



# ARBITRATION AWARD

Case No: PSHS1062-18/19

Commissioner: T ERASMUS

Date of award: 7 June 2019

In the matter between:

**NEHAWU obo PIETER JACOB DANIELS**

(Union/ Applicant)

and

**DEPARTMENT OF SOCIAL DEVELOPMENT- WESTERN CAPE**

(Respondent)

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## Details of hearing and representation

1. This matter was set down for Arbitration at the Public Health and Social Development Sectoral Bargaining Council in terms of section 64(1) and 134 of the Labour Relations Act 66 of 1995 (“the LRA”) and was heard at the offices of the Respondent at Rembrandt Mall, C/o Lady Grey and Bergrivier Street, Paarl on 29 May 2019. The Applicant was represented by Mr. X Petse from NEHAWU, whilst the Respondent was represented by Ms. K Arendse, Labour Relations Officer at Respondent.

## Issue to be decided

2. The issue in dispute is whether or not the Collective Agreement contemplated in Resolution 1 of 2009 was correctly interpreted or applied.

## **Applicant's case**

3. **PIETER JACOB DANIELS testified in support of his own case (hereinafter referred to as "Applicant")**
4. Applicant was transferred from Stellenbosch to the Social Development Department in Paarl. Applicant's job title was that of Child and Youth Care Worker. A type of modernisation took place and Applicant was supposed to be placed elsewhere, as a result of which he was placed in the Paarl Social Development office and assisted as Assistant Community Practitioner.
5. There is no such function as Child and Youth Care Worker at Paarl. Applicant's title was therefore not translated into Social Auxiliary Worker or Assistant Community Practitioner at the time. Applicant seeks a remedy in terms of which his position is translated from that of Child and Youth Care Worker to that of Assistant Community Practitioner. Applicant's duties in Paarl entails that of Assistant Community Practitioner and Social Auxiliary Worker, he is performing the functions under those duties.
6. Applicant received an appointment letter in 2010 in terms whereof he had to move to the Paarl Local Office as Community Development Practitioner as from 1 November 2010, in terms of a modernisation process. He did not take up the position at the time, as his institutional manager at the time, Lenie Kotzé, asked him to stay on in Stellenbosch for longer due to operational requirements.
7. Although his colleagues had already been released to the institution in Paarl, he only took up his position in Paarl on 9 January 2012, at which point he found that his colleagues were already translated, although there was no post at the institution and they were not qualified as Social Auxiliary Workers.
8. Applicant started engaging with head office, regarding his dissatisfaction with the translation of his job title, because his KPA's did not correlate with his job title, thus depriving Applicant from benefits, such as pay transgression. Respondent

informed Applicant that he was on the highest personal notch in terms of his job title.

9. Applicant sought to be translated because his colleagues were translated without even asking to be translated, it happened automatically.
10. Ms. Annemie van Reenen informed Applicant that he must first qualify himself as a Social Auxiliary Worker, which he did and qualified in 2015.
11. Applicant did not receive a clear answer from management as to why he was not translated. He was however referred to Resolution 1 of 2009. He was also informed that his complaint fell outside the 90-day period within which he could refer a dispute.
12. Applicant feels aggrieved as there is no job title such as Child and Youth Care Worker in Paarl and he was not working directly with children. He was busy with his RPL in community development. Applicant tried to fulfil all additional requirements set by the office. Applicant believes that it is unfair that his colleagues were translated and his position was not translated. His job title is still not that of Assistant Community Practitioner. Applicant raised his dissatisfaction with both Elsabe Raymond and Terence Orr in 2013. He directed his line manager to his appointment letter as ADCP and he submitted the letter to Human Resources Department as well who undertook to place the letter on his file.

