

PSCBC

Dispute Resolution Workshops

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PSCBC Chairperson, Ms Ingrid Dimo & GS, Mr Frikkie De Bruin chairing at the DR Workshop - GP

During March & April 2024, the PSCBC organized a series of Provincial Workshops aimed at shedding light on the provisions of Resolution 1 of 2024, which outlines the Rules for the Conduct of Proceedings before the PSCBC.

Six Dispute Resolution workshops were conducted in Gauteng, Mpumalanga, Limpopo, and the Eastern Cape, as well as two National departments workshops. These workshops were skilfully led and facilitated by our esteemed Chairperson, Ms. Dimo, and General Secretary, Mr. De Bruin.

During these workshops, several critical topics were addressed, including; Enforcement of Collective Agreements in the Public Service (Resolution 3 of 2023), Application of Grievance Procedure (Resolution 2 of 2002), Introduction of newly built e-referral and portal platforms

PSCBC

Dispute Resolution Workshops

Additionally, our Resident Panellist Manager, Mr. Mbulayeni Netshifhefhe, Dispute Resolution Senior Manager, Ms. Bhengani, along with Senior Officers Ms. Macheko and Ms. Kok, conducted empowering presentations to support young leaders and women in council. Their presentations were concise and informative, providing valuable insights to the attendees.

The workshops, that were collectively attended by over 400 delegates received overwhelmingly positive feedback from delegates, who commended the PSCBC for organizing and schooling them on the latest developments.

This initiative marks a significant step towards resolving and preventing disputes within the public service.

The PSCBC remains committed to fostering dialogue, promoting understanding, and implementing effective mechanisms for dispute resolution within the public service. We extend our gratitude to all participants and stakeholders for their continued support and active participation in our Workshops.



Delegates at the PSCBC DR Workshop - MP



PSCBC GS, Mr Frikkie De Bruin at the EXCO Operational planning Session

PSCBC EXCO Operational Planning Session

We are pleased to share highlights from the recent 2-day EXCO Operational Planning Session that was held from the 18th to the 19th of April in Gauteng.

The event brought together Executive Committee members and the PSCBC Management Committee with the primary objective of evaluating the performance of the past five years and strategizing for the next five years.

On the first day, the session focused on strategic management, risk management, monitoring, and evaluation. Participants engaged in discussions aimed at assessing past performance, identifying areas for improvement, and setting strategic priorities for the future.

Day two of the session centred on remote work dynamics, delegation of authority, and an overview of departmental unit plans. These topics were chosen to address emerging trends and challenges in the workplace, particularly in

light of evolving work dynamics influenced by remote work arrangements.

Each manager presented their respective unit's performance, leading to insightful discussions and fruitful brainstorming sessions. The event provided a platform for the executive committee and senior managers to exchange ideas, share best practices, and align their objectives for the future effectively.

The EXCO Operational Planning Session served as a valuable opportunity for the PSCBC leadership to assess past achievements, identify areas of improvement, and plan strategically for the future. By fostering collaboration and alignment among key stakeholders, the event positioned the PSCBC for continued success in advancing its mission and objectives.



Workshop on National Health Insurance (NHI) Bill

Delegates at PSCBC NHI workshop

We are pleased to provide you with an overview of the recent workshop hosted by the PSCBC on Tuesday, 16th April 2024, in Gauteng. The workshop focused on discussing the principles and implications of the National Health Insurance (NHI) Bill, a crucial topic for public service employees, government representatives, and other relevant parties.

The workshop aimed to foster a comprehensive understanding of the NHI and its potential impact on the healthcare landscape. It was attended by a diverse group of stakeholders eager to delve into this important issue.

Ms. Ingrid Dimo, the PSCBC Chairperson welcomed delegates to the workshop, setting the stage for a fruitful discussion. Following her introduction, Mr. Frikkie De Bruin, the PSCBC GS, outlined the purpose of the workshop and posed several essential questions regarding the implementation of the NHI and its implications for public service medical schemes in order to set the tone for the workshop.

