



# ARBITRATION AWARD

Commissioner: **Janine Carelse**

Case No: **PSHS980-19/20**

Date of award: **27 February 2021**

In the matter between:

**AUDREY CUPIDO- JACOBS**

APPLICANT

and

**DEPARTMENT OF HEALTH- WESTERN CAPE**

RESPONDENT

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## **DETAILS OF HEARING AND REPRESENTATION**

1. The arbitration hearing was initially set down for hearing on 12 October 2020, 23 November 2020 and 9, 10 and 11 February 2021. The proceedings were digitally and manually recorded, and the matter proceeded in English.
2. The applicant was present and represented by Advocate C Bosch, instructed by Mr. Thashen Subrayen, an attorney at Subrayen Attorneys. The respondent was represented by Advocate F Rodrigues, instructed by the office of the state attorney.
3. Both parties handed in bundles of documents on which they relied in support of their cases. The applicant's bundle was marked bundle "A" and the respondent's bundle was marked bundle "B" and bundle "C".

## **ISSUE TO BE DECIDED**

4. The issue to be decided is whether the respondent committed an unfair labour practice relating to benefits / promotion when it failed to upgrade the applicant to a salary level 9, Assistant Director position.

## **BACKGROUND TO THE MATTER**

5. The applicant is employed by the respondent as a senior administrative officer: Supply Chain Management and Support Services in the Drakenstein sub-district. In July 2016, the applicant lodged a grievance because she was employed (and received remuneration and benefits) at the rank of senior administrative officer (SAO) at level 8 but performed the same duties as assistant directors (ASD): Finance and Supply Chain Management (a level 9 post). She asked that her post be upgraded to the level of ASD. The grievance was unsuccessful but in May 2017, the Public Service Commission requested the applicant's post be subjected to a job evaluation. The job evaluation was conducted in June / July 2017. The conclusion was that the applicant's post should remain at a level 8. The job evaluation results were presented to a Transversal Moderating Panel meeting on 29 September 2017 which endorsed the job evaluation results. The results were further confirmed by the Chief Director of People Management in December 2017 who recommended that the results of the job evaluation should be accepted. The respondent also accepted the job evaluation results and the applicant was informed that her post was to remain at a level 8. This led her to refer a dispute to this council. The applicant's dispute relates to benefits. She claims that if the respondent upgrades her post, she would be entitled to better benefits. The applicant alleges that the respondent acted unfairly in failing to upgrade her post and the relief that she seeks is to be upgraded into a ASD salary level 9 post.

## **SURVEY OF EVIDENCE AND ARGUMENT**

### **Evidence**

#### **Applicant's evidence**

6. The applicant testified under oath and stated that she oversees three administrative officers (AOs) for finance and supply chain, information management and for support services. Her broader responsibilities include finance and supply chain management, information management and support services. She averred that no other SAOs: finance and supply chain management are also responsible for support services, as it is usually dealt with by an employee at HR and Facility Management. She contended that support services are a massive additional responsibility. It includes infrastructure management (such as the workshop and maintenance projects, security, cleaning, grounds, contractors, linen, waste management, Telkom services) and transport (the applicant oversees a fleet of 39 vehicles). She contended that she is further responsible for the budget management instrument (the budget) for the sub-district which includes the clinics and three community day centres. The applicant reports on her budget to the Cape Winelands District Executive Management: Finance and Supply Chain Management Committee and she is the only SAO on that committee. She stated that in the other sub-districts, the responsibility for budgets falls on ASDs or Directors (Bundle A p59). The budget (excluding payments for staff) for which the applicant is responsible is larger than any of the other sub-districts (Bundle A p62). She further averred that she is responsible for a similar number of staff to other heads of finance (Bundle A p59). She referred to a job description for an ASD: Support Services in Paarl and testified that she performs the same tasks as those contained in the ASD job description. She further stated that she fulfils functions that other SAOs and even heads of finance do not and that there is an overlap between functions (bundle A p60 – 61).
  
7. Under cross-examination, the applicant conceded that there is no hospital in her subdistrict and that ASDs are based at hospitals and that hospitals bring with them functions that she does not do. She stated that there is no significant difference between the way things are ordered in hospitals and for her clinics. Equipment is usually ordered off a list and in terms of contracts already in place. The fact that equipment is complex equipment makes no difference to the ordering process. She conceded that they do not

take in revenue from patients, but that her clinic generate revenue by way of personnel debt and the sale of assets.