**The following ensued from cross-examination:**

13. Applicant believes that he should be translated along with his colleagues, as he is being deprived of benefits. Applicant conceded that he has not entered into a performance agreement with his supervisor until April 2013. Applicant conceded that Respondent referred him to Resolution 1 of 2009 when he asked for reasons why he was not translated. It was put to Applicant that in terms of pages 137 and 138 of bundle R on 1 June 2018 he was informed as follows:

*“I notice your demand and would like to respond as follows:*

*In terms of the DPSA OSD requirements you will need to apply for a SAW post. Therefore the Department would not be able to transfer you from one category to another. Once successful for the post your salary will be calculated on the basis of years of experience. Your salary will therefore be less than what it is currently.*

*To conclude the matter you will need to move back to the Facility in you CYCW post.”*

14. Applicant conceded that Annemie van Reenen is the Director of Operational Requirements Management. Applicant however denies that this can be viewed as a clear instruction, regarding the date and time when he must report as a Child and Youth Care Worker. It is also not clear whether there was such a post available for which he could have applied at the time and it was not followed up by Respondent in any event.
15. Reference was made to page 82 of bundle R where Applicant was questioned on his understanding of the wording “once-off” to which he conceded that OSD allows a once-off translating only. Applicant also confirmed that his salary notch is that of R211 101 and that he is appointed on Grade 3 level.
16. Reference was made to pages 60 and 61:

*“A minimum of 20 years appropriate experience in social auxiliary work after registration as Social Auxiliary Worker with the SACSSP.”*
17. Applicant does not have the required years of experience. He only has four (4) years’ experience, therefore it was put to him that he does not qualify in terms of the agreement, namely applicable number of years after registration with the

Council. Applicant however stated that he was employed in 1993 and the Resolution was not applicable at the time.

18. **PIETER GABRIELS testified on behalf of Applicant (hereinafter referred to as “Gabriels”)**
19. Gabriels testified that he and Applicant were colleagues for the past 20 years. They both worked as Child and Youth Care Workers at Lindelani Place of Safety in Stellenbosch. He was transferred to the present facility in Paarl in 2010. Their job titles were changed to Social Auxiliary Worker about ten years ago. He was part of the first group that came to the Paarl office. Their job titles were once again changed to that of Child and Youth Care Worker. There was no position for a Child and Youth Care Worker at the Paarl office. Applicant studied and obtained a certificate as a Social Auxiliary Worker.
20. Thereafter he applied for a post of Community Development Practitioner in 2014/2015 and he was appointed as such. At the time, he was the only one who could apply for the post, because he had a degree. Although it was stated on Applicant’s payslip that he was employed as a Child and Youth Care Worker, it did not adhere to his day to day work. Applicant’s job title was never changed.
21. Gabriels confirms that although he worked as Social Auxiliary Worker before 2015, the Department called them different names from time to time. Gabriels believes that it is unfair that Applicant was not translated because he was working at Paarl as a Social Community Worker. He does not fulfil the work as Child and Youth Care Worker at all, as there is no such post at the Paarl office of the Department.

**The following ensued from cross-examination:**

22. Gabriels confirmed that they were called Auxiliary Workers in the past. He confirmed that he is aware of Resolution 1 of 2009 and that it was probably implemented in 2009. Gabriels confirmed that when he was first translated as Social Auxiliary Worker in 2010/2011, at the same time when Applicant was

matched and placed at the Respondent's Paarl office. He was an Assistant Community Practitioner in 2010/2011 when he was transferred to the position of Social Auxiliary Worker. He applied for the position after he obtained the qualification as Social Auxiliary Worker. He conceded that there was only a once-off translation allowed between the different OSD's in terms of Resolution 1 of 2009.

23. He conceded that the relevant legislation has to be taken into consideration as well. Gabriels conceded that the letter on page 138 from Annemie Van Reenen constituted an instruction to Applicant to move back to Lindelani. However there was a modernisation process in terms whereof they were compelled to go from the Stellenbosch office to Paarl.

