

IN THE PUBLIC HEALTH & SOCIAL DEVELOPMENT SECTORAL BARGAINING COUNCIL

HELD IN JOHANNESBURG

CASE NO: PSHS100-11/12

DATE OF AWARD: 7 August 2012

In the matter between:

PSA obo Van der Walt J.

Applicant

And

Department of Health – Gauteng

Respondent

ARBITRATION AWARD

DETAILS OF HEARING AND REPRESENTATION

1. The matter was set down for arbitration hearing at the offices of Department located at the Bank of Lisbon Building, corner of Sauer & Market Streets, Johannesburg, on 16 July 2012. It took place under the auspices of the Public Health & Social Development Sectoral Bargaining Council. Mr A Z Smit, official of PSA, represented the Applicant, while Ms M Ramudzuli, Assistant Manager - Labour Relations, represented the Respondent.
2. The witnesses gave evidence under oath and the proceedings were mechanically recorded. The parties asked and were granted an opportunity to submit closing arguments in writing by 7 August 2012.

ISSUE TO BE DECIDED

3. I am required to determine whether the conduct of the Respondents constituted an unfair labour practice by failing to promote the Applicant from level 9 to 10, and if so, to consider an appropriate remedy.

BACKGROUND TO THE ISSUE

4. The Applicant started working for the Respondent as a Senior Clerk on 2 October 1991 and has advanced to an Assistant Director's position (level 9) and based at Charlotte Maxeke Academic Hospital in Johannesburg.
5. Following the submission of the Applicant's grievance in relation to not being promoted to level 10, the Chief Executive Officer approved promotion from the current financial year (2005/2006). However, this was never implemented.
6. The matter is before this forum for determination.

SURVEY OF EVIDENCE AND ARGUMENTS

The Applicant's evidence

7. The Applicant testified that level 10 posts were advertised in three hospital institutions i.e. Johannesburg, Chris Hani Baragwanath and Steve Biko academic hospitals. He was invited to attend an interview three (3) years later, but was not successful. Instead he was informed that he was already in the Assistant's Director's post. On contacting the CEO, the latter informed him that the said posts were already fixed on a three (3) year contract basis. His colleagues who were at the same level were later absorbed in the said respective level 10 posts. He then lodged a grievance on that basis, but this was to no avail.

8. In cross-examination the Applicant conceded that the three (3) hospital institutions he referred to do not have the same the budgets and that he is familiar with the procedures regarding upgrading of the posts.

The Respondent's evidence

9. The Respondent's witness, Prudence Sikhakhane, testified as follows:

10. She occupies the Deputy Director's position in the HR department. She is mainly responsible for Management and Organisational Development since 2008.

11. She testified that she did the evaluation of the Applicant's post and came to the conclusion that it does not warrant upgrading.

12. She further testified that in response to the Applicant's concerns raised around the latter's current position (salary level 9) the HR Director in 2005 had already made formal presentations to Central Office for possible review of the current HR Planner posts. In 2011 he was informed that the results of the Job Evaluation conducted against the Applicant's current post came to salary level 9, and thus the post remained unchanged.

13. She further pointed out that delegation to approve a promotion is only the competence of the Head of Department depending on the budget available at the time.

ANALYSIS OF THE PARTIES' SUBMISSIONS

14. As a starting point section 186(2) (a) of the LRA defines "*Unfair labour practice' as meaning any unfair act or omission that arises between an employer and employee involving unfair conduct by the employer relating to promotion, demotion, probation or training of an employee or relating of benefits to an employee.*"

15. In the present case the dispute relates to the issue of non-promotion of the Applicant from level 9 to 10. Briefly, the Applicant together with two of his colleagues applied for posts of deputy directors (level 10) respectively. His colleagues were successful. In his case he was not successful. In other words the Applicant was also subjected to the same Recruitment and Selection processes.
16. According to the Respondent an HR planner was presented to the Head Office and the findings were that the Applicant was correctly placed at level 9 in 2006. In 2008 a job evaluation was done and the results also came to the same level as those of 2006. I have noted that the Respondent's witness, Ms Sikhakhane, also confirmed that a request for job evaluation was forwarded to their unit and the same level (9) was confirmed as correct.
17. A further factor worth noting is that the Respondent's evidence made it clear that the CEO (Chief Executive Officer) on his own does not have the delegations to change structure, only the Head of the Department for the Province (Gauteng) has those delegations.
18. What seems to be the fundamental in the present case is that the Applicant, on not being successful in his application for a level 10 post after the normal processes were followed, he then justly and understandably brought a concern about the level 9 of his post as compared to his colleagues who were successful in their interviews. I have noted after the normal due process of job evaluation as far back as 2006 and confirmed in 2008 the Applicant's level 9 was found to be correct.
19. What is only regrettable is the fact that the Applicant was only duly and formally informed of the final results on the job-evaluation in 2011. In this regard I have noted the Director's letter dated 26 April 2011 also expressing "*regrets about the delay that has occurred surrounding the communication of the job evaluation results*".
20. On balance of probabilities and taking what has been presented before this forum into account, I am unable to find that the Respondent's conduct constituted an unfair labour practice as envisaged by section 186(2)(a) of the LRA in respect of the Applicant's case.

AWARD

21. The Applicant had not discharged the onus of proving that the Respondent's conduct in not promoting him to level 10 salary post constituted an unfair labour practice.

22. The matter is hereby dismissed.

A handwritten signature in black ink on a light green background. The signature is stylized and appears to read 'Lungile Matshaka'.

Lungile Matshaka

PHSDSBC Panellist