Prof. Crisp, who is responsible for spearheading the establishment of the NHI, delivered a passionate

and insightful presentation whilst addressing the questions posed by Mr. De Bruin. Prof. Crisp covered technical details, including the implications for public servants, the future of private medical aid schemes, and the continuity of medical assistance for those already receiving treatment.

Prof. Crisp's presentation sparked a robust engagement among attendees, reflecting the importance and complexity of the NHI issue. Participants actively participated in discussions, sharing their perspectives and seeking clarity on various aspects of the proposed healthcare reform.

Mr. Galorale Mompoti, Vice-Chairperson Labour, closed the Workshop. He expressed appreciation for the well-compiled presentation and called for the establishment of a multi-stakeholder team for continuous engagements on the NHI. This initiative underscores the commitment of the PSCBC to facilitate ongoing dialogue and collaboration on critical issues affecting our members and stakeholders.

DPSA National Labour Relations Conference

We are delighted to share with you the highlights from the recent Department of Public Service and Administration (DPSA) National Labour Relations Conference, held in Pretoria from 22nd to 23rd February 2024.

The conference, held under the theme “Growing South Africa together for a capable and ethical Public Service,” brought together key stakeholders from the public service. Among the attendees were distinguished figures including our very own PSCBC Chairperson, Ms. Ingrid Dimo, and Acting Manager in the office of the GS, Ms. Valencia Kola.

Notable speakers also included the Honourable Minister for Public Service & Administration, Minister Noxolo Kievet, Public Service Trade Unions leadership,

Ms. Yoliswa Makhasi (DG- DPSA), and Ms. Sharlaine Oodit, GS of General Public Service Sector Bargaining Council (GPSSBC).

Mr. Dumisani Hlophe, Acting Deputy Director-General of Negotiations, Labour Relations, and Remuneration Management, set the tone with his opening address, emphasizing the need to enhance mutual benefits in the public sector workspace.

Minister Kievet urged delegates to engage robustly and truthfully, focusing on critical topics such as Strengthening Collaboration with Labor, Professionalization of the Labor Relations function, and the elimination of Gender-Based Violence (GBV) in the public service.



PSCBC delegates at DPSA National Labour Relations conference



On the second day of the conference, the PSCBC Chairperson, Ms. Ingrid Dimo, delivered a compelling presentation on the state of Collective Bargaining in the Public Service. Her insights into current trends and challenges sparked meaningful discussions among attendees, enriching their understanding of the subject matter.

The PSCBC congratulates the DPSA for orchestrating a well-organized and fruitful event, providing a platform for constructive dialogue and collaboration within the public service sector.



Delegates at DPSA National Labour Relations Conference



Labour Laws News Conference

On the 29th of February 2024, the PSCBC attended the Labour Laws News Conference, which was held in Modderfontein, Johannesburg. The conference provided a platform for various stakeholders to share insights and experiences on the latest developments in labour law.

The PSCBC General Secretary, Mr. Frikkie De Bruin, delivered a presentation on Collective Bargaining in the Public Service. During his presentation, Mr. De Bruin provided valuable insights on the challenges and opportunities inherent in collective bargaining in the public service.

His talk covered topics such as the legal framework for collective bargaining in the public service, the role of trade unions and employer organisations in the bargaining process, and the challenges faced by both parties during the bargaining process.

Mr. De Bruin's presentation was well-received by the delegates, who appreciated his practical guidance on navigating the collective bargaining process in the public service.

The delegates engaged thoroughly with Mr. De Bruin, asking questions, and seeking clarification on various issues.

Overall, the presentation left the delegates with a deeper understanding of the complexities involved in collective bargaining in the public service, and the importance of collaboration and effective communication in achieving mutually beneficial outcomes.

