



GENERAL PUBLIC SERVICE
SECTOR BARGAINING COUNCIL

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ARBITRATION AWARD

Panelist/s: N J MABILO
Case No.: GPBC566/2024
Date of Award: 30 JUNE 2026

In the ARBITRATION between:

PSA obo MS Mlimi

(Union / Applicant)

and

Department of Co-operative Governance and Traditional Affairs

(Respondent)

Union/Applicant's representative: NG Mlangeni of PSA _____
Union/Applicant's address

1st Respondent's representative: MG Malatjie _____

2nd Respondent's representative: HS Ali

ARBITRATION AWARD

DETAILS OF HEARING AND REPRESENTATION:

1. The arbitration of the unfair labour practice dispute between **PSA obo MS Mlimi** (applicant) and **Department of Co-operative Governance and Traditional Affairs** (Respondent) was held under the auspices of GPSSBC, on 10 March 2025, 27 August 2025 and 05 June 2026 at Riverside Park in Mbombela.
2. The applicant was represented by Ms NG Mlangeni of PSA. The first respondent was represented by Mr MG Malatjie and the second respondent by Mr HS Ali.
3. The proceedings were recorded both manually and electronically.

ISSUE TO BE DECIDED:

4. I am required to determine whether the respondent committed any unfair labour practice in not appointing the applicant to the promotional post of Deputy Director: Business Support and appointing the second respondent to the post. If so, to determine the remedy.
5. Relief sought was protected promotion, compensation or any other alternative relief applicable.

BACKGROUND TO THE MATTER:

6. The applicant started to work for the respondent on 01 March 2009.
7. He occupied the position of Assistant Director.
8. The applicant was on a salary notch of R 585 957.00.
9. The first respondent was Department of Co-operative Governance and Traditional Affairs.

SURVEY OF EVIDENCE AND ARGUMENT:

Applicant's Submission:

The applicant, **Shadrack Mkhuba Mlimi** testified under oath and stated the following:

10. He was employed by the respondent as Assistant Director: Business support. He was employed as Admin Officer (Stock Management) in 2009. In 2010 he was seconded to Expenditure in Finance section. In 2011 he was promoted to Assistant Director: Traditional Leadership. In 2023 he acted as Deputy Director for a period of 6 months.
11. Reference was made to Bundle 1 page 18 which reflected his appointment letter for the position of Deputy Director: Business Support (Geneology) for a period of 6 months.
12. The witness stated that he was doing the work since March 2011 and he was the relevant person to be appointed to the post.
13. Reference was made to the advert for the post as provided in the bundle of documents. The requirements were read and the witness highlighted that he met all the requirements of the post in terms of qualifications and experience specified. In addition he submitted that he had hands-on experience of the duties as he acted in the post for 6 months.
14. The respondent overlooked someone who had been performing the duties and brought someone who was new to the position. The minimum three years experience stated in the advert was not considered.
15. Reference was made to the recruitment policy section dealing with recruitment and selection, which states that: *'Applications that do not meet requirements will be eliminated'*. According to the witness, the appointed incumbent should have been eliminated.
16. Under cross examination the witness confirmed the roles he played in expenditure management, including budgets, making payments.
17. As regards attending competency test, he stated that he was supposed to have been one of the two who attended and that was why he lodged a grievance. He further stated that he deserved to have been included and attended the competency test.
18. Again, he reiterated that he met all the requirements of the post including experience on finances.
19. During re-examination, the witness stated that the appointed incumbent lacked three years experience in traditional leadership.

Respondent's Submission:

The respondent's first witness, **Songelwa Jeremiah Motha** testified under oath and stated the following:

20. He was employed at Traditional Leaders as Director: Committees and Local Housing. His main responsibility was to oversee functionalities of houses. He chaired the shortlisting and interviewing panels.
21. The second respondent, Mr Tsobolo met the requirements of the position. He spent some years as school principal managing school budget. The second respondent was also a researcher according to his CV and he held a Bachelors degree with History as a major.
22. The witness stated that after interviewing the next step was competency assessments which was outsourced. Only those who get first and second position in the interviews are sent for competency assessments. In the case at hand it was Mr Tsobolo who obtained number 1 and Mr Selobane who got number 2 in the interviews.
23. When asked about the position obtained by the applicant at the interviews, he first stated that he did not remember and later said that the applicant was rated number 3.
24. Under cross examination the advert requirements were read and he was asked to show the experience of the appointed incumbent. The witness replied that the incumbent was a principal at a rural area and therefore interacted with traditional leaders in some way or other.
25. It was pointed out to the witness that the appointed incumbent never stated any experience in traditional leadership in his application and the witness agreed that it was so.
26. When asked why did they shortlist someone who did not have the required experience, the witness replied that the incumbent had History as a major subject.
27. In reexamination, the witness reiterated that the incumbent was shortlisted because of his knowledge of History and of finance as a former school principal.

Respondent's second witness, **Jabulani Petros Mamadi** testified under oath and stated the following:

28. He was employed by the respondent as Personnel Officer. He played a role in the shortlisting and interviewing processes as a scribe. According to the witness shortlisting was done as per the requirements in the advertisement of the post.
29. Although not sure of how many people were shortlisted, all who were shortlisted met the requirements of the post.
30. Trade Union representatives of NEHAWU and PSA did observe the processes.
31. When asked what issues did the trade unions raise he replied that no issues were raised. Later he said that the trade union observers said that the processes went smooth. The witness testified that the applicant did not complain as well.
32. Under cross examination the witness stated that he was not familiar with procedures followed when trade unions raise disputes and he did not know whether they did raise any disputes.
33. In reexamination the witness reconfirmed that all the shortlisted candidates did meet the requirements of the post.

Respondent's third witness, **Sibongile Mavis Mandlazi** testified under oath and stated the following:

34. She occupied the position of Director: Human Capital at COGTA. Her role regarding recruitment included appointing panels and checking reports from panels before submitting to the Head of Department.
35. When asked what was required for the panel to shortlist she replied that the panel would check the profiles and CV's of the candidates to shortlist. The shortlisting was based on the post advertisement.
36. The policy was used to limit the number to the required number. If all candidates fail to meet the requirements the post get advertised again.
37. When asked who did not meet the requirements among those shortlisted she answered that she did not recall. However, if someone was found not meeting the requirements that submission would not be sent to the HOD.

38. Under cross examination the witness submitted that while she was not in a position to change the recommendation of the panel, she was able to recommend it or not.
39. When asked whether all the applicants shortlisted met the requirements she replied that there were those within the department who did not meet the requirements but were shortlisted.
40. When asked again whether all shortlisted candidates met the requirements she replied that they all met the requirements. She further added that she checked their CV's and they all met the requirements.
41. The requirements of the post were read from the advert and she was asked about the appointed incumbent's experience in traditional leadership. At first she replied that it was stated somewhere and later agreed that she cannot find it. She finally agreed that he never stated any experience of traditional leadership.

Respondent's fourth witness, **Zandile Pertunia Sithole** testified under oath and stated the following:

42. She was employed by COGTA as Deputy Director: Expenditure Management for ten years now. She was a member of the shortlisting and interviewing panel.
43. When asked whether anyone of the candidates failed to meet the criteria, she did not recall. Then she was asked about the appointed incumbent and she replied that he was a principal at a rural school and he met the requirements.
44. The witness stated that the appointed incumbent was rated number 1 , other official was rated number two and the applicant was rated number 3 or 4.
45. The two top ranked candidates were sent for competency assessment in line with the policy.
46. At no stage did anyone raise any challenges with shortlisting and interviews.
47. Under cross examination she confirmed that she did peruse the submissions of the appointed incumbent. She stated that school principals do interact with traditional leadership even though she was not able to pinpoint on what.
48. When told that interaction was not experience she replied that interaction may lead to experience.

