



ARBITRATION AWARD

Commissioner: **Joseph Wilson Thee**

Case No: **PSCB448-15/16**

Date of Award: **8 November 2016**

In the matter between:

PSA OBO CAROLINE ORAPELENG

APPLICANT

and

DEPARTMENT OF PUBLIC WORKS

1ST RESPONDENT

DEPARTMENT OF PUBLIC SERVICE AND ADMINISTRATION

2ND RESOPNDENT

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DETAILS OF HEARING AND REPRESENTATION

1. This is the award in the matter between Caroline Orapeleng, the employee and the Department of Public Works, the employer.
2. For convenience sake I will refer to the employee as the Applicant and to the employer as the Respondent.
3. The arbitration hearing was held under the auspices of the PSCBC in terms of Section 24 of the Labour Relations Act, as amended ("the Act") and the award will be issued in terms of Section 138(7) of the Act.
4. The arbitration hearing took place on 13 September 2016 at the Department of Public Works and Department of Public Service and Administration (DPSA) in Mmbatho.
5. The Applicant was present and was represented by Mr. Dickson from PSA.
6. The Respondent was represented by its Employee Relations Manager Mr Masilo Rakgoale.
7. The proceedings were digitally recorded and conducted in English.
8. Both parties submitted their respective bundle of documents at the commencement of the proceedings. The documents were accepted for what it purports to be what it is except for the issues in dispute. Parties further requested not to lead any evidence but to make an opening statement and to submit written Heads of Argument by 20 September 2016.

ISSUE TO BE DECIDED

9. I must decide whether or not the Respondent is in breach of Resolution 3 of 2009. The Applicant requested to be upgraded.

BACKGROUND TO THE DISPUTE

10. The Applicant is currently employed as a HR Admin Clerk at Salary Level 6. On 24 July 2009 Resolution 3 of 2009 in respect of an agreement on a revised salary structure for employees on salary levels 1-12 not covered by an occupational specific dispensation and to introduce a career pathing model and grade progression for identified salary levels.

11. Subsequently, to the resolution being passed, the Applicant's requested to be upgraded in accordance with the provisions of the resolution 3 of 2009 with specific reference to clause 3.6.2.2 from salary level 6 to 7. The Respondent declined the application of the Applicant to be upgraded on the grounds that she does not qualify.
12. The Applicant filed a grievance with the Respondent but the dispute remained unresolved. She referred a dispute to the PSCBC on 4 May October 2015. A conciliation meeting was held on 27 November 2015 but the dispute remained unresolved and certificate to such effect was issued.
13. On 1 February 2016 the Applicant requested that the dispute be resolved through arbitration.

SURVEY OF THE EVIDENCE

THE APPLICANT'S CASE

14. The Applicant argued its case on paper as follows. She has completed 15 years of continuous service with the Respondent on level 6. The Applicant argues that the grade progression has no bearing with a job title but the employee. The overall objective of the paragraph 3.6.2.2 of resolution 3 of 2009 was to recognise and reward long service. In support of her case the Applicant refers to the court judgement in **Coetzer & Others v Minister of Safety and Security & Another [2009] 11 LC at 6.9.2**

THE RESPONDENT'S CASE

15. The Respondent submitted the following. Resolution 3 of 2009, clause 3.6.2.7 provides that when an employee is appointed on a post graded on a salary level 6, he /she shall only progress to salary level 7. Clause 3.6.2.9 provides that no employee who was appointed on salary level 4, 5, and 6 can grade progress to salary level 6, 7 and 8 respectively, i.e. over the last 2 salary levels.
16. These employees must apply for a vacant funded post on those salary levels. More importantly, clause 3.6.2.10 provides that this provision does not do away with the provisions of the of Evaluation system in the public Service.
17. DPSA issued circular no 2 of 2009 regarding the implementation of salary /grade progression model for employees on salary level 1 -12 (non OSD employees). Meaning that salary progression is capped to the next higher salary level above the salary level to the post. (in terms the job evaluation system).
18. Therefore, employees can only progress from salary 4 to 5 to 6, or from salary level 6 to 7 or from 7 to 8. On 12 December 2012 DPS issued a directive on the implementation of the co -ordination process bench mark job description and grading levels. Bench mark job descriptions were developed for two performer levels in each of the categories.

