



Council Name

# ARBITRATION AWARD

Panellist/s: Seretse Masete  
Case No.: GPBC1921 /2013  
Date of Award: 20/05/2019

In the ARBITRATION between:

**GODFREY SEVHA NYALUNGU and 3 OTHERS**

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(Union / Applicant)

and

**DEPARTMENT OF PUBLIC WORKS ROADS AND INFRASTRUCTURE.**

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(Respondent)

**Union/Applicant's representative:** Phillip Maponya from PSA

Union/Applicant's address: 570D Giyani Main road Old Parliament Giyani

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**Respondent's representative:** Labour relations officer: Ms M Letsoalo

Respondent's address: 570D Giyani Main road Old Parliament Giyani Trichardt

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### Particulars of proceedings and representation

1. The matter was held on 20 May 2019 at the respondent's premises situated at old Parliamentary Offices Main road Giyani in Limpopo.
2. The Applicants, **Godfrey Sevha Nyalungu**, (1<sup>st</sup> employee), **Gideon Gordon Bvuma** (2<sup>nd</sup> employee), **P E Mhlaba** (3<sup>rd</sup> employee) and **M K Ramphaka** (4<sup>th</sup> employee) were represented by Phillip Maponya from PSA and the respondent, **Department of Public Works Roads and Infrastructure (employer)**, was represented by its Labour Relations officer Ms M Letsoalo
3. The proceedings were in English and interpreted into Xitsonga by N.M. Mogotsi.

### Issues to be decided

4. I have to decide whether or not the conduct of the respondent by not implementing the job evaluation results conducted in 2006 and 2008 respectively to the employees, constituted an unfair labour practice.
5. I must determine the appropriate relief, if I find that the conduct of the respondent constituted an unfair labour practice.

### Background to the dispute

6. The **employee** together with her three colleagues were employed by the employer as clerks stationed at Giyanai Parliamentary offices in Limpopo.
7. The employees alleged that job evaluation was conducted by the employer in 2006 and 2008 respectively for levels one to eight.
8. The posts for clerks were upgraded to level six in 2006 and to level seven in 2008 but their posts were disregarded.
9. They wanted their salary levels to be retrospectively upgraded to level six from 01 April 2006 and to level seven from 01 February 2009.
10. The employer rejected the employees' version citing that the job evaluation processes were only meant for people at head office.
11. The employer promised to call two witnesses but did not, and the employee party called two witnesses, **Godfrey Sevha Nyalungu** and **Gideon Gordon Vhuma** and submitted one bundle of document marked **Annexure A**.

## Survey of evidence and arguments

### The Employees' version

The employee, **Godfrey Sevha Nyalungu**, testified under oath as follows:

12. He was employed by the employer as an admin Clerk on 01 September 2013. In 2006, he was at salary level two. Job evaluation was conducted in 2006 as shown on page 15 of **Annexure "A"** and posts were upgraded but he remained at salary level two. He was upgraded to salary level five in 2009 but did not know how he was upgraded. He referred to page 21 of **Annexure "A"** which was a memorandum indicating that Job evaluation should be done for all posts from salary levels one to eight. He believed he was supposed to be at **salary level six in 2006** and in salary level seven in 2009 after the 2008 job evaluation. The HoD has approved the 2008 job evaluation of posts as shown on page 25 of **Annexure "A"**.
13. He agreed that page 14 on **Annexure "A"** was indicating that one employee was applying for job evaluation to be conducted against his/her post but rejected that the job evaluation of 2006 was only for those who made requests. He confirmed that the work of the admin Clerks at Head office are different from those at cost centres and Districts. Those at head office are performing duties less than those at Districts. The Memo on page 21 and 15 of **Annexure A** do not differentiate between job evaluation at the district or at the head office. He disagreed that job evaluation was conducted only in 2003 and 2008 as there was a job evaluation in 2006 as well. All Clerks are at salary level seven unless employed after the said job evaluation. The application on page 14 was for an individual but there was nowhere it showed to have been approved.

The second witness of the employee, **Gideon Gordon Bvuma**, testified under as follows:

14. He was employed by the employer in 1987 at salary level 2 but translated to an admin Clerk in 2003 but remained at salary level 2. He was only moved to salary level four in 2004. Page 15 number 19 of **Annexure "A"** showed an admin Clerk to be on salary level 6 but he was never taken to salary level six like the other employees. He was only moved to salary level five in February 2009. He did not agree that the 2006 job evaluation was meant for a particular group of employees. Clerks at the Districts perform more work than those at Head office. The 2006 and 2008 Job evaluation did not differentiate between employees at the District level and

employees at the Head office. Page 25 of **Annexure "A"** showed that admin Clerks moved from salary level six to salary level seven after the 2008 job evaluation. He was supposed to have been at salary level six in 2006 and salary level seven in 2009. It was put to him that on page 16, the employee was at salary level six and still after job evaluation remained at salary level six and he was not appointed at that salary level. He responded that his argument was that he was supposed to be at salary level six after the 2006 job evaluation. Page 14 of **Annexure "A"** mentioned Mashigo but page 15 did not mention Mashigo. This showed that the job evaluation of 2006 was not meant for individuals. Page 16 of **Annexure "A"** implied that he was supposed to be at salary level six in 2006.

