

IN THE GENERAL PUBLIC SERVICE SECTORAL BARGAINING COUNCIL (GPSSBC)

In the matter between

PSA obo SHONGWE

APPLICANT

And

DEPARTMENT OF EDUCATION

RESPONDENT

Case NO: GPBC2238/2018

ARBITRATION WARD

DETAILS OF HEARING AND REPRESENTATION

This matter was scheduled for arbitration on 26 March 2019 at the Offices of the Department of Education, 2 De Jager Street, Uitkomst Building in Ermelo.

The employee party, Ms NF Shongwe (hereinafter referred to as the Applicant), was represented by her union official of PSA Ms Pamela Letebele. The employer party, Department of Education (hereinafter referred to as the Respondent), was represented by its Labour Relations Manager Ms Ivy Madinsela.

Both parties were present. The matter is relating to Interpretation of application of collective agreement. The parties narrowed down the issues and decided that there was no need for oral testimony and requested that the matter be dealt with in terms of exchange of written heads of arguments.

The statement of case made during narrowing of issues was electronically recorded

ISSUE TO BE DECIDED

I have to decide whether, in the circumstances detailed hereunder, the Respondent interpreted or applied clause 3.1.1 of the GPSSBC resolution 1/2002 correctly by not paying the Applicant her acting allowance.

BACKGROUND TO THE ISSUES

The Applicant, Ms NF Shongwe is in the employ of the Respondent since 20 June 2008 as an Admin Clerk level 5. The Respondent is a Mpumalanga provincial government department of education. (DARDLEA).

The Applicant alleges that the Respondent failed to interpret or apply resolutions 1/2002 correctly when it failed to pay her acting allowance after she acted for 5 years in the position of Warehouse Officer. The Applicant lodged a grievance and the Respondent gave an unsatisfactory reply. The Applicant referred the dispute to Council, but could not be resolved through conciliation. The Applicant seeks the Respondent pay her acting allowance for the period she acted in the higher position.

The parties indicated that there was no need for oral evidence and opted to deal with this matter through exchange of heads of arguments. The parties agreed to submit bundles of documents with heads of arguments.

SUMMARY OF THE APPLICANT'S CASE

Clause 3.1.1 of the GPSSBC Resolution 1/2002 states that "An employee appointed in writing to act in a higher post, by a person who is duly authorised, shall be paid an acting allowance provided that-

- a) The post is vacant and funded; and
- b) The period of appointment is uninterrupted for longer than six weeks".

In the attached Applicant's bundle, page 8, the Deputy Director Dr P.G. Thusi: FSS has on 25 September 2012 appointed the Applicant who is on salary level 5 to act on a higher post of Warehouse Officer which is at salary level 7. Dr Thusi is a Senior Official of the Respondent and according to the letter he has provided the Applicant with, one can only deduce that indeed he had the necessary authority to pronounce such delegations. It was not for the Applicant nor even on this platform to question if Dr. Thusi was duly authorised to appoint officials to act or not.

It is the Applicant's submission that by virtue of the said page 8, the Respondent ought to have known that the post was vacant and funded hence the appointment. On page 9 of the Applicant's bundle a senior official of the Respondent details the added roles and responsibilities for the Applicant to acquaint herself with. On page 10 the Respondent refers to the Applicant as "Acting Head of Stores".

Further in pages 10 to 13 of the Applicant's bundle, on the 02 May 2017, the Head of the Department has noted the execution of duties of the Applicant. On page 18 of the same bundle, by July 2015 the Respondent still refers to the Applicant as "Acting Head of Stores".

The Applicant has met the requirements of the collective agreement and seeks to be paid acting allowance from 2012 until 2018.

SUMMARY OF THE RESPONDENT'S CASE

The Respondent submits that in terms of its approved organizational structure there was at the time no post of a warehouse officer in the structure (page 3 of the Respondent's bundle). The Respondent further submits that the parties to the provincial chamber of the GPSSBC concluded a Resolution 1/2011 on the Procedure for the Transfer of employees working in the warehouses of the Mpumalanga Department of Education (see pages 4-8 of the Respondent's bundle). The objectives of the agreement was to provide for a procedure for the placement of employees rendering services in the district warehouses of the Respondent which it sought to close in November 2011. The Applicant at the time the resolution was concluded was one of the beneficiaries of the collective agreement as she was appointed at the time as an Admin Clerk salary level 3 (see page 9 of the Respondent's bundle) also to work in the warehouse.

The Respondent submits that the Applicant was never appointed to act in a higher position by a duly authorized person. The only person authorized to appoint acting incumbents is the Head: Education, and

that function has not been delegated to any other official. So Dr Thusi was not authorized to appoint anyone.

The Respondent argues that the Applicant has failed to demonstrate in their submission that she was appointed to act in a vacant post that was funded, that she accepted the appointment in writing and that she was appointed by the duly authorized person to act. The Applicant could not have been appointed to act at a position that required matric and other qualifications when she herself does not have matric.

The alleged appointment letter to act is titled “Appointment as a Warehouse Officer at Ermelo Stores” on page 8 of the Applicant’s bundle is not a letter of appointment to act, the post did not exist at the time, warehouses were already closed and a process of placement of warehouse staff in terms of resolution 1/2011 was in the process of being concluded. The Applicant accepted the offer of placement as Admin Clerk Logistical Management on the 10 December 2012 in line with resolution 1/2011.

ANALYSIS OF EVIDENCE AND ARGUMENTS

I have to determine whether, in the circumstances detailed above, the Respondent interpreted or applied GPSSBC resolution 1/2002 correctly by not paying the Applicant her acting allowance.

Clause 3.1.1 of the GPSSBC Resolution 1/2002 states that “An employee appointed in writing to act in a higher post, by a person who is duly authorised, shall be paid an acting allowance provided that-

- a) The post is vacant and funded; and
- b) The period of appointment is uninterrupted for longer than six weeks”.

The Applicant asserts that she was appointed to act in a higher position in 2012 by a senior official of the Respondent. However when one peruses the alleged letter of appointment it does not speak to appointing the Applicant to act and neither does it specifies the period of acting. The letter merely says the Applicant is appointed as a warehouse officer at Ermelo Stores. Further there is no explanation why the matter took more than 5 years if this was an acting matter. The Applicant would have surely complained from the first month when she was not paid her acting allowance.

Secondly the Respondent has demonstrated through the structure that the position of warehouse officer did not exist at the time when the Applicant purports to have been appointed. The submission by the Applicant to say that the purported letter of appointment is a prove of existence of the position is not sufficient. This then proves non-compliance with the requirement of existence of a vacant and funded position.

The Applicant further does not sufficiently dispute the Respondent’s assertion that the only person who has been authorized to appoint acting incumbents is the Head: Education and that Dr Thusi has not been delegated with that responsibility.

From the circumstances outlined above I find on a balance of probabilities that the Respondent has not interpreted or applied GPSSBC resolution 1/2002 correctly when it did not pay the Applicant acting allowance.

AWARD

- Application is dismissed
- I make no order as to costs.



MARTIN SAMBO
PANELLIST
28 January 2020