49. In reexamination she confirmed that no disputes were raised during shortlisting and interviews.

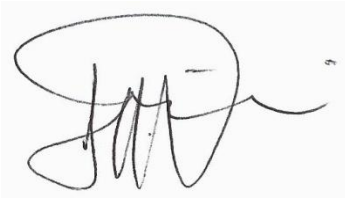
ANALYSIS OF EVIDENCE AND ARGUMENT:

50. The matter was referred as unfair labour practice in terms of sections 186(2)(a) of the Labour Relations Act 66 of 1995 as amended. It was therefore set down for arbitration. It defines unfair labour practice as any unfair act or omission by an employer relating to the promotion, demotion, probation, or training of an employee, or the provision of benefits. The current case related to promotion.
51. The applicant party presented their case with oral evidence by the applicant and a bundle of documents. The applicant testified under oath and presented his evidence showing that he was both qualified and experienced for the position, having acted in the same position for a period of six months. While he was fully aware that acting did not guarantee appointment, he became aware that he was sidelined and a person who did not meet the requirements of the post was appointed. The applicant demonstrated that he had the required qualifications and experience in traditional leadership and in finance or expenditure management in line with the PFMA. It was also pointed out that the appointed incumbent lacked the required experience in traditional leadership and financial management. The advertisement of the post was used to show the minimum requirements of the post.
52. The respondent party gave oral evidence using four witnesses and a bundle of documents. According to the first witness, the appointed incumbent met all the requirements of the post. He said that the appointed incumbent was a principal at a rural school and therefore had interacted with traditional leadership. In addition he had History as a major subject, which was required. The respondent party emphasized the fact that the trade unions observed the processes and never raised any concerns. The second witness also emphasized that the appointed incumbent met the requirements of the post. According to the respondent's version all went well and the suitably qualified and experienced candidate was appointed to the post.
53. The requirements of the post were stated on the advertisement as follows: ' *A Senior Certificate and a National Diploma/ Degree in Anthropology/ History/ Development Studies or equivalent qualification. A minimum 3 years experience in Finance/Expenditure Management. A minimum of 3 Years' experience in Traditional Leadership field (Anthropological/ historical/ Geneological) at Junior Management level. Knowledge of PFMA, Treasury Regulations, Traditional and Khoi-San Leadership Act and Public Service Regulations. Computer literacy and a valid driver's license* '.

54. The above paragraph was a statement describing the requirements that a candidate must meet to be appointed to the post. Any panel seeking to assess candidates to the post was supposed to check that the requirements are met. The departmental Recruitment and Selection Policy also made provision under 10.1 that: *'Applications that do not meet the requirements will be eliminated.'*
55. A comparison of the qualifications and experiences of the applicant and the appointed incumbent reflect that the two had the required academic qualifications. When it comes to the 3 years experience in Finance/ Expenditure Management and the 3 years experience in Traditional Leadership field the appointed incumbent lacks both. Interactions with traditional leaders as a school principal cannot be experience in Traditional Leadership. Managing a school budget cannot be regarded as experience in Finance/ Expenditure Management. On the contrary, the applicant demonstrated working in Finance and dealing with expenditure management. He also worked in Traditional Leadership as when he was acting in the post in question.
56. Based on the above, I am persuaded to believe that the applicant had made a case for unfairness in the recruitment and selection process. He also demonstrated that he was the best candidate for the job in terms of qualifications and experience including financial management experience and experience of traditional leadership. In addition he acted in the post and executed the duties for a period of six months. I also noted that the incumbent had been in the post for a long time. I will therefore not reverse the process but provide for compensation for the unfairness on the part of the first respondent.
57. I shall award compensation equal to six months salary and direct the department to consider him for promotion to a level equivalent to the level of the post in question (Salary level 12). On a notch of R585 957.00, the applicant's monthly salary was R48 829.75. Six month's salary shall amount to R 292 978.50.
58. The Department of Co-operative Governance and Traditional Affairs to consider promoting the applicant to the level of Deputy Director, salary level 12 to make up for the lost opportunity.
59. All evidence presented was considered. I only cited the facts which had a direct bearing to the findings and conclusions made in my determination of the dispute.
60. Based on the above, the award is as stated below.

AWARD:

1. The action of the first respondent constituted unfair labour practice.
2. The applicant is granted compensation equivalent to four months salary, which amount to **R292978.50**, to be paid by no later than 30 August 2026, failing which it shall earn interest in terms of the Prescribed Rate of Interest Act of 1975.
3. The department is required to oblige.

A handwritten signature in black ink, appearing to be 'Nj Mabiolo', written on a light gray background.

DR. NJ MABILO

GPSSBC Panelist.