



ARBITRATION AWARD

Panellist/s: T ERASMUS
Case No.: GPBC367/2023
Date of Award: 31 October 2025

In the ARBITRATION between:

PSA o.b.o. MARK ADAMS

(Union / Applicant)

and

DEPARTMENT OF CORRECTIONAL SERVICES

(Respondent)

ARBITRATION AWARD

DETAILS OF REPRESENTATION:

1. The hearing pertaining to an alleged unfair labour was held at the offices of the Council on the 29th of May 2025 and the 2nd of September 2025 and the 13th of October 2025 respectively at the Council's premises at the Department of Correctional Services, Peninsula Drive, Goodwood. The matter was set down in terms of section 186 (2)(a) of the LRA, 66/1995. The Applicant was represented by Ms. Aileen Mosetic from the PSA, whilst the Respondent was

represented David Zoya, Regional Coordinator Employee Relations, Western Cape. Both parties handed in a bundle of documents. The proceedings were mechanically recorded.

ISSUE TO BE DECIDED

1. I must decide whether the Applicant was subjected to an unfair labour practice dispute under section 186(2)(a) of the Labour Relations Act (LRA) No. 66 of 1995, concerning a failure to promote to the post of Assistant Director Inspectorate.

BACKGROUND TO THE DISPUTE

2. The Applicant alleges an unfair labour practice relating to promotion, claiming the Respondent failed to promote him to the Assistant-Director Inspectorate post. The matter was previously arbitrated by the Council (GPSSBC), where the award was issued in favour of the Respondent. The Applicant brought an application for review of the arbitration award with the Labour Court. The Labour Court ruled in favour of the Applicant and set aside the award and referred the matter back for arbitration before a different commissioner.
3. The Applicant, employed by the Respondent since 19 December 1988, commenced employment as a security officer and currently holds the position of Manager HR Support at Pollsmoor Correctional Services, he is employed on salary level 8.
4. The Applicant applied for the non-center-based post of Assistant Director Inspectorate, advertised on 27 November 2020 with a closing date of 4 December 2020. He was shortlisted, interviewed on 27 January 2022, and strongly recommended for appointment effective from the 1st of March 2022. However, the Respondent did not appoint him, citing a regional management meeting held on the 1st of April 2022, where a decision was made not to fill administrative posts, not forming part of the SSS Framework. The Applicant seeks a finding that he was subjected to an unfair labour practice related to promotion to the post from 1 March 2022.
5. The Applicant made two applications for Promotion of Administrative Justice Act (PAJA) , receiving limited information, including that he did not meet equity requirements, as he is not in line with the National and Regional EE Stats of September 2021 and that the post must

be re-advertised. A second PAJA application reiterated the equity issue, and in terms of the Minutes of the Regional Management Committee Meeting, dated the 1st of April 2022, a decision was taken to – “*check posts that can still be filled between now and end April, then re-advertise posts that will not be finalized by then.*” This was in direct contradiction with the Respondent’s letter in terms whereof the Applicant was found to be the strongly recommended candidate. It was however noted on the 8th of April 2022 that the post was to be re-advertised per the Regional Management Executive (RME) decision of 1 April 2022, in spite of the decision that the Applicant must be appointed to the post of: “ASSISTANT DIRECTOR INSPECTORATE (CORRECTIONS) REGIONAL OFFICE: WESTERN CAPE REGION. The post remains unfilled to date.

6. The Respondent acknowledges the dispute as an unfair labour practice concerning promotion, as detailed in the pre-arbitration minutes and the advertisement of the position, with a closing date of the 4th of December 2020. The post was not filled due to financial constraints, with only critical Self-Sufficiency and Sustainability (SSS) posts prioritized. The Applicant was recommended but not appointed due to budget constraints, and the post was re-advertised in February 2023. The Respondent asserts the Applicant was not subjected to unfair labour practice, as it retains the prerogative not to fill positions.

SURVEY OF THE EVIDENCE AND ARGUMENTS

APPLICANT’S CASE

7. The Applicant, Mark Adams, testified that he joined the Respondent on 19 December 1988, he currently serves as Manager HR Support with a salary of R579,738 per annum, and applied for the position of Assistant Director Inspectorate (Corrections) (reference WC2020/11/13). He was interviewed on 22 January 2022, and the panel, concluding on 8 February 2022, identified him as the strongly recommended candidate. However, the panel noted all recommended candidates were not aligned with September 2021 National and Regional Employment Equity (EE) statistics.
8. The Applicant was not informed of the interview outcome and sought information via PAJA, receiving documentation with the heading: ‘FINAL OUTCOME OF INTERVIEWS. After receiving this, he referred the matter to arbitration, and after the arbitrator ruled against him, then to the Labour Court for review. The Applicant referred to the comments on candidates

in the outcome, where the following is stated: “ including two coloured males (Mr. Adams and Mr. van Heerden), recommendations, and the decision not to appoint, citing the RME decision of 1 April 2022 to re-advertise the position.

