



ARBITRATION AWARD

Panellist/s: Seretse Masete
Case No.: GPBC 1895/2017
Date of Award: 8/01/2021

In the ARBITRATION between:

AF MAOKA and One Other

(Union / Applicant)

and

DEPARTMENT OF CORRECTIONAL SERVICES.

(Respondent)

Union/Applicant's representative: Own representation
Union/Applicant's address: Private X1 Lynn East 0039
Telephone:
Cell: 00822260357

Respondent's representative: Phehello Mofokeng
Respondent's address: 124 WF Nkomo street Pretoria
Telephone:
Cell: 0727871184

Particulars of proceedings and representation

1. The matter was held on 10 December 2020 and 08 January 2021 at the employer's premises in Pretoria at 9h00.
2. The Applicants, **Abram Fikkie Maoka (1st employee) and Kgoeng P Rapolai (2nd employee) (employees) represented themselves** and the respondent, **Department of Correctional Services (employer)**, was represented by its employee Relations officer, Phehello A Mofokeng.
3. The proceedings were in English and digitally recorded.

Issues to be decided

4. I have to decide whether or not the failure by the employer to implement OSD second phase to the two employees, constituted an unfair Labour practice.
5. I further have to determine an appropriate remedy should I find that the employer committed an unfair labour practice against the employees.

Background to the dispute

6. The 1st **employee** was employed as a security officer since 31 July 1998 and was earning R235 509-00 per annum at the time of the dispute. The second employee was employed on 15 February 1999 and was earning R235 509-00 per annum at the time of the dispute.
7. Both employees alleged that the employer failed to implement the OSD second phase to them and sought that to be corrected.
8. The employer rejected the allegations by the employees citing that OSD was implemented to all the employees.
9. The employee called no witness and submitted one bundle of document marked **Bundle A (the bundle)** while the employer called no witness and used the same bundle of documents used by the employees.

Survey of evidence and arguments

The Employees' version

The employee, Kgoeng Rapolai, testified under oath as follows:

10. The Department failed to place him and his colleague on the correct OSD salary notch of R242 577,00 as supported by **page 3 of bundle A paragraph 4.1** signed by the parties to the agreement. In April 2016 he was on R235 509, the employer was supposed to place them at R242 577,00, but that did not happen **see Page 39 of the bundle**. The employer should prove that it did place them at the correct notch.
11. It was put to him that **Page 41 of the bundle**, is Mr Fourie's information, not the applicant's. It was further put to him that using the other person's information without his permission was an offense. He answered that Mr Faurie agreed in writing. He brought the Faurie document because the correct notch did not appear on his (employee) printout. It was put to him that he could not make his own calculations, but should produce proof. He answered that the only way of proving that was the date of appointment. He did not have anything extra document to submit except the proof of years of experience and Mr Four's print-out. Page 40 on top was a persal printout and at that time his notch was R23 5509.00
12. Page No sentence

The employer's evidence and arguments

13. **Page 121 of the bundle**, recognition of OSD phase 2. This was for those appointed in correctional service Act. The employer entered into a settlement agreement on [page 1-6 of bundle A. The settlement was to settle all the dispute. All the employees were translated and different experience was considered including the two applicants. On page 40 of bundle A, the applicants were at R235 509,00. The figures seen on the persal printout are the correct ones. If there were any discrepancies, the system could have alerted the employer.

It was put to him that if they were placed at the correct notch, his notch and the notch of Mr Fourie appearing on the printout would have been the same. He responded that the printout information was correct and the employer did not have any knowledge of the R242 577-00. In terms of **Settlement agreement 1 of 2016**, all employees were to be awarded OSD second phase based on their year of experience. In relation to that paragraph, the employer implemented the agreement. The 1st employee, Abram Fikkie Maoka confirmed all the testimony by confirming the testimony of his colleague, the 2nd employee.

14. Every Correctional service official who qualified was translated properly to his or her proper notches as guided by the years of experience as contemplated by the **Settlement Agreement 1 of 2016 paragraph 4.1**. The two applicants were therefore properly translated in their correct notches as of 01.04.2016 as reflected on **page 39 and 40 of the bundle**. The information contained on these pages is the persal generated information for both the applicants and this information is authentic and correct and the applicants confirmed that the persal report on **pages 39 and 40** was authentic and correct and reflected their correct salary progression in the Department.
15. The applicants failed to produce any proof to suggest that the employer failed to translate them in their correct notches of R 242 577.00 as alleged by them.

The employer's evidence was so solid in that the applicants failed to cross examine the witness of the employer on any part of the evidence.

The fact that the applicants did not have any proof of wrong doing from the employer's side confirmed that the applicants dispute against the employer was frivolous, malicious and was without merits.
16. All other issues which were mentioned by the applicants in their evidence in chief were irrelevant to the dispute and must not be considered by the Commissioner in arriving at a decision. The applicants case should therefore be dismissed.

Analysis of the evidence and arguments

17. **Section 138(7)(a)** of the **Act** requires me to issue an award with "brief reasons". I therefore will only concentrate on the summary of the evidence relevant to my findings. The Occupation specific dispensation (OSD) is dealt with in terms of **PSCBC Resolution 1 of 2007** Which is given effect by **Resolution 2 of 2009** in providing OSD for Correctional Services officials. **Paragraph 11.1 of Resolution 2 of 2009**, provides that *with effect from 1 April 2010 the recalculation of salary notch*

position shall be based on Department of Correctional Services(DCS) experience as at 30 June 2009 based on years of experience obtained in addition to the experience required for appointment on that level. The recalculation of the salary notch will be limited to officials in production levels (salary levels 3 to 8). Paragraph 7.3.1 of the same resolution provides that no person shall receive a salary (notch or package) that is less than what she/he prior to the implementation of the OSD.

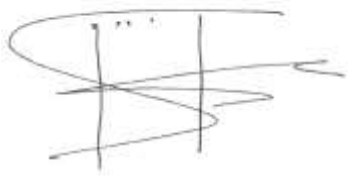
18. **Common cause issue are**; the employees were employed by the Department and were within the OSD salary bracket in terms of **Resolution 2 of 2009**. They did lodge a grievance which was not dealt with in their favour. The **Settlement Agreement 1 of 2016** provides that all OSD qualifying employees on salary levels 3 to 8 shall be placed on their correct notches they would have been on as at **01 October 2016**. The persal printouts on **pages 39 to 42 of the bundle** were authentic.
19. The employees met all the requirements in terms of qualifying for OSD in terms of Resolution 2 of 2009, and this was not in dispute. The employees used their colleague's (G Fourie) persal information on **page 41 of the bundle** to benchmark their argument. The employer representative was not happy with the use of other employee's information without his (employee) consent. He then went on to indicate that the issue would be investigated and the two employees(applicants) might be charged with misconduct. He did not dispute that G Fourie was the employee of the Department who, like the two employees, qualified for OSD. He further did not dispute that G Fourie's notch was adjusted in terms of the **Settlement Agreement 1 of 2016**. He further did not dispute that G Fourie's notch differed from those of the two employees as at 01 October 2010. My take is that the document was not illegal, but I cannot say it was properly obtained because Mr Fourie was not called to come and confirm or deny whether he gave permission to the employees to use it or not. The employer further did not challenge the authenticity of the information on the document, instead, he agreed that the persal printouts on **pages 39 to 42 of the bundle** were authentic. The issue of disciplining the employees for having used G Fourie's information, is the employer's prerogative. The employer further did not lead evidence to show whether there was some difference in terms of the number of years between the employees and G Faurie which might have caused the difference in the salary notches.
20. Having said all that in the above paragraph, I am going to compare G Fourie's history of salary adjustment to those of the two employees. The 1st employee salary notch was **R212499-00** as at 2015-04-01, see **page 39 of the bundle**. The 2nd employee's salary notch was **R212499-00** as at 2015-04-01, see **page 40 of the bundle**. The salary notch of G Fourie at the same year, 2015-04-01, was also **R212499-00**, see **page 41 of the bundle**. So the three employees were at the

same salary notch in **April 2015**. On 01 April 2016, the 1st and the 2nd employee were at the same salary notch with G fourie, see **pages 39 to 42 of the bundle**. Also if one looks at 01 July 2009, the two employees were at the same notch of **R23086-00** with G Fourie. On 16 April 2016, both the employees and G Fourie were at the same notch of **R235509-00**.

21. The **settlement agreement 1 of 2016** provides that all OSD qualifying employees on salary levels 3 to 8 shall be placed on their correct notches they would have been on as at 01 October 2016, **see page 3, paragraph 4.1 of the bundle and Paragraph 7.3.1 of Resolution 2 of 2009** provides that *no person shall receive a salary (notch or package) that is less than what she/he prior to the implementation of the OSD*. Both employees had the required years of experience and also fell within the salary levels 3-8 as per **paragraph 11.1 of Resolution 2 of 2009**.
22. G Faurie's notch was adjusted to R242 577-00 as at 01 October 2016 as per the settlement agreement, see **page 41 of the bundle**. There was no 01 October 2016 adjustment for the two employee's notches, see **page 39 and 40 of the bundle**. The employer representative did not lead evidence on these differences, even in his closing arguments, he hardly said anything related to those differences. On the balance of probabilities, I take the version of the employees. The 1st and the second employees were unfairly treated by the employer when adjustment of notches were made to the qualifying employees in terms of the **settlement agreement 1 of 2016**.

Award

23. The Employer, **Department of Correctional Services**, committed an unfair labour practice by failing to adjust the salary notches of the 1st employee, **Abram Fikkie Maoka** and the 2nd employee **Kgoeng P Rapolai**.
24. The employer is ordered to adjust the notches of the two employees in paragraph 22 above from **R235 509-00** as they were as at **01 April 2016 to R242 557-00** as they were supposed to have been as at **01 October 2016** retrospectively from **01 October 2016**.
25. The adjustment must be made on or before the **28th of February 2021**.
26. The persal system once punched the effective date, is able to calculate the difference in areas and those areas must be paid to the employees on or before the **15th of March 2021**, failing which interests would accrue.
27. No order as to cost.

A handwritten signature in black ink, appearing to be 'Seretse Masete', written over a faint grid of lines.

Seretse Masete

GPSSBC Part Time Panellist