



PHSDSBC

PUBLIC HEALTH AND SOCIAL DEVELOPMENT
SECTORAL BARGAINING COUNCIL

ARBITRATION AWARD

Panelist: Minette van der Merwe

Case No: PSHS1092- 16/17

Date of award: 06 July 2017

In the matter between:

PSA obo KZ Makae

(Union/ Applicant)

and

Department of Health – Free State

(Respondent)

DETAILS OF HEARING AND REPRESENTATION:

- [1] The arbitration was held on **19 June 2017** at the Respondent's offices in Bloemfontein (Bophelo House).
- [2] The Applicant was present and represented by Mr Jaco Greeff, an Official from the Public Servants Association (PSA). The Respondent was presented and represented by Mr Lucky Mapena, a Senior Labour Relations Officer from the provincial office of the Respondent.
- [3] No interpretation was required. The proceedings were not recorded as no evidence was led.

BACKGROUND TO THE DISPUTE:

- [4] The matter was scheduled for Arbitration in terms of section 186(2)(a) of the Labour Relations Act (Act 66/1995) (hereinafter referred to as the “LRA”), related to an alleged unfair labour practice in respect of promotion.
- [5] The following was agreed by parties:
- [5.1] The parties agreed to argue the merits of the dispute on heads of arguments only, as no witnesses were going to be called to testify and no oral evidence were going to be led.
- [5.2] The Applicant would submit heads of arguments no later than 23 June 2017.
- [5.3] The Respondent would submit heads of arguments in reply no later than 30 June 2017.
- [5.4] The Applicant may supplement its heads of arguments by no later than 05 July 2017, which it elected not to file.
- [5.5] Heads of arguments had to be submitted via e-mail to myself as well as the Bargaining Council.
- [6] Parties complied with the agreement as per paragraph [5] above.

ISSUE TO BE DECIDED:

- [7] I was called upon to determine the following:
- [7.1] Whether the Applicant was entitled to the grade progression in terms of the Collective Agreement 4 of 2010, specifically clause 1.2
- [7.1] Whether the dispute is one related to promotion i.e. correctly categorized
- [8] As remedy, the Applicant sought grade progression to be applied to her with effect from 11 January 2016 from an Environmental Health Practitioner Grade 1 to an Environmental Health Practitioner Grade 2.

SURVEY OF EVIDENCE AND ARGUMENTS:

Heads of arguments from Applicant:

NOTE: This is a verbatim reflection of the heads of arguments received:

[9]

[9.1] The Issue to be decided:

Is if the Applicant is entitled to the grade progression in terms of the Collective Agreement 4 of 2010 clause 1.2 (Attached find the clause referred to) that allows the Applicant to grade progress from an Environmental Health Practitioner Grade 1 to an Environmental Health Practitioner Grade 2 having 10 years of service.

[9.2] Background:

It is an undisputed fact that the Applicant completed her community service in 2005. She was appointed thereafter as an Environmental Health Practitioner Grade 1 on 10 January 2005 up to date.

It is clear that the Applicant complies with the requirements of having 10 years of service therefor the Respondent must grade progress her to grade 2. The Applicants qualifies from 11 January 2016.

[9.3] Relief:

Grade progression effective from 11 January 2016 from Environmental Health Practitioner Grade 1 to an Environmental Health Practitioner Grade.”

Heads of arguments from the Respondent:

NOTE: This is a verbatim reflection of the heads of arguments submitted.

[10]

[10.1] ISSUE IN DISPUTE

- *The applicant in casu has declared a dispute in terms of the interpretation and application of a collective agreement section 1.2 of the Collective Agreement.*

[10.2] ISSUES IN DISPUTE:

- *Whether the respondent has correctly interpreted and applied the Resolution correctly, precisely clause 1.2 as attached by the applicant.*
- *It remains the position of the respondent that the applicant is correctly placed as Environmental Health Practitioner Grade one(1), it should also be noted Madam Commissioner, the clause referred to since the inception of the resolution in 2010, any official who will qualify in the stream of careerparthing in a Grade, will have to have 5 years of Above Average Performance(performing above Expectations, the official must have Four(4) Annual Assessments (PDMS) performing significantly above expectations in Grade 1 in order to enjoy Accelerated Grade progression. With 5 years Actual Service.= It is the position of the respondent that she does not qualify in this category at all.*
- *Second to the above Madam Commissioner is that. Since the inception of this Resolution we have not even reached 10 Years its only 2017, the benefits of officials performing at an average or who are fully effective will be dealt with in 2020. It will then means they would have had actual service as Environmental Health Practitioner Grade 1 for 10 years with satisfactory performance (performance fully effective and slightly above expectations) for grade progression purposes.*

[10.3] ARGUMENT

- *Madam. Commissioner the applicant based their argument has not submitted any proof of performing above expectation to can enjoy Accelerated grade progression as expressed by the resolution, and furthermore the Resolutions has not reached*

10 years from the day of inception, therefore the applicant cannot claim grade progression at this stage, this is the respondent case.

- *It is against this background that the dispute of the applicant should be found to be irrelevant, defective and without basis and therefore be dismissed.”*

ANALYSIS OF EVIDENCE AND ARGUMENT:

[11] The onus in proving that an unfair labour practice was committed, vests in the Applicant party.

[12] I am guided by section 186 (2)(a) of the LRA as well as the applicable Collective Agreement that required interpretation. That said, it was not clear which resolution the Applicant required interpretation, as the Resolution mentioned in its Heads of Arguments and the Resolution attached to its Heads of arguments, differed.

[13] The Applicant referred me to Resolution 4 of 2010 in its Heads of arguments, where paragraph 1.2 dealt with Housing Allowance, and the subject did not have any bearing on this dispute.

[14] Further the Applicant attached Resolution 7 of 2000 in support of its Heads of Arguments where the issue of Pay Progression was dealt with in clause 8, but not in detail. The specific resolution merely stated that the then current leg and rank position would be terminated and a new pay progression system and career path system would be developed and agreed upon before the termination of the then current system, being 01 July 2001. The particular Resolution did not establish timeframes and benchmarks. This resolution was documented to take effect from 01 July 2000.

[15] The Applicant failed to make out a case, and further failed to discharge the onus of proof.

[16] The Applicant claimed to qualify for grade progression in that she had ten years' service, whereas the Respondent refuted the claim, and stated that the claim for

grade progression was based on the date from which the applicable Resolution took effect, and that the Resolution did not have retrospective effect. The Respondent further stated that the Applicant further had to meet certain performance standards, of which I had no evidence submitted by the Applicant.

[17] The Applicant failed to establish a claim on two grounds being (1) this dispute did not fall within the categorization of a section 186(2(a) dispute related to promotion, but would have been better categorized as a section 24 dispute i.e. interpretation and application of a Collective Agreement and (2) the Applicant failed to prove that she was entitled to grade progression as she failed to even refer me to the correct Resolution she sought to be interpreted, and further she failed to prove her years' of service and that she met the requirements to be considered for grade progression.

[18] The claim thus stands to be dismissed.

AWARD:

[19] The Applicant, **KZ Makae**, failed to discharge the evidentiary onus to proof that an unfair labour practice related to promotion was committed by the Respondent, **Department of Health- Free State**.

[20] The claim is hereby dismissed.

Signature:



Panelist: **Minette van der Merwe**