

**IN THE GENERAL PUBLIC SERVICE SECTOR BARGAINING COUNCIL**

**HELD AT KIMBERLEY**

**ON 24 APRIL 2019**

**IN THE MATTER BETWEEN:**

**PSA obo G H ZENANI**

**AND**

**THE DEPARTMENT OF SPORTS: ARTS & CULTURE**

**GPBC 1317/2018**

**ARBITRATION AWARD**

## **DETAILS OF HEARING AND REPRESENTATION**

1. The present dispute between PSA obo GH Zenani (hereinafter referred to as the applicant) and The Department of Sports; Arts & Culture (hereinafter referred to as the respondent) was referred to Arbitration in terms of Section 191 of Act no 66 of 1995, as amended (the Act). At the Arbitration hearing which was held at the Offices of the respondent in Kimberley on 24 April 2019, the applicant was represented by Mr. K Williams of PSA and the respondent was represented by Mr. F Borman.
2. The parties were assisted in a pre-arbitration conference and a signed pre-arbitration minute was handed up.
3. The parties agreed that the matter be decided on oral submissions.
4. Both parties handed up bundles of documents and were accepted to be what they purported to be.
5. Both parties made submissions and are considered.
6. Herewith, brief reasons for my decision in terms of Section 138 (7) of the Act.

## **ISSUE TO BE DECIDED**

7. The issue to be decided by myself is whether the MEC had indeed approved the promotion of the applicant or had she approved that the applicant act in the salary level 8, position.

## **BACKGROUND**

8. The applicant is employed at the respondent as a Labour Relations Officer on salary level 7.
9. A submission was compiled by the Labour Relations unit that the applicant be promoted to salary level 9, and forwarded for approval to the H R Manager; the Head of Department; the Chief Financial Officer & the MEC.
10. The various managers made comments and forwarded the submission finally to the MEC for approval or rejection.
11. The applicant and respondent reached an impasse on the interpretation of the submission, whether the submission was approved or not.
12. The applicant lodged a dispute with Council. A certificate of non-resolution was issued and the matter was referred to Arbitration.

13. At the initial date of the scheduled arbitration, the matter was postponed due to the non-attendance of the MEC, who was the main witness in the proceedings.
14. The matter was heard at Arbitration on the above date, although the MEC was again absent.

## **SURVEY OF SUBMISSIONS**

### **APPLICANT'S SUBMISSION**

15. The applicant submitted that the submission as per page 1 to 7 of the respondent's bundle had requested that the applicant be translated from salary 7 to salary level 8. He submitted that he had met the requirements of the translation as per Public Service Regulation 44 of 2016 on page 9 of the respondent's bundle.
16. He insisted that the MEC had authorised the promotion of the applicant. The MEC had commented "approved" and signed the submission. He argued that page 1 of the submission had clearly stated the aim of the submission in that the applicant be translated from rank and salary level 7 to rank and salary level 8. Page 2 of the submission stated the background in which it suggested that the Labour Relations unit had been restructured. The new proposed duties of the of the officials was also listed.
17. On page 8 of the submission, the legal and financial implications were presented. On page 5, though the paragraph was not numbered, he argued that that was paragraph 6 which the MEC had approved. On page 6 of the submission, both the HR manager and the CFO had commented and signed the submission.
18. He contended that only after the applicant had raised a grievance, that the respondent insisted that the authorization of the submission had raised a misunderstanding. He insisted that he should have translated to a level 8 position on 1 December 2018.
19. In his reply, the applicant insisted that in the submission, the H R Manager had supported the submission. The Human resource manager runs the H R department. The MEC, he claimed had approved paragraph 6 of the submission and not paragraph 9 of the submission.

### **RESPONDENT'S SUBMISSION**

20. The respondent argued that the MEC had indeed signed approved" but that she had approved the comments of both CFO and the HOD. There being no Chief Director at the respondent, hence this portion of the submission remained blank. He charged that the MEC would normally

abide with the decision of her managers. She would act in accordance of the advice of the HOD and CFO. He therefore insisted that the MEC had endorsed the applicant acts in the position.

21. He argued that the Public Service Regulations were intended for employee retention. He submitted that the Human Resource department had ill advised the respondent in this regard.
22. He further contended that the right to promotion was not an automatic right. He conceded though, that an employee had the right to fair labour practices. He claimed that the applicant did not meet the requirements of the post and was therefore acting in the post.
23. He submitted that in 2016/2017, there was a moratorium on posts, hence the Public service Regulations came into place in respect of promotions. He insisted that the MEC had acted on the advice given. She approved the comments of both her managers and approved their comments and not the submission on paragraph 6 of the submission.
24. He insisted that there was no unfair labour practice and cited ***DOJ v CCMA & Others (2004) 13 1.11.6 (LAC)*** where the Court held that an employee had no right to be promoted, indeed the employee had an interest.

## **ANALYSIS OF SUBMISSIONS**

25. Section 23 of the Constitution of the Republic of South Africa provides that everyone has a right fair labour practices. The Labour Relations Act no 66, of 1995 and jurisprudence give effect the Constitutional imperative in Section 23.
- 26.

## **REMEDY**

27. The applicant sought to be retrospectively promoted to salary level 8 from 1 December 2016.
28. In terms of Section 193, an arbitrator may award any order that is deemed reasonable should an arbitrator find that the employer had committed an unfair labour practice, including compensation; re-employment or reinstatement.
29. The parties agreed that the retrospective pay that the applicant would be entitled to, would be R 63 649.00 after being paid the acting allowance for his tenure when the applicant acted in the position.

30. In view of the above, I am persuaded that the retrospective promotion of the applicant would be a reasonable and appropriate order.
31. The retrospective effect of the applicant's level 8 position, is from 1 December 2016. The retrospective amount covers the period 1 December 2016 to 31 May 2019.
32. The applicant shall be paid monthly on the level 8 salary from June 2019.

### **AWARD**

33. The applicant is promoted to salary level 8, retrospectively from 1 December 2016.
34. The respondent is to pay the applicant in the amount of R 63 649.00 in retrospective pay directly into the applicant's bank account into which the applicant ordinarily received his salary.
35. The amount as per paragraph 26 above is to be paid by no later than 15 June 2019.

**Signed at Kimberley on this 24<sup>th</sup> day of April 2019**



**GPSSBC PANELLIST**

**SHIRAZ MAHOMED OSMAN**