



# ARBITRATION AWARD

Panelist: John Cheere Robertson  
Case No.: PSCB430-21/22  
Date of Award: 21 February 2023

**In the Matter between:**

**PSA obo K Greybe & Others**  
(Union / Applicant)

and

**Department of Justice & Constitutional Development**  
(1<sup>st</sup> Respondent)

**Department of Public Service & Administration**  
(2<sup>nd</sup> Respondent)

**Applicant's representative:** Mr H Hall (PSA) \_\_\_\_\_

Applicants' address: \_\_\_\_\_  
\_\_\_\_\_

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**1<sup>st</sup> Respondent's representative:** Mr NK Sithole \_\_\_\_\_

1<sup>st</sup> Respondents address: \_\_\_\_\_  
\_\_\_\_\_

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**2<sup>nd</sup> Respondent's representative:** Ms T Maile \_\_\_\_\_

2<sup>nd</sup> Respondents address: \_\_\_\_\_

## **Details of hearing and representation**

- 1 This matter was referred for arbitration to the Public Service Coordinating Bargaining Council (PSCBC) in terms of section 24(5) of the Labour Relations Act 66 of 1995 (LRA) on 19 August 2022 and 01 February 202 and was heard by means of the zoom digital platform. Mr H Hall (PSA) represented , Ms K Pretorius (Neé Greybe), Ms T Dladla, Ms M Moloi and Ms J Smit (Neé Vermeulen) (applicants). Mr N Sithole represented the Department of Justice & Constitutional Development (1<sup>st</sup> respondent). Ms Teresa Maile represented the Department of Public Service and Administration (2<sup>nd</sup> respondent) on 19 August 2022 and did not attend on 01 February 2023. The matter proceeded in the absence of the DPSA representative as no reason had been tendered for her absence.

## **Preliminary Matters**

- 2 On 19 August 2022 the parties requested to submit an agreed statement of case together with their respective arguments thereon and an agreed bundle of documents. It was agreed that the applicant party would forward the agreed statement of case and bundle of documents, together with their arguments thereon, to the PSCBC by 26 August 2022. The respondent to answer by 29 August 2022 and the applicant party to make a reply should they wish to by 31 August 2022. The parties submitted written closing arguments. However, no agreed statements of facts / case was submitted. The PSCBC was requested to request the parties to submit a statement of case and also an agreement on the status of the documents handed up. Subsequently the matter was scheduled for a hearing on 1 February 2023. On 1 February 2023, the parties reached agreement on the status of the documents handed up and a statement of case, the signed statement of case to be submitted to the PSCBC by 8 February 2023. The parties were afforded the opportunity to submit further written closing arguments, failing which I would refer to the written closing arguments already submitted. In addition Mr Hall would make enquiries as to whether a Ms Nthibogelang<sup>1</sup> was one of the members who had initially referred the dispute to the PSCBC.
- 3 I received the applicants' statement of case, signed on 6 February 2023, together with an application to join Ms Nthibogelang as a party to the applicant's dispute on

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<sup>1</sup> Ms Nthibogelang's salary advice forms part of the salary advices handed up by the applicant party at A160-A164.

7 February 2023. The stated case signed by the 1<sup>st</sup> respondent's was received on 10 February 2023.

- 4 I am unable to entertain the application to join Ms Nthibogelang. The reason is that she was not included in the members who referred the dispute and further did not attend the conciliation hearing. The PSCBC accordingly has no jurisdiction to consider her application at this stage<sup>2</sup>.