9. The Applicant referred to the Regional Management Committee (RMC) meeting minutes, dated the 1st of April 2022, stated that posts could be filled by the end of April 2022, with no decision to prioritize only SSS posts. The Applicant testified that the decision was unfair, as the process was finalized on the 8th of February 2022, and other administrative posts were filled between June 2022 and December 2022, as per Persal records. He argues the decision was not collective, and the Inspectorate post, an administrative position, was inconsistently re-advertised, as per his grievance outcome, dated the 21st of December 2022, in terms whereof he was advised that the post would be re-advertised, based on discussions at the Regional Management Committee meeting on the 1st of April 2022, where positions not finalized at that time the decision was to prioritize Self-Sufficiency and Sustainability (SSS) Framework positions for filling due to budget constraints. He was advised that the decision was based on managing the Compensation of Employees Budget. The ASD position is an administrative position and does not form part of the SSS Framework and was not prioritized for filling as a result thereof.
10. The Applicant received further details about his grievance on the 11th of January 2023. The Applicant's current salary level overlaps with the advertised salary (R392,004 vs. his R441,294 in March 2022), and per the Occupational Specific Dispensation (OSD) on the promotion would result in a 3% notch increase to R454,539, as calculated on. The EE data only indicates room for appointing a coloured male, supporting the Applicant's eligibility.
11. The Applicant acknowledged that the panel's recommendation was not binding but argued the decision to re-advertise the post, based on the 1 April 2022 RMC meeting, was unfair since the process concluded on 8 February 2022, and other posts from the same advert were filled. The Applicant found it inconsistent that the Deputy Regional Commissioner deemed the post “too old” yet approved other posts.
12. The Respondent noted the clause in the advertisement's reserving the right not to fill posts, but the Applicant countered that a valid reason is required, and in terms of the minutes, dated the 1st of April 2022. It did not explicitly prohibit filling the post. The post was re-

advertised on 24 February 2023, and the Applicant applied but was not shortlisted, He argued the decision was unfair, as other administrative appointments were made despite alleged budget constraints.

13. The Respondent stated that the post was re-advertised based on the 1 April 2022 RMC meeting, prioritizing SSS posts due to budget constraints, but the Respondent acknowledged that no firm decision was taken on SSS prioritization. The Applicant noted the process was finalized on 8 February 2022 the Applicant argued that the selective filling of five administrative posts, despite budget constraints, suggests inconsistent application, as these were lower-level posts compared to the ASD Inspectorate position.

The Respondent's case

14. Mr. David Mangalis Zoya testified that he commenced his employment with Correctional Services in 1998 as a correctional official. He was promoted to Employee Relations Manager in 2007, later advancing to Assistant-Director Employee Relations in KwaZulu-Natal. In 2020, he was transferred to Goodwood, Western Cape, and in 2023, he became Regional Co-ordinator, Employee Relations, Western Cape, at the Assistant-Director level. He currently holds this position and is acting as Regional Head, Human Resources, at the director level.
15. The present matter is a de novo arbitration hearing concerning a dispute over a post advertised on 4 December 2020 for "Assistant Directors (CB-5): Divisional Head: Security." The Applicant invoked section 186(2)(a) of the Labour Relations Act (LRA) after he was not promoted to the aforementioned position.
16. It is undisputed that the Applicant applied for the position, was shortlisted, participated in interviews, and was recommended as the best candidate. However, the final outcome indicated that the Applicant was strongly recommended, and he was noted as being in line with equity targets.
17. Following his non-appointment, the Applicant lodged a grievance on 18 November 2022. The Respondent's documentation reflects that the delegated authority decided on 8 April 2022 to re-advertise the post. The Applicant expressed dissatisfaction with this decision and received feedback on 21 December 2022 outlining the reasons for his non-appointment.

18. Minutes from the Regional Management Committee Meeting on 1 April 2022 indicated a proposal to flag posts advertised more than 12 months ago for re-advertisement. It was deemed irregular to fill posts from 2020 or 2021, with no clear decision on prioritizing positions within the Self-Sufficiency and Sustainability (SSS) framework, though budget constraints were noted as a factor.
19. Ultimately, the executive decided the post should be re-advertised. The Applicant participated in the new process in 2023 but was eliminated early on for not meeting the criteria. Positions advertised during this period were filled between September 2023 and early 2024. The Applicant subsequently declared a dispute regarding the second position, which remains vacant due to issues of gender equity and the authority's inability to fill the post as per current agendas. The advertisement encouraged female applicants. The employer retains the prerogative to fill or not fill a post, provided all relevant parties are informed. It is disputed that the respondent committed an unfair labour practice.
20. Cross-examination highlighted that the decision to re-advertise was based on committee discussions and budgetary constraints. The Applicant received certain documents only after his first grievance and further documents following a second PAJA application. There were questions about why the full documentation was not initially provided, with the explanation that these issues were not in dispute at that time.
21. Recommendations regarding the post were finalized on 4 April 2022, which did not align precisely with the committee minutes. The delegated authority maintains discretion to re-advertise posts, provided decisions are made fairly and for sound reasons. It was also noted that posts at salary level 8 and higher, including the Applicant's, were not filled, whereas lower-level administrative posts were prioritized due to their critical nature and understaffing. The Applicant contested the necessity for payments associated with these posts.

