



GENERAL PUBLIC SERVICE
SECTOR BARGAINING COUNCIL



Web: <http://www.gpssbc.co.za>

DEFAULT AWARD

Panellist/s: Joyleaf Boase
Case No: GPBC433/2025
Date of Award: 24 September 2025

In the ARBITRATION between:

PSA obo van Zyl, C

(Union / Applicant)

And

1st Respondent -The Department of Education and Sports Development, Potchefstroom

2nd Respondent – The Department of Social Development, Potchefstroom

Union/Applicant's representative: Mr Ockert Engelbrecht

Union/Applicant's address: PSA

1st Respondent's representative: NA

Respondent address: Labour Relations

2nd Respondent's representative: NA

Respondent address: Labour Relations

DEFAULT AWARD

DETAILS OF HEARING AND REPRESENTATION

1) The arbitration hearing took place on 04 of August 2025 at the 1st Respondent premises, the Department of Education and Sports Development in Potchefstroom. The proceedings were electronically recorded. The Applicant, "Ms Cindy van Zyl" was represented by "Mr Ockert Engelbrecht", an official from PSA union. Both 1st and 2nd Respondent were not present and not represented.

2) An enquiry as to whereabouts of the 2 Respondent's couldn't bear fruit as it was impossible to get hold of them, I then had to exercise my discretion in terms of the LRA, section 138 (5) (b) (i) and proceed with the arbitration in the absence of the 2 Respondents, as I was satisfied that they were properly notified of the proceedings on 16 of April 2025, via this emails: chomes@nwpq.gov.za and qletebele@nwpq.gov.za.

ISSUE TO BE DECIDED

3) I am required to determine whether an act or omission by both the 2nd Respondent before transferring the Applicant to the 1st Respondent without correcting the salary grade 1 (R298 614.00) to salary grade 2 (316 794.00), was fair or not, if not an appropriate adjustment be remunerated.

BACKGROUND TO THE MATTER

4) The Applicant was working in the social workers unit for the 2nd Respondent in 2021, who was supposed to adjust her from salary grade 1 to grade 2 but wasn't done until it transferred her in 2022 to the 1st Respondent, who implemented the adjustment around August 2023, after the late submissions of her files from the 2nd Respondent.

5) Aggrieved by this failure not to adjust the salary grade, she lodged a grievance, farther referring the dispute to the Council, which remained unresolved on 07 of April 2025 and followed by her request for arbitration on 16 of April 2025

ANALYSIS OF EVIDENCE AND ARGUMENT

6) In terms of Section 186(2)(b) '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.

7) In terms of Section 194(4) Limits on compensation –

(4) the compensation awarded to an employee in respect of an unfair labour practice must be just and equitable in all the circumstances, but not more than the equivalent of 12 months remuneration.

8) The South African Constitution, Act 109 of 1996, Section 23(1)- pledges to everyone the right to fair labour practice. In the employment context, this constitutional right is narrowed down in Section 185(b) of the Act unequivocally guarantees that every employee has the right not to be subjected to unfair labour practice.

9) In NUM obo Coetzee and other's V Eskom Holdings SOC Limited and other's (CA 4/2018) [2019] ZALAC 62; [2020] 2 BLLR 125 (LAC); (2020) 41 ILJ 391 (LAC), the Court noted that the failure to properly grade an Employee is related to the provisions of benefits for the simple reason that benefits (including status, remunerations, eligibility for promotion etc) are normally determined by grade. An Employee who complains that his/her job is wrongly graded doesn't seek promotion to a new, higher, or different job. Any re-grade of the job to coincide with the actual work done does not change the job contents. A re-grade doesn't promote an Employee into a new position it merely recognises the correct value to be attached to what the Employee, in fact, is already doing. A promotion gives an Employee a different or a reversed task. A dispute about an unfair incorrect grading is thus an unfair labour practice dispute relating to the provisions of benefits over which CCMA will normally have jurisdiction.

10) In terms of the Labour Relations Act 66 of 1995, Section 213 - Collective Agreement means a written agreement concerning terms and conditions of employment or any other matter of mutual interest concluded by one or more registered trade, on the one hand and, on the other hand -

- (a) one or more employers.
- (b) one or more registered employers' organisations; or
- (c) one or more employers and one or more registered employers' organisations.

11) It is trite law that he/she who alleges unfair labour practice must prove. The Applicant in this matter alleges that the 2nd Respondent failure not to correct her salary grade as it was required by the Resolution 1 of 2009 and by further delaying her employment details files submissions on a transfer made in 2022, compromised and which later was adjusted to correct salary grade 2, after 18 months since arriving to work for the 1st Respondent, constitutes unfair labour practice relating to the benefits as contemplated by the provisions of Section 186(2)(a) of the Act.