#### **Respondent's case**

24. **GERT PETRUS NICHOLAAS LAUBSCHER testified on behalf of Respondent (hereinafter referred to as "Laubscher")**
25. Laubscher testified that he is the Corporate Service Relations Manager and primarily responsible for Human Resources matters and he manages relations between the Department of Social Development and the Department of the Premier. He has been employed by the Department since October 2001 and by the Respondent for the past 30 years.
26. Reference was made to page 22 of Respondent's bundle, more specifically Resolution 1 of 2007. Laubscher explained that this Resolution came about due to an agreement between the parties regarding salaries from 2007 until 2011. This Resolution highlighted the process that both the Employer and employees had to attend to, which gave rise to Resolution 1 of 2009, as the later Resolution gave affect to the process identified in Resolution 1 of 2007. The Resolution outlines how a person can progress to meet a career path. They first had to assess staff and then translate staff according to experience.

27. The Department then changed and aligned the structure in alliance with the implementation of the OSD. They had to ensure that the structure was aligned in order to ensure that the PERSAL information is correct. They had to ensure that the employees meet the criteria for a position. He referred to a so-called “grandfather clause” in terms of which employees could still be moved into the occupation.
28. There were two phases with the OSD:
  1. Direct read off: This is your salary, you are working for instance as a Child and Youth Care Worker.
  2. Second phase dealt with experience, whichever is the greater one, is the notch to which you are translated to.
29. In terms of the Resolution an employee is required to have two (2) years of experience prior to translation.
30. Laubscher testified that the Applicant was employed as a Child and Youth Care Worker. In the past the Department used the rank of Social Auxiliary Worker to describe Child and Youth Care Workers, although they were still performing the job of Child and Youth Care Worker. They had to align to the OSD to prevent people from receiving incorrect salaries. Their occupation was changed to that of Child and Youth Care Workers and the PERSAL was changed accordingly to ensure the correct translation.
31. Reference was made to page 89, the Guide on Transformation and Restructuring. It was a modernised structure which was implemented around June 2010. The modernisation process entails an OD process, to which an executive has to adhere to. An organisational development investigation was done and all regulations were appealed and the Department could not do job evaluation for OSD posts. It is stated on page 92 of the document:

*“Collective Agreements and Determinations*

*Apart from the relevant legislation, you should also take into account any relevant collective agreements or determinations by the Minister for the Public Service and Administration (MPSA). Applicable severance packages, be it employee- or employer-initiated packages, will be determined in this manner.”*

32. The Department must always comply with Resolution 1 of 2009 when modernisation is done. In order to be translated an employee must meet the requirements of the post. The shortlisting and selection process only follow once an employee meets the requirements of the job.
33. Reference was made to page 135 of bundle R, being a letter in terms of which Applicant was informed of his deployment from the Stellenbosch office to the Paarl office. Laubscher was asked to comment on what influence the Resolution will have on this letter. He replied that if one is matched and placed into a position Respondent has to ensure that the employee meets the requirements.
34. The panel needs to look at the OSD prescripts in order to match and place. The requirement was grade 10 with no experience. For Child and Youth Care Worker the requirement was grade 12 with no experience. It is possible that there was no Child and Youth Care Worker position available at the time, therefore any employees who were transferred had to meet the inherent requirements of the job to be translated. One cannot be translated retrospectively if you did not meet the requirements of the job. Professional registration with the Council is also required for an employee to practice as a Social Auxiliary Worker. They need to be registered as they work as they work at the right hand of the Social Worker.
35. Reference was made to page 136, being Applicant's Registration Certificate as Social Auxiliary Worker, dated 31 March 2016. One would only qualify for recognition of experience from this date onwards. Registration with the council is a pre-requisite or complete learnership, which always needs registration with the council. One cannot just move from Child and Youth Care Worker to the position



of Social Auxiliary Worker. The position of Child and Youth Care Worker is on a slightly lower grade than that of Social Auxiliary Worker, whilst the latter job needs registration with the Council. One could previously be transferred horizontally if you were performing the same function, but that option has been taken away.