ANALYSIS OF ARGUMENTS AND EVIDENCE

22. The Applicant claimed unfair labour practice under Section 186(2)(a) of the Labour Relations Act (LRA). The Applicant alleges that the Respondent acted arbitrarily and unfairly by failing to promote him to the advertised Assistant Director: Inspectorate post, despite being

recommended for the position. The Respondent cites budget constraints, prioritisation of other posts, and employment equity considerations as reasons for its decision.

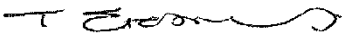
23. I must consider the legal standards governing unfair labour practices, employer discretion in promotion decisions, and employment equity considerations, and apply them to the facts before me. The Applicant, currently Manager HR Support, was shortlisted and interviewed for the Assistant Director (CB-5): Inspectorate post on 22 January 2022.
24. The Applicant was strongly recommended for appointment from 1 March 2022, with management recommendations supporting his appointment. Despite meeting the criteria and being recommended, the Deputy Regional Commissioner (DRC) did not approve the appointment, deciding to re-advertise the post based on the 1 April 2022 Regional Management Executive (RME) decision.
25. The Respondent cited budget constraints and prioritisation of other posts as reasons for the decision, which the Applicant disputes as factually incorrect based on Regional Management Committee (RMC) minutes.
26. The Applicant lodged a grievance, and the Respondent communicated the outcome on 21 December 2022, maintaining its position on budget constraints and prioritisation of other posts. The Applicant claims that the re-advertisement was arbitrary and that the Respondent failed to provide evidence supporting its claims regarding budget constraints and prioritisation.
27. The Applicant asserts that the Respondents actions constitute an unfair labour practice under Section 186(2)(a) of the LRA. Section 186(2)(a) of the LRA defines an unfair labour practice as any unfair act or omission between an employer and employee concerning promotion, demotion, probation, training, or benefits.
28. Employers have discretion in promotion decisions, but this discretion must be exercised fairly, rationally, and in accordance with established policies and procedures. Clause 37(e) of the Employment Regulations requires that when a recommendation for appointment is not approved, the reasons for the decision must be recorded in writing. [Cowley / South African Police Services](#).

29. Employment equity considerations require employers to implement affirmative action measures to redress disadvantages experienced by designated groups. However, failure to adhere to internal policies and guidelines may justify interference in promotion decisions.
30. The Applicants claim of unfair labour practice under Section 186(2)(a) of the LRA is supported by the assertion that the Respondent acted arbitrarily and failed to provide valid reasons for its decision to re-advertise the post. The LRA requires that promotion decisions be made fairly and in accordance with established policies and procedures.
31. The Respondents failure to provide evidence supporting its claims of budget constraints and prioritisation of other posts undermines the rationality of its decision. Furthermore, the Applicants salary calculations suggest that budget constraints were not a valid reason for the decision, as the promotion would have resulted in only a 3% increase in salary. The Respondents reliance on its discretion to re-advertise the post is subject to scrutiny under Clause 37(e) of the Employment Regulations, which mandates that reasons for overturning a recommendation must be recorded in writing. [Cowley / South African Police Services](#). The Respondents failure to provide written reasons for its decision constitutes a procedural irregularity and raises questions about whether the decision was made in good faith. Employment equity considerations were cited by the Respondent as a reason for the decision to re-advertise the post. However, the Applicant has provided evidence that four of the five administrative posts filled after April 2022 were occupied by male appointees, contradicting the Respondents equity argument. The absence of a specific affirmative action plan or failure to adhere to internal policies and guidelines may justify interference in the Respondents decision.
32. The Respondents reliance on Solidarity obo Louw v Minister of Police Services and South African Police Services v Solidarity obo RM Barnard highlights the principle that panel recommendations are not binding and that employers have discretion in promotion decisions. However, this discretion must be exercised within the bounds of fairness, rationality, and adherence to established policies and legal obligations.
33. The Applicant's claim of unfair labour practice under Section 186(2)(a) of the LRA is supported by evidence of procedural irregularities, inconsistencies in the Respondents reasoning, and failure to provide valid reasons for its decision to re-advertise the post. The Respondents reliance on budget constraints and employment equity considerations is undermined by the Applicants evidence and the lack of adherence to established policies

and procedures. The Respondents discretion in promotion decisions is not absolute and must be exercised fairly and rationally. I find that the Applicant was subjected to an unfair labour practice by the Respondent.

Award

34. The Respondent committed an unfair labour practice by arbitrarily not appointing the Applicant, as the decision lacks consistent reasoning. The Applicant is to be promoted to Assistant Director: Inspectorate (Corrections) from 1 March 2022, at R454,539 per annum, with back pay and adjustments to the current date.



Teresa Erasmus
(Panellist_