12) The Applicant in her oral submission she maintained that the transfer made in April 2022, its unfair, conducted unfairly as it worsened her salary position which was known and was done later with a letter send stating the backdating of the salary grade but with no remuneration for that or back pays from 2021, with the 2nd Respondent, labelling it pay progression that was due to her after 10 years of service. The 1st Respondent even though it corrected the salary grade it is responsible for the 18 months she worked before which is on 01 of April 2022 until 01 of May 2024, while the 2nd Respondent, who was joined to the matter as previous employer is responsible from 01 of April 2021 to 01 of April 2022, before the transfer.

13) I considered the oral and documentary evidence led by the Applicant, mainly out of this annexure "B", noting the conduct of the 2 Respondent, choosing to ignore the proceedings and showing a deliberate intention not to own up to their actions. On that the 2nd Respondent, transferred the Applicant in April 2022, but on 29 of February 2023, it wrote a letter on annexure "B", by Mr I.K. Kgobe, the District Director, with the subject stating outcome result for Occupational Specific Dispensation (OSD) grading, mentioning to say "kindly be informed that she met the requirements for OSD grading in line with Resolution 1 of 2009 of the Public Health and Social Development Bargaining Council on agreement and implementation to professions and occupants: She have been graded from Social work Grade 1 to Social Work Grade 2, with effect from 01 April 2021, and she will be expected to discuss the key performance areas with her supervisor in line with new grade.

14) Furthermore, the letter states that "any overpayment/underpayment shall be rectified, with appeals having to be lodged if there is any query within 30 days from receiving the letter. After I have read this letter, it tells clearly the ignorance or undermining done mainly by this 2nd Respondent but also the 1st Respondent should've rectified the 18 months since the Applicant arrived, this cannot be correct. In taking the Applicant evidence in totality, I find that there is evident enough that the 1st and 2nd Respondent acted or exercised their discretion in bad faith, capriciously, malice or gross unreasonably which follows the question of an unfair labour practice as mentioned.

15) In conclusion as I have duly applied my mind to the facts and merit of the case before me, on a balance of probabilities I find that the Applicant has discharged the onus that the 1st and 2nd Respondent committed an act of unfair labour practice by not upgrading her salary grade which they acknowledge she was due for on the letter. However, it must be noted that the Council (GPSSBC) has no jurisdiction over the 2nd Respondent which falls under the Public Health and Social Development Sectoral Bargaining Council (PHSDSBC). Despite the joinder application made and ruling granted what remains is that the Council has no jurisdiction on the 2nd Respondent which gives the Applicant an opportunity to file the dispute through the correct sector, the PHSDSBC.

'Relief'

16) Due to the Council only having jurisdiction over the 1st Respondent is that, the Department of Education and Sports Development, in Potchefstroom is ordered to remunerate/backpay it's portion since the arrival of the Applicant, Ms Cindy van Zyl from 01 of April 2022 to 01 of April 2024, from an adjustment on Social Worker salary grade 1 of R298614.00 to R316794.00 salary grade 2, which gives the difference of R18180.00 (Eighteen Thousand One Hundred and Eighty Rands) x 12 months (as per LRA, Section 194 (4) = R218160.00 (Two Hundred and Eighteen Thousand One Hundred and Sixty Rands).

17) The Applicant has an opportunity if she still wishes to file the dispute with the Public Health and Social Development Sectoral Bargaining Council against the 2nd Respondent, the Department of Social Development, in Potchefstroom as the Council has no jurisdiction to arbitrate the matter or to order a relief.

18) Therefore, the 1st Respondent is ordered to pay the above amount on or before 15 October 2025 and it must further note that interests will accrue on the amounts from the date of this award in accordance with section 143 (2) of the LRA.

AWARD

19) There was an unfair labour practice effected on the Applicant, Ms Cindy van Zyl.

20) The 1st Respondent, the Department of Education and Sports Development, in Potchefstroom is ordered to remunerate/backpay its portion of 24 months since the arrival of the Applicant, Ms Cindy van Zyl from 01 of April 2021 until 01 of April 2024, as per the LRA Section 194(4), limits on compensation to the value of R218160.00 (Two Hundred and Eighteen Thousand One Hundred and Sixty Rands), subject to taxation.

21) The 2nd Respondent, the Department of Social Development, in Potchefstroom cannot be subjected to any relief sought or be ordered because the Council has no jurisdiction over it but if the Applicant still wish she can file the dispute with the correct Council, the Public Health and Social Development Sectoral Bargaining Council.

22) Only the 1st Respondent is ordered to pay the above amounts on or before 15 October 2025 and it must further note that interests will accrue on the amounts from the date of the award in accordance with section 143 (2) of the LRA.

23) This award is final and binding, and it may be enforced as if it were an order of the Labour Court in respect of which a writ has been issued, in terms of section 143 (1) of the LRA.

Name:

Joyleaf Boase

GPSSBC PANELLIST

A handwritten signature, likely "Joyleaf Boase", is written in dark ink. The signature is enclosed within a circular stamp that has a double-line border. The signature is somewhat stylized and cursive.