8. The applicant conceded that the ASDs deals with in-patients and Drakenstein does not deal with in-patients. The district hospital has wards including trauma and emergency. Primary healthcare does not have wards and they are only responsible for patients who come and go during the day. She conceded that there are more patients at the district hospital than there is at primary health care and the district hospital further has a 24 hours service. She conceded that the circular H85/2013 that she referred to does not refer to her position because it refers to 50 beds which has no bearing on Drakenstein sub-district. The amount of staff that the ASD must support is much more than she supports at primary health care. She conceded that they have an occupational health, sonar and therapists, which falls under allied services. She contended that even though she does not have those hospital or emergency OPD, she has the support services component that she must supervise and manage. The support stays the same regardless of the number of staff. She conceded that they would need more staff if they worked 24 hours per day and if she had worked in a hospital, they would need more staff.
9. The applicant conceded that the job information and output given by her and Mrs Theron to Chris Van Der Merwe in the interview that he had with them was correct. (Bundle C p6-17).
10. The applicant's evidence was corroborated by her witness, Mr Essex.

### **Respondent's evidence**

11. Ms. E Mouton gave evidence under oath for the respondent and stated that she is the Deputy Director: Human Resources for the Cape Winelands District and she and her HR staff are situated in Worcester. She averred that if there had been a district hospital in Drakenstein Sub-District then the applicant would have had to report to the ASD in the district hospital. She stated that an ASD in the district hospital also gives support to the Hospital which renders a 24-hour service and he/she is also responsible for rendering a service to the public health centre (PHC) which consists of the sub-structure office

community day clinics and clinics. Ms. Mouton contended that the applicant's post is not similar to that of an ASD in a district hospital because she only serves the PHC in the Drakenstein sub-structure.

12. Under cross-examination she stated that she does not work with the app directly. She does not know what she does on a day to day basis.
13. Under re-examination she stated that if the post has been evaluated and approved, they plan to get the funds to remunerate the person, however, they would need to review the structure. If there is no funding for the upgrade of the post, they cannot do it.
14. Mr. Chris Van Der Merwe (Van Der Merwe) testified under oath for the respondent and stated that he is employed as a job analyst for the Department of the Premier. He has been employed with the Western Cape Government for many years. His core function is to investigate and recommend the structures of a Department in the Western Cape Government which is called Organizational Design. He contended that when you investigate an organizational design then the population in that municipal district is an important factor to take into consideration, to determine the size of a hospital if a hospital needs to be built.
15. His other core function as an analyst is to job evaluate posts within the Western Cape Government to ensure that the same work is remunerated equally. This job evaluation system is determined by the Minister for the Department of Public Service and Administration, and they receive directives on how a job evaluation should be conducted. He received training on how to enter data into the computer evaluation system.
16. He stated further that he interviewed Sr Theron, the head of Drakenstein Sub-District, and the Applicant. She gave him a copy of her job description which was used in the evaluation of her job. He then had to capture all the information received from the applicant and Sr Theron into the computer. The computer is programmed to do the job evaluation and provide the eventual score for the post which information was entered into the system. He explains that the computer presents him with certain key words, and he ticks the columns most relevant to the information he received from the applicant.

17. Chris further testifies that the job profile summary relates to the responsibility, thinking Demands, knowledge, communication and environment required for the specific post, and each of these profile summaries the computer calculates and give it a score. Under the profile of responsibility, it considers how much staff the applicant manages directly, how much staff is managed indirectly and other staff whom she manages. The financial resources section relates to expenditure, income stores & livestock, and a final overall scoring is presented. In the case of the applicant's score, it presented a job weight of 464.96 in total.
18. He contended that his submission, the evaluate job summary and the evaluate job report was presented by him at the Transversal Moderating Panel on the 29th September 2017. The panel is chaired and coordinated by the Department of the Premier with the Director: Human Resources of the Department of Health, a representative from Department of Environment Affairs and Development Planning, a member of the Western Cape Education Department and 9 other members of the Department of the Premier in attendance. The outcome of the applicant's job evaluation that she remains at the rank of a SAO and salary level 8 was endorsed by the panel.
19. He further averred that even though the applicant's job description appears similar to that of an ASD in the District Hospital, their duties is vastly different as the ASD's responsibilities is much greater, in that he must give support not only to PHC but to the operations of the District Hospital. He states that the District hospital consists of wards which is made up of general wards, theatre, OPD and emergency ward radiography, pharmacy and allied services which consist of physiotherapy, dietician, oral health and occupational therapy, whereas the PHCs consists of CDC, clinics, and mobile clinics. The goods and services required in a theatre for example are much more complex items sought than that needed in PHCs.
20. He further stated that because the district hospital operates a 24-hour service more staff is needed as they work shifts. The ASDs have SAOs reporting to him/her, for example in Witzenberg Sub-District, there should be 3 SAOs reporting to the ASD. The ASD is also responsible for revenue as patients must pay for services and patient fees is a big component for which PHCs has no responsibility.

