



ARBITRATION AWARD

Panellist/s: **Mohau Ntaopane**
Case No.: **GPBC1123/2019**
Date of Award: **25 August 2020**

In the **ARBITRATION** between

PSA OBO MUDAU, KM

(Applicant)

And

DEPARTMENT OF WATER AND SANITATION

(1st Respondent)

NYAMA, LEDILE

(2nd Respondent)

NEHAWU OBO MAPHAKELA, PHYLLIS

(3rd Respondent)

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DETAILS OF HEARING AND REPRESENTATION

- [1] This is the arbitration award in the arbitration between Mr. KM Mudau as represented by PSA, the applicant, and the Department of Sanitation, the 1st respondent, 2nd respondent and 3rd respondent.
- [2] The arbitration was held under the auspices of the General Public Service Sector Bargaining Council (GPSSBC) in terms of section 191(5)(a)(iv) of the Labour Relations Act, 1995 as amended ("the Act") and the award is issued in terms of section 138(7) of the Act.
- [3] The arbitration was heard on 05 August 2020 at the Lyttelton Office Village, 260 Basden Avenue in Centurion. The applicant was represented by PSA Labour Relations Officer, Mr. Archie Sgudla, while Ms. Jabu Songo represented the 1st respondent, the 2nd respondent represented herself, and Mr. Nkwai Masekela, NEHAWU Official, represented the 3rd respondent.
- [4] The process was conducted in English and digitally recorded. The applicant and 1st respondent submitted a bundle of documents into the record. Parties had agreed to submit written arguments on 12 August 2010, however, a request to extend the date of submission to 14 August 2020 was made. The 2nd and 3rd respondents opted to make no submissions into the record.

ISSUES TO BE DECIDED

- [5] I am required to determine whether the 1st respondent has perpetrated an unfair labour practice related to promotion in terms of section 186(2)(a) of the Act. Should I find in the affirmative, I am also required to decide on the appropriate relief in terms of section 193 of the Act.

BACKGROUND

- [6] Prior to referring this matter, the applicant, an Environmental Officer Specialised Production (SR-9) who's been in the employ of the 1st respondent since 2006, lodged a grievance on 03 April 2019 stemming from having not been short-listed for the post of Control Environmental Officer Grade A advertised on 30 November 2018. The outcome of the grievance issued on 26 April 2019 in terms of which the applicant was said to have not met the minimum requirements of the post as advertised, particularly the 6 years post qualification experience, and that the panel had reduced the list of 20 short-listed candidates by increasing the criteria to 9 years post qualification experience.
- [7] The contention of the applicant is that the 1st respondent committed an unfair labour practice related to promotion by having excluded him from competing for the post because he met the minimum requirements as advertised,

and that the 1st respondent unfairly amplified the criteria for short-listing, while allowing others who did not meet the new criteria to compete for the post(s).

- [8] The 2nd and 3rd respondents as joined in this matter were appointed into the two positions that were available and it was not the applicant's contention that they were not suitable for the positions. They were joined to the matter so as to participate in the arbitration as they may have a substantial interest in the matter.

SURVEY OF EVIDENCE

Applicant's case

- [9] The only witness called for the applicant was Mr. KM Mudau. He referred to page 33 of his bundle, the post advertised on 30 November 2018 requiring a 4 year qualification and 6 years post qualification, and submitted that he applied for it being of the view that his B-Tech Chemical Engineering Environmental qualification obtained with UNISA in 2012 and his experience met the minimum requirements. He further referred to page 20 of his bundle, his academic record from UNISA indicating that he had completed his degree, while page 21 was his graduation certificate. He was then called into a meeting somewhere in March 2019 by one of the shortlisting panelists, Mr. Ephraim Matseba, Control Environmental Officer working in Water Resource Management, the section that advertised the post, who explained to him that he did not make the shortlist because the date on his certificate was 10 June 2013, as such his post qualification experience was only 5 years and 6 months. Mr. Matseba told him that there had been a debate in the panel as to whether he qualified or not, as a result the panel requested him to call him in so that he is not surprised when not invited for an interview. He explained to Mr. Matseba that the date on the certificate was the graduation date and that one qualifies prior to graduation, meaning that he had qualified in November 2012.
- [10] Mr. Mudau then wrote an email to HR and Corporate Services Management, which email communication appears on pages 17-18 of his bundle. It was sent on 1 April 2019 and addressed to Mr. Daniel Masoga and Ms. Beula Mekwa, while Mr. Sydney Nevhorwa, Deputy Director:Corporate Services was also copied. On the same day Mr. Masoga responded copying panel members. Mr. Mudau was requested to provide his highest qualification, to which he responded by attaching his academic record. He was then informed that the panel will provide him with feedback. However, having not received such feedback, he wrote again on 3 April 2019 to enquire and Ms. Mekwa indicated that only three out of four requirements were met in terms of his application. On page 15 appeared an email from Mr. Nevhorwa who stated that he had obtained his qualification in June 2019, which he did not agree with as he was of the view that he qualified in November 2012. As a result he lodged a formal grievance on 3 April 2019, the response for which he received on 26 April 2019 (page 2 of the respondent's bundle) reiterating the view that he did not qualify for shortlisting as he did not meet the minimum requirements having obtained his qualification on 10 June 2013.

- [11] Mr. Mudau referred to page 8 of the respondent's bundle, which was a list of 20 candidates who had made the cut and stated that they had met the requirements in terms of the advert, however the criteria had now been increased to 9 years post qualification. He submitted that Mr. Mathebe, candidate No.4 on the list had told him that he obtained his 4 years honours degree in June 2012, while Ms. Khoza, candidate No. 8 on the list, said that she started working in the department in June 2010. It was therefore his view that when you do the calculations, neither of the two met the new requirement of 9 years post qualification experience. Mr. Mudau felt that the respondent acted unfairly where he is concerned because he believed that he had qualified and because by upping the criteria, the respondent created requirements that were no longer in line with the advert. To add insult to injury, two candidates that did not meet those new requirements had been shortlisted, while he was not. Mr. Mudau held the view that he was entitled to being appointed on the same notch and to be reimbursed from the date of appointing the successful candidates.
- [12] In cross-examination Mr. Mudau conceded that in his CV, the only document in terms of his application in response to the advert where his qualification is mentioned or could be referenced, specifically on page 11 of the respondent, only the year the degree was obtained, being 2012, is mentioned, and not the month. When asked which, between the academic record and the certificate, represents the qualification, his stated that in terms of his understanding the certificate was merely proof of a qualification as one qualifies before they are presented with the qualification, while the academic record detailed what he had done up until he obtained the qualification. He was referred to the advert and asked whether in terms of his understanding, the requirement for a qualification spoke to the academic record or a certificate. His response was that even an academic record was allowed, the same way a certificate could be attached as proof of a qualification, as such it would be wrong in his view for the 1st respondent to start counting the years of experience from the date on the certificate as it does not refer to the year of qualification.
- [13] Mr. Mudau was asked what the response to the email he wrote was in response to his grievance. He stated that he was told that they referred to the certificate attached, in terms of which he qualified in June 2019, and that they do not consider the CV as enough proof of qualification. It was then put to him that his CV having only stated that he qualified in 2012, this was the reason he was given for not being shortlisted. He agreed. Mr. Mudau was referred to page 9 of the respondent bundle, the shortened list of 8 candidates, vis-à-vis his reference to page 8, being the long list, and asked in terms of which list were the two candidates he mentioned included despite having not qualified. His response was that they referred him to page 9 when asking him why the criteria of 9 years disqualified him when they had been shortlisted. When asked what he had done about this discovery his response was that at that stage there was nothing he could do as he had already filed his grievance and the interviews had already been conducted.
- [14] Mr. Mudau was asked whether he had any proof to show that he had engaged the two candidates. He conceded that the engagement was merely verbal, as such there was nothing he could produce as proof of having spoken to the two candidates. It was put to him that Mr. Matsebe would dispute having shortlisted anyone who did not

meet the 9 years criteria and would further state that he did not get shortlisted as he did not meet the original 6 years. Mr. Mudau's response was that sometimes a person has more than 9 years' experience, and not necessarily 9 years post the qualification. He also indicated that the minutes signed by the committee on page 8 were contradictory in this respect. When asked how he could request to be appointed into a position for which he did not contest, he responded that he was unfairly denied the opportunity to do so.

1st Respondent's case

- [15] Mr. Mogale Ephraim Matseba, Control Environmental Officer: Grade B, was the only witness to be called by the respondent. He confirmed that the post in question fell under his section and that he was part of the panel. Explaining the shortlisting process, he stated after there had been responses to the advert, HR would pre-screen applications and then submits them to the approval panel for consideration. They would then go through the applications and shortlist 20 candidates. From those 20 candidates they then had to reduce the list even further since they could not interview all of them for only 2 posts as only a maximum of candidates is allowed per post, therefore the reduced list on page 8 is that of the candidates that made it through the long list. As a panel they decided that in order to do that they had to increase the post qualification years to 9 years, resulting in only 8 candidates making the cut.
- [16] Mr. Matseba disputed the allegation that there were candidates that did not meet the criteria, but nevertheless were shortlisted. With regard to the applicant, he stated that in his understanding he was not shortlisted because he did not qualify. He commented on the email from Mr. Nevhorwa as it appears on page 15 of the applicant's bundle by agreeing with the contents thereof. Mr. Matseba explained that HR indicated that the applicant's date of qualification was 10 June 2013, as such they looked at when the qualification was obtained in terms of the attached certificate, despite the applicant having stated in his CV that he qualified in 2012. He added that as far as he could remember they did not receive the applicant's academic record as it appeared on page 20 of his bundle, nor was he sure whether it was this the applicant referred to when in his email he said he had finished his studies the year before. As the panel, they calculated the years post qualification from the date indicated on the certificate, being 10 June 2013, meaning that the period amounted to 5 years and 5 months in total. Mr. Matseba also disputed the allegation that he had called the applicant to a meeting in March 2019 to discuss the shortlisting as HR issues are dealt with by HR. He stated lastly that when seeing 2012 in the applicant's CV, it would be difficult to say when in 2012, as such they are likely to assume that the end of that year is what is meant.
- [17] In cross-examination Mr. Matseba was asked whether in terms of the recruitment and selection process, the panel was allowed to alter or change the requirements in terms of the advert. His response was that such action did not amount to deviation as the policy provided for the panel increasing the minimum requirements where you have a lot of applicants. He was then referred to pages 43 – 56 of the respondent bundle, the recruitment policy, and requested to point out the provision empowering the panel in that regard. He read out point 6.4.5 (b) and (c) on

page 51 in terms of which the final short-lists should not exceed a maximum of 5 applicants, with the method of short-listing and final assessment being a matter for each Selection Committee to determine. His view was that such should be applied consistently to all applicants. It was put to him that the provision did not give such leeway, to which he responded that he believed that it did. It was also put to Mr. Matseba that Ms. Khoza, candidate No.8, only joined the department on June 2010, as such her experience would not have been 9 years. He clarified the issue by stating that the experience spoken to did not only related to the department, but experience in integrated water resource management.

- [18] Mr. Matseba was asked why in his view the applicant would fabricate a meeting with him. His response was that there was no instruction from HR that he needed to interact with him, as such there no such meeting dealing specifically with an issue that would have been within the purview of issues dealt with by HR. When asked to agree that at the time the applicant did not know that he had not been shortlisted, his response was that the applicant would be the best person to provide proof as to the meeting having happened. He was then referred to page 18 of the applicant's bundle, the email written on 1 April 2019 and asked whether anyone would if someone had been shortlisted without having been told by HR. His response was that in terms of the HR policy, panel members are sworn to secrecy in terms of a document signed agreeing that you would not communicate with anyone, non-compliance with which amounting to a dismissible offence.
- [19] Mr. Matseba was asked, as qualified CEO: Grade B, whether a graduation ceremony is not just a confirmation that one has qualified. In terms of his understanding a qualification was a certificate, whereas an academic record represents whatever year one finishes. He was then referred to page 31 of the applicant's bundle, Z83 form, and it was put to him that it provided for the application form on its own to be submitted without any attachments, meaning that the qualification may be requested for the final decision to be made. His response was that as he was not the author of the document, he could not answer the question and that perhaps HR was best positioned to respond to it. It was then put to him that he was being deliberately evasive as he was never asked whether he was the author of the document and that panel members must know what the form means to them as they go through it. His response was the form was gazetted, as such himself and the departments were not its custodian, the meaning to be attached to the stipulations in the form being the prerogative of the Department of Public Service and Administration. He agreed to the seriousness of the form and that one could not simply complete it and claim to not know what it meant.

ANALYSIS OF EVIDENCE AND ARGUMENT

- [20] Section 185(b) of the Act affords every employee the right not to be subjected to unfair labour practice. Section 186(2)(a) considers an unfair labour practice the unfair conduct by the employer relating to the promotion of an employee. It is for the applicant to prove that the conduct or practice complained of can be characterized as an unfair labour practice in terms of section 185(b) – **Nawa & another v Department of Trade & Industry**¹. In

¹ [1998] 7 BLLR 701 (LC)

IMATU obo Visagie v Mogale City Municipality it was held that in unfair labour practice disputes relating to promotions, if the employee is challenging the process and that decision or conduct by the respondent is not established by the employee, that is the end of the matter². In **Pamplin v Western Cape Education Department**³ the Court emphasized that the employer is, in the same token, obliged to defend challenges on the substantive and procedural fairness, if it wishes to avoid a negative outcome by placing evidence that it acted fairly and in good faith during the promotion exercise.

Arguments

Applicant

- [21] In the applicant's argument it was submitted that he testified that he qualified for the post as advertised and that he even met the adjusted requirement of 9 years and above in service. The view of the applicant with regard to when he obtained his qualification remained that he qualified first through writing exams and obtaining results prior to the graduation ceremony. Excluding him from competing for the post when he met the minimum requirements even after the years of experience were increased is therefore considered unfair by the applicant. The applicant submitted that the desired outcome did not involve the reversal of the 2nd and 3rd respondents' appointments, as such having joined them in the matter should not be construed as having that as its purpose (**PSA V Minister of Justice** is referenced in this regard). The applicant argued further that the selection panel did not have the authority to change the requirements of the advert from six (6) years post-qualification experience to that of extensive 9 years and above in service.
- [22] In support of this view reference was made to **Letsogo v General Public Service Sectoral Bargaining Council** JR 350/16 at paragraph [22] wherein it is stated that "The arbitrator failed to realise that the selection panel could not mero motu change the requirements for the position; they did not have the power and / or the authority to do so. These requirements as set out in the advertisement were set out by the relevant executive authority, being the Minister and could be only changed by him/ her". Reference is also made to Section C.1.1 of Public Service Regulations regulating appointment and promotions in terms of which "An executing authority shall determine the composite requirements for employment in any post on the basis of the inherent requirements of the job". It was further argued with reference to paragraph [23] in the **Letsogo** matter and **NUTESTA v Technikon Northern Transvaal** [1997] 4 BLLR (CCMA) at p.473 that having done so, the respondent will have committed an unfair labour practice since it did not re-advertise the position. The applicant argued that testimony that Mr. Mathebe and Ms. Khosa made the last list despite having not met the requirements was never challenged by the respondent. It was pointed out that the same candidates' names also appeared on the short-list as it appears on page 9 of the respondent bundle.

² IMATU obo Visagie v Mogale City Municipality (JR 86/15) [2017] ZALCJHB 432 (handed down on 20 November 2017)

³ (C 1034/2015) [2015] ZALCCT (handed down on 9 May 2018)

- [23] The applicant argued further that the failure of the 1st respondent to shortlist him on the basis that his qualification was dated 13 June 2013 meant they considered irrelevant considerations as the CV and the Z83 form were sufficient documents that ought to have been considered by the selection panel, the meaning of additional information as per the form having been something the selection panel should have known in light of requirements for selection and appointments within the public service. The applicant held the view of that the actions of the 1st respondent were arbitrary, capricious and unfair towards the applicant. The applicant referred to the principles in **Apollo Tyres South Africa South Africa (Pty) v CCMA and others** (2013) 34 ILJ 1120 (LAC) in terms of which an employee who alleges an unfair labour practice related to promotion need not prove that he has a right to promotion. While in **City of Cape Town v SA Municipal Workers Union obo Sylverster and Others** (C1148/2010)[2012] ZALCCT 40; [2013] 3 BLLR 267 (LC); (2013) 34 ILJ 1156(LC) (7 September 2012) the Court expressly rejected the notion that the employer has the prerogative to decide who to appoint and that it should not be questioned when it exercises that discretion as the proper yardstick is “fairness to both parties”.
- [24] The applicant questioned the 1st respondent’s failure to call as a witness the chairperson of the selection panel to explain what was considered in excluding him, the increasing of the years of experience and how the other 2 candidates made it to the short-list. It was the applicant’s view that in light of decided cases, an adverse inference should be drawn from a failure to produce a witness to give relevant evidence. The applicant referred to paragraph 9 (1)(c) VI/III of the Public Service Commission Staff Code which provides that ‘protective promotions are effected on the recommendation of a Commission to protect the position of officers and employees – . . . who are found to have been prejudiced in the filling of a promotion post after such a post had been filled., and submitted that such amounts to providing all the benefits of a promotion to an employee without actually appointing them in order to ensure that the appointment of another in the contested post remains intact.
- [25] The applicant referred to **Kwadukuza Municipality v Rajamoney and others** (D880/10)[2013] ZALCD 17 (13 June 2013) at para 20 where the Labour Court (per Judge Cele) set out that: “It is trite that a “protected promotion” may be granted as a relief where evidence showed that but for the unfair labour practice the contesting candidate would probably have been appointed to the contested post” Further the court cites the cases of **Minister of Safety and Security v SSSBC and Others** [2010] 9 BLLR 965 (LC) and **PSA v Department of Justice and Others** [2004] 2 BLLR 118 (LAC) in which cases the only impediment to granting of similar relief was a failure to join the party with a direct and substantial interest in the matter. Accordingly, the applicant prayed for a protected promotion and an amendment to his service record.

1st Respondent

- [26] The 1st respondent argued that applicant confirmed that the academic record from which he counted the 6 years post qualification experience was not attached to his application, nor presented to the panel for consideration. The applicant’s response that the certificate was his qualification was held to corroborate the evidence of Mr. Matseba that this is what was considered as the qualification when the calculation was made. The 1st respondent

argued that the applicant failed to substantiate the allegation that two candidates that did not meet the requirements were short-listed, something which was disputed by Mr. Matseba as a panel member. With regard to the applicant's argument that on page 8 the panel considered 9 years extensive experience, the respondent submitted that Mr. Matseba explained that they were looking at the post qualification experience. The 1st respondent held the view that the applicant failed to show that by increasing the post qualification experience to 9 years it had acted unfairly, while Mr. Matseba had taken them through the relevant sections in the policy proving that only 5 candidates could be shortlisted and that the panel could decide on the shortlisting method.

- [27] The 1st respondent argued further that the applicant fabricated a meeting with Mr. Matseba in March 2019, something disputed by Mr. Matseba as he testified to having been sworn to secrecy as such he could not have discussed anything outside of the shortlisting meeting, the emails between him and HRM bearing testament to that. The 1st respondent felt that it should be noted that the applicant did not challenge the appointment of the 2nd and 3rd respondent despite having joined them to the matter. The 1st respondent submitted that the applicant had failed to prove that he met the requirements of the post as advertised and after the years of experience had been adjusted by the panel, nor did he show that such action constituted unfairness. The 1st respondent referred to **Letsogo v Department of Economy and Enterprise Development and others** (JR350/16) (2018) ZALCJHB 48 (2018) 39 ILJ851 (LC) (9 January 2018) where the Court said that "to compete in the process, to be shortlisted or even considered for appointment an applicant must possess the necessary qualifications. Only then the employer consider other factors such as training, skills, competence, knowledge and the need to redress imbalances of the past. Screening of applicants should take place according to the initial criteria for the job".
- [28] The respondent also referred to **Sun International Management PTY LTD v CCMA and others** (LC) (unreported case no. JR 939/14, 18-11-2016) (Lagrange J) a judgment considered important as highlights that when an employee raises an unfair labour practice dispute relating to promotion, in order to be successful, it must be shown that he or she met the inherent requirements of the post in question and that he or she was the best candidate for the post. As well as that the decision of appointing another individual in preference over said employee was unfair. Accordingly, the 1st respondent's prayer was that the finding in this matter should be that an unfair labour practice related to promotion was not perpetrated against the applicant and that he is not entitled to a protected promotion.

Probabilities

- [29] The starting point seems to be whether the applicant met the requirements of the advertised post when he applied for it. It is only once this matter is resolved can we consider whether the adjustment of the requirements was within the powers of the 1st respondent and whether it served to unfairly exclude the applicant from competing for the position. I submit that evidence as summarized in this award represents the relevant facts to be considered, which are a true reflection of what was submitted in the arbitration, however, the audio recording is also available for scrutiny of the parties. It was not the applicant's testimony, nor was it a fact established or contended in the

arbitration, that he met the increased criterion of 9 years post qualification experience as submitted in argument. Had that been the case I submit that the approach in the case of the applicant would have been different. Given that there is a dispute as to what constitutes a qualification and when it was obtained, both parties appearing to have diametrically opposed views on the matter, I have to consider what a reasonable person in the position of a panel member would conclude with the information at their disposal. It is the applicant's view that he obtained his qualification in November 2012, hence his CV says he obtained his qualification in 2012. He attached his academic record which according to him shows that he obtained his qualification then.

[30] The applicant on his own admission, however, did not attach the academic record to his application, as such his CV only stating that he qualified in 2012 may have created the confusion that in order to alleviate, the academic record may have been necessary; the view by the applicant in terms of what is said in the Z83 form notwithstanding. Mr. Matseba even stated that it is difficult to say by looking at the CV as to when the applicant qualified, as such they would have concluded that it was at the end of the year. The applicant must concede that if that were the case then his experience would have fallen just short of a month to meeting the minimum requirements. The confusion in my view appears to have manifested itself in what the applicant testified to have been told by Mr. Matseba that there had been a debate as to whether he met the requirements or not. I note the view of the 1st respondent and Mr. Matseba that he was sworn to secrecy as such he could not hold meetings to discuss such issues with candidates, however, the email to which the applicant attached his academic record when requested to do so was not disputed. Hence it appears that there must have been a debate around this issue because I cannot see why at that stage the applicant did not in the least make the long-list. I am more convinced of this issue because the version of Mr. Matseba that the meeting did not happen was not put to the applicant the same way other versions were.

[31] As to whether the selection panel was empowered to adjust the requirements of the advertised post without the post being re-advertised, the applicant referred to the **Letsogo** matter. I submit, however, that the Court found the decision of panel to have being made without authority and served to alter the inherent requirements of the job, something they did not have the authority to do so. As rightly pointed out by the applicant with reference to Section C.1.1 of the Public Service Regulations, such change would not be permitted. The panel in my view did not alter the inherent requirements of the job as they did not interfere with the core professional attributes required of candidates in the posts; they simply employed a method of reducing the number of candidates, who all met the minimum requirements, so as to arrive at a number of candidates per post consistent with policy. Some method had to be employed, and I submit that the provision referred to by Mr. Matseba in the Recruitment and Selection Policy was applicable and having used that to increase the number of years post qualification fell within the realm of reasonableness.

[32] The view of the applicant that the respondent did not challenge the submission that Mr. Mathebe and Ms. Khosa made the short-list despite having not met the requirement of 9 years post qualification experience does not hold water because Mr. Matseba disputed that anyone made the list who did not meet the requirements. This was for

the applicant to prove as the party making the allegation and not the party responding to it. The applicant held the view that an adverse inference should be made when the respondent did not call the chairperson of the selection panel to talk to these issues and I submit that this is more applicable to a party who bears the onus and not the other way around. The issue of whether the years of experience amounted to post qualification experience or 9 years of service is not one I am of the view should be entertained as it did not form part of the applicant's evidence that this is what the change in requirements amounted to. As I have indicated above, the contention of the applicant was that the years of service post qualification is what had been increased, not that it had been changed to something else altogether. The applicant in cross-examining Mr. Matseba even conflated issues when contending that having joined the Department in 2010, Ms. Khosa did not have 9 years' experience when applying for the post. It has always been the 1st respondent, and I submit the applicant's contention, that the 9 years' experience spoken of, whatever the belated interpretation of the minutes on page 8 may have been, pertains to post qualification.

- [33] It is therefore my finding that on the evidence as analyzed, the applicant as per the academic record he was in possession of before being issued with the certificate may have met the minimum requirements as per the advertisement. The panel may have been unsure as to whether they should have relied on the certificate or something else, something which they obviously resolved by considering the certificate. This of course would imply that a delay in the issuing of a certificate would mean that one cannot be said to have obtained a qualification, which would of course would be unreasonable. This is, I submit, was a lapse in judgment, however, had the applicant made the long-list, he would have added to the number of candidates, ultimately falling short of appearing on the short-list as he did not have 9 years post qualification experience. The decision of the short-listing panel to increase the years of experience was not unreasonable in my view and the failure of the applicant to substantiate the claim that others who also did not meet the amplified criteria made the short-list means that the applicant has not shown arbitrary or capricious conduct of the 1st respondent that constitutes an unfair labour practice related to promotion.

AWARD

- [34] The applicant, PSA obo KM Mudau, has not established an unfair labour practice related to promotion as perpetrated by the 1st respondent, Department of Water and Sanitation.
- [35] The applicant is therefore not entitled to the remedy sought.
- [36] I make no order as to costs.



Signature:

GPSSBC Panellist: **Mohau Clement Ntaopane**