

ARBITRATION AWARD

Panelist: Wayne Paul _____
Case No.: GPBC1281-2018 _____
Date of Award: 11 June 2019 _____

In the ARBITRATION between:

PSA obo P Mtshali
(Union / Applicant)

and

Department of Agriculture and Environment Affairs
(Respondent)

Union/Applicant's representative: M Nyandu (PSA) _____
Union/Applicant's address: _____

Telephone: _____
Telefax: _____

Respondent's representative: J Nxumalo (E.R.) _____
Respondent's address: _____

Telephone: _____
Telefax: _____

ARBITRATION AWARD

DETAILS OF HEARING AND REPRESENTATION:

1. Mr Mxolisi Nyandu from the PSA represented the Applicant and Mr Jabulani Nxumalo, the E.R. manager, represented the Respondent.
The arbitration was scheduled for 29 and 30 April 2019.
The parties resolved to submit heads of argument and not to present oral argument due to the Nature of the dispute.
The final heads of argument was received 6 June 2019.

ISSUE TO BE DECIDED:

2. According to sect. 5.2 and sect. 6 of the referral to the GPSSBC, the outcome required by the Applicant is for the Commissioner to order the Respondent to upgrade and promote the Applicant to a salary level 11 and rank of Records Manager, with effect from February 2016.

BACKGROUND TO THE MATTER:

3. The applicant had requested a job evaluation during 2009/2010.
4. The result of the job evaluation confirmed the post at a Deputy Records Manager with a salary level 9.
5. It is the applicant's version that she was appointed in August 1999 in the post as Records Manager however the appointment was never effected.

SURVEY OF EVIDENCE AND ARGUMENT:

Applicant's written submissions

6. According to the written submissions the applicant requested a job evaluation during November 2003 for the purpose of upgrading the post to come in line with other Record Managers in other Departments.
7. In June 2004 her salary was adjusted to level 9.
8. During January 2009 the applicant again requested a job evaluation after noticing that Record Managers in other departments had their salaries adjusted to level 11.
9. During October 2010 the applicant became aware that 3 Regions Structure were approved by the MEC and the post was rated as a Deputy Director, however the Applicant's salary and title was never adjusted.
10. During 2015 the applicant was demoted from the rank of Records manager (Deputy Director) to Deputy Record's manager level 9.

11. According to the written submissions the applicant is seeking a finding from the Commissioner that she was unfairly demoted and seeks reinstatement to the rank of Records manager.

Respondent's reply written submissions

12. It was pointed out by Mr Nxumalo, obo the Respondent that the applicant's dispute as defined by the referral to the GPSSBC, relates to an unfair labour practice in respect of promotion and not demotion.
13. The Public Service Regulations regulate how the following processes should unfold in respect of creating and filling of posts, job evaluation, grading and remuneration as well as recruitment process which entails advertising, selection and promotion.
14. A collective agreement, PSCBC Resolution 3 of 2009, was concluded and provides that an employee on specific salary level should grade progress to a salary level higher after completing 15 years of service respectively.
15. The applicant's current post, Deputy Records Manager, was among posts that were subjected to a job evaluation process in 2015 and the results were approved in September 2015.
16. Prior to the job evaluation the applicant's post was on salary level 9.
17. It was confirmed by the Office of the Premier to the Department that the post Deputy Records Manager, remained on salary level 9, therefore the applicant's claim that her post was job evaluated in 2015 and came out on salary level 11 is incorrect.
18. There is no prescript that provide for an upgrade of the incumbent if the job evaluation results grade the post at the same level as was before the job evaluation process was embarked on.
19. The respondent has since promoted the applicant to salary level 10, in line with grade progression as prescribed in Resolution 3 of 2009.
20. It is the respondent's version that the post occupied by the applicant was never evaluated and graded on a salary level 11.
21. The official record reflects the post as that of Deputy Record's manager.


ANALYSIS OF EVIDENCE AND ARGUMENT:

22. I am required to determine if the Respondent commit an unfair labour practice by not promoting the applicant to the rank of Records manager.
23. It must be born in mind that the decision at which I arrive at is based on the written submissions before me.
24. According to the documentary evidence I find no evidence that the post which the applicant currently occupies, had been upgraded to that of a Records Manager on a salary level 11.

25. It would appear that the applicant's dispute is based on certain other regions that were upgraded following job evaluations.
26. It is clearly the applicant's view that her post is incorrectly graded.
27. The fact of the matter is that I cannot interfere with the result of a job evaluation that was done and approved by the office of the Premier.
28. According to the Respondent's submissions, the applicant was promoted to salary level 10 in line with the grade progression model as per PSCBC Resolution 3 of 2009.
29. Based on the balance of probability, I accept the respondent's version that the post currently occupied by the applicant and which is the basis of this dispute, is officially graded at the rank of Deputy Records Manager.
30. Consequently I find no evidence of unfair labour practice having being committed by the respondent.

AWARD:

31. The application is dismissed.


Name: _____

Arbitrator

Ncamisile Ngcobo

From: Mxolisi Nyandu
Sent: Friday, 13 September 2019 12:15
To: Ncamisile Ngcobo
Subject: FW: Proof of service to Parties: Award GPBC1281-2018.pdf
Attachments: We sent you safe versions of your files; Award GPBC1281-2018.pdf

FOR POST

-----Original Message-----

From: Pollet Malatji <PolletM@gpsbc.org.za>
Sent: Friday, 13 September 2019 11:57
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-----Original Message-----

From: Pollet Malatji
Sent: Friday, 13 September 2019 11:56
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Subject: FW: Proof of service to Parties: Award GPBC1281-2018.pdf

-----Original Message-----

From: Thomas Sebola
Sent: Wednesday, 19 June 2019 11:34
To: 'Jabulani.Nxumalo@kzndard.gov.za'; 'shaun.henman@kzndard.gov.za'; 'lungile.mbambo@kzndard.gov.za'; 'mandisa.ndebele@kzndard.gov.za'; 'mxolisi.nyandu@psa.co.za'
Cc: Sylvia Mathole; Joe Masenya
Subject: Proof of service to Parties: Award GPBC1281-2018.pdf

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