### **Issue for determination**

- 5 Whether the respondent correctly applied PSCBC Resolution 3/2009 in not grade progressing the applicants from salary level 7 to 8 with effect from the dates they completed 15 years continuous service at salary level 7 namely 1 February 2021, and dependent thereon appropriate relief

### **Background and survey of evidence**

- 6 The parties agreed on a statement of case<sup>3</sup>, which sets out the background to the dispute as follows:

6.1 *This dispute concerns the interpretation or application of PSCBC Resolution 3/2009*

#### **Agreed Facts**

6.2 *The applicant party is the PSA obo the applicants listed below. The applicant party referred a dispute concerning the interpretation or application of R 3/2009 to the PSCBC in respect of their dispute with the 1<sup>st</sup> respondent concerning the interpretation or application of R 3/2009. The Department of Public Service & Administration (2<sup>nd</sup> respondent) has been joined as a party to these proceedings. The dispute remained unresolved at conciliation and a certificate of non-resolution was issued.*

6.3 *The applicants are employed by the 1<sup>st</sup> respondent [as] secretaries, and performing legal administrative work. The applicants are:*

|       | NAME:                       | PERSAL   | DATE OF APPOINTMENT |
|-------|-----------------------------|----------|---------------------|
| 6.3.1 | Ms K Pretorius (Neé Greybe) | 18577857 | 03 03 1997 (A160)   |
| 6.3.2 | Ms T Dladla                 | 19174837 | 01 01 2006 (A163)   |
| 6.3.3 | Ms M Moloi                  | 16187008 | 0109 1995 (A161)    |
| 6.3.4 | Ms J Smit (Neé Vermeulen)   | 16664159 | 01 03 1996 (A162)   |

6.4 *As per the applicants' respective salary advices (A160-A164), the applicants' Job Titles are reflected as Secretary Grade IV Senior, and Occupational Classification as Secretaries & other Keyboard Operating Clerks*

6.5 *The applicants previously on salary level 6, were placed at salary level 7 with effect from 01 02 2006 (A21-22). They continue to be remunerated at salary level 7.*

6.6 *Grading of jobs for secretary and personal assistant was done by the DPSA as per the Benchmark of Job Descriptions, Grading Levels And Implementation Guidelines For*

<sup>2</sup> See e.g. National Union of Metalworkers of SA v Intervale (Pty) Ltd & others (2015) 36 ILJ 363 (CC)

<sup>3</sup> The second respondent is not a signatory to the statement of case, see paragraph 1 above.

*Jobs of Secretary And Personal Assistant, (File reference 1/8/8/23) dated **13 December 2006** (A125-A128)).*

- 6.7 *In terms of the above benchmark, the post of secretary was graded at 4+, allowing the relevant authority the discretion to allocate either salary range 4 or 5 (A125-A128).*
- 6.8 *As of 01 07 2006 (A21-A22, A156-A158) the DPSA Benchmark of Job Descriptions, Grading Level was implemented and the applicants' posts were graded at level 5. The applicants' job title and salary range was translated from that of Senior Secretary grade IV (performing secretarial functions) and other equivalent ranks) at salary range 7 to Secretary at salary range 5. The applicants were translated accordingly in their respective posts with retention of their salary at salary range 7 to date.*
- 6.9 *Each of the applicants completed 15 year's continuous service on salary level 7 on 01 02 2021 and has obtained the necessary satisfactory performance rating in her performance assessments over the last two year period.*
- 6.10 *The contents of the documents handed up, Exhibit A (A1-A167) and Exhibit R (R1-R69) are not in dispute are relevant and admissible and are admitted as evidence in this arbitration, of what they purport to be and require no further proof as to authenticity, delivery and receipt.*

**Issue for determination**

- 6.11 *Whether the respondent correctly applied PSCBC Resolution 3/2009 in not grade (salary level) progressing the applicants from salary level 7 to 8 with effect from the date they completed 15 years continuous service at salary level 7 i.e. 01 02 2021 and dependent thereon appropriate relief*

**The parties respective cases**

- 6.12 *The applicants case is that in accordance with clause 3.5 read with clause 3.6.2.2 of R 3/2009 they are entitled to be grade (salary level) progressed to salary level 8, 15 years after they were placed on salary level 7, i.e. **01 02 2021** (01 02 2006-01 02 2021).*
- 6.13 *The respondents case is that as the applicants' posts were graded at level 5, by the 1<sup>st</sup> respondent on 01 02 2006 (A21-A22, A156-A158). The applicants however were retained on a personal salary range of 7. In the circumstances and in terms of the grading of their posts at level 5, they are unable progress to salary level 8, 15 years from 01 02 2006 in terms of R 3/2009. The respondent's case further is that employees in posts graded at salary level 5 may only grade (salary level) progress from salary level 5 to 6 in terms of R 3/2009.*

