ARBITRATION AWARD

Panellist: Mr. THABE PHALANE_____
Case No.: GPBC1871/2017_____
Date of Award or Ruling: 12 NOVEMBER 2019_____

In the ARBITRATION between:

PSA obo E.S Makhombothi & 5 Others
(Union / Applicant)

and

Department of Education
(1st Respondent)

Union/Applicant's representative:	Mr J.C Heynecke
Union/Applicant's address:	Pamela.Letebele@psa.co.za
Telephone:	087 234 7688/ 086 533 9622
Email:	Pamela.Letebele@psa.co.za
Respondent's representative:	Mr P.F Masilela.
Respondent's address:	Private Bag X 11314 Nelspruit 1200
Telephone:	013 947 1711/ 013 766 5352
Email:	i.madonsela@education.mpu.gov.za/ f.rieger@education.mpu.gov.za /Mpho.Marakalala@gauteng.gov.za

Arbitration Award

Details of hearing and representation

1. This matter was set down as Arbitration on 28 October 2019 at the Department of Education Government Building 7 situated at Solomon Mahlangu Driveway, Kwa-Mhlanga.
2. The Applicants attended and were represented by Mr J.C Heynecke, a Union Official, whilst the Respondent was represented by Mr P.F Masilela, standing in for the Respondent's appointed representative, Mr S. Khoza, who was unavailable due to a mistaken belief that the matter was withdrawn.
3. The Respondent applied for a postponement but the reasons given were unsatisfactory and I ruled that the matter must proceed as this was not the first time the matter was scheduled for arbitration and has been postponed at least three times before.
4. The matter was digitally recorded. The Applicants submitted a bundle of documents marked bundle "A". The Respondent was previously given the bundle of documents on 19 March 2019.
5. The Applicant submitted that they were subjected to unfair labour practice relating to benefits after they submitted performance assessments for the year 2014-2015.
6. The Applicants received a satisfactory level of performance but the Respondent failed to progress the Applicants as from 01 July 2015.

Issue to be decided

7. I am required to determine whether the Respondent committed an unfair labour practice by not progressing the Applicant to the next notch level after they qualified for grade progression, and consequent thereon, to issue the appropriate relief.

Hisstorical background

8. The Applicants are employed as Administration Clerks in the sub-Directorate Inclusive Education & Curriculum Enrichment, Library & Computers in Education Division in Mpumalanga.
9. Mr Mpanbani, G. D works in the Inclusive Education Division.
10. The DPSA Incentive Policy Framework for employees on salary 1-12 not covered by specific OSD provides for pay/notch progression by the awarding of 1 notch to eligible employees with a satisfactory performance rating.
11. The Applicants received a satisfactory performance rating and were thus eligible for pay progression.
12. They lodged a dispute after they received a letter stating that they failed to submit 3rd and 4rth quarter assessments reports.
13. The Applicants submitted their assessments but they were lost in transit.
14. The Applicants want to be progressed according to their rating and paid the attendant benefits due to them.

Summary of Evidence and Argument by the Applicants

Mr J.C Heynecke-Union Official

15. The witness is the Union official of PSA, and is representing the 5 Applicants.
16. They are, 1st applicant- Mr Makhombothi E.S, 2nd applicant-Mr Masimula E.J, 3rd Applicant-Mr Masemola,J, 4th Applicant-Mr Mpanbani,G.D and 5th Applicant-Mr Malatswane, N.
17. The 6th applicant, Ms Mabena D, has since passed on.
18. In terms of the Translation keys of Public Servants not covered by OSD, 01 April 2015, The 1st applicant was on salary level 5 at scale R 134 379, during 2015.
19. He was supposed to be progressed to the next notch, R 136 407 after the rating. The failure by the Respondent to progress him means that he is one notch lower every year that there are salary increments and adjustments.
20. The Applicant continues to be prejudiced as a result of the omission and he wants to be paid retrospectively the necessary adjustment and back-pay.

21. The 2nd applicant was on salary level 2 at scale R 79 335, during 2015. The next notch was R 80 520 after the rating, which was not implemented. He continues to be prejudiced by a notch lower every year that there are salary increments and adjustments. He also wants to be retrospectively paid the adjustments as well as back pay.
22. The 4th applicant was on salary level 5 at scale R 132 399, during 2015. The next notch was R 134 379 after the rating. By failing to implement the pay progression, the applicant continues to suffer the prejudice with the attendant loss of benefits and adjustments that are lower that they should actually be, and he wants to be paid retrospectively the adjustments and benefits due to him.
23. The 3rd Applicant is on the same untenable position as the 1st Applicant.
24. The 5th Applicant is on the same undesirable position as the 2nd Applicant.
25. All the Applicants qualify to be progressed retrospectively from 2015 and they want to be paid accordingly the benefits due to them.

Under cross examination

26. There was no cross examination as the representative appointed was absent and I ruled that the arbitration must proceed.

ANALYSIS OF THE EVIDENCE AND ARGUMENT:

27. I have considered the Applicants evidence, bundles, as well as oral submissions when arriving at this award.
28. There was no evidence submitted by the Respondent to counter these submissions.
29. The results of the performance assessments are contained in the bundle of documents and they have been signed by the Applicants supervisors and the designated Managers.
30. The Applicants also submitted e-mail correspondence to the Departments various officials and there is an acknowledgment that the documents were submitted bit they were lost.

31. The Applicants have therefore complied with the requirements for the processing of their assessment ratings and are therefore entitled to be progressed as per the Respondents' incentive Policies.
32. It is therefore my finding that the Applicant has succeeded to show that the Respondent has committed an unfair labour practice related to benefits.

In the premises, I make the following award

AWARD:

33. The Applicants have succeeded to show that the Respondent has committed an unfair labour practice by not progressing them.
34. The Respondent is ordered to progress the Applicants retrospectively for the year 2014/2015.
35. The Respondent must also adjust the salaries of the Applicants retrospectively as a result of the said pay progression.
36. The referral of Ms D. Mabena is dismissed as a result of her passing on.
37. There is no order to costs.

THABE PHALANE.....
(GPSSBC) Arbitrator