



PHSDSBC

PUBLIC HEALTH AND SOCIAL DEVELOPMENT
SECTORAL BARGAINING COUNCIL

ARBITRATION AWARD

Case Number: PSHS857-11/12
Commissioner: Suria van Wyk
Date of Award: 10 September 2014

In the arbitration between:

NEHAWU obo T. Mothalosa
(Union/Applicant)

and

Department of Health – Free State
(Respondent)

Union/Employee's representative: **Mr. S. Moloï**
Union/Applicant's address: **31 Jan van Riebeeck Street**
Thaba Nchu
Bloemfontein
9780
Telephone: **051 875 2546 / 051 875 1713**
Telefax: **051 875 1124**
E-mail: **None**

Employer's representative: **Me M. Makoa**
Respondent's address: **P.O. Box 227**
Bloemfontein
9300
Telephone: **051 408 1231**
Telefax: **051 408 1058, 086 632 2770**
E-mail: **None**

DETAILS OF HEARING AND REPRESENTATION

1. The arbitration hearing convened on 28 August 2014 at the Botshabelo District Hospital in Botshabelo.
2. Mr. S. Moloi from NEHAWU represented the applicant and Me M. Makoa appeared on behalf of the respondent.
3. A recording was made of the hearing.

ISSUE TO BE DECIDED

4. The issue to be decided is whether the respondent has committed an Unfair Labour Practice in terms of section 186(2) of the Labour Relations Act, 66 of 1995.
5. The applicant seeks protected promotion to the position of CEO of Diamant District Hospital.

BACKGROUND TO THE ISSUE

6. The respondent employed the applicant as Assistant Director: Administration at Botshabelo District Hospital. He applied for the position of CEO Diamant District Hospital on 2 March 2009, he was shortlisted and invited to an interview. The position was then re-advertised on and the applicant applied again, however this time he was not shortlisted. Upon enquiry he was informed that he was not shortlisted because he did not meet the requirements of the advertised post. It was indicated that he did not have nursing background; however this was not a listed requirement on the advertisement. The applicant lodged a grievance on 10 March 2010 and later declared a dispute with the PHSDSBC.
7. At the time of the arbitration the applicant was earning a salary of R287 412-00 per annum.
8. The matter was initially set down on 6 August 2014 and postponed to enable parties to arrange a last meeting to try and resolve the dispute. An agreement was reached that the arbitration would continue on 28 August 2014.

SURVEY OF EVIDENCE AND ARGUMENT

9. At the outset, I must indicate that only relevant evidence (pertaining to the issue in dispute) will be recorded in the award and not all the evidence presented at the proceedings.

Applicant's Case:

10. Mr. T. Mothalosa testified under oath to the following:
- a. He applied for the position of CEO Diamant District Hospital on 2 March 2009. The closing date was 13 March 2009.¹ The requirements in terms of the advertisement were an appropriate recognized Bachelor's degree or equivalent qualification; extensive management experience and a valid driver's license.
 - b. He was shortlisted and attended the interviews² which were held on 15 April 2009. There was no outcome communicated.
 - c. He started receiving correspondences from Xhariep District Office informing him about ad hoc management issues. This occurred from the period 16 July 2009 – 5 June 2012.³ The e-mails received were:
 - i. 16 July 2009 – Re: Information missing: Evaluation of Hospital Boards Directors. The initial message was not clear but the content indicated that Xhariep submitted Agenda's, Minutes & dates of meetings. This was a response from Michelle Grobbelaar (personal assistant to the Xhariep District Manager) to the initial message sent on 16 July 2009.
 - ii. 14 August 2009 – Acting District Manager: Xhariep District. Please note that Me. Mgoqi: Stoffel Coetzee / Embekweni will be Acting District Manager for Xhariep from 17 August 2009 to 30 September 2009. Me Tshegare is still on sick leave and her phone out of order. Please e-mail/contact the office for any assistance. All mail/documents must still be sent to the office of the District Manager: Xhariep or to myself: Michelle Grobbelaar. This was an e-mail from Michelle Grobbelaar (personal assistant to the Xhariep District Manager).
 - iii. 14 September 2009 – Me Tshegare. Please note that Me Tshegare, District Manager: Xhariep will be on sick leave until 2 October 2009. This was an e-mail from Michelle Grobbelaar (personal assistant to the Xhariep District Manager).
 - iv. 1 November 2011 – Appointment of Manager: Finance, SCM and HR. please note that Mr. P.I. Kgaile was appointed as Manager: Finance, SCM and HR at Xhariep District from 1 October 2011. He can be contacted at 051 447 2777 or e-mailed at

¹ Bundle A, page 22.