JUDGEMENT: SAUO obo LINDA C MOLLER VS MEC FOR DEPARTMENT OF EDUCATION NW

The Labour Court of South Africa on 5 March 2024, delivered a judgement on a matter between SAUO obo LINDA C MOLLER and MEC For the Northwest province Department of Education.

Summary:

This case highlights the importance of adhering to arbitration awards, whether they are issued by the CCMA or bargaining council. Once an award is certified, failure to comply with it can result in the respondent being held in contempt of court. In this case, the respondent was deemed to have failed to comply with the award without just cause. Consequently, the Labour Court imposed fines on them, which were suspended on the condition that they comply with the award within a specific period.

Introduction

[1] This is an application brought by the applicant to hold the respondents in contempt of court. The applicant was represented in this matter by the Afrikaans Onderwys Unie (hereafter “the Union”).

Material facts

[2] The applicant, Ms Linda Moller (hereafter “Moller” or “the applicant”) was engaged by the Department of Education as an educator and graded at post level 164. She challenged this at the Education Labour Relations Council (the “ELRC”). After conciliation, the dispute was arbitrated. An arbitrator appointed by the ELRC issued an arbitration award dated 27 November 2022 (the “award”). In the award, the arbitrator found that Ms Moller was incorrectly graded, and he then ordered:

2.1 The respondents to place Moller on post level

178 with effect from 15 December 2022; (own emphasis)

2.2 The respondents to pay backpay in the amount of R36 743, 50 by 15 December 2022, with interest at the prescribed rate if these monies were not paid on 15 December 2022. (own emphasis)

[3] The award was certified, in terms of section 143 of the Labour Relations Act No. 66 of 1995 as amended (hereafter “the LRA”) on 14 July 2023.

[4] On behalf of the respondents, the second respondent delivered an answering affidavit in which he stated Moller was placed on post level 178 with effect from 14 September 2023. He conveniently ignored the fact that the Department was required to move Moller on 15 December 2022, and it took the Department almost one year to comply.

[5] The applicant contends that the move from post level 164 to post level 178 would have meant an increase in her annual salary from R284 238, 00 to R304 746, 00; a difference of R20 508, 00 per annum or an amount of R1709, 00 per month. The respondents do not dispute this.

[6] In its answering affidavit, the respondents admit that:

6.1 They have received the award,

6.2 They implemented the award with effect from 14 September 2023, instead of 15 December 2022. Accordingly, respondents admit that they have not fully complied.

6.3 They paid Moller the backpay referred to in the award, but this was on 14 September 2023. Accordingly, respondents admit that they have not

paid interest on the backpay from 15 December 2022 until 14 September 2023.

[7] This matter came before Tlhotlhemaje J on 23 November 2023, who ordered inter alia that: (1) the second respondent must attend court on 29 February 2024, and (2) the second respondent must correct the salary and benefits of Moller from 15 December 2022 and pay any outstanding amount because of this correction within 14 days.

[8] On 28 February 2024, the second respondent filed an answering affidavit.

[9] On 29 February 2024, when the matter came before me, the second respondent was not in attendance. The court order issued on 23 November 2023 made it clear that the second respondent was not excused from attending court even if he filed an affidavit. From the bar, the respondents' legal representative stated that the second respondent is no longer employed by the Department. It goes without saying that evidence cannot be accepted from the bar.

[10] It is plain from the abovementioned narrative that:

10.1 The order issued by this court on 23

November 2023 came to the attention of the respondents,

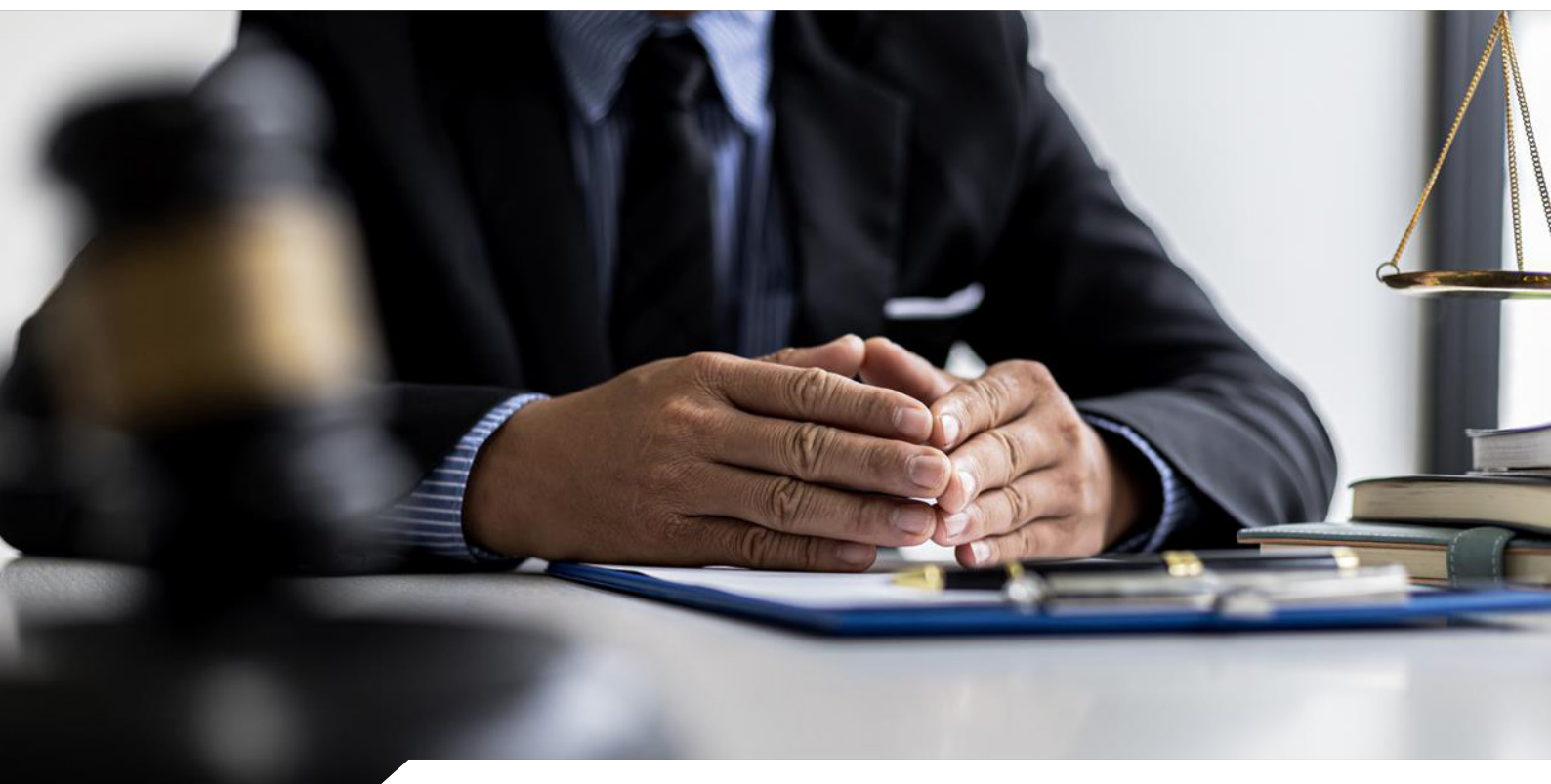
10.2 The respondents did not place the applicant on post level 178 with effect from 15 December 2022,

10.3 The respondents did not pay the applicant interest (on the backpay) at the prescribed rate with effect from 15 December 2022 to 14 September 2023.

[11] The respondents allege that their partial fulfilment of the award is adequate. In my view, this demonstrates that the non-compliance with the award is deliberate and wilful. The respondents raised no difficulties they had experienced with fully implementing the award.