### **The employer's version**

The employer's representative submitted that she was not going to lead evidence but will use the available evidence presented by the applicant's witnesses and the available documents to put her case forward.

### **Analysis of the evidence and arguments**

15. Parties agreed to submit their closing arguments on or before 28 May 2019 but they did not do so. The Council was informed on 07 June 2019 about the failure by the parties to submit their closing arguments. The dead line was extended to the 12<sup>th</sup> of June 2019 but still parties did not comply. I therefore did not have any alternative but to continue deciding on the matter using the information at my disposal.
16. The Job Evaluation Memorandum on page 15 of **Annexure A** was about Job Evaluation of posts on salary levels ranging from two to 12. The Memorandum did not specify whether the job evaluation was for the Districts, Head office or other institutions like Cost centres. The Memorandum was signed and approved by the HoD on 14 March 2006. According to that Memorandum, Admin Clerks Skills development who were at salary level 5 were upgraded to salary level 6.
17. On page 21 of **Annexure A**, is a Memorandum for job Evaluation of posts on levels one to eight. Paragraph 1.1 on that Memorandum stated that *"the purpose of this Memorandum is to seek approval from the HoD regarding the evaluation of all Departmental posts on salary levels one (1) to eight (8) across the Department"*. This statement did not exclude

any admin Clerk at any section or unit. All posts across the Department from level one to level eight were approved for job evaluation and was signed by the HoD on 20 January 2009. According to that Memorandum, Admin Clerk post at level six was to be graded to level 7 and those at level four entry level were graded to level five. Based on the contents of the Memoranda on pages 15 and 21, I accept the version of the employees that the conduct of the employees amounted to an unfair Labour practice against them.

18. The employer argued through cross-questioning that the job evaluation was meant for particular employees especially those at head office. Her version was that individuals were applying for their posts to be evaluated. She gave an example by Mashigo A.L. who made an individual request for her post to be evaluated, see the letter on page 14 of **Annexure A**. That letter was signed by someone on behalf of the Chief Director and there was no sign that it was approved or not. The person who signed it only made recommendations. I cannot accept this evidence by the employer because the letter has got nothing to do with the Memoranda signed and approved by the HoD on pages 15 and 21 of **Annexure A**. I also do not agree with the employer that the Memoranda were meant for other officials at Head Office and not the employees. The Memoranda were very clear and the one on page 21 even indicated specifically that it was for the posts at level one to eight across the Department. I am satisfied that the employees were justified to say the employer committed an act of unfair Labour practice regarding promotion against them.

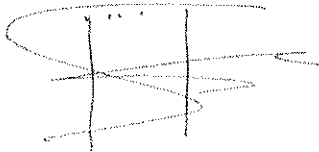
#### **Award**

19. The employer, **Department of Public Works, Roads and Infrastructure**, committed an act of unfair labour practice against the employees, **Sevha Godfrey Nyalungu and three others, Mhlaba P E, Bvuma G G and Ramphaka MK**.
20. The employer is ordered to upgrade the employees' salary levels as follows;
  - (a). Nyalungu SG from salary level **two (2)** to salary level **six (6)** from 01 April 2006 to 31 January 2009 and from salary level **six (6)** to salary level **seven (7)** from 01 February 2009 to date.
  - (b). Mhlaba PE from salary level two (2) to salary level **six (6)** from 01 April 2006 to 31 January 2009 and from salary level **six (6)** to salary level **seven (7)** from 01 February 2009 to date.

©. **Bvuma GG** from salary level **three (3)** to salary level **six (6)** from 01 April 2006 to 31 January 2009 and from salary level **six (6)** to salary level **seven (7)** from 01 February 2009 to date.

(d). **Ramphaka MK** from salary level **three (3)** to salary level **six (6)** from 01 April 2006 to 31 January 2009 and from salary level **six (6)** to salary level **seven (7)** from 01 February 2009 to date.

25. The employer is further ordered to pay the employees area salaries calculated according to their salary levels as upgraded.
26. The upgrading of the salary levels of the employees, must be implemented by the employer before **31 August 2019**.
27. The area salaries to the employees must be paid to them before the **30<sup>th</sup> of September 2019**.



Seretse Masete

Date 12/06/2019

**GPSSBC Panellist**