36. Laubscher testified that the job descriptions of a Child and Youth Care Worker and Social Auxiliary Work differ. The salary might place one in a different grade, therefore they must look at the qualifications and compliance to the OSD prescripts must be done.
37. Laubscher was questioned on what possible solutions are available to Applicant, to which he responded that one has to look at appointing Applicant as a Child and Youth Care Worker. He was matched and place into an Assistant Community Worker in the region. He could apply for posts and alternatively perform the post to which he was placed into as that of Child and Youth Care Worker position.
38. Respondent's core business is social work and their duty is to ensure that service provided is optimum. Respondent does not predominantly focus on community development, but they are still bound by the prescripts of the OSD. Applicant does now meet the requirements and he has been out of Child and Youth Care work for some time, but the Respondent still needs to comply with the regulations. At the time of the modernisation process they did not look at the OSD, therefore there was no compliance with the OSD. Applicant did not meet the requirements for Social Work at the time of modernisation.

**The following ensued from cross-examination:**

39. Laubscher explained that modernisation took place throughout the whole of the Western Cape Government. Services can be delivered by the use of the correct number of staff required for the service. The scenario was to modernise Social Development to enable Respondent to render the services within the service delivery area and to populate the structure to enable Respondent to render the service delivery needs, and also to ensure effectiveness and efficiency.

40. Employees such as Applicant were unaffected, whilst he still has the title of Child and Youth Care Worker. One cannot change Applicant's job description retrospectively to that of Social Auxiliary Worker, because he only met the requirements in 2016 when he obtained his certificate.
41. Reference was made to page 68 of bundle A, being a letter from Applicant to the Social Work Manager, dated 2 April 2019 where he complained about the fact that his KPA's do not meet his job description on PERSAL and up to this day, Applicant's job title is still that of Child and Youth Care Worker, while there is no such post in Paarl. The letter still has not been implemented. It has not been corrected on the PERSAL system.
42. Laubscher was questioned on whether there is any way in which management can correct the process. Laubscher responded that there are different three (3) different streams in OSD and colleagues were given a once-off opportunity to move. Modernisation brought about that colleagues could be matched and placed, but
1. Regulations; and
  2. OSD prescriptions must be complied with and
  3. Whether the individuals were performing the functions plus one, were the terms that had to be complied with.
43. Laubscher is not aware of the other colleagues that were moved from Lindelani even although they did not apply for the posts.
44. Reference was made to page 69 of bundle A, listing employees who were transferred from Lindelani to Social Development and they are listed as Social Auxiliary Workers, amongst which Applicant's name appears. Laubscher responded that this is an organogram and does not necessarily reflect the information on the PERSAL system. The moment when Applicant was transferred from Lindelani to Paarl, he had to apply for the position of Assistant Social Auxiliary Worker. Laubscher is unaware as to whether there were any vacancies at the time.

### **The following ensued from re-examination:**

45. Laubscher was questioned on how the Department can ensure that Applicant's title of Child and Youth Care Worker is aligned to his KPA's. Laubscher responded that Applicant received a matching and placing letter to perform the work as an Assistant Social Worker, as he was in excess as Child and Youth Care Worker. This was the closest equivalent to his level where he could perform meaningful work. The regions do not perform child and youth care work. He was qualified as Social Auxiliary Worker, but he had to follow the process and apply for the position.

### **Analysis of the evidence and argument**

46. The Applicant referred a dispute that arose on 5 March 2018 regarding the interpretation and application of Resolution 1 of 2009 (OSD). The Applicant was transferred from the Lindelani Place of Safety as a Child and Youth Care Worker in Stellenbosch area to Paarl Social Development due to modernisation that resulted in Applicant being in excess as a Child Youth Care Worker.
47. A group of employees that were removed from Lindelani Place of Safety to Paarl Social Development were affected. According to Applicant, all the other employees' job titles were translated from Child and Youth Care Worker to Social Auxiliary Worker, whilst others were translated to Assistant Community Development Practitioner without them having any experience or qualifications.
48. The Applicant later came to realise that his job title was not translated, at which point he raised the matter with management, as was confirmed by Pieter Gabriels, Applicant's witness that there is no such function or duties of a Child and Youth Care Worker at Paarl Social Development Department. Applicant has performed the task of Assistant Community Development Practitioner as well as Social Auxiliary Worker for the past 10 years since he was matched and placed in Paarl, as per the letter evidenced on page 68 of bundle A, where more specifically the following is stated:

*“I have been performing the duties of an Assistant Community Development Practitioner for the past 10 years in the Stellenbosch Delivering Area, but according to my job title I am a Child and Youth Care Worker which means that my current key performance areas is not in line with my job title. I have submitted a complaint during 2015 for the rectification and translation of my job title from Child and Youth Care Worker to an Assistant Community Development Practitioner.*

*I have noticed that on the staff establishment of 2019 that I am a social auxiliary worker in Stellenbosch Service Delivering Area. (Find attached the staff establishment of the Stellenbosch SDA).*

*I hereby request that my job title be aligned with my key performance areas.”*

49. Applicant’s job title is that of Child and Youth Car Worker which is in conflict with his key performance areas as this is not in line with his job title.
50. Gert Laubscher on behalf of the Respondent testified that all departments were modernised for service delivery needs. He was not aware whether there were any posts advertised for Social Auxiliary Worker or Assistant Community Development Practitioner since Applicant was matched and placed. Management encouraged Applicant to obtain his Social Auxiliary Certificate, which he did and that he should apply for the position thereafter. Applicant obtained a Certificate as a Social Auxiliary Worker as per page 31 of Applicant’s bundle.
51. As confirmed by Gert Laubscher, Applicant received a deployment letter on 1 November 2010 to match and place him at the Paarl Regional Office: Cape Winelands in the capacity of Assistant Community Development Practitioner. The letter was signed by the Head of the Department on 5 May 2011, as per page 3 of bundle A:

**“SUBJECT: DEPARTMENT OF SOCIAL DEVLEOPMENT: MODERNISATION  
– DEPLOYMENT OF EMPLOYEES**

*We hereby wish to inform you that after careful deliberations and a thorough assessment of your employment profile, also taking into consideration the provisions as contained within the Personnel Plan and HR Guidance Principles, the panel was able to match and place you within the REGIONAL OFFICE: CAPE WINELANDS.*

*Your deployment details are as follows:*

*(Should you currently occupy a contract position you will remain on contract until the Department revert back to you.)*

*Appointment status : Permanent / contract in terms of the Public Service Act, 1994 (as amended)*

*Capacity : ASSISTANT COMMUNITY DEVELOPMENT PRACTITIONER*

*Date of deployment : 1 November 2010*

*Kindly acknowledge receipt of this letter by signing the attached Annexure B and returning it to the Project Manager, Mr NB Lukhai within 5 days upon receipt of this letter.*

*If you are not in agreement with the outcome of the deployment process, you may lodge a grievance in terms of the rules determined by the Public Service Commission as well as Section 10 of the approved Personnel Plan. All written queries are to be directed to your respective Senior Management who will collate and forward it to Mr NB Lukhai.”*

52. Laubscher explained that the delay in the implementation of Applicant's appointment could have been a delay in the administrative process that should have been concluded a long time ago.
  
53. The matter before me therefore concerns the interpretation and application of a Collective Agreement, more particularly Resolution 1 of 2009 of the Public Health and Social Development Sectoral Bargaining Council on Occupational Specific

Dispensation (hereinafter referred to as “OSD”) in respect of Social Services Professions and Occupations.

54. Applicant contends that his matching and placing in the Social Development Department of Paarl office is inconsistent with his job title and that his job title should be amended to that of Social Assistant Worker or Social Auxiliary Worker as that is in line with his KPA’s. The Department however contends that Applicant is currently still appointed as Social Health Worker and that the translation could only take place once in terms of Resolution 1 of 2009.

