



# ARBITRATION AWARD

Panellist: **LUFUNO RAMABAUANA**

Case No: **PSHS522-10/11**

Date of award: **11<sup>th</sup> April 2013**

In the matter between:

**Ledile Francina Malebana**

Applicant

And

**Department of Health: Mpumalanga**

Respondent

---

## **Applicant Representatives and addresses:**

LJ Leso (LJ Leso Inc)  
22966 Marishane Street  
P.O RETHABILE  
Mamelodi East  
0122

## **Respondent's Representatives and addresses:**

MA Mahlangu (Labour Relations Official)  
Private Bag X11285  
Nelspruit  
1200

## **INTRODUCTION AND REPRESENTATION**

- 1 The arbitration was heard over a number of days and was completed on the 11 March 2013, on that occasion both parties agreed to file written heads at a later stage. I received requests for the delay in submitting heads of arguments from the employer.
- 2 Both parties were represented at the hearing and as indicated on the attendance register and on the covering page of this award.

## **THE ISSUES IN DISPUTE**

- 3 The only issue to be decided was the alleged unfair labour practice against the applicant. The applicant alleges unfair labour practice relating to promotion and benefits. The gist of the applicant's complaint relates to her appointment and the level she was appointed on.
- 4 According to the applicant she should have been placed at a higher level on being appointed Environmental Health Practitioner "EHP" permanent.
- 5 Applicant believes her level "6" should have been adjusted to level 7 on being appointed permanent "EHP".
- 6 There was also an application by a number of other "EHP" who wanted to join the proceedings and in a separate ruling I declined to join the said "EHP" into the current proceedings.
- 7 The applicant seeks to be promoted to level 7 or alternatively level 8 as a number of years have lapsed and to be backdated the appropriate salary since 2004.
- 8 It also came to light the dispute arose in 2004 when applicant was appointed permanent but the dispute was however referred in 2010, it is not clear why it took such a long time and why the condonation was never decided, in fact the conciliating Commissioner indicated on the certificate of outcome that condonation was not applicable.
- 9 I continued with arbitration on the basis of the issued certificate, despite the fact that the matter was referred extremely late to the bargaining council.

## **BACKGROUND TO DISPUTE**

- 10 The applicant was first employed with the Department of Health: Mpumalanga in 2003/01/10, then as a Community Service Environmental Health Officer “EMP”. The appointment was for a period of 12 months.
- 11 On the 23<sup>rd</sup> December 2003 the applicant’s appointment was confirmed permanent and titled Environmental Health Officer, it would seem despite the permanent appointment the salary level remained unchanged at R62568 and at salary level 6, this is applicant’s discontentment.
- 12 The applicant’s salary was adjusted only in 2003/07/01 to R67887 and on 2004/07/01 to R72096, it would seem at the time the applicant realised she may have a cause to file for unfair labour practice her salary had adjusted to R118182 in terms of various adjustments and same were recorded on the “salary trail sheet” handed to me as evidence during the arbitration.

## **SURVEY OF EVIDENCE AND ARGUMENTS**

### **APPLICANT’S SUBMISSIONS**

- 13 In their opening submissions the applicant’s representative argued the case is about the failure by the respondent to implement core when applicant was appointed into the Environmental Health Practitioner, applicant went through the community service for a year and from there on she should have been promoted higher.
- 14 With applicant’s permanent employment she should have been moved to level 7 and after eight years in service she should have been moved to level 8, it is the applicant’s case that she qualifies to be moved to level 8.
- 15 In her evidence the applicant confirmed the submission that she was appointed at level 6 and when she was made permanent she should have been moved to level 7, level 6 is an entry level and 7 is a further level after one has completed community service. Applicant also confirmed that to date all her assessments have been done and are up to date.
- 16 Under cross-examination the applicant conceded she terminated the community service and signed a new contract as a permanent employee. She signed the contract

that did not have the salary summary and the salary was communicated verbally. She also conceded level 6 does not necessary belong to community service employees.

17 The submissions by the applicant also included the testimony of Poppy Thandi Tause. Tause confirmed that she knew the applicant since 2003. She believes the applicant should have been at level 8.

18 Tause also confirmed that the applicant should have been moved to level 7 on completion of her community service and with her service it is more obvious she should have at level 8 already.

19 Tause also have her own issues with CORE, it had done nothing to her and she is still at level 8 and in comparison to PAS, she believes CORE had failed EHP employees.

20 Under cross examination Tause conceded no employee has been moved in the manner that applicant seeks to be moved. She also informed the arbitration that the issues are EHP wide complaints hence the other employees wanted to join the action.

21 Tause could not explain why the applicant should be employed or moved to level 7 if no employee has been treated in that manner before.

22 Carrin Swart also testified for the applicant. She informed the hearing CORE was supposed to be implemented on 1999/07/01 but was only implemented in 2001. CORE was only implemented for other categories but not in her EHP team.

23 When an EHP was confirmed into a permanent post they previously added a notch but matters changed with the applicant's group. The changes were brought up by the OSD and as a result the applicant did not move to level 7 and in her view a lot of people were affected. She believed that people will be placed at level 7 on appointment.

## **RESPONDENT SUBMISSIONS**

24 Roland Hodger Robenheimer testified for the respondent. He is the HR employee in charge of the Persal and OSD related issues. He informed the arbitration that any movement by EHP employees to higher levels is an issue that gets subjected to recruitment processes. All allied employees are appointed into EHP at level 6.

25 CORE gave departments more freedom to use their own interpretations, and in terms of their own practise level 6 is for community service and entry and further levels are advertised and people compete for the posts.

26 Automatic movement to level 7 from entry fell away in 2001. Social workers have different career movement. Everything was discussed and agreed to at the bargaining chambers

## **ANALYSIS OF EVIDENCE AND ARGUMENT**

27 At the core of applicant's complaint is the movement from level 6 to 7. The applicant's case is that she was not promoted to a higher level on completion of her community services and thus seeks to be moved to level 7 and as eight years has lapsed since her appointment she should appropriately be placed at level 8.

28 It appears from the persons that testified that there is a general sympathy with the applicant's situation and the circumstances of EHP in general. It also came to my notice that the EHP matters may be a subject matter for deliberations and negotiations at the bargaining chambers in the same way as the employment conditions terms and conditions of employment for social workers was handled. In this respect it is a matter that parties and particularly the member/s union have to present before the bargaining chambers. I say this in light of the matters being of EHP concern in the whole province and probably the entire country. The matter does not seem to affect the applicant separately and individually.

29 At the arbitration I was presented with various documentations and noticeably both contracts of employment, the Community Service contract and the EHP contract, the CORE document and importantly the testimony of Rowland Hodge Raubenheimer and that of the applicant.

30 The Applicant's testimony does not take the matter any further as it is just an elaboration of the expectation to have been moved to level 7 on appointment and later to level 8 after serving a period of 8 years. Similarly the other applicant's witnesses expressed their expectation on how the career progression of the EHP should have been. This appears to have been the regime until same was abolished in terms of the CORE.

31 It does not seem that contractually the applicant is entitled to be moved to level 7 on appointment as an EHP and the majority of the witnesses confirmed that such movement was done under the old PAS regime and not in terms of the CORE strategies and the Department has not moved employees any higher on completion of the Community Service and this has been the case since the CORE implementation.

- 32 The appointment of the applicant was specific and points to an appointment at level 6 and provides the applicant with assessment processes in her career to allow her various salary movements and adjustments. This distinguishes her with community service employees who may be regarded as being on trial and not entitled to salary adjustments.
- 33 In his evidence Mr Raubenheimer informed the arbitration that the entry level and the on completion of Community Services within the two years in employment EHP may be placed at level 6 or 7. The “Technicians and Associate Professionals” guidelines also give directives and give management the prerogative to place either at level 6 or 7 depending on the circumstances of each individual employee.
- 34 In my view no unfairness was committed by the employer and the applicant was appropriately employed in terms of prevailing prescripts.

## AWARD

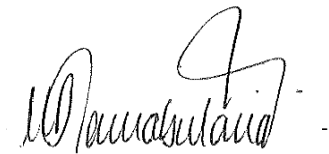
35 In light of my findings herein the claim of unfair labour practice against the respondent Department of Health Mpumalanga is dismissed.

36 Applicant was appropriately appointed at level 6 and her further elevation is subject to posts being advertised and the applicable recruitment processes.

37 The matter is one of mutual interest and may be a subject matter of collective bargaining.

38 I make no order on costs.

Done and dated at Pretoria on this the 11<sup>th</sup> DAY OF APRIL 2013.



---

Lufuno Ramabulana

Panellist: PHSDSBC