21. He contended that the Department of Health is obliged to implement their recommendations and if they do not agree with the outcome of any job evaluation then they must resubmit a request for such post to be re-evaluated. He confirms that they do not know how such calculation is generated by the computer programme and the reason is that no one at the Premier's office knows the working of the programme, and therefore it cannot be manipulated.

22. Under cross-examination he conceded that he is an analyst and thus cannot speak on behalf of the people who do the work every day. He could not say whether community day centres were comparable to district hospitals in terms of their complexity and budget.

### **ANALYSIS OF EVIDENCE AND ARGUMENT**

23. It is trite law that an employee who alleges that the employer committed an unfair labour practice bears the onus of proving the claim on a balance of probabilities. I must decide whether the respondent's decision not to upgrade the applicant to an ASD on salary level 9 was unfair, arbitrary, capricious, inconsistent or irrational.

24. Section 41 of the Public Service regulations, 2018 (as amended) provides as follows:

“(1) The Minister shall determine-

A job evaluation and job grading system or systems that shall be utilised in the public service to ensure work of equal value is remunerated equally; and

A range of job weights derived from the system or systems for each salary level in a salary scale.

“(2) The Minister may-

Issue directives on the application of a job evaluation or job grading system or systems.

Review the application of job evaluation in the public service;

Determine a job or category of jobs that an executive authority must evaluate; and

Issue directives that direct the evaluation and grading of any job or category of jobs”

“(3) An executive authority may evaluate or re-evaluate any job in his or her department, except Jobs evaluated and granted by the Minister in terms of sub regulation (2) (a) or Jobs determined in terms of an OSD.

25. Advocate Rodrigues rightly argued that Van der Merwe's evidence had barely been challenged by the applicant. He testified about the differences between the work that an ASD does compared to the work that the applicant does. He averred that an ASD, inter alia, oversees more staff, deals with more complex matters in the hospitals where there are patient admissions and 24-hour emergency services. It was clear from his evidence that there is a striking difference between the work that an ASD does at the hospitals and the work that the applicant does at the day clinic. I agree with Advocate Bosch that the applicant's duties and the duties of an ASD do overlap here and there, but I do not agree that it is identical or even substantially similar as argued by Advocate Bosch. The applicant has failed to show this, on a balance of probabilities. I acknowledge that the applicant fulfills many functions and I am in no way diminishing her role and responsibilities.

26. Van der Merwe further testified that he captured into the computer the job outputs and information that was given to him by Sr Theron and the applicant. The applicant confirmed this but by the same token disputes that Van der Merwe had entered the information correctly. Both the applicant and Essex testified that Van der Merwe failed to capture the applicant's information management duties. This evidence was not put to Van der Merwe and remains unchallenged. Again, the applicant and Sr Theron together gave the applicant's job information and outputs to Van der Merwe when he interviewed them. Why did the applicant not inform Van der Merwe then that she also fulfills information management functions? Moreover, the applicant did not appeal against the job evaluation outcome when she had the opportunity to do so. It would be unfair to hold the respondent liable for the applicant's omission.

27. Van der Merwe further testified that the computer job evaluation system has pre-defined weightings attached to it and he is not aware of how that information is programmed and the rationale behind that is to preserve the integrity of the system so that nobody can manipulate it. No evidence was adduced to show that the computer system was rigged or that it was open to being rigged. I have no suspicion of foul play or mala fides on the part of the respondent or Van der Merwe. Van der Merwe came across as a truthful and reliable witness. It should be borne in mind that he is also a chief organizational design practitioner and has several years' experience in his field. This undoubtedly adds to his

credibility, which can be seen from his testimony. The applicant has not brought evidence to challenge the pre-defined weightings and therefore the weightings installed on the computer system must be accepted to be correct, flawless and rational.

28. What is more, the applicant's job evaluation outcome was subjected to a transverse panel who scrutinized the outcome and required Van der Merwe to make minor changes. He testified that even after the changes, the applicant's job evaluation outcome remained on a salary level 8. This evidence further supports my finding that there were no improper or arbitrary motives on the part of the respondent.

29. In the result, I find that the respondent had not committed an unfair labour practice against the applicant.

#### **AWARD**

30. The applicant was not subjected to an unfair labour practice in terms of section 186 (2) (a) of the LRA.

31. The applicant's claim is dismissed.

32. There is no order of costs.



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Janine Carelse