



ARBITRATION AWARD

Panellist/s: Colin Rani
Case No.: PSHS339-10/11
Date of Award: 15-Nov-2011

In the ARBITRATION between:

PAWUSA obo G.D Hartley

(Union / Applicant)

And

Department of Health: Western Cape

(Respondent)

Union/Applicant's representative: PAWUSA obo G.D Hartley

Union/Applicant's address:

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Respondent's representative: Dept of Health - Western Cape.

Respondent's address: P O Box 2060

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Details of hearing and representation

1. The arbitration hearing was held in the offices of the Department of Health (George) on 21 September, 2011.
2. Geoff Smith (Attorney), represented the applicant, Mr. G D Hartley. Mr. F Rodrigues represented the respondent party, the Department of Health in the Western Cape. The matter was decided on the basis of written heads of arguments.

Issues to be decided

3. Whether the respondent's failure to upgrade the applicant to salary level 10 constituted an unfair conduct: promotion in terms of section 186(2)(a) of the Labour Relations Act.

Preliminary Issue

4. It is the respondent's case that the PHSDSBC lacks jurisdiction because the applicant's dispute is not about promotion as defined in section 186 (2)(a) of the Labour Relations Act.

Summary of evidence and arguments

5. Although I have considered all the submissions and arguments, because section 138(7) of the Labour Relations Act requires that the reasons for my decision be stated briefly, I will refer only to the submissions and arguments that I regard as necessary to substantiate my finding and the determination the jurisdiction dispute.
6. The parties agreed to the admission into evidence of a bundle of documents, including the founding affidavit of Mrs. MC Thaw (respondent) and opposing affidavit from Mr. G D Hartley (applicant). Neither party disputed the validity of these documents.

The respondent's case

7. Mrs. Thaw stated the post of a Senior Administrative Officer at the Murraysburg was advertised on 29th August 2008 long after the upgrading of all the posts of the hospital secretary in the department letter dated 10 November, 2007. According to Mrs. Thaw, it was never the intention of the District Office that the post of the applicant should be on the same level as other hospital secretaries as the functions and responsibilities are not on the same level. She submitted that the applicant applied for the post as

advertised and was well aware that the salary grading for the post was that of level 8. The applicant was promoted to Senior Administrative Officer on 5 November, 2008. He accepted the promotion on 10 November, 2008.

8. Mrs. Thaw submits that the dispute relates to the upgrading of the applicant's current position. This is indicated in the applicant's letter to the District Manager. In the letter, the applicant asked a pertinent question as to why his position has not yet been upgraded.
9. Regarding the jurisdiction challenge, Mrs. Thaw argued that due to the fact the dispute is not about promotion, it does not fall within the definition of an Unfair Labour Practice: Promotion. Therefore, PHSDSBC lacks the jurisdiction to arbitrate the matter.

Applicant's case

10. Mr. Hartley submitted that he accepted a promotion on a salary level 8 as it was advertised in 2008. However, he became aware that the post he accepted was subjected to evaluation and benchmarking in December. He said that the scale should have been on salary level 10 as per memo dated 30 November, 2009.
11. According to Mr. Hartley, the dispute is about promotion. He said that the dispute relates to salary scale that should have been implemented in terms of the implementation of job evaluation benchmark results and upgrading of post of hospital salary. According to Mr. Hartley, the job evaluation benchmarking had already been implemented. He wants the post be evaluated in terms of the job evaluation benchmark results.
12. He submits that the dispute relates to the upgrading of his salary scale from level 8 to salary level 10 in accordance to with the benchmarking of the post that was advertised by the respondent and accepted by him.
13. Regarding the jurisdiction dispute, Mr. Hartley submits that the failure by the respondent to upgrade his salary to salary level 10 as per job evaluation and benchmarking for the post relates to an unfair labour dispute- promotion and therefore, the PHSDSBC has a jurisdiction to arbitrate the matter.

Analysis of evidence and arguments

14. It is a trite law that promotion disputes are arbitrated as unfair labour practices in terms of section 186(2)(a) of the LRA. In this case, it is the fact that the applicant was appointed on salary level 8 as per job advertisement in May 2007. He accepted this promotion in November, 2008.
15. The applicant contends the post was later upgraded to salary level 10, and the respondent failed to adjust his salary to salary level 10. The respondent denies this. The applicant submits that the respondent's failure to upgrade his salary constituted an unfair labour practice: promotion. Therefore, the PHSDSBC has a jurisdiction to arbitrate the matter.
16. The respondent submits that the dispute relates to the upgrading of the applicant's current position. According to the respondent, this is indicated in the applicant's letter to the District Manager. In the letter, the applicant asked a pertinent question as to why his position has not been upgraded. The applicant did not refute this. The issue that needs to be settled is whether a dispute that relates to upgrading of the post falls within section 186 (2)(a)- unfair labour practice: promotion.
17. It is a trite law that where an employee is retained in an upgraded post, but not promoted to a higher salary level, the failure of the employer to promote the employee does not constitute an unfair labour practice relating to promotion. Upgrading of a post does not necessarily give the incumbent the right to automatic promotion. This ruling is well ventilated in *National Commissioner of the SAPS v Basson & others* (2006) 27 ILJ 614 (LC) and *National Commissioner of the SAPS v SA Police Union & others* (2004) 25 ILJ 203.
18. In *Polokwane Local Municipality v SALGBC & others* [2008] 8 BLLR 783 (LC) it was held that a demand that a post must be re-graded or upgraded, is a mutual interest dispute and not an unfair labour practice dispute relating to promotion.
19. Here, I find that the PHSDSBC has no jurisdiction to arbitrate the matter as contemplated in section 186 (2)(a) of the Labour Relations Act.

Award:

20. The application is dismissed.
21. No order for costs is made.

DONE AND SIGNED IN CAPE TOWN ON THIS 15TH DAY OF NOVEMBER 2011.

A handwritten signature in black ink, appearing to read 'Rani', with a large, stylized loop on the left side.

Arbitrator:
Colin Rani

DETAILS OF HEARING AND REPRESENTATION

ISSUE TO BE DECIDED

BACKGROUND TO THE ISSUE

SURVEY OF EVIDENCE AND ARGUMENT

ANALYSIS OF EVIDENCE AND ARGUMENT

AWARD

Panellist/s: **Colin Rani**
Sector: **Public Health & Social Development**