² Bundle A, page 26.

³ Bundle A, page 63-80.

kgailep@fshealth.gov.za. This was an e-mail from Michelle Grobbelaar (personal assistant to the Xhariep District Manager).

v. 6 April 2012 – Xhariep District: Acting District Manager – June 2012. Please note that Me Moathodi will be Acting District Manager: Xhariep for June 2012. All documents must still be sent to Me Michelle Grobbelaar for capturing. Please attach the acting letter to all documents for the Acting District Manager's signature. Me Moathodi can be contacted at tel: 051 447 2777, fax: 051 447 1036 or e-mail: moathodi@fshealth.gov.za. This was an e-mail from Michelle Grobbelaar (personal assistant to the Xhariep District Manager).

vi. The above e-mail was resend on 6 May 2012.

- d. The post was re-advertised⁴ with the closing date for the second advert being 30 October 2009. The requirements of the post were an appropriate Bachelor's Degree (or equivalent qualification); Sound knowledge of Health Management and computer skills.
- e. He applied for the position on the second advertisement but he was not shortlisted despite the fact that he met the advertised requirements. He made enquiries and received a response from the respondent on 7 March 2010⁵ indicating that he did not meet one of the criterion set by the panel being that of a nursing background.
- f. He lodged a grievance⁶ on 10 March 2010 and after no response was received he declared a dispute with the PHSDSBC.
- g. The respondent acted unfairly by not applying the Public Service Regulations, 2001 fairly. He referred to the recruitment, advertising and selection of candidates.
- h. He acted in the position of CEO of Botshabelo Hospital from October 2008 – December 2008.⁷ He had experience and was better qualified as the appointed candidate. He saw the e-mails he received as preparation for him to be appointed and by not being shortlisted he was denied the opportunity to be appointed.
- i. He would like the Council to award him a protected promotion and compensation for the prejudice he has suffered.
- j. The successful candidate Me Moathodi was joined and subpoenaed but did not attend the arbitration.

11. During cross-examination the following was established:

- a. In his view the meaning of *Sound Knowledge of Health Management* meant knowledge of Complaint resolution within 25 working days rate; Hospital patient satisfaction rate; Average length of stay,

⁴ Bundle A, page 25.

⁵ Bundle A, page 27-31.

⁶ Bundle A, page 33-34.

⁷ Bundle A, page 35-37.

Inpatient utilization rate; Expenditure per patient day equivalent; Delivery by caesarean section rate; Inpatient separation total; Patient day equivalent, Peer reviews; Analyzing of peer reviews; Ability to manage finances and OPD Head count total.

- b. Although the Public Service Regulations, 2001 indicated that a panel may agree on criteria no proof of the criteria agreed upon existed in the bundles. The respondent only provided the long list of the candidates.
- c. The Policy on the Management of Hospitals, published in the Government Gazette No. 34522 of 12 August 2011 confirmed that henceforth a CEO in a small District Hospital must be a medically trained person to ensure that they can also act as a Clinical Manager.
- d. The Government Gazette No. 34522 of 12 August 2011 was not applicable in 2009 and one does not require medical background to perform the duties of a CEO.
- e. When a person was appointed as an acting CEO it does not mean that he will be appointed into such a position but it does mean that person has gained experience. The successful candidate Me Moathodi did have a nursing background and she also acted as CEO in Diamant Hospital for a period of 12 months according to the documents.

Respondent's case:

12. Mr. Godfrey Mandla Mathe testified under oath to the following:

- a. He was not involved in the process when the position was advertised the first time. He only became involved as part of the selection panel when the position was advertised the second time.
- b. In his opinion a Sound Knowledge of Health Management meant that a person must have a medical or nursing background.⁸ The applicant was not shortlisted because he did not have a medical or nursing background which was set as one of the selection criteria by the selection panel.
- c. The selection panel had the long list of candidates which had to be narrowed down. The Department of Health also had to align themselves with the 10 Point Plan as pronounced by the Minister of Health in 2009 and therefore the panel agreed that the shortlisted candidates must be someone with a level of medical or nursing background.
- d. The Policy on the Management of Hospitals was contained in the Government Gazette No. 34522 of 12 August 2011.
- e. In terms of the Public Service Regulations, 2001⁹ the selection committee shall make a recommendation on the suitability of a candidate after considering only-
 - i. Information based on valid methods, criteria or instruments for selection that are free from any bias or discrimination;

⁸ Bundle B, page 27-28.

