



ARBITRATION AWARD

Commissioner: **KM Moodley**

Case No: **PSHS32-22/23**

Date of award: **11 August 2022**

In the matter between:

PSA obo Madondatheni Luswazi and 1 Other

Applicants

and

Department of Health- KwaZulu Natal

Respondent

Details of the hearing and representation

1. The arbitration was held at the boardroom of the Respondent, at uThukela District Office, in Ladysmith, on 28 July 2022. Madondatheni Luswazi and Xonani Terrence Sikhakane (the Applicants) were represented by B. Fisher of union PSA and Department of Health- KwaZulu Natal (the Respondent) was represented by its employee NC Qwabe.
2. As the proceedings were mechanically recorded, I will only make reference to those aspects of the evidence that are relevant to my findings. All the witnesses testified under oath. I am satisfied that the parties have been correctly cited and that the PHSDSBC has jurisdiction to hear this matter.
3. The parties tabled bundles of documents, i.e., Bundle A was tabled by the Applicant and Bundle B was tabled by the Respondent. The contents of the bundles were accepted by both parties as being what they purported to be.
4. No objection was raised to me as the Commissioner presiding over the arbitration.

Issue to be decided

5. The issue to be decided is whether or not the Applicants qualify for grade progression from Grade 1 to Grade 2 with effect from 1 July 2020.

Common cause issues

6. The following were agreed between the parties as being issues of common cause:
 - a) Both Applicants have more than 10 years actual service and/or relevant experience at the time of declaring a dispute.
 - b) Neither of the Applicants possess a grade 12 qualification at the time of arbitration.

Issues in dispute

7. The issue in dispute is whether or not a grade 12 qualification is a requirement for the Applicants to qualify for a grade progression i.e. from Grade 1 to Grade 2.

Background to the dispute

8. The Applicants are employed by the Respondent as Forensic Officers and are based in Estcourt.
9. They were translated to grade 1 as per the OSD, on 1 July 2010.
10. On 1 July 2020 they expected to be automatically grade progressed from grade 1 to grade 2, by the Respondent. However, this did not happen.
11. The Applicants then lodged a grievance with the Respondent but this was unsuccessful.
12. They then referred a dispute to the Council for adjudication.

Survey of evidence and arguments

The Applicants' case

Applicant: Witness: 1: Xonani Terrence Sikhakane-Forensic Officer-Applicant 1

13. Sikhakane testified that he qualified for grade progression from grade 1 to grade 2 as he complied with all the requirements of Clause 4.1.10.2 of Resolution 2 of 2010. He pointed out that Clause 4.1.10.2 provides for the completion of 10 years of appropriate experience in order to be grade progressed.
14. On 1 July 2020 he completed 10 years of service in grade 1 and therefore should have been automatically grade progressed to grade 2 by the Respondent.
15. When this did not happen, he lodged a grievance with the Respondent. He was then told that he did not qualify for grade progression as he did not possess a grade 12 qualification.
16. He testified that he was translated to grade 1 in 2010 because he met the requirements at the time.

17. Now that he has obtained 10 years appropriate experience, he qualifies to be grade progressed to grade 2 with effect from 1 July 2020, as he complies with clause 1.1 of Annexure B of Resolution 2 of 2010.

Witness 2: Madodatheni Luswazi-Applicant 2

18. Luswazi testified that he was employed by the Respondent as a Forensic Officer.

19. On 1 July 2010 he was translated to Grade 1 as per the OSD at the time, as he met all the requirements for the translation.

20. On 1 July 2020 he completed 10 years appropriate experience in the post and expected to be grade progressed to grade 2, but this did not happen.

21. He lodged a grievance but was unsuccessful. He was advised that he did not qualify for grade progression as he did not meet one of the requirements for grade progression ie he did not possess a grade 12 qualification.

22. He testified that he complied fully with all the requirements of Clause 4.1.10.2 of Resolution 2 of 2010 as he completed 10 years of appropriate experience as at 1 July 2020.

Respondent's case

Witness 1: Sindiswe Mthembu-Senior HR Practitioner

23. Mthembu testified that as part of her duties she deals with, inter alia, matters of grade progression, for the Ladysmith/ Estcourt region of the Respondent.

24. She testified that the Applicants were translated to grade 1 in 2010 although they did not meet the minimum educational qualifications at that time. This was a once off arrangement designed to benefit the Applicants, and was called the "grandfathers' clause".

25. If the Applicants wanted to be grade progressed from grade 1 to grade 2 in 2020, they had to comply with two requirements:

- a) They needed to have 10 years appropriate experience, and
- b) They needed to have a grade 12 qualification.

26. She pointed out that Clause 1.1 of Annexure B of Resolution 2 of 2010 provided for 10 years' service and compliance with the appointment requirements of the post. The Job evaluation results provided for a senior certificate /grade 12 qualification as the minimum qualification for the post of Forensic Pathology Officer Grade 2.

27. As at 1 July 2020 the Applicants did not have a grade 12 qualification so they did not qualify to be grade progressed.

28. Only when the Applicants possess a grade 12 qualification will they qualify to be grade progressed.

Analysis of evidence and argument:

29. Clause 4.1.10.2 of Resolution 2 of 2010 provides that employees may qualify for *“Progression to the next salary grade (scale) attached to the post, provided that candidates meet **all the requirements** to progress to the relevant higher grades as indicated in Annexure B”*

30. Clause 1.1 of Annexure B provides the following grade progression requirements: *“10 years actual service and/or recognised experience after **compliance with the appointment requirements of the grade**”*

31. The appointment requirements of the grade are recorded in the Job Evaluation results dated 7 February 2006 which specifies the **minimum qualifications** for the post of Forensic Pathology Officer Grade 2 as being a Senior Certificate (Grade 12).

32. Therefore, I conclude that the minimum requirements for grade progression from grade 1 to grade 2 are,

- a) 10 years recognised experience and,
- b) a Senior certificate (grade 12)

33. It was common cause that the Applicants do not possess a grade 12 qualification.

34. Therefore, they do not qualify to be grade progressed from grade 1 to grade 2.

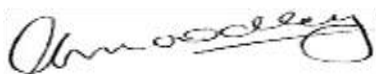
Conclusion:

35. The Applicants do not qualify for a grade progression.

Award

36. I find that the Applicants do not qualify for grade progression.

37. This matter is dismissed



COMMISSIONER: KM MOODLEY