



Arbitrator: Nozibusiso Faith Gumede \_\_\_\_\_  
Case No.: GPBC 207-2022 \_\_\_\_\_  
Date of Ruling: 01 December 2022 \_\_\_\_\_

**In the matter between:**

**PSA obo MP MOTAUNG & 15 OTHERS**

**Applicant**

and

**DEPARTMENT OF HOME AND SANITATION**

**Respondent**

**JURISDICTIONAL RULING**

1. This ruling is in respect of the provisions of Rule 22 of the **Rules for Conduct of the Proceedings before the General Public Service Sector Bargaining Council (GPSSBC)**. In regards to the *point in limine* raised by the respondent regarding the jurisdiction of the GPSSBC to arbitrate this matter. The parties were afforded with an opportunity to make submissions in the following manner, the respondent on 15 November 2022 and the applicant on 22 November 2022.

**RESPONDENT'S SUBMISSIONS**

2. The dispute before the GPSSBC is Equal Pay for Equal Value. The issues to be decided are as follows:
  - Whether or not GPSSBC has a jurisdiction to arbitrate the matter,
  - Whether or not the Commissioner has a jurisdiction to arbitrate this matter.
3. The applicants are Groundsman, General Workers and Tradesman at salary grade 2 and 3. They are appointed correctly in terms of the Department of Public Service and Administration (DPSA) Coordinated Benchmark Job Description and Grading levels for support jobs, Cleaners, General Workers and Handyman.

4. This dispute was triggered by a Collective Agreement and Arbitration Award of National Education, Health and Allied Workers' Union (NEHAWU) obo SJ Tabane & 55 Others.
5. On 4 June 2018, the Department of Water and Sanitation signed a Collective Agreement with NEHAWU and Public Servants Association of South Africa (PSA) on matters of mutual interest at the GPSSBC: Department Bargaining Chamber: Water and Sanitation: Resolution 1 of 2018
6. Item of paragraph 4 of the Collective Agreement, clause 4.1 (e) and (i) Establishment of a Consultative Chamber Task Team. Parties agree to establish a chamber task team(s) that will address the following:  
  
4.1 (e) Remuneration of employees at salary level 1 to 4 who are performing work of higher salary levels (in doing so, this should not result in down grading of these employees.  
4.1 (i) Equal pay for work of equal value.
7. The employer is of the view that PSA is a party to the Collective Agreement and the dispute before the council is being attended to by both the Department of Water and Sanitation and the Labour Organisation at the GPSSBC Departmental Bargaining Chamber meeting.

#### **APPLICANT'S SUBMISSIONS**

8. It is our contention that matters (as per Clause 4.1 (e) and 4.1 (i) of Resolution 1 of 2018) were never tabled at Chamber. We refer to the minutes dated 12 July 2022 of which the issues were never tabled. We would also like to refer page 2 of the minutes submitted by the respondent, the above issues were not part of the agenda points.
9. Furthermore on page 3 of the minutes under matters arising paragraph 7 of the Clause 4.1 (e) and 4.1 (i) of Resolution 1 of 2008 issues were never discussed.
10. All the submissions as referred to above points to Respondent coming up with retaliatory attacks against Applicants for personal gratification and nothing related to carrying out the functional responsibilities of Respondent.
11. Applicant avers that it is common cause that the Labour Relations Act, 66 of 1995 (LRA) accepts the principle that "*every case must be decided on its own merits*". Further applicant contends that the GPSSBC is a sectoral council operational within the public service established in terms of section 37 (1) of

the LRA. This council has exclusive jurisdiction for matters within this sector as provided for in section 37 (5) of this Act.

12. This council is governed by its own constitution and conduct its business in terms of its own rules and resolutions which are binding to all parties within general public sector. The council makes rules through which it performs its functions and such rules are binding to parties and Commissioners that are appointed to adjudicate disputes.
13. It is further Applicants contention that Commissioners appointed and clothes with jurisdiction to consider only disputes that are referred to council in line with the rules of council. To this effect parties to council entered into GPSSBC Resolution 4 of 2004 which was subsequently amended in or around 2017 to regulate referrals of disputes. Parties details in this collective agreement in part 3 under paragraph 16 -20 of the resolution what clothes council with jurisdiction and goes further to define in part 4 paragraph 21 – 29 what rules apply to the conduct of both conciliation and arbitration.
14. The raising of the preliminary point in this regard should be understood as a means to frustrate Applicants and not have the dispute finalized which goes completely against the intention of the Act to effect that disputes should be resolved quickly without resorting to legalistic processes that emulate the court process. The bargaining council has been established to amongst others give effect to speedy resolution of disputes.
15. It is common cause that the LRA places higher emphasis on the need for self-regulation to with collective agreements have higher binding value to some extent even higher than the provisions of the LRA only to the extent that such promotes the purport of the LRA.
16. It is for this reason that Applicants submit that the council has a jurisdiction to handle this matter, this is due to the fact that this is GPSSBC resolution1 of 2008, and the Department failed to deal with the issues as stated in the resolution.