Legal analysis

[12] Section 143(1) read with section 143(3) of the Labour Relations Act No. 66 of 1995 (hereafter "the LRA") provides that a certified arbitration award may be enforced as if it is an order of the Labour Court. Where a certified award orders something other than the payment of money, the award may be enforced by way of contempt proceedings in the Labour Court. Inasmuch as the certified award is





deemed to be an order of the Labour Court, the LRA requires that it be accorded due respect.

[13]As Cameron JA (as he then was) so stated in *Fakie NO v CCII Systems (Pty) Ltd (Fakie)*:

“[6] It is a crime unlawfully and intentionally to disobey a court order. This type of contempt of court is part of a broader offence, which can take many forms, but the essence of which lies in violating the dignity, repute or authority of the court. The offence has in general terms received a constitutional ‘stamp of approval’, since the rule of law – a founding value of the Constitution – ‘requires that the dignity and authority of the courts, as well as their capacity to carry out their functions, should always be maintained’. (Own emphasis)

[14]As Cameron JA eloquently put it, in *Fakie*, when court orders are disregarded, this “sullies the authority of the courts and detracts from the rule of law”.

[15]The Constitutional Court recorded in *Pheko v Ekurhuleni Metropolitan Municipality* that the willful

disobedience of an order made in civil proceedings is contemptuous and a criminal offence. Contempt in the context of civil proceedings is coercive, and not punitive, in character.

[16]In this matter, it was common cause that the award was certified, that it was served on the respondents, and there had not been full compliance with the award.

[17]Once an applicant has proven the existence of the order; service of the order; non-compliance (beyond reasonable doubt) the respondent bears an evidential burden in relation to wilfulness and *mala fides*. If the respondent fails to establish reasonable doubt as to whether non-compliance was wilful and *mala fide*, contempt will have been established beyond reasonable doubt.

[18]Here, the respondents advanced no evidence that the non-compliance was neither wilful nor *mala fides*. They simply took the approach that partial compliance was adequate. In the circumstances, I find that the respondents deliberately chose not to comply.

[19] In all the circumstances, the evidence establishes, beyond reasonable doubt, that respondents are in contempt of court. They have not fully complied with the award:

19.1 They failed to pay interest on the backpay at the prescribed rate, calculated from 15 December 2022 until 14 September 2023,

19.2 They failed to place the applicant on post level 178 with effect from 15 December 2022. This would have required them to adjust her remuneration from 15 December 2022. Instead, the respondents did this with effect from 14 September 2023.

Costs

[20] The application was made necessary by the respondents' deliberate non-compliance with an arbitration award. There is no reason in law and fairness why the applicant should be denied costs.

Conclusion

[21] The application is successful. The respondents are indeed in contempt of court. In the circumstances, I make the following order:

21.1 The first and second respondents are jointly and severally fined a total amount of R100 000, 00 (one hundred thousand rands), which fine is suspended for 60 (sixty) days, subject to full compliance with the arbitration award issued by the ELRC under case reference ELRC306-22/23NW by:

21.1.1 Complying with paragraph 16 of the arbitration award by placing the applicant on post level 178 with effect from 15 December 2022 including the necessary adjustments to her salary and benefits, and

21.1.2 Complying with paragraphs 17 and 18 of the arbitration award by calculating and paying to the applicant the interest contemplated in those paragraphs.

21.2 The respondents are ordered to pay the costs of this application, jointly and severally, the one paying the other to be absolved.



PUBLIC SERVICE CO-ORDINATING BARGAINING COUNCIL

VISION

“ensuring workplace democratization, economic development, social justice and labour peace for the public service”

MISSION

“embracing the future of work by advancing and protecting centralised collective bargaining, ensuring effective dispute management and good governance, empowering women, persons with disabilities and youth

VALUES

Integrity
Efficiency
Accountability
Good governance
Equity

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