy Director: Grievance and Dispute Resolution is on salary level 11, failed to prove this through documentary evidence. The Respondent further failed to show a justifiable basis for its decision to pay the Applicant acting allowance on the 6<sup>th</sup> notch of salary level 11. The Respondent could not dispute that it used an unauthorized document that was unilaterally prepared by Mr Mathebula. The decision by the Respondent to pay the Applicant the acting allowance at a lower salary level than the level at which her predecessor in the post was, was based on insubstantial reasons and not in line with the guidance received from the DPSA. The Respondent has therefore committed an unfair labour practice against the Applicant.
- [35] The Applicant has testified that had she been paid acting allowance on the correct salary level and notch, she would have received R58, 376. 30 more than what she was paid. She received R31,820.84(R3,182.12 per month) in acting allowance. Had she been paid the acting allowance on salary level 12 and in line with the GPSSBC Resolution 1 of 2002 she would have been paid R90,198-10 (R9,091-81 per month). She has therefore claimed that she be paid the shortfall of the acting allowance. I find that the Applicant's claim is justified.
- [36] The Applicant has further prayed for an order that she be paid compensation equivalent to two or three months' salary for the unfair labour practice. In considering the issue of compensation, I have taken into consideration that the Applicant has not demonstrated any financial loss or demonstrable prejudice as a result of being paid acting allowance at salary level 11. I therefore find that the claim for compensation is not justified.

## **AWARD**

- [1] The Respondent, **Department of Education** has committed an unfair labour practice relating to benefits against the Applicant by not calculating and paying the Applicant, **Frieda-Marie Rieger** acting allowance at salary level 12.
- [2] I order the Respondent to pay the Applicant the shortfall of the acting allowance in the amount of **R58, 376. 30**, by no later than 05 June 2026.

[3] As provided by the LRA, section 143(2), the amount will attract interest at the rate prescribed in section 2 of the Prescribed Rate of Interest Act 55 of 1975 if not paid, until paid in full.



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**Asnath Sedibane**  
**GPSSBC PANELLIST**