⁹ Regulation VII D.5.

- ii. The training, skills, competence and knowledge necessary to meet the inherent requirements of the post;
 - iii. The needs of the department for developing human resources;
 - iv. The representativeness of the component where the post is located; and
 - v. The department's affirmative action program.
- f. It further stated that a selection committee shall record the reasons for its decision with reference to the criteria mentioned in regulation VII D.5.
- g. The criteria set by the selection panel included a nursing background.
- h. If a candidate was unsuccessful he or she will be informed of the reasons if an enquiry is made, hence a letter¹⁰ was send to the applicant explaining the reasons why he was not shortlisted. According to the letter the criteria set by the selection panel was the following:
- i. An appropriate recognized Bachelors Degree – or equivalent.
 - ii. Sound knowledge of Health Management.
 - iii. Computer Skills.
 - iv. Nursing background.
- i. The fact that the applicant acted in a position of CEO at Botshabelo District Hospital did not entitle him to be appointed in the position.
- j. The reason the position was re-advertised was because of the pronouncement of the Minister of Health in 2009.
- k. According to the Policy on the Management of Hospitals¹¹ a degree/advanced diploma in a health-related field is a prerequisite for a candidate applying for a position as CEO and a degree/diploma in management was an added advantage.
- l. The e-mails¹² received by the applicant cannot be explained; in the opinion of the witness such action was not allowed in terms of policy.

13. During cross-examination the following was established:

- a. He knew about the reason for re-advertisement because although he was not part of the first advertisement process he heard the other panel members talking informally about it before the selection panel meeting commenced.
- b. The pronouncement in 2009 was communicated to him by the HOD as a directive. It was done verbally and not in writing. It was put to the witness that a pronouncement in any form will always be in writing.

¹⁰ Bundle A, page 32.

¹¹ Government Gazette No. 34522 of 12 August 2011.

¹² Bundle A, page 63-80.

- c. It was the opinion of the witness that the Policy on the Management of Hospitals is contained in the Government Gazette No. 34522 of 12 August 2011 did apply in 2009. This was disputed by the applicant.
- d. The members of the selection panel all kept minutes of the meeting. Afterwards everything was packaged together with the recommendation.¹³ The minutes were not contained in any of the bundles and the whereabouts thereof was unknown.

ANALYSIS OF EVIDENCE AND ARGUMENT

14. Arbitration is a new hearing (*de novo*) which means that the evidence concerning the reason for dismissal is heard afresh before the arbitrator. The arbitrator determines the dispute in the light of the evidence admitted at arbitration. This is not a review procedure for the disciplinary hearing conducted by the respondent however this does not prevent the arbitrator from referring to an enquiry record insofar as it is admitted as evidence in the arbitration. The standard of proof is that of a balance of probabilities. If, in this analysis, certain evidence is not referred to, this does not imply it had not been considered.¹⁴
15. An unfair labour practice is defined in section 186(2) of the Labour Relations Act 66 of 1995. It means: “any unfair act or omission that arises between an employer and an employee involving unfair conduct by the employer relating to the promotion, demotion, probation or training of an employee or relating to the provision of benefits to an employee.”
16. The first and obvious requirement of this form of unfair labour practice is that the conduct complained of must relate to *promotion*. Employees, are promoted when they are elevated to *higher* posts. A lateral transfer is not a promotion. Nor is a notch increase within a particular grade.¹⁵ Promotion normally, but not necessarily, involves an increase in salary; it always entails an increase in responsibility and status.¹⁶ Moreover, the dispute must relate to a failure or refusal to promote the employee to an *existing* vacancy.¹⁷
17. In the context of an unfair labour practice, the employee has a remedy against unfair conduct on the part of the employer in respect of promotion. Unfair conduct on the part of the employer in respect of appointments or filling a vacant post is not in the list of unfair labour practices. That means that if a dispute is about

¹³ Bundle A, page 45.

¹⁴ Government Gazette Notice 602 of 2011 - CCMA Guidelines: Misconduct Arbitrations at par 17.

¹⁵ *Sukhdeo and Department of Social Welfare & Population Development (KZN)* [2006] 5 BALR 525 (PHSWABC).

¹⁶ *Mashegoane & another v The University of the North* (1998) 3 LLD 76 (LC) (advancement from post of lecturer to dean); *Jele v Premier of the Province of KwaZulu-Natal & others* (2003) 24 ILJ 1392 (LC) (advancement from post of director to chief director).

¹⁷ John Grogan: *Employment Rights* (JUTA) 2010, page 107.

promotion, the Bargaining Council has jurisdiction to conciliate and arbitrate; if the dispute is about an appointment (or, in most cases, a non-appointment), the Bargaining Council does not have jurisdiction.

18. In *Mashegoane & another v University of the North* [1998] 1 BLLR 73 (LC) Mlambo J adopted the approach that if an employee's appointment to a post would have amounted to such employee being appointed to a higher rank or position, that is promotion and a resultant dispute is a dispute relating to promotion.
19. The pivotal question is how to distinguish between promotion disputes on the one hand and appointment (or non-appointment) disputes on the other hand. In *Department of Justice v CCMA & others*,¹⁸ the Department of Justice advertised (internally and externally) the post of Chief State Law Advisor. Requirements for the post included admission as an advocate and the possession of an LLB degree. From the many applications, a shortlist of four candidates was drawn up. After interviewing these four applicants, the selection committee stated that it was not in a position to recommend any one candidate for appointment to the post. The post was advertised again and the entire process was repeated; eventually, one candidate was appointed for a fixed term of 12 months. But one of the present State Law Advisors was aggrieved by this fixed-term appointment; he was of the view that he complied with the requirements. From the perspective of this aggrieved employee, of course, the issue in dispute was the fact that the employer had not promoted him. From the perspective of the employer, however, the dispute related to an appointment to the post.
20. The Labour Appeal Court held that the decision not to appoint the employee to the post amounted to a decision not to promote him, and that this decision fell within the ambit of the unfair labour practice decision. However, at the same time, if someone from outside the organization (who is not an 'employee' for the purposes of the definition of the unfair labour practice definition, of course), was not appointed, that non-appointment did not constitute a dispute about a promotion. An applicant who has not been appointed can dispute the employer's decision on the basis of non-promotion.
21. Subsequently the matter before me can be dealt with in terms of section 186(2) of the Labour Relations Act, 66 of 1995.
22. It was common cause that the applicant applied for the position of CEO Diamant District Hospital in 2009. He was shortlisted and attended the interview. The position was not filled, but re-advertised. He applied again but this time he was not shortlisted.

¹⁸ (2004) 25 ILJ 248 (LAC).

23. The applicant submitted that he met all the requirements as advertised hence he should have been shortlisted. The respondent however argued that he did not meet the requirements because *Sound Knowledge of Health Management* meant that he had to have a medical or nursing qualification and that was one of the criteria set by the selection committee.
24. Very little evidence on this aspect was led and in determining whether or not *Sound Knowledge of Health Management* should be interpreted to include medical or nursing knowledge, it was noted that the criteria allegedly set by the selection panel was the following:
- a. An appropriate recognized Bachelors Degree – or equivalent.
 - b. Sound knowledge of Health Management.
 - c. Computer Skills.
 - d. Nursing background.
25. The question that comes to mind is why it would be necessary to list *nursing background* as criteria if it was included in the meaning of *Sound Knowledge of Health Management*?
26. It was further alleged that the reason the post was re-advertised was because of the 10 Point Plan pronounced by the Minister in 2009. The contents thereof now are being reflected in the Government Gazette No. 34522 of 12 August 2011. If this was true surely the re-advertised requirements would have indicated that the requirements of the position are (as contained in the Government Gazette No. 34522 of 12 August 2011):
- a. A degree/advanced diploma in a health-related field and a degree/diploma in management would be an added advantage.
27. The witness of the respondent, Mr., Mathe who confidently testified to these facts were not part of the first advertisement process and his knowledge amounts to mere hearsay based on an informal discussion held prior to the convening of the selection committee. No further evidence in support of this was led.
28. The applicant disputed the testimony of the witness that the directive to act based on the 10 Point Plan pronounced by the Minister in 2009 was given to him verbally. No documentary proof of such a directive or pronouncement was contained in the bundles and it was also not corroborated by the *viva voce* testimony of the HOD.

29. The Public Service Regulations, 2001¹⁹ makes provision for the setting of criteria when making recommendations. Testimony was heard that every member of the selection committee will make notes of the meeting and those will be packaged together with the recommendation. These documents are however not available and subsequently the allegation that the criteria listed above was the criteria decided on by the selection committee was not corroborated. The respondent also failed to call other panel member to corroborate these facts.
30. The regulations further states that a selection committee shall record the reasons for its decision with reference to the criteria mentioned in regulation VII D.5. The recommendation however makes no reference to the criteria listed under paragraph 24 and the motivation reads as follows:
- a. *The candidate was recommended for the post based on her insight of the job contents; also she managed to answer the questions as expected. Her knowledge, skills, experience and the understanding of the job contents was enough to convince the panel to consider her for this post. She is currently acting as CEO at Diamant Hospital and she has been acting there for more than 12 months without any remuneration. Under her leadership the Hospital has transformed and achieved lots of positive things as far as service delivery is concerned. She loves the environment there and community, colleagues do understand her. She is an asset within the Hospital and the Department as a whole, considering the fact that she was always and she is still willing to serve there irrespective whether the place is too rural.*
31. The respondent has failed to provide sufficient proof on a balance of probabilities that the selection committee in fact set *nursing background* as criteria for selection during the short listing process, and that *Sound Knowledge of Health Management* should be interpreted to include medical or nursing knowledge.
32. In the absence of proof of such criteria existing I do not need to entertain the argument of the applicant that the selection committee acted *ultra vires* in deciding upon the alleged criteria.
33. I therefore find that the respondent acted procedurally unfairly in not short listing the applicant whilst he met the advertised requirements of the post. Procedural unfairness in a promotion however does not necessarily entitle the employee to an order that they be promoted.

¹⁹ Regulation VII D.5.

34. Under the common law, employees have no legal entitlement to be promoted to higher posts, unless they can prove a contractual right or, perhaps, a “legitimate expectation” based on some prior practice or promise.²⁰
35. The applicant alleged that he was given a legitimate expectation by the respondent that he would be appointed because he started receiving e-mails about *ad hoc* management issues from 16 July 2009 – 5 June 2012. He was under the impression that he was being updated on the developments in order to prepare him for his appointment as CEO of Diamant District Hospital.
36. A legitimate expectation arises when the employee acquires a reasonable impression from the employer’s words or conduct that he or she will be promoted. When one considers the e-mails contained in the applicant’s bundle only three e-mails were sent to him before the successful candidate was appointed on 1 February 2010. They were:
- a. 16 July 2009 – Re: Information missing: Evaluation of Hospital Boards Directors. *The initial message was not clear but the content indicated that Xhariep did submit Agenda’s, Minutes & dates of meetings.* This was a response from Michelle Grobbelaar (personal assistant to the Xhariep District Manager) to the initial message sent on 16 July 2009.
 - i. This e-mail was a response to a request for information which would appear to be missing and in no-way deals with issues of management which would give an impression that the applicant was being prepared to be appointed as CEO.
 - b. 14 August 2009 – Acting District Manager: Xhariep District. Please note that Me. Mgoqi: Stoffel Coetzee / Embekweni will be Acting District Manager for Xhariep from 17 August 2009 to 30 September 2009. *Me Tshegare is still on sick leave and her phone out of order. Please e-mail/contact the office for any assistance. All mail/documents must still be sent to the office of the District Manager: Xhariep or to myself: Michelle Grobbelaar.* This was an e-mail from Michelle Grobbelaar (personal assistant to the Xhariep District Manager).
 - i. This e-mail was a communiqué making administrative arrangements while certain personnel were off sick and in no-way deals with issues of management which would give an impression that the applicant was being prepared to be appointed as CEO.
 - c. 14 September 2009 – *Me Tshegare. Please note that Me Tshegare, District Manager: Xhariep will be on sick leave until 2 October 2009.* This was an e-mail from Michelle Grobbelaar (personal assistant to the Xhariep District Manager).

²⁰John Grogan: *Employment Rights* (JUTA) 2010, page 107; The existence of that concept in our law was confirmed in *Administrator of the Transvaal & others v Traubothers* (1989) 10 ILJ 823 (A).

- i. This e-mail was also a communiqué making administrative arrangements while certain personnel were off sick and in no-way deals with issues of management which would give an impression that the applicant was being prepared to be appointed as CEO.

37. The applicant has failed to convince me that by receiving such e-mails he was given a legitimate expectation of being appointed as the CEO of Diamant District Hospital. The other e-mails were received in 2011 and 2012 with similar content to the last two mentioned above. The fact that such e-mails were sent to him after the successful candidate was appointed on 1 February 2010 further confirms that it was not intended to prepare him for the appointment he had hoped to get.
38. In the face of procedural unfairness in the process the applicant must still establish that he would have been appointed had it not been for the unfair practice complained of.²¹ The applicant submitted that he was of the view that he was the better candidate because he had been acting as CEO at Botshabelo District Hospital for three months and it was a bigger hospital than CEO of Diamant District Hospital.
39. A commissioner's function is not to ensure that employers choose the best of most worthy candidates for promotion, but to ensure that, when selecting employees for promotion, employers do not act unfairly towards candidate. However, employees may have a valid complaint if they can show that they have been overlooked for promotion where they possess objective attributes, such as experience or qualifications, which the person who has been promoted does not possess, and their employers cannot explain why they were overlooked.
40. The documents provided however indicate that both the applicant and the successful candidate met the requirements as per the advertisement. The successful candidate (in addition to the advertised requirements) was also a professional nurse and she had experience as acting CEO in for more than twelve months.
41. While it was common cause that the mere fact that the applicant acted in the position of CEO did not entitle him to promotion, it was the sole reason why he felt that he was the better candidate. The reality however is that the successful candidate also had this experience and not only for three months but for more than twelve months. The applicant failed to provide sufficient proof on a balance of probabilities to convince me that he would have been appointed if he had been short listed and therefore the primary relief sought by the applicant to be awarded protected promotion cannot be granted.

²¹*National Commissioner of the SA Police Service v Safety & Security Bargaining Council & others* (2005) 26 ILJ 903 (LC).

42. Section 193(4) of the Labour Relations Act 66 of 1995 determines that an arbitrator appointed to determine an unfair labour practice dispute may order reinstatement, re-employment or compensation on terms that the arbitrator deems reasonable. The decision must be that of a reasonable decision-maker and the type of relief granted will depend on the facts of each case that is brought before the commissioner. In this instance I deem it appropriate to award the applicant compensation for the procedural unfairness committed by the respondent in the promotion process.
43. At the commencement of proceedings the union submitted that the respondent and several witnesses were in contempt of the proceedings and that as Commissioner I should make an appropriate decision on how to deal with the issue of subpoenas that were ignored and that instructions in terms of the postponement ruling which was issued were not followed by the respondent. Considering that the effect of the witnesses not being present and the documents not being available prejudiced the case of the respondent more than it prejudiced the case of the applicant I deem it appropriate not to hold the respondent and witnesses in contempt. This matter has been delayed since 2010 and by enforcing contempt proceedings this would have had the result that the matter would be delayed another couple of years.
44. In calculating the compensation to award the following was considered:
 - a. The actual prejudice suffered by the applicant;
 - b. The possible prejudice to his case due to witnesses not honoring subpoenas;
 - c. The possible prejudice to his case due to documents not being provided as subpoenaed;
 - d. The fact that he was unable to discharge the onus of proof that he would have been appointed had it not been for the unfair conduct of the respondent.
45. The applicant's testimony was found to be credible and no contradictions were found in his testimony. The respondent's witness was found to be uncooperative and refused to answer questions. His conduct and demeanor during the proceedings were contemptuous and makes me question his credibility.
46. In conclusion the respondent has committed an unfair labour practice in terms of section 186(2) of the Labour Relations Act, 1995 by not short listing the applicant.

AWARD

47. The respondent has committed an unfair labour practice in terms of section 186(2) of the Labour Relations Act, 1995.
48. The respondent is ordered to pay the applicant an amount of R143 706-00 (one hundred and forty three thousand seven hundred and six rand) as compensation as a result of the procedural unfairness during the promotion process in 2009. This amounts to six months compensation.
49. Calculation:
- a. $R287412-00 \text{ per annum} / 12 = R23\,951-00 \text{ per month}$
 - b. $R23951-00 \text{ per month} \times 6 = R143\,706-00$
50. This must be paid on or before 30 September 2014 and will earn interest in terms of section 143 (2) of the Labour Relations Act, 1995.
51. The applicant's claim for protected promotion is hereby dismissed.
52. There is no order as to costs.



Commissioner Signature: Name: Suria van Wyk