**Relief**

- 6.14 *The applicants seek that they be grade (salary level) progressed with effect from the date they completed 15 years continuous service at salary level 7 i.e. **01 02 2021**, and that they be remunerated accordingly with all benefits.*
- 6.15 *The respondents seek that the status quo ante remains and the applicants' claims be dismissed.*

**Analysis of evidence and argument**

- 7 *I have considered all the evidence and argument, but because the Labour Relations Act no. 66 of 1995 (LRA) requires brief reasons (Section 138 (7)), I have only referred to the evidence and argument necessary to substantiate my finding/s and award.*

- 8 An arbitrator is empowered to determine a dispute concerning the interpretation or application of a collective agreement by way of an appropriate award that gives effect to such collective agreement<sup>4</sup>.
- 9 Where a dispute exists as to the interpretation or application of a collective agreement an arbitrator is enjoined to adopt a practical and purposive<sup>5</sup> approach to the interpretation of the collective agreement in line with the purpose of and primary objectives of the LRA<sup>6</sup>, *taking into account the text used in the light of ordinary rules of grammar and syntax; the context in which the provision appears, the apparent purpose to which it is directed and the material known to those responsible for its production*<sup>7</sup>. Our courts have adopted a purposive approach to the interpretation of statutes including the LRA and collective agreements<sup>8</sup>.
- 10 Where a collective agreement has been **applied correctly**, the Bargaining Council does not have jurisdiction to decide whether this is unfair<sup>9</sup>, unless the collective agreement itself, introduces fairness as a consideration.

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<sup>4</sup> S 138. CCMA accreditation of bargaining councils in terms of S 127 of the Labour Relations Act 66 of 1995; Section 138(9) of the Labour Relations Act 66 of 1995 provides that: "The commissioner may make any appropriate arbitration award in terms of this Act, including but not limited to, an award-

(a) that gives effect to any collective agreement;

(b) that gives effect to the provisions and primary objects of this Act;

(c) that includes or is in the form of a declaratory order"

<sup>5</sup> See Hogg, P.W. 1992. *Constitutional Law of Canada*. 3<sup>rd</sup> edition. 809-815 to the effect that a purposive approach, unlike a generous broad or liberal approach, which may overshoot the meaning of a statute or in this case a collective agreement, may be helpful, but only so long as it is subordinate to purpose. A purposive approach will normally narrow the scope of meaning or a right to include activity that comes within that purpose and exclude activity that does not. This is echoed in the provisions of Section 1 & Section 3 of the Labour Relations Act, 66 of 1995.

<sup>6</sup> *Assign Services (Pty) Ltd v NUMSA et al* (2018) ILJ 1911 (CC) [42] *The purpose of s 198A must be contextualized within the right to fair labour practices in s 23 of the Constitution and the purpose of the LRA as a whole* (As set out in s 1 of the LRA); *Western Cape Department of Health v Van Wyk & others* (2014) 35 ILJ 3078 (LAC) [22]. See also *Tabane v PSCBC and others* (LC) C27/15 (28 September 2017) [15]

<sup>7</sup> *Natal Joint Municipal Pension Fund v Endumeni Municipality* (920/2010) [2012] ZASCA 13; [2012] 2 All SA 262 (SCA); 2012 (4) SA 593 (SCA) (16 March 2012) [18]. *SA Municipal Workers Union V SA Local Bargaining Council & others* (2012) 33 ILJ 353 (LAC) [15]. *...the language of the document falls to be construed in the light of its context and the apparent purpose to which it is directed as well as material known to those responsible for its production* *DENOSA obo Du Toit & another v WC Department of Health & others* (2016) 37 ILJ 1819 (LAC). See also *CHEP South Africa (Pty) Ltd v Shardlow NO and others* [2019] JOL 40990 (LC) [19]-[20] citing *Assign Services (Pty) Ltd v NUMSA et al* (2018) ILJ 1911 (CC) [41], *Assign Services (Pty) Ltd v NUMSA et al* (2018) ILJ 1911 (CC) [41]