19. The information was used for the process and the outcomes were as follows. Production level clerk graded on salary level 5 and supervisory level clerks graded on salary level 7. [See annexure C] DPSA issued another circular no 2 to clarify this matter by an illustration in clause 3(b) that incumbent B occupies post graded on salary level 4 of job evaluation.
20. The incumbent is remunerated on salary level 5. The incumbent is eligible to grade progress to salary level 6. Therefore salary level 5 is the appropriate salary level in terms of the grade progression model for an incumbent of the posts graded at level 4 to grade progress to salary level 6. Incumbent B remains on salary level 5, despite the fact that she /he has met the qualifying criteria.
21. Therefore the Applicant was appointed on post level 6 which is the post that has been re-graded to salary level 5 in terms of DPSA job evaluation outcome dated 12 December 2012. The Applicant has completed 15 years of continuous service on salary level 6 in 2014 , which is after 12 December 2012 (regarding of Clerk post to level 5).
22. The Applicant is a clerk on production level and not a supervisory level. For the reasons given the Applicant does not qualify to grade progress to salary level 6 based on the provisions of clause 3.6.2.7 and 3.6.2.9 respectively.

ANALYSIS OF EVIDENCE AND ARGUMENTS

23. I must determine whether the Applicant qualifies to be upgraded in terms of PSCB Resolution 3 of 2009.
24. The relevant clause 3.6.2.2 provides that salary with effect from 1 April 2010 salary adjusted with effect from 1 July annually)an employee on salary level 4,5, 6, or 7 , who has completed the 15 years of continuous service on a salary level , irrespective of the notch , and has obtained a least satisfactory rating in his /her performance assessment (the average assessment over at least 2 years period will determine the performance rating), shall grade (salary level) progress to salary level 5, 6, 7, and 8 respectively . This is not subject to the post availability.
25. When interpreting collective agreements arbitrators should follow the judgement of the LAC in the matter between **North East Cape Forests v SAAPAWU & others (2) 1997 (18) ILJ971 (LAC)**“A *Collective Agreement in terms of the Act is not an ordinary contract and the context within which a collect agreement operates under the Act is vastly different from a commercial contract. Froneman DJP has indicated that the primary objects of the Act were better served by a “practical approach to the interpretation and application of Collective Agreements rather than by reference to purely contractual principles”. This is not to say however that the ordinary principles of interpretation of contract are never appropriate when interpreting and applying collective agreements.*

26. In Northern Cape Forests the Court merely stressed that the interpreter should ask the further question whether an interpretation yielded by these principles accords with objectives of the LRA. The fact is that a collective agreement is a written memorandum which is meant to reflect the terms and conditions to which parties have agreed at the time they concluded the agreement.
27. The courts and arbitrators must therefore strive to give effect to that intention. Thus the Courts frequently apply the 'parole evidence' rule- that is that evidence outside the written agreement itself is not generally permissible when the words of the memorandum are clear- when interpreting collective agreement. I only had the parties on paper to take into account in making a determination in the present dispute. Notwithstanding the above case law in dealing with interpretation of collective agreements.
28. In the Applicant's brief written argument it submits that the intention was to be recognised long service. I only received the Applicant arguments without any supporting documentary evidence in support of her case. On the other hand the Respondent provided documentary evidence in support of their case.
29. It is common cause that the Applicant has completed 15 continuous years of service on salary level 6. The evidence before me shows that she achieved her fifteen years during 2014. She achieved her completed years after 12 December 2012, meaning after the re-grading of the clerk's post to salary level 5.
30. I carefully studied the Respondent's argument and must concur insofar as the argument was presented. Firstly, the provisions of clause 3.6.2.2 is not simply about rewarding years of service but clearly speaks to other criteria that is required such as satisfactory rating, performance assessment.
31. Therefore the Applicant's contention that she should be upgraded purely on service is incorrect. Furthermore, I am satisfied that the Respondent has applied its mind and correctly interpreted clause 3.6.2.9 that provides that no employee who was appointed on salary level 4,5, and 6 can grade progress to salary level 6,7 and 8 respectively.
32. It stands to reason that should the Applicant wish to be grade progressed to the next level she should apply for a funded vacant post. Alternatively, if she wishes to advance she should be subjected to a job evaluation in terms of clause 3.6.2.10. The job evaluation results before me shows that the Applicant was re-graded to salary level 5 which was conducted by DPSA on 12 December 2012.
33. Having regard to the above, I accordingly make the following finding.

AWARD

I find that:

34. That the Respondent did not breach the provision of resolution 3 of 2009. The Applicant is not entitled to be upgraded.

A handwritten signature in black ink, appearing to read 'J. Thee', with a long horizontal flourish extending to the right.

Joseph Wilson Thee
PSCBC PANELLIST: