



ARBITRATION AWARD

Panelist/s: Mr Martin Sambo _____
Case No.: GPBC1779/2018 _____
Date of Award: 24 September 2020 _____

In the ARBITRATION between:

PSA obo MAPHANGA A.

(Union / Applicant)

AND

CO-OPERATIVE GOVERNANCE & TRADITIONAL AFFAIRS

(Respondent)

Union representative: Ms Asnath Sedibane _____
Applicant's address: PSA _____
Union Official _____
Telephone: _____
Telefax: _____

Respondent's representative: Mr Malatjie _____
Respondent's address: Coghta _____
Telephone: _____
Telefax: _____

ARBITRATION AWARD

DETAILS OF HEARING AND REPRESENTATION

This matter was scheduled for arbitration on 24 March 2019, 09 June 2019, 09 March 2020 and 14 July 2020 at the Offices of the Department of Cooperative Governance Traditional Affairs, Building 6, Government Complex in Nelspruit.

The employee party, Mr A Maphanga (hereinafter referred to as the Applicant), was represented by his union representative Ms Asnath Sedibane of PSA. The employer party, Co-operative Governance and Traditional Affairs [COGTA] (hereinafter referred to as the Respondent), was represented by its Labour Relations Officer Mr Malatjie.

The proceedings were electronically recorded.

ISSUE TO BE DECIDED

Whether, in the circumstances detailed hereunder, the Respondent has committed an unfair labour practice as set out in section 186(2) of the Labour relations Act 66 of 1995 ('the LRA') by not upgrading the Applicant from salary level 09 to salary level 10.

BACKGROUND TO THE ISSUES

The Applicant Mr A Maphanga is employed by the Respondent as an Assistant Director (ASD): Municipal Capacity Building. The Respondent is the Co-operative Governance And Traditional Affairs Department.

The Applicant was employed by the Respondent on 01 April 2008 and is currently earning a monthly salary of around R26 000 at salary level 09. His dispute relate to the fact that his position has not been upgraded whereas the two Deputy Directors (DDs) he supports were upgraded from salary level 11 to salary level 12 after the job evaluation. The Applicant contends that when they submitted job descriptions for job evaluation to the Office of the Premier, they discovered his job description is the same as those of the DDs. The DDs were then advised to change his job description and that resulted in his post not being upgraded. The Applicant was dissatisfied, lodged a grievance and finally referred the matter to Council for conciliation. The matter could not be resolved through conciliation and was referred to Council for arbitration.

The Applicants seeks that his post be upgraded from SL 09 to SL 10. The Applicant led testimony of three witnesses whereas the Respondent led one witness for its case. Parties submitted bundles A & B of documents and stated that they had no point in limine to raise.

ANALYSIS OF EVIDENCE AND ARGUMENT

I am required to determine whether, in the circumstances detailed hereunder, the Respondent has committed an unfair labour practice as set out in section 186(2) of the Labour relations Act 66 of 1995 ('the LRA') by not upgrading the Applicant from SL 09 to SL 10.

The onus to prove the facts on which an allegation of such an unfair labour practice falls on the Applicant.

The Applicant Mr Andy Drayco Maphanga testified that he has been in the post of ASD Municipality Capacity Building from April 2009. He explained the duties of his directorate and

stated that the main mandate of their unit is to coordinate capacity building activities in municipalities. He compared his job functions and key responsibility areas (KRAs) with those of his of the two DDs in his unit and came to the conclusion that they are performing the same functions. He further testified that in the section they all share work equally and there no work for DD or ASD. He further testified that in the 2016/17 financial year around July or August his unit was called for job evaluation at the Office of the Premier. They started with the 2 DDs in his unit Ms Nkuna his supervisor and Ms Ngomane. When Ms Nkuna returned from the Office of the Premier she told him that th e person doing the job evaluation told her they had to change his job description as it is the same with that of DDs but she never entertained that topic any more. He testified that he also spoke to Ms Ngomane about this and she confirmed but also never spoke about this anymore. Both DDs positions were upgraded from salary level 11 to salary level 12 as a result of that job evaluation. On the morning of his turn to be job evaluated Ms Nkuna told him to remember that she told him his job description had to be changed. He stated he does not know if she did it or not. He attended the job evaluation and they pulled out his PMDS and wanted him to explain every function per bullet. The person doing the job evaluation was satisfied. However when the outcome letter came stated his job weight is that of level 9 (that meant his position was not upgraded). He then assumed from then that his job description was changed. After this he made internal consultations with his supervisors and could not be assisted. He finally approached HR and was told to put his issue in writing. He lodged a grievance and was replied a year later on 23 April 2019. He does not agree with the responses of the Respondent since he was at salary level 09, supported the DDs, they got upgraded but he was not. This does not make sense. He refused to be re-evaluated as he lost confidence in the manner this happened.

In cross-examination he was referred to a response from the Respondent that indicated that he did not perform a function that said “ Monitoring deployed young professionals”, the Applicant insisted that this function was performed by him and none of the DDs performed it. When pressed to say the job evaluator will come and testify that he conceded that he did not perform this function, the Applicant indicated that he only said so for the sake of peace. He further claims he did not agree but only said is fine. He also conceded that he does not have the KRA dealing with budget as that is a management and argued that even DDs don't have a budget especially in their section and that it is at Director Level.

The Applicant subpoenaed his supervisor Ms Nkuna who testified that her position is DD since 2008 and was at salary level 11 but is currently at salary level 12. Her position and that of Ms Ngomane was upgraded in 2018 after they were called at the Office of the Premier and were job evaluated around 2017 June/July. She disputes that her functions are the same as those of the Applicant since he reports to her as a manager. She contends however that the functions as reflected in the Annual Performance Plan (APP) for a specific year would need to be in line. She agrees with the Applicant that as they received jobs they would share it equally but that such was an internal arrangement they agreed on due to shortage of staff and they needed to work smart. She further agrees that after her job evaluation she told the Applicant that she was told to develop his job description to that of an ASD. She then told the Applicant to show him his job description but he delayed. Then the Office of the Premier based on what the Applicant submitted tailor made a job description for him and job evaluated him based on it. The Applicant agreed to it. The outcome came and the Applicant was not upgraded. She got a call from the Office of the Premier that the Applicant has lodged an appeal and that they would like to meet with her. When she got there she was shown the appeal and the developed job description and asked her if is covered all he does and she confirmed it does. They had called the Applicant for re-evaluation, he confirmed that the functions on the developed job description are his but that he is no longer interested in being re-evaluated. Ms Ngomane called the Applicant and told him that he could still be re-evaluated but within three days the Applicant called her and said he has changed his mind and does not want to be re-evaluated. She testified that in her DD positions there are functions that ASDs don't do. For instance she manages the budget since 2008. The difference in the functions is the management part of it, the Applicant reports to her whereas he has no one reporting to him. Further she monitors the budget and the Applicant does not do that at all. Further the function to request financial resources from stakeholders to deploy young graduates is done by DDs and the Director only.

The Applicant had also subpoenaed the other DD in his unit Ms Fikile Ngomane who testified that she does not know the Applicant's functions as he does not report to her. She however indicated that when looking at this written job functions she sees that some functions are similar. She testified that she had only heard from Ms Nkuna that the Office of the Premier said the Applicant's job description is the same as DDs. She testified that Ms Nkuna said they had to come with a job description of ASD as he could not be assessed on the job description outside his powers. Ms Nkuna then said she developed a job description and emailed it to him. She is aware that the Applicant does more or less what the DDs do. However she is not aware of the Applicant's claim that he attends budget review sessions. She concedes that the KRAs of the Applicant are similar to her but that they are not 100% the same. She testified that she was also called to the Office of the Premier for job evaluation and that she had to present her job functions and unpack her performance areas so that the evaluator understand what she was doing. Her position was upgraded after that job evaluation.

The Respondent called Ms Stella Mabuza who testified that she is a DD in the Office of the Premier in the Directorate Organizational Design and Evaluation. Her unit is responsible for organizational development of Provincial Departments and are also conducting job evaluation of posts. They are using a job evaluation system called EVALUATE but previously they used EQUATE. The EVALUATE system is a process to job evaluate and it has five factors which have to all be determined. Firstly they consider the job description of the post; that post should be on the approved organisational structure; then one has to analyse if that job description is in line with the approved organisational structure; if the post is filled the incumbent must be interviewed or if vacant, the supervisor will be interviewed; a comparison is then made between the information by the incumbent with what is on the organisational structure; If the analyst is not satisfied with something they may consult the supervisor; then the analyst complete the EVALUATE questionnaire and capture it on the system; thereafter the system will give recommended result from job weight and salary level of the post; after that a file with all its documents is created and submitted to internal Quality Assurance Committee to check if the post is not overscored; after this the post is presented to the Provincial Job Evaluation Panel to check on the quality; then they as secretariat of that Committee will communicate the results to various departments.

She testified that in the case of the Applicant the system reflected his job weight after evaluation to remain graded at salary level 09 and the Committee agreed with it. The Applicant lodged an appeal and she dealt with that appeal. Another Analyst met with the Applicant to get more information which might not have been considered. The Applicant told the analyst that the job description used was not the one he should have been analysed on. A file was then retrieved and only a performance agreement and a job description developed by the Applicant and first analyst in the first interview was found. Since she was dealing with the appeal, she found that on the performance agreement was a function that said "monitoring deployed young professional". She also checked with the first analyst why they developed that job description. The reason she found was that when evaluating a post there must be a job description but in this case there was a job description which was not in line with the organisational structure. So during the appeal she asked the Applicant if he is performing the function of "monitoring deployed young professionals". The Applicant confirmed that that function is not performed by him. When evaluating the post she could not see the budget card on the ASD post. The Applicant does not supervise any official. Further, during the appeal and according to the information gathered there was no evidence to support re-evaluation of the Applicant. The Applicant confirmed the functions on the developed job description to the first analyst and confirmed also to her during appeal.

I have considered the oral testimony of witnesses, documentary evidence and submissions of the parties. In this case the onus lies on the Applicant to prove. From the evidence before me, I am unable to agree with the Applicant that the duties of DDs and those of the Applicant are the same. It is clear from evidence confirmed by the Applicant himself that he does not perform the function of "monitoring deployed young professionals", he does not manage the budget whereas DDs do, and he does not supervise any subordinate. Secondly, the Applicant claims his job description is changed and that is why he was not upgraded. The Applicant does not lead any evidence to prove

that assertion. The Applicant further does not give any proof of the changed job description nor does he at least indicate which functions had been changed that could have maybe influenced the EVALUATE system to rule in his favour. The Respondent's evidence is that the Applicant was given an opportunity for re-evaluation which he refused. Further the Applicant was given an opportunity in appeal to indicate the functions that might have been overlooked, but it seems the Applicant has confirmed the developed job description instead of giving other functions that could have been changed from his job description. From the evidence before me I am unable to find that the Applicant did the same work with the DDs or that his job description has been changed. The onus lies with the Applicant but the Applicant does not discharge.

From the circumstances outlined above, I therefore find, on a balance of probabilities, that the Respondent has not committed an unfair labour practice as set out in section 186(2) of the Labour relations Act 66 of 1995 ('the LRA') by not upgrading the Applicant's post from salary level 09 to 10.

AWARD

1. Application is dismissed.
2. I make no order as to costs.



Panellist Mr Martin Sambo