<sup>8</sup> See *SAMWU v SALGA and others* (LAC), Case No. DA 06/09 dated 29 November 2011 [14] per Mlambo JP. *Western Cape Department of Health v Van Wyk & others* (2014) 35 ILJ 3078 (LAC) [21]-[22]. *NEHAWU v University of Cape Town and others* (2003) 24 ILJ 95 (CC) [40]-[41]

<sup>9</sup> *Department of the Premier, Western Cape v Plaatjies NO & others* (2013) 34 ILJ 2876 (LC) per Steenkamp J Par [46]-[47]

- 11 The applicants referred a dispute relating to the interpretation or application of PSCBC Resolution 3/2009. The applicants are employed, by the Department of Justice and Constitutional Development, as secretaries. As of 01 07 2006 (A21-A22, Paragraph 5 of A156-A158 / R38-40) the DPSA Benchmark of Job Descriptions, Grading Level was implemented and the applicants' posts were graded at level 5<sup>10</sup>. The applicants' job title and salary range was translated from that of Senior Secretary grade IV (performing secretarial functions) and other equivalent ranks) at salary range 7 to Secretary at salary range 5. The applicants were translated accordingly in their respective posts with retention of their salary at salary range 7 to date.
- 12 The applicants' claim salary progression from salary level 7 to salary level 8, in terms of R 2/2009, with effect from 1 February 2021, on the basis that they have completed 15 years on salary level 7. Their claim is that they are entitled, in accordance with clause 3.5 read with clause 3.6.2.2 of R 3/2009, to be salary progressed on the basis they have completed 15 years on salary level 7 and not from the date of a job evaluation.
- 13 PSCBC Resolution 3/2009 signed 24 and 29 July 2009, applied with effect from 1 April 2009 except for clauses 3.6.2 and 3.6.3, which came into effect from **1 April 2010**<sup>11</sup>. The objective of PSCBC Resolution 3/2009 is:
- 13.1 To give effect to clause 5 of Resolution 1 of 2007 by introducing a revised salary structure for all occupational categories **graded** on salary levels 1-12 not covered by any Occupation Specific Dispensation (OSD)<sup>12</sup>
- 13.2 To introduce a **career pathing model** and **grade progression for identified salary levels**<sup>13</sup>.
- 14 Self-evidently R 3/2009 deals not only with a revised salary structure but also a career pathing model and grade progression for identified salary levels.

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<sup>10</sup> Rank: Senior Secretary grade IV (performing **secretarial** functions) and other equivalent ranks, Salary Range 7, Notch, All notches. Revised to: Rank: Secretary, Salary range 5, Notch, Translation with retention of existing salary notch. Posts should be created at salary range 5 if the functions are set out in the job description for secretary are performed. The job incumbent will retain his/her salary on a personal basis. While on a personal salary, the incumbent will not qualify for pay progression. (R38-R40 at second last row R40.)

<sup>11</sup> See PSCBC R 3/2009, Clause 5.1 The provisions of this Agreement shall take effect from 1 April 2009, except for clauses 3.6.2 and 3.6.3, which shall take effect from **1 April 2010**

<sup>12</sup> See PSCBC R 3/2009 Clause 1.1

<sup>13</sup> See PSCBC R 3/2009 Clause 1.2

- 15 The revised salary structure for salary levels 1-12, reduction in notches, percentage increment between notches, translation of affected employees and progression to a higher notch within the scale attached to a salary level is provided for in Clause 3.1-3.3. The principles for career pathing for salary levels 1-12 are set out in Clause 3.4.
- 16 The principles on which the grade progression model is based and the model for salary levels 4-5, 5-6, 6-7 and 7-8 is set out in Clause 3.5 and Clause 3.6.2 respectively as follows:

**3 PARTIES TO THE COUNCIL AGREE**  
**Grade Progression Model**

3.5 The grade progression model is based on the following principles:

- 3.5.1 Posts are graded based on the outcome of Job Evaluation,
- 3.5.2 Recognition of performance; and
- 3.5.3 Completed continuous years of service on a salary level irrespective of the notch

...

