

Council Name

ARBITRATION AWARD

Panellist/s: Seretse Masete
Case No.: GPBC2673/2018

Date of Award: 10/08/2020

In the ARBITRATION between:

NEHAWU obo MAUTLA and 2 Others

(Union / Applicant)

and

DEPARTMENT OF WATER AND SANITATION.

(Respondent)

Union/Applicant's representative: N R Masekela

Union/Applicant's address:

Telephone:

Cell:

Respondent's representative: Prince Ngobeni

Respondent's address:

Telephone:

Cell:

Particulars of proceedings and representation

1. The matter was held virtually on 20 July 2020 and both parties were represented.
2. The Applicants, **Mautla and 2 others (employees)** were represented by NR Masekela, a Nehawu representative and the respondent, **Department of Water and Sanitation (employer)**, was represented by its employee Prince Ngobeni.
3. The proceedings were in English and audio virtually recorded.

Issues to be decided

4. I have to decide whether or not the conduct of the respondent by not upgrading the post occupied by the employees, constituted an unfair labour practice.
5. I must determine the appropriate relief should I find that the conduct of the employer constituted an unfair labour practice against the employees.

Background to the dispute

6. The **employees, A Mautla**, was employed on 01 February 2011 and the other two employees, **BA Matjeni and S Mkhwanazi** were both employed by the employer on 01 February 2017. Mautla was earning **R120780 per annum** and the latter two employees were earning **R104082 each per annum** at the time of the dispute.
7. The posts of other employees who were occupying a similar position with them were upgraded from level 2 to level 4 but theirs.
8. They felt it was an unfair labour practice for their posts not to have been upgraded just like those of their fellow colleagues. They lodged a grievance which graduated into a dispute which was referred to the council.
9. They wanted their posts to be upgraded and their payment to be back dated.
10. The employer rejected the employees' version citing that their matter was still in the hands of the chamber and their dispute was premature.
11. Parties agreed on their own not to lead evidence but to only submit heads of arguments for consideration by the commissioner. Both parties submitted bundles of documents marked **employee's bundle** and **employer's bundle** respectively through an email.

Survey of evidence and arguments

The Employees' version

The employee's representative, NR Masekela presented his heads of arguments as follows:

12. The employees were employed at salary level 2 and the Department upgraded the posts of other employees doing the same work from salary level 2 to salary level 4 as per the **award of SJ Tabane and 55 others, see the attached award in th employes' bundle.**
13. The employees (Mautla and the other2) were in the same category with the other employees, Tabana and 55 others, whose posts were upgraded and the employer confirmed that during the narrowing of issues. They (employees) did not refer a dispute of interpretation and application of a collective agreement. **Resolution 1 of 2018** (the agreement) was irrelevant to their dispute. The posts of **Ramphela and 8 others** who were also in the same category with the employees doing the same work, were upgraded after the signing of the said collective agreement. They prayed that the posts of the three employees be upgraded as well.

The employer's version

The employer's representative, Prince Ngobeni submitted his heads of arguments as follows:

14. There was a collective agreement, **Resolution 1 of 2018, (the agreement)** signed by both parties with the purpose of dealing with similar matters raised by the employees. Nehawu was part of the agreement and it had not withdrawn from the agreement at the time of the dispute. The dispute of the employees was covered in the said agreement. **Paragraph 4.1(e)(i) of the agreement**, provides that a consultative chamber Task Team would be established to deal with remuneration of employees at salary level one (1) to four (4) and issues of equal pay for work of equal value. **Clause 7.1 of the agreement** provides that if there is a dispute on the interpretation and application of the agreement, any party may refer the matter to the council for resolution in terms of the dispute resolution mechanism of the council.
15. The council has already made a ruling on a similar matter of **Madisha and 13 others** that it did not have jurisdiction, **see page 10 of the employer's bundle.** The CCMA has also ruled on the same matter that it had no jurisdiction and advised that parties should refer the matter to

the council or withdraw from the agreement for them to follow the path which they would choose as appropriate, see **page 12 of the employer's bundle**. The matter is still before the bargaining council and the commissioner should rule in the employer's favour that it did not commit any unfair labour practice against the employees.

Analysis of the evidence and arguments

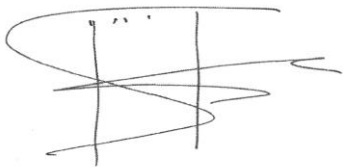
16. According to the award of Tabana and 55 others, attached by the employees in their bundle, there was a submission requesting the posts of employees at a lower salary levels (1 to 4) messengers included to be upgraded. The memo was approved and signed by the chief director. The posts of the aggrieved employees were among those to be upgraded because they were messengers. There was no disagreement between the parties in terms of the award of Tabana and 55 others on the above issues except that the employer indicated that the chief director did not have powers to approve the submission and that there was a ball pen written condition on the approved submission. I am merely noting what was in the award and not necessarily that it will determine my decision. Both parties corroborated each other that a similar matter of **Madisha and 13 others**, was referred to the council and the CCMA respectively, where both the council the CCMA ruled that they did not have jurisdiction and the CCMA referred the matter back to the council and or that the employees could withdraw from the agreement and follow the path they deemed appropriate. The employees in the current matter were therefore not wrong to refer the dispute with the council.
17. The employees argued that the posts of **Tabana and 55 others** as well as that one of **Ramphela and 8 others** were the same with the posts of the employees' posts but the former two groups were upgraded but the aggrieved employees. I have not seen anywhere, where the employer was disagreeing with the employees on this matter except to say the matter of the three employees emanated from the matter of **Tabana and 55 others where Mautla and 2 others** were not party to. This means the employees' version that other messengers' posts were upgraded and theirs were left out, was correct.
18. The employer argued that the CCMA in the **Madisha and 13 others matter mentined above**, ruled that it did not have jurisdiction to hear it, because the dispute concerning the matter was regulated in a collective agreement. CCMA further advised the employees in this matter, to refer their dispute to the council or withdraw from the agreement and then follow the path they deemed proper. I noted that there was no dispute on the ruling made by the council and CCMA respectively. The employer however, argued that Nehawu which was representing the

employees, did not withdraw from the agreement, and was therefore bound by it. The employer further argued that the dispute of the three employees was premature because their matter was still handled by the Task Team established by the chamber in terms of the agreement. I do not agree with employer because **Clause 7.1 of the agreement** provides that if there is a dispute on the interpretation and application of the agreement, any party may refer the matter to the council for resolution in terms of the dispute resolution mechanism of the council. The employees therefore were correct to refer their dispute to the council like **CCMA advised in Madisha and 13 others**.

19. The **agreement (resolution 1 of 2018) is marked C** on the employer's bundle. **Page 19 paragraph 4**, provides for the establishment of the consultative chamber Task team as the employer argued. **Paragraph 4.3 of the same page**, provides that there would be a report and recommendations tabled to the chamber by **10 July 2018**. Both parties did not lead evidence on the said report and or recommendation or any other progress made by the Task Team. We are in August 2020 now, two years after the suggested progress report. The applicants argued that they were not upgraded and the employer argued that their matter was handled by the chamber but the **employer did not lead evidence on how the chamber was handling the matter, no program with time frames were submitted to me and no progress report was submitted to me**. Because the employees felt aggrieved, they referred the matter to the council as **clause 7.1 of the agreement** provided. I therefore do not agree with the employer that the employees should wait as the matter was handled by the chamber. There was no sign, at least in terms of the evidence led by both parties, that showed that the chamber was still busy with the matter.
20. I agree with the employees that there were other employees in the same category with them (aggrieved employees), whose posts were upgraded and the employer did not specifically challenge this version. I further agree with the employee that they were right to refer their dispute to the council. The employer committed an act of unfair labour practice against the three employees by failing to upgrade their posts from salary level two to salary level 4. The employer must therefore upgrade the posts of the three employees from salary level two (2) to salary level four (4) and pay them the difference in areas.

Award

1. The employer, **Department of Water and Sanitation** committed an act of unfair labour practice against the employees, **A Mautla, BA Matjeni and S Mkhwanazi**.
2. The employer is ordered to upgrade the posts occupied by the three employees from salary level two (2) to salary level four (4), as follows; **A Mautla** a basic salary difference of **R2715-25 X 57** Months (from January 2016 to September 2020) which amounts to **R154769-25.. BA Matjeni and S Mkhwanazi** a basic salary difference of **R2220,25 X 45** (from February 2017 to September 2020) each, which amounts to **R99911-25 each of the two employees**.
3. Issues of bonuses, payment of performance management system rating incentives/bonuses and general salary increment if applicable, will be adjusted by persal.
4. The upgrading of the posts in paragraph 2 above must be completed and finalised within **thirty (30) days** of receipt of this award.
5. The payment of the difference in areas to the employees must be completed and finalised **within thirty days** of receipt of this award.
6. No order as to cost.



Seretse Masete

Date 10 August 2020

GPSSBC Panellist