



ARBITRATION AWARD

Panellist: SB Balkaran

Case No.: 2617/2018

Date of Award: 25 November 2019

In the ARBITRATION between:

PSA obo NF Ntombela

(Union / Applicant)

And

Department of Correctional Services

(Respondent)

Union/Applicant's Representative:

Union/Applicant's address:

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Respondent's Representative:

Respondent's address:

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Mr Raymond Rhulani Shope

Respondent's Representative

Deputy Director: Dispute Resolutions and Arbitrations

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VENUE/REPRESENTATIONS

1. This Arbitration was at the Department of Correctional Services, Ncome Prison, Vryheid (Kwazulu-Natal). The Applicant (Ms NF Ntombela) was present and represented by Mr MP Zulu of the PSA. The Respondent was represented by Mr RR Shope (DCS: Pretoria) and Mr T Moore (DCS: Utrecht) of the Department of Correctional Services.

ISSUES IN DISPUTE

2. This matter deals with the interpretation or application in terms of the Labour Relations Act (66 of 1995). The Applicant referred GPSSBC Resolution 1 of 2002 for interpretation and application whereas the Respondent contends that Resolution 2 of 2009 supersedes Resolution 1 of 2002, hence the non-payment of the acting allowance between level 5 and level 7.

BACKGROUND TO THE DISPUTE

3. It is common cause that Ms NF Ntombela is acting in the position and it is not disputed that Ntombela received letters of appointment to act in the higher graded post from 1 March 2016 to current date.
4. Ms NF Ntombela (Ntombela) is employed by the Department of Correctional Services (Ncome Prison) as a Correctional Officer, Grade 3 (level 5). She was appointed to act as a Project Manager (Milk Production) when the position became vacant when the incumbent holding the post retired. The post was on level 7. The Applicant argued that the Respondent had failed to pay the Applicant the Acting Allowance being the difference between her Level 5 and Level 7 as provided for in terms of GPSSBC Resolution 1 of 2002 as level 5 and level 7 are not earning the same salary. Ntombela has not been compensated the difference between salary level 5 and salary level 7.
5. The Respondent argued that Resolution 2 of 2009 superseded the provisions of Resolution 1 of 2002 in introducing a new work stream (CO1 – CO3) which allowed for interchangeability without additional remuneration (acting allowance) within the salary band. The position Project Manager (Milk Production) on CO1 ended as per Resolution 2 of 2009. However, some letters of acting appointment were correctly issued and in some instances, some letters were incorrect.

SURVEY OF SUBMISSIONS AND ARGUMENTS

6. It is common cause that there was no dispute of facts but a dispute of law and both parties agreed that was no need to lead oral evidence.
7. The Applicant submits that GPSSBC Resolution 1 of 2002 is the payment of an Acting Allowance and the purpose is to determine a policy of acting allowance and compensation to be paid to an employee appointed to act in a higher post.
8. The Applicant accepted the acting position in writing [Annexures 12 to 28] since 1 December 2016 to date without interruption. Resolution 1 of 2002 at paragraph 3.1.3 that *"The acting allowance will be calculated on the basis of the difference between the current salary notch of the employee and the commencing notch of the higher post"*. The Applicant therefore posits that the issue of the work streams argued by the Respondent in GPSSBC Resolution 2 of 2009 does not impact the acting allowance, but regulates the implementation of OSD. It does not seek to replace Resolution 1 of 2002 nor to replace the payment of the acting allowance in higher graded posts. The volume of work for the post (Project Manager - Agronomy CB1-3) is at salary level 7 and not 5, hence the difference in remuneration between the two salary levels and the payment of the acting allowance. The Applicant further argues that nowhere in Resolution 2 of 2009 does it state that it seeks to replace any existing Resolutions, especially Resolution 1 of 2002.
9. The Respondent counters that salary levels have abolished and replaced with work streams by Resolution 2 of 2009 which has made these levels interchangeable; thus one level can perform other level jobs without additional remuneration. Hence the posts are not advertised.
10. The Respondent further avers that the Applicant is incorrect in its submission and that GPSSBC Resolution 2 of 2009 which is OSD for Correctional Officials introduced work streams or new structures in the Department of Correctional Services [Annexure B15] where the Applicant's work stream is "corrections

stream" (Centre-based). In the letter of appointment [Annexure A12], the Applicant is said to be acting at CB1-3. This is a clear indication of departure from levels which was previously level 5 (her current post and level 7 the acting post).

11. The Applicant therefore argues that the notion by the Respondent that Resolution 2 of 2009 supersedes Resolution 1 of 2002 is therefore baseless and is thus legally entitled to be paid an acting allowance based on the difference of level 5 and the commencing notch of salary level 7 with effect from 1 December 2016 to date in terms of GPSSBC Resolution 1 of 2002.

ANALYSIS OF SUBMISSIONS AND ARGUMENTS

12. The Applicant in paragraph 3.1 of his t is trite that the Commissioner has to decide as to whether GPSSBC resolution 2 of 2009 supersedes GPSSBC 1 of 2002. Both parties are aware that Resolution 2 of 2009 introduced a new work stream and posts are interchangeable as both parties are signatories to the particular resolutions. Therefore the principals when negotiating Resolution 2 of 2009 were acutely aware of the implications of Resolution 2 of 2009 on Resolution 2 of 2002.
13. A close reading of Resolution 2 of 2009 points to the introduction of unique salary structure where there are no longer salary levels in the Department of Correctional Services [Annexure B15] at paragraphs 6.1.1(1) and 6.1.1 (2) provide for salary structures as referred to previously. The introduction of the unique salary structure as per Resolution 2 of 2009 informs the manner in which the DCS must operate and by implication affects or amends how the acting allowance must be paid. Since Resolution 2 of 2009 is a later resolution, it will therefore supersede existing resolutions pertaining to the interchangeable work streams and the payment of acting allowances in terms of its applicability.
14. It is correct that the Applicant falls under Corrections Stream (Centre based) and the reasons advanced in each of the letters of appointment refers to the new stream; thereby indicating to the Applicant that the posts are interchangeable. In each letter, the Respondent had embedded the Applicants acknowledgement of whether she accepted the acting position or not and since she was aware of the introduction of Resolution 2 of 2009 as she commenced acting only in 2016, she had the right to choose not to act as she was aware of the new work streams.
15. I offer no comment on whether the posts are to be advertised or not as emanating from Resolution 2 of 2009.

RULING

16. The Applicants referral to be paid an acting allowance in terms of Resolution 2 of 2002 must be dismissed as Resolution 2 of 2009 introduced and assimilated the levels into "new" work streams.
17. The Respondent's decision not to pay an acting allowance to Ms NF Ntombela is upheld.
18. I make no order as to costs.

Signed and dated in Durban on this 20 January 2020.



Sanjay Balkaran

Panellist