3.6 The model will be structured as follows:

...

**3.6.2 Salary levels 4-5; salary levels 5-6; salary levels 6-7 and salary levels 7-8**

- 3.6.2.1 Subject to the Public Service Regulations and based on the outcome of the job evaluation exercise, posts are advertised and filled at the minimum notch of the first appropriate salary level.
- 3.6.2.2 With effect from **1 April 2010** (salary adjusted with effect from 01 July annually) an employee, on salary level 4, 5, 6 or 7, who has completed 15 years of continuous service on a salary level, irrespective of the notch, and has obtained satisfactory rating in his/her performance assessments (the average assessment over the last two year period will determine the performance rating), shall grade (salary level) progress to salary level 5, 6, 7 or 8 respectively. This is not subject to the availability of posts.
- 3.6.2.3 Grade progression will be capped for employees on salary level 3, 8 and 10. Therefore, employees cannot grade progress from salary levels 3 to 4, from salary level 8 to 9 and from salary level 10 to 11.
- 3.6.2.4 Employees can only **grade progress** from salary levels 4 to 5, **or from salary level 5 to 6**, or from salary level 6 to 7, or salary level 7 to 8
- 3.6.2.5 When an employee is appointed on a post graded on salary level 4, he/she shall only progress to salary level 5.
- 3.6.2.6 **When an employee is appointed on a post graded on salary level 5, he/she shall only progress to salary level 6.**
- 3.6.2.7 When an employee is appointed on a post graded on salary level 6, he/she shall only progress to salary level 7.
- 3.6.2.8 When an employee is appointed on a post graded on salary level 7, he/she shall only progress to salary level 8.
- 3.6.2.9 **No employee who was appointed on salary level 4, 5 and 6 can grade progress to salary level 6, 7 and 8 respectively. I.e. grade progress over 2 salary levels. These employees must apply for vacant funded posts graded on those salary levels**
- 3.6.2.10 **This provision does not do away with the provisions of the Job Evaluation in the public service**

3.6.2.11 **Average performers shall grade (salary level) progress after 15 years.**  
... (emphasis added)

- 17 The **grade progression model** (Clause 3.5) is based on **job evaluation, recognition of performance** and **completed continuous years of service on a salary level**.
- 18 Resolution 3/2009 does not prescribe how and when job evaluation is done and in fact recognises that this is one of the principles on which the grade progression model is based (i.e. that posts are graded on the outcome of job evaluation as per the provisions of the job evaluation system in the public service)<sup>14</sup>. Job evaluation is vested in the Minister of the Department of Public Service and Administration (MPSA). In terms of the Public Service Act, 1994 and Public Service Regulations, the MPSA has the authority to determine norms and standards on the grading of posts in the Public Service<sup>15</sup>. Accordingly this is a function vested in the MPSA, exercised in terms of the Public Service Act, 1994 and the Public Service Regulations. See e.g. section 3 (1) regarding norms and standards and section 1 as to the meaning of employment practices and salary level, in the Public Service Act, 1994.
- 19 Salary progression, in terms of R 3/2009, is not based on the number of years at a particular salary level only. The requirements for grade (salary level) progression in terms of R 3/2009 is **job evaluation, recognition of performance** and the **necessary completed years of continuous service**. The applicants' posts were graded at post level 5 with effect from 01 07 2006 (R38)<sup>16</sup>.
- 20 Clause 3.6.2.2, and 3.6.2.11 cannot be read in isolation from the rest of R 3/2009, which inter alia make provision for; the grading of posts based on the outcome of job evaluation<sup>17</sup>, the retention of the Job Evaluation system in the public service<sup>18</sup> and the specific references to the effect that employees appointed *on a post graded on salary levels 4, 5, 6 and 7*, shall only progress to salary levels 5, 6, 7 and 8 respectively<sup>19</sup>. Clause 3.6.2.6 provides that an employee appointed on a post graded on salary level 5, shall only progress to salary level 6. This is subject to the post being job evaluated and the incumbent having completed the necessary

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<sup>14</sup> See e.g. