



# **ARBITRATION AWARD**

**IN THE PUBLIC HEALTH & SOCIAL DEVELOPMENT SECTORAL BARGAINING  
COUNCIL**

**HELD IN EAST LONDON on 12 December 2011 and 07 May 2012**

**CASE NO: PSHS416-11/12**

**IN THE MATTER BETWEEN**

**Msitshana Msamo Att obo Maduna**

**APPLICANT**

**And**

**Department of Correctional Services: EC**

**RESPONDENT**

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## **ARBITRATION AWARD**

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### **DETAILS OF HEARING AND REPRESENTATION**

1. This matter was set down for arbitration on 12 December 2011 and 7 May 2012
2. The arbitration was held at East London Correctional facility at West Bank in East London.
3. The applicant was represented by Mr. Msitshana from Msitshana Msamo Attorneys, a firm of attorneys in East London.
4. Mr. PA Gabelana from POPCRU also attended the proceedings.
5. The respondent was represented by Mr. K Quba
6. The parties agreed to submit their supplementary closing arguments on 14 May 2012.

## **PRELIMINARY ISSUES**

7. There were no preliminary issues raised by the parties.

## **ISSUE TO BE DECIDED**

8. I am required to determine whether the respondent committed an unfair labour practice (benefits) against the applicant.
9. If this constitutes an unfair conduct I must determine the appropriate remedy in terms of the Labour Relations Act 66 of 1995, as amended.

## **BACKGROUND TO THE ISSUE**

10. The applicant is employed by the respondent as a social worker – Grade 3.
11. She commenced employment with the respondent on 25 November 1983.
12. She lodged a grievance with the respondent in respect of the payment of salary progression in terms of the OSD: Resolution 1 of 2009.
13. The grievance outcome from the Area Manager was that she was on top notch and thus not eligible for salary promotion.
14. The applicant challenges that this is tantamount to an unfair labour practice: benefits.

## **SURVEY OF ARGUMENT AND EVIDENCE**

### **Submissions by the Applicant**

**The applicant submitted a bundle of documents marked as Employee Bundle “A”**

### **Ms Petronella Lindiwe Maduna**

15. Ms Maduna is employed at Maximum Correctional Centre in East London. She is employed as a grade 3 social worker.
16. She was paid (up until April 2011) R244 815.00 per annum. Since the general increase her salary increased to R261 462.00 per annum.
17. She testified that some of her colleagues received pay progression in April 2011 (performance based 3%)
18. Her assessment of 123% qualified her for the pay progression, but she did not get it.
19. She wrote to the Human Resources department complaining but was advised that she did not qualify because she was at the top notch of her salary scale.

20. She testified that in terms of the Assessment Booklet, if a person obtains 100% and above, that person qualifies for pay progression. The booklet does not make reference to top notch.
21. She referred this dispute to the Council after exhausting all the respondent's internal grievance procedures.
22. She seeks to be paid her pay progression with retrospective effect.
23. Under cross examination the applicant agreed with the respondent that she was at top notch.
24. The applicant, when asked whether she knew that her colleagues were at the maximum of their salary notches she stated that she was not sure.
25. It was put to her that they would not be paid if they were at the maximum of their salary scales. She did not respond.

### **Submissions by the Respondent**

**The respondent submitted a bundle of documents marked as Employer bundle (B). In support of its case it called one witness.**

#### **Mr Johannes Edwin Job**

26. He is employed by the respondent as the Manager Human Resources: Administration. He is responsible for the implementation of policies relating to salaries and benefits at respondent.
27. He testified that the applicant's case involves the OSD Resolution 1 of 2007.
28. The OSD for nurses became effective as from 1 April 2008.
29. Prior to the 2004 translation, the applicant was a social worker on salary level 8. All social workers from this date received a structural adjustment (only to uplift their salaries).
30. During this time, all social workers at respondent were still remunerated at salary levels. This lasted up until the implementation of OSD.
31. After the implementation of the OSD, salary levels fell away and the employees were paid in accordance with grades.
32. The applicant translated to Social Worker Grade 3, at the maximum notch.
33. He further testified that pay progression for social workers was done bi- annually.
34. Mr Job stated that pay progression refers to the employee moving from one notch to the other in the same grade.
35. He testified that there was no way an employee would receive pay progression if she/ he was at the top notch of the applicable grade.

36. This was the prevailing situation with the applicant's case.
37. The only other way of translating the employer in terms of the OSD would have been the grade progression, but this was only applicable after five years (i.e. from 1 April 2008).
38. Even this route would not apply to the applicant's case because five years is only applicable from 2013.
39. Mr Job stated that the respondent has not committed an unfair labour practice by not translating the applicant's salary grade.
40. The applicant was already at R261 462.00 which was the maximum notch for grade 3 Social Workers. There is no higher notch than this one.
41. He referred to various OSD documents in his bundle of documents.
42. There was no cross examination

## **ANALYSIS OF EVIDENCE AND ARGUMENT**

43. In these proceedings the applicants challenge that the respondent committed an unfair labour practice (benefits).
44. The applicant is challenging that the respondent committed an unfair labour practice (benefits) in refusing to translate her salary a notch up after she received a 123% appraisal from the assessment.
45. Her evidence is that her colleagues who were similarly assessed and received above 100% were so translated.
46. When cross examined on whether these employees were at maximum scales she did not respond.
47. The respondent's representative referred me to the OSD Resolution 1 of 2009 and it was clear that the applicant is at top notch of grade 3.
48. I am convinced that there is no other notch within grade 3 in which the applicant could progress to.
49. Furthermore, the respondent submitted that the only way would be for the respondent to consider the applicant for grade progression but this was only applicable after five years. This too is not applicable in the applicant's present case.
50. The applicant has failed to prove that the respondent has committed an unfair labour practice when it refused to translate her salary notch pursuant the assessment.
51. In the circumstances, I make the following award:

## AWARD

52. This matter is dismissed.

53. The applicant is not entitled to any relief.

54. There is no order as to costs.

Signature: \_\_\_\_\_

Commissioner: *Mangisi Mrwebi*