## **DETERMINATION**

17. The records shows that this dispute was referred, as the unfair labour practice in relation to benefits. The referral further shows that the issue in dispute is “*upgrading of salary levels for facilities management general workers: GPSSBC Resolution 1 of 2018*”. However, the respondent contented that the dispute before the GPSSBC is Equal Pay for Equal Value. Therefore, the true nature of the dispute has to be ascertained in order to determine whether GPSSBC has jurisdiction to arbitrate this matter or not. In view that in **HOSPERSA obo Tshambi v MEC for Health KwaZulu Natal [2016] 7 BLLR 649 (LAC)** “*the court*

*reaffirmed that in arbitration proceedings, the Commissioner is not bound to slavishly follow the parties' characterization. The Commissioner must determine the true nature of the dispute".*

18. I noted that the applicants did not deny that this dispute derived from the collective agreement (Resolution 1 of 2018) and Arbitration Award of NEHAWU obo SJ Tabane & 55 Others. However, the records shows the sequence of events as follows:

- On 10 January 2017, the Arbitration Award was issued for the unfair labour practice dispute in relation to benefit between NEHAWU obo SJ Tabane & 55 others and the respondent.
- On 13 March 2018, the Settlement Agreement was entered between NEHAWU and the respondent. The 1<sup>st</sup> paragraph states that *"this settlement agreement serves to resolve matters of mutual interest and other related matters between NEHAWU and the respondent which resulted into a strike"*.
- On 4 June 2018, a GPSSBC Resolution 1 of 2018 was concluded by the respondent and labour organizations (NEHAWU and PSA). Clause 1 states the purpose was *"to resolve the dispute and address the matters of interest that parties have negotiated and agreed on and make it a Resolution of the Departmental Bargaining Chamber"*.

19. Bulletin 1 and 2 (paragraph 18 above) shows that the applicants in this matter were not party to this dispute *nor* concluded the aforementioned settlement agreement. However, both NEHAWU and PSA concluded the collective agreement (Resolution 1 of 2018) in consultation with their members. Therefore, the parties cannot act outside its provisions due to its binding nature.

20. The outcome sought by the applicants in this matter is an *"upgrade and payment in the difference of salary 2 and 4 should be implemented"*. The reference was drawn to clause 4.1 (e) of the aforementioned resolution which stipulates that *"parties agreed to establish chamber task team(s) that will address the following, remuneration of salary level 1 to 4 who are performing work of higher salary levels (in doing so, this should not result in down grading of these employees) and clause 4.1 (i) Equal pay for work of equal value"*. It is evident that there is Bargaining Chamber which is competent to deal with matters of this nature. However, it appear, as if it has not been tabled on the agenda however, there is no evidence led to show that they have been precluded from doing so.

21. In determining whether this is an unfair labour practice in relations to benefit dispute or not. In **Apollo Tyres South Africa (Pty) Ltd v CCMA [2013] 5 BLLR 434 (LAC)** *"the court held that the benefit in terms of the LRA means existing advantages or privileges to which an employee is entitled ex contractu, ex lege or granted in terms of a policy or practice subject to the discretion of the employer"*. The applicants'

submissions suggest that this benefit derived from the afore-mentioned resolution however there is no provision which provides for an upgrade and/or payment of the difference of salary level 2 and 4.

22. However, this resolution provides that these issues should be addressed by a Chamber Task Team. This will remain in force, until this resolution is terminated or amended by the relevant parties. Therefore, the respondent's *point in limine* succeeds. In that GPSSBC lacks jurisdiction to arbitrate this matter.

## **RULING**

23. I make the following order:

24. The *point of limine* succeeds that GPSSBC lacks jurisdiction to arbitrate this matter.

25. I make no order as to costs.



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**(Nozibusiso Faith Gumede) Arbitrator**