



GENERAL PUBLIC SERVICE
SECTOR BARGAINING COUNCIL



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ARBITRATION AWARD

Panellist/s: DOLLY MAHASHA
Case No.: GPBC 2068/2019
Date of Award: 04 November 2020

In the ARBITRATION between:

PSA obo T NDHLOVU

APPLICANT

AND

DEPARTMENT OF PUBLIC WORKS

RESPONDENT

Union/Applicant's representative: SEAN VERMEULEN OF PSA

Applicant's address:

Telephone:

Telefax:

Respondent's representative: THEMBI MALULEKE

Respondent's address:

Telephone:

Telefax:

ARBITRATION AWARD

DETAILS OF HEARING AND REPRESENTATION:

1. The matter was set down for hearing as an arbitration process on the 13 October 2020. The matter was conducted through virtual platform.
- 2) The matter was first scheduled for arbitration for 28 August 2020. The respondent representative requested that the matter should be adjourned to allow the department to further go some investigations with regard to the matter. The matter was scheduled again for arbitration for 07 October 2020. The respondent representative again requested the matter to be adjourned in order to seek mandate to settle the matter. The matter was scheduled again for arbitration for 13 October 2020. The respondent representative again requested the matter to be adjourned, such request was refused and the ruling was made so as to proceed with the matter.
- 3) The employee, Tshepiso Ndhlovu, attended the hearing and was represented by Sean Vermeulen of PSA.
2. The employer was also in attendance and represented by Thembi Maluleke, an Assistant Director, employed as such by the Respondent.
3. Comprehensive bundles of documents were handed into the evidence and utilized during the arbitration hearing
4. The closing arguments from the applicant and the respondent was well received and duly considered in my award.
6. The hearing was digitally recorded.

ISSUE TO BE DECIDED:

7) This matter is brought in terms of section 24(2), section 24(5) of the labour relations Act 66 of 1995 and relates to the interpretation and application of a collective agreement. It is the applicant case that the respondent failed to interpret and apply clause 8.4, 7.6.5, 7.8 of the collective agreement 09 of 2009 ("the agreement").

BACKGROUND TO THE ISSUE.

- 8) The applicant is a construction manager employed as such by the respondent.
- 9) She lodged an internal grievance because the respondent failed to upgrade her salary in terms GPSSBC Resolution 9 of 2009.
- 10) That her dispute is only about average performance grade progression and not about top performers' grade progression.
- 11) That the respondent has failed to move her salary in terms of the translation key table from Construction project manager Grade A to construction project manager Grade B.

SURVEY OF EVIDENCE AND ARGUMENT:

12. It is not the purpose or the intention of this award to provide a detailed transcription of all the evidence that was placed before even though all evidence and arguments were considered. I have summarized the evidence that I found to be the most relevant to make the determination of this dispute.

Applicant's Submissions

- 13) It is the applicant's case that the applicant scored 100% given the fact that she was awarded a notch adjustment during the 2011/2012 financial year and not 50% as alleged by the respondent.
- 14) Thai referred to the agreement clause 7.6.5 which was read for the record and state "that notches in terms of pay progression shall also be considered if the employee has completed a period of at least twelve months and has rendered consistent acceptable level of performance during the period under review (i.e. a minimum overall performance rating score of 100% must be achieved").
- 15) That the respondent failed to differentiate between top performer and average performer and as such she qualifies as an average performer since she worked with the respondent for more than 6 years. Thai referred to the agreement Clause 8.4 was read into the record and states that "for employees on the engineers work streams, top performers may grade progress after 3 years and average performers may grade progress after 6 years. Only 20% of top performers may grade progress in any given year.
- 16) The applicant also testified that she was never subjected to any disciplinary hearing regarding her performance and thus requested me to interpret clause 7.8 of the agreement. It was further the applicant submission during cross examination that the aforesaid assessment was with the HR.

Respondent's submissions

No submissions by the respondent

Arguments

Applicant's arguments

- 17) That failure by the respondent's to call witnesses in support of their case should make the finding to the effect that the applicant's case went unchallenged/opposed.
- 18) That the respondent must pay wasted costs to the council as the matter was set down for arbitration on the 28 of August 2020 and 30 of September 2020 and adjourned on both dates to allow the respondent representative to seek mandate to settle the matter. According to the

respondent representative a submission was made to management to grant approval for the applicant's grade progression

Respondent's arguments

- 19) The dispute against an employer is about grading for top performers and not average performers
- 20) That failure of the applicant to provide the commissioner with PMDS performance assessment for the year 2011/2012 is a clear indication that the applicant could not provide proof of the aforesaid assessment to the HR.
- 21) That the applicant capitalised on the error made by the employer to pay her the grade progression benefits she was not entitled to.
- 22) The applicant did not do much in showing cause that she indeed qualified for the pay progression and subsequent qualifies for OSD grading progression to a higher grade.
- 23) That the applicant's case be dismissed.

ANALYSIS OF EVIDENCE.

- 20) The applicant referred a dispute in terms of section 24 of the LRA. Section 24 of the LRA provides for arbitration of disputes about the "interpretation or application of collective agreement.
- 21) The applicant's case is that the respondent failed to interpret clause 8.4, 7.6.5 and moreover failed to consider clause 7.8 of the agreement.
- 22) I find that literal interpretation of clause 8.4 of the Agreement is interpreted to mean that if the employee has worked for three years he/she may be classified as a top performer and if worked for 6 years he/ she would be classified as an average performer. I agree with the applicant when she says that she qualifies as an average performer because she has worked with the respondent for more than 6 years.
- 23) The literal interpretation of clause 7.6.5 means that an employee would be entitled to a pay progression to the minimum score of 100% if he/ she has completed a period of twelve months with the respondent and had achieved a satisfactory score.
- 24) I was also tasked with the responsibility to interpret clause 7.8. Which deal with the poor performance. During the testimony in chief, the applicant testified that she was never subjected to any disciplinary hearing regarding poor performance. My interpretation to this clause is that, since the corrective measures was not taken against the applicant with regard to her performance; it means her performance was satisfactory to the employer.
- 25. On the basis of the reasons provided above, I find the rationality to interfere with the Respondent's decision to upgrade the salary of the Applicant.
- 26. I therefore find that the applicant had prove on a balance of probabilities, that the respondent had failed to interpret the above mentioned clauses
- 27. The employee is seeking as a relief, to order the employer to upgrade her salary from 50% to 100%. Section 193 of the LRA empowers the Commissioner to award reinstatement, re-appointment or order compensation. It is my finding that the relief sought by the employee is a competent one.

AWARD

28) My finding is that the correct interpretation and application of clause 7.8 mean that for an employee to be classified as an average performer he/ she must have worked with the respondent for six years.

Clause 7.6.5 means that an employee would be entitled to a pay progression to the minimum score of 100% if he/ she has completed a period of twelve months with the respondent and had achieved a satisfactory score.

Clause 7.8 means that the corrective measures would be taken against an employee whose performance has been assessed as poor. It is my findings that the applicant has complied with the provisions of GPSSBC resolution 9 of 2009 "agreement". If that was not the case the respondent would have rebutted nor to call witnesses to testify against the evidence presented by the applicant.

29) The respondent is compelled to comply with clause 8.4, 7.6.5, and 7.8 of the agreement.

30) The respondent is ordered to pay the costs of the first sitting which was on 28 August 2020 and the second sitting which was on 13 October 2020.

31) There is no order for cost.


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MAHASHA D
GPSSBC PANELIST.