



GENERAL PUBLIC SERVICE
SECTOR BARGAINING COUNCIL



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ARBITRATION AWARD

Arbitrator: Nozibusiso Faith Gumede _____
Case No.: GPBC 1913-2019 _____
Date of Award: 19 October 2020 _____

In the ARBITRATION between:

NEHAWU obo TEBOGO SARAH LETSHWENE _____
(Union / Applicant)

and

NATIONAL DEPARTMENT OF PUBLIC WORKS _____
(Respondent)

Union/Applicant's representative: Jimmy Sithole and Lourens Jansen – Union Officials _____
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DETAILS OF THE HEARING AND REPRESENTATION

1. This matter was held under the auspices of the General Public Service Sector Bargaining Council ("GPSSBC"). The hearing took place at National Department of Public Works on 1 September 2020 and 9 October 2020.
2. The applicant, Tebogo Sarah Letshwene was represented by Jimmy Sithole and Lourens Jansen, the union officials from Public Servants Association of South Africa (PSA) whilst the respondent, National Department of Public Works was represented by Lebo Hlongwane, the Deputy Director: Employee Relations. The service of the interpreter was not required. The hearing was digitally and manually recorded.

ISSUE (-S) TO BE DECIDED

3. I am required to determine whether the collective agreement (**GPSSBC Resolution 5 of 2009 -Agreement on the implementation on an Occupation Specific Dispensation (OSD) for engineering Technicians, Survey Technicians, Architectural Technicians, Draughtspersons, GIS Technicians and Scientific Technicians**) was correctly interpreted and/ applied or not.

BACKGROUND TO THE DISPUTE

4. The applicant is employed as Control Engineering Technician, at the notch of R56 545.00 per month. She seek retrospective payment, as a relief in this matter.

SURVEY OF EVIDENCE AND ARGUMENT

5. I do not intend to deal with every aspect of the evidence as it is recorded and will only record the part of the evidence that I deem necessary for the purpose of this determination. I will deal with the evidence of all the witnesses in the same manner. The parties submitted the documentary evidence to support their cases.

APPLICANT'S CASE

6. **Tebogo Sarah Letshwene**, the applicant testified as follows:

7. She was at notch R219 651.00 on 30 June 2009, and should have been translated to R342 282.00, as per Resolution 5 of 2009. However, she was incorrectly translated to a non-OSD notch of R221 850.00 on 1 July 2009. In terms of this resolution, the notch R219 615.00 should have been translated to R222 408.00. However, this notch (R222 408.00) does not appear on PERSAL which proves that she was not translated to it.
8. She was also moved to non-OSD notch of R245 145.00 on 1 July 2009 which surpassed R225 744.00, as the last leg of Grade A. Therefore, Grade B notch R342 282.00 was appropriate for her progression, and the Cost-of-Living (COLA) should have been added on this notch. The respondent failed to justify how the non-OSD notch R245 145.00 was translated to R245 760.00, as reflected on the PERSAL records.
9. Under cross examination, she argued that the respondent failed to provide proof, as to how the R245 760.00 was implemented.

RESPONDENT'S CASE

1ST WITNESS

10. **Minkie Selena Booysen** (Booyesen), the Deputy Director: Condition of Services testified as follows:
11. She conceded that the applicant's employment fall within the scope of the Resolution 5 of 2009. She was translated from notch R219 651.00 to R222 408.00 on 1 July 2009. She receive a pay progression from R219 615 to R221 850.00 on 1 July 2009 before the OSD was implemented in 2010. She was not translated from R221 850.00, and she was not at this notch on 30 June 2009. The notch R245 145.00 was the cost of living (COLA) adjustment effected on 01 July 2009.
12. The employees who were earning R226 308.00 per annum, as on 30 June 2009 were translated to R342 282.00 notch, as oppose the applicant who was earning R219 615.00 during this period. The R222 408.00 plus COLA was adjusted to R245 760.00 by the respondent.
13. Under cross examination, she stated that the OSD translation was implemented in 2010 at the notch of 30 June 2009. The R219 651.00 was not an OSD notch. The employees were translated to A or B grades, and the applicant was translated to Grade A, as she was earning R219 651.00 on 30 June 2009. Clause 13.1 stipulate that "*employees will be translated to appropriate posts and salary in accordance with the posts that they occupy at the time of translation*". The implementation was in accordance with this clause, and it came into effect on 01 July 2009. This resolution does not stipulate that the translation must be effected after pay progression. The COLA and pay progression were calculated, as per 30 June 2009 notches, the same method was used in the implementation of the OSD. The COLA and pay progression

had to be implemented regardless of the OSD delays. The R221 850.00 did not play any role in applicant's translation because she was not at this notch, as on 30 June 2009.

ANALYSIS OF THE EVIDENCE AND ARGUMENT

14. In terms of section 138(7) of the Labour Relations Act 66 of 1995, I am required to issue an award with brief reasons, and what follows is a summary of the evidence and argument that I regard as necessary to substantiate my findings and determination of the dispute. It is the applicant's contention that the respondent did not properly interpret and apply aforementioned resolution.
15. However, the PERSAL records shows that she was at notch R219 651.00 on 1 July 2008. It was not disputed that she was translated as per the provisions the 1st phase of this resolution. Clause 13.2.2 of this resolution stipulate that "**1st phase** – *minimum translation from the current post as at 30 June 2009, to the appropriate post and salary grade, as contained in Annexure A1*". The applicant conceded that she was at notch R219 651.00 on 30 June 2009. Therefore, the translation should have been implemented from this notch.
16. The applicant argued that the resolution prescribes R222 408.00, as opposed R221 850.00. However, the PERSAL records shows that R221 850.00 was effected on 1 July 2009, as pay progression. The R245 154.00 notch is also reflected at an adjustment on the PERSAL printout. The respondent's witness averred that it was COLA adjustment which also became effective on 1 July 2009. This implies that notch R221 850.00 and R245 154.00 are indeed the non-OSD notches.
17. However, it is R245 760.00 which is reflected as translation OSD notch on the PERSAL printout. The applicant argued that the respondent failed to justify the non-OSD amount of R245 145.00 which was translated to R245 760.00. However, the respondent's witness argued that she was translated from R219 651.00, as this is what she was earning at the time of translation. The resolution does outline that the translation should be from the current post, as on 30 June 2009. The evidence led shows that she was earning R219 651.00 at the time or on 30 June 2009 not as on 1 July 2009.
18. The respondent's witness averred that R222 408.00 plus COLA was adjusted to R245 760.00. However, the applicant contended that it should have been R342 282.00, as she had surpassed the last leg of Grade A which was R225 744.00. This suggest that she should have been translated after COLA and pay progression implementation. However, there was no evidence led to show that the resolution make such provisions. It also evident that R222 408.00 does not appear on the PERSAL records. However, there was no evidence led to show that she had suffered prejudice due to this omission.

19. Moreover, the respondent's witness averred that it was employees who were at notch R226 308.00 who were translated to R342 282.00 on 1 July 2009. I also noted that there was no evidence led to show that the applicant was earning R226 308.00 at any stage or on 30 June 2009.
20. Therefore, the applicant did not discharge a burden of proof in this matter, and the relief sought will not be granted.

AWARD

21. I make the following order:
22. The Resolution 5 of 2009 was correctly interpreted and applied in translating the applicant.
23. I make no order as to costs.



(Nozibusiso Faith Gumede) Arbitrator