

IN THE ARBITRATION HEARING HELD AT GIYANE  
Case no. GPBC 1921/13

In the matter between

PSA o.b.o

NYALUNGU S.G AND 3 OTHERS:                      APPLICANT

And

DEPARTMENT OF PUBLIC WORKS:                      RESPONDENT

**APPLICANT'S HEADS OF ARGUMENTS**

**1. BACKGROUND TO THE CASE**

Respondent conducted a job evaluation exercise and the outcomes were approved by the Head of Department on the 14 March 2006.

In terms of the outcome's administration clerks were upgraded to level 6.

They are all based at Mopani district.

Another job evaluation was conducted in 2008 upgrading Admin Clerks from level 6 to level 7.

Nyalungu S.G and Mohlaba are Admin clerk currently on level 5 since 2009 and was on level 2 at the time of the job evaluations. They are entitled to be promoted from level 2 to 5 with effect from 1 April 2006 and from level 6 to level 7 with effect from April 2008.

Bvuma and Ramphaka are on level 5 since 2009 and were on level 3 as at the time of the job evaluation They are entitled to be promoted from level 2 to 5 with effect from 1 April 2006 and from level 6 to level 7 with effect from April 2008

The respondent omitted to promote the applicants to upgraded positions in terms of the two job evaluation outcomes.

The respondent only upgraded or promoted administration clerks at head office in 2006 and left out the applicants who are in Mopani district. In 2009 they were upgraded to salary level 5.

Applicants therefore referred their dispute as unfair labour practice relating to promotion in terms of *section 186(2) (a) of the Labour Relations Act, 66 of 1995 as amended*

**2. ISSUES TO BE DECIDED**

The Commissioner is to determine whether the outcomes of the job evaluations were for the respondent the Department of Public Works or not.

The Commissioner is invited to determine whether the failure to promote the applicants in terms of the outcomes of the job evaluation dated 14 March 2006 and was fair or not.

Whether or not the employer implemented the job evaluation results for 2008 taking Nyalungu and Mhlaba; Bvuma and Ramphaka from level 6 to level 7 respectively

Whether or not failure to implement the two job evaluation results constituted unfair labour practice

Whether the conduct of the respondent to promote the admin clerks at head office to the exclusion of the applicants was fair or not.

To decide on the appropriate relief as sought by the applicants

### **3. CASE FOR THE APPLICANT**

It is the case of the applicants that the respondent conducted job evaluation exercise which place administration Clerks on level 6 in 2006 and to level 7 in 2008.

The three applicants are currently on level 5 and were not placed on level 6 in 2006 and on level 7 in 2007 following the upgrading of their positions which was done as per outcomes of job evaluations which gave rise to a right to their promotion.

It is the case of the applicant that these outcomes were meant for the Department of Public works who is their employer and were not for a specific group or office of the respondent.

In terms of the evaluation for 2006 the posts of Admin Clerks were on salary level 6 before evaluation and remained at 6 until upgraded to salary level 7 in 2008

If the outcomes were implemented in 2006 and 2008 respectively, they would have been on supervisory levels

### **4. CASE FOR THE RESPONDENT**

No evidence was led from the respondent

### **5. ANALYSIS OF EVIDENCE AND ARGUMENTS**

#### **5.1 PROCEDRAL UNFAIRNESS**

This is a section 186 dispute relating to promotion and not about the fairness of the job evaluation exercise that was conducted by the respondent.

The applicants are challenging the decision not to promote them.

The Executing Authority is empowered by the *Public Service Regulation in particular Chapter 1 of PART IV B.3* reads as follows "An executing authority may evaluate or re-evaluate any job in her or his department."

It is our submission that the act does not provide for a discriminative application

It cannot be reasonably possibly true that those outcomes were meant for head office staff only and excluded the districts as it would amount to unfair labour practice.

The respondent alluded to the fact that when such exercise is conducted it was meant for a certain individual employee who requested such evaluation.

It placed on record that not all employees would be interviewed like with the subsequent evaluations of 2009, they were not interviewed.

## 5.2 SUBSTANTIVE UNFAIRNESS

*Section 186(2) (a) of the LRA states that "Unfair labour practice means any unfair act or omission that arises between an employer and an employee involving unfair conduct by the employer relating to promotion..."*

The respondent conducted an exercise that would have promoted the applicants from their then level 2 and 3 to level 6 to 7 in 2008 and in that exercise the respondent omitted and or acted unfairly by not implementing the outcome of their own job evaluation exercise which placed them as such.

*In SARS v SSSBC & Others (2010) P54-09 (LC) Bason J held that the decision not to promote should not be exercised in a manner that does not constitute unfair labour practice.*

In this case it is submitted that the decision not to implement the outcomes of job evaluations 2006 and 2008 respectively that would have promoted the applicants who are their employees because they are in the district constitute unfair labour practice relating to promotion.

## 6. CONSISTENCY

It has been confirmed that employees of the respondent at head office benefited from the exercise and were promoted accordingly.

There is no specialty in the field of admin clerks and accounting clerks with the department, these are generic positions.

The Public Service Act does not provide that the Executing Authority may evaluate position in certain part of the department.

The regulations say an executing authority may evaluate or re-evaluate any job in his department.

It is common course that he jobs of administration clerks are generic in nature and their posts are bot at head office and in the districts including cost centers.

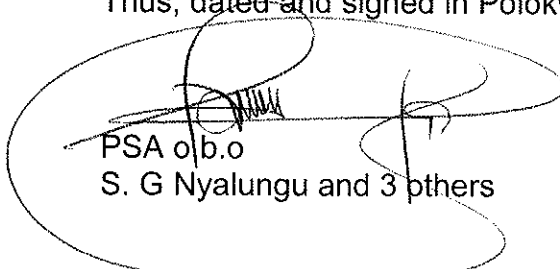
Therefore, the respondent committed an unfair conduct

## 5. RELIEF SOUGHT

It is my submission that having regard to the above, all the three applicants be promoted from level 2 and 3 respectively to level 6 with effect from 1 April 2006 and from level 6 to salary level 7 with effect from April 2009

That they be paid their arrear salary calculated at the difference between salary levels 3 to 7 retrospectively.  
Ordering that all payments mentioned above attract interests in terms of *section 143 (2) of the LRA*

Thus, dated and signed in Polokwane on the 29 May 2019



PSA o/b.o  
S. G Nyalungu and 3 others