### **The interpretation and application of the OSD**

55. The purpose of the LRA is to advance economic development, social justice, labour peace and the democratization of the workplace by giving effect to its primary objects. Its primary objects include the promotion of orderly collective bargaining.
56. In turn, collective agreements derive their legal effect from the provisions of s 23 of the LRA. Broadly, they bind the parties and their members to the collective agreement and subject to certain statutory requirements being met, also non-members.
57. In *North East Cape Forests v SA Agricultural Plantation & Allied Workers Union & others*, the court held that the primary objects of the LRA are better served by a practical approach to the interpretation and application of a collective agreement rather than by reference to purely contractual principles.
58. This is however, not to say that the collective agreement will not be interpreted with regard to its ordinary and grammatical meaning. There has to be a healthy balance between the two approaches. Put differently, a collective agreement must be interpreted in such a manner as to ensure effective and sound industrial relations.
59. Before I deal with the relevant provisions of the OSD on which the Applicant relies, it is as well that I deal briefly with certain common cause facts.

## Common cause facts

60. The Applicant was employed as a Child and Youth Care Worker at the Lindelani Place of Safety in Stellenbosch. As a result of modernisation he was matched and placed at the Paarl Social Development Department and his day to day functions included that of Assistant Social Worker and later that of Social Auxiliary Worker.
61. Applicant's job title was not amended to that of Assistant Social Worker, although his day to day tasks included that of Social Worker. It is common cause that there was no such post as a Child and Youth Care Worker at the Paarl Regional Department of Social Development.
62. On 4 June 2009, the OSD was concluded in the Public Health and Social Development Sectoral Bargaining Council. The OSD is a national OSD and was implemented centrally. It is applicable to all posts created in terms of the Public Service Act, 1994 ("the PSA").
63. Applicant seeks an award whereby it is found that he qualifies to be translated from a Child and Youth Care Worker to Assistant Community Development Practitioner from 1 November 2010, as his deployment letter stated: "*CAPACITY: ASSISTANT COMMUNITY DEVELOPOMENT PRACTITIONER*", as there are no duties as such at the Child and Youth Care Worker at the Paarl Social Development office, since his deployment from Lindelani Place of Safety. Applicant performs the duties of ACDP and SAW.

## Facts in dispute

64. Respondent noted that Applicant conceded that he was in excess at the establishment. In terms of the Department of Public Service and Administration's Guide on Transformation and Restructuring, employees that cannot be absorbed through matching and placing will be in excess to the establishment.

65. In addition to the above, the DPSA: Guide on Transformation and Restructuring indicates that during the matching and placing process, the employee's profile and the prerequisites are considered. In instances where the employee's profile does not match the requirements of the post, the employee will not be absorbed into the post. The DPSA: Guide on Transformation and Restructuring further reads that *"where more than one employee's profile matches a particular post, you need to select on one candidate amongst them."* As a result of the abovementioned provisions, an employee would be declared in excess to the establishment in one of two occurrences. Firstly, where the employee failed to meet the inherent requirements of the post, or where a better suited candidate was matched and placed to the post. According to Laubscher, Applicant did not meet the inherent requirements of the job at the time when he was matched and placed at Paarl.
66. Applicant conceded that he was declared in excess and that his colleagues were placed as Social Auxiliary Workers and Community Development Practitioner Assistants. Applicant was declared in excess and he was not the better suited candidate in respect of the Community Development Practitioner Assistant, therefore he could not be matched and placed to the aforesaid post.
67. Applicant commenced employment at the Paarl local office on 9 January 2012, therefore he did not have the relevant experience. Applicant conceded that he received correspondence from Annemie Van Reenen, Director: Operational Support Management, instructing him to return as a Child and Youth Care Worker, although Applicant did not view this as an instruction.
68. Applicant conceded that the Department advised him that he should apply for the position after he obtained the qualification as Auxiliary Worker. Laubscher testified that the modernisation structure that was implemented, required that staff were required to be placed on a designed structure and that the structure could not be designed around the employees' circumstances. As a result, the matching and placing process had to be conducted. Laubscher indicated that the solutions available to the Applicant is to return to the facility in Stellenbosch and to apply for a vacant post in Paarl.



69. The Resolution makes provision only for a once-off translation, to which Applicant conceded.
70. Applicant currently earns R211 101, which equates with the salary scale of Social Auxiliary Worker Grade 3. Applicant acknowledged that a Social Auxiliary Worker on Grade 3, requires a minimum of 20 years' experience, or 10 years' experience after registration with the South African Council for Social Services Professions. Applicant's registration certificate is dated 26 March 2016 and therefore he does not have the required post qualification experience. It remains Respondent's case that the Department issued a letter of deployment to Applicant erroneously, he was never meant to be translated.
71. Laubscher testified that the modernisation structure was first designed where after the process commenced. The modernisation process resulted in the matching and placing of officials. Where officials could not be placed, they would be deployed to the regional offices to conduct "meaningful work". The officials who were not matched and placed, were placed in excess to the Department.
72. The lateral translation between Occupational Specific Dispensation (OSD) occupational categories are not permitted, as it has a direct effect on the salary structure and inherent requirement. Laubscher confirmed that Applicant's current salary structure may require more years of experience and have additional inherent requirements, which he may not have.
73. It is Respondent's case that Resolution 1 of 2009 introduced Occupational Specific Dispensations (OSD) within the social services profession with effect from 1 April 2008. The purpose of the Resolution was to create career pathing within three (3) occupational categories, namely: Social Work, Community Development Practitioner and Child and Youth Care Worker. Section 3.2.1.3 of the Resolution indicates that translation of employees will be subject to the employee being translated "*to appropriate posts and salary grades in accordance with the posts that they occupy at the time of translation.*"

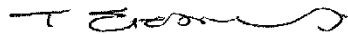
74. In terms of section 3.2.1.3 of the Resolution, an official is required to be translated to an appropriate post in accordance with the post that the official occupies at the time of translation. The post an official occupies at the time of the translation would fall into one of the three occupational categories. Each of the occupational streams constitute a defined career path within which an official may progress. Therefore, section 3.2.1.3 of the Resolution only permits an official to translate within a defined career path.
75. In amplification of the above, paragraph 3(a)[ix] of the DPSA Circular: Implementation of the OSD for Social Service Professions and Occupations, reads as follows:
- “Serving employees appointed in this period not in possession of the appointment/registration requirements set in the OSD will, as a once-off implementation measure, be translated to the appropriate salary scales. The effect is that the employees will be eligible for grade progression to higher grades in the post without having to obtain the relevant qualification. However, for higher alternative posts these employees will have to comply with the requirements of the relevant posts.”*
76. The parties are bound by the Collective Agreement. Furthermore, the translation of employees between OSD occupational categories, implies that an employee, who has obtained the minimum requirements would have a “right” to be translated, without following the recruitment procedures.
77. According to the Organogram on page 69 of bundle A, Applicant is classified as a “Social Auxiliary Worker”. Although Applicant was matched and placed as Assistant Social Worker at the Paarl office in 2010, his position was never translated, as was the case with his colleagues. Applicant was advised by Respondent to obtain his qualification as Social Auxiliary Worker, which advice he followed and he obtained the said qualification in 2016, therefore he became

suitably qualified for his appointment as Social Auxiliary Worker from 2016 onwards.

78. Applicant is already remunerated on Grade 3, Social Auxiliary Worker notch.
79. In terms of paragraph 3.2.3 of Resolution 1 of 2009: "*The above-mentioned employees are required to make a once-off choice*" to be translated. Applicant was however never placed in a position where he had to make a choice to be translated or not. He was simply matched and placed at the Paarl office of Respondent, where he has remained since he moved across in January 2012 and he stopped fulfilling the functions of Youth and Child Care Worker. His daily functions are currently that of Social Auxiliary Worker.
80. Applicant was matched and placed by his employer in terms of clause 3.2.3.2 of Resolution 1 of 2009 in terms of service delivery requirements. Respondent was therefore obliged to transfer Applicant at the time, alongside with his colleagues as contemplated in terms of clause 3.2.3.3 and 3.2.3.4 of Resolution 1 of 2009.

## **Award**

81. Respondent is ordered to immediately translate Applicant in the Social Worker dispensation as from 1 January 2012.
82. The outstanding remuneration at the level of Social Worker must be paid by Respondent to Applicant by no later than 30 June 2019.



**COUNCIL COMMISSIONER: TERESA ERASMUS**