

# ARBITRATION AWARD

Panellist/s: THOMAS MAHASHA  
Case No.: GPBC 2424/2018  
Date of Award: 22 AUGUST 2019

## In the ARBITRATION between:

(Union / Applicant)

PSA OBO TA MUGWEDI

and

(Respondent)

DEPARTMENT OF PUBLIC WORKS

**Union/Applicant's representative:** DINGIMUZI MICHAEL MKHIZE

Union/Applicant's address:

Telephone:

Telefax:

**Respondent's representative:** MATSOBANE REUBEN SEPHOKA

Respondent's address:

Telephone:

Telefax:

## **DETAILS OF THE HEARING AND REPRESENTATION.**

1. The Applicant attended the hearing and was represented by Dingimuzi Michael Mkhize of PSA Union.
2. The Respondent was also in attendance and represented by Matsobane Reuben Sephoka. The proceedings were digitally recorded. The hearing was conducted in English and interpreted to Tshivhenda by Vincent Mulima.

## **ISSUE TO BE DECIDED.**

3. I am required to determine whether the Respondent committed an unfair labour practice relating to promotion, and if so, I must then determine the appropriate relief.

## **BACKGROUND TO THE ISSUE.**

4. The Applicant, Thabelo Audrey Mugwedi, referred an unfair labour practice-promotion with the GPSSBC in terms of section 186 (2) (a) of the Labour Relations Act 66 of 1995 ("the LRA") as amended.
5. The matter was set down for arbitration on 21 August 2019 at 09:00 AM.
6. The Applicant seeks promotion.

## **PRELIMINARY ISSUES.**

7. The Respondent applied for postponement in order to join the Department of Treasury because of its refusal to upgrade the Applicant. The Applicant opposed the application indicating that the Department of Treasury has no interest in the matter. I find it to be a fruitless exercise which will be unfair to the Applicant to join the Department of Treasury simply because of its refusal to upgrade the applicant. I therefore made an ex tempore ruling and dismissed an application for postponement.

## **SURVEY OF EVIDENCE AND ARGUMENT.**

### **EVIDENCE OF THE APPLICANT.**

8. Thabelo Audrey Mugwedi testified that she is based at Vhembe District. She is currently holding a salary level 7 post. The post she is occupying was evaluated. The job evaluation results upgraded the post to salary level 8. She therefore, qualified to be upgraded to salary level 8, since 1 April 2010.
9. She lodged a grievance with the Respondent. The Respondent furnished her with the outcome of the grievance on 27 September 2019. In terms of the outcome of her grievance, the Respondent approved to upgrade her to salary level 8.

10. An approval to upgrade her was since 1 April 2010, not been implemented by the Respondent.
11. She seeks retrospective upgrading from salary level 7 to salary level 8.

### **RESPONDENT'S CASE.**

The Respondent did not challenge the Applicant's testimony.

### **ANALYSIS OF EVIDENCE AND FINDINGS.**

22. Section 186 (2) Section 186(2) (a) of the LRA defines unfair labour practice, as *"any unfair act or omission that arises between the employer and an employee involving unfair conduct by the employer relating to promotion, demotion, probation or training of an employee or relating to provision of benefits to an employee"*.
23. The Applicant's case is that the Respondent committed an unfair labour practice when it refused to upgrade her to a higher post level.
24. Promotion means an elevation into a higher post-usually with an attendant increase in salary and/or benefits, or an increase in duty or responsibility, or an elevation in status. It was the Applicant's testimony that she is still occupying a salary level 7 post in spite of the post having been upgraded to salary level 8 effective from 1 April 2010. That piece of evidence was not challenged by the Respondent.
25. The Applicant has the onus of proving the existence of unfair labour practice.
26. In *Department of Justice v Commission for Conciliation, Mediation and Arbitration and Others*, the Court said " *...An employee who complains that the employer's decision or conduct in not appointing him constitutes an unfair labour practice must first establish the existence of such a decision or conduct. If that decision is not established, that is the end of the matter. If that decision or conduct is proved, the enquiry into whether the conduct was unfair can then follow*". It was the Applicant's uncontested testimony that she was given an offer to be promoted, and that the offer had not been implemented. It was the Applicant's testimony that, following the outcome of the job evaluation results, the Respondent had to upgrade her from salary level 7 to salary level 8 and that she was not upgraded. Once more, that evidence was not challenged by the Respondent. I accept the Applicant's version that she qualified to be promoted with effect from 1 April 2010.
27. In *City of Cape Town v SA Municipality Workers Union on behalf of Sylvester & Others (2013) (LC)*, the court held that *"the overall test is one of fairness"*. I find it to be unfair for the Applicant to be kept in a salary level 7 position for over 9 (nine) years despite having been upgraded.
28. I therefore find that the applicant has proved on a balance of probabilities that the respondent committed an unfair labour practice relating to promotion.

**AWARD.**

29. I therefore make the following order:

30. The Respondent, Department of Public Works, Roads and Infrastructure, is ordered to promote the Applicant, Thabelo Audrey Mugwedi to salary level 8 with full benefits attached to the upgraded post with effect from 1 April 2010.
31. The Respondent is further ordered to pay the applicant an amount of R434 274 (four hundred and thirty four thousand two hundred and seventy four rand) not later than 15 October 2019, being her outstanding difference in salaries and other benefits.



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**MAHASHA TM**  
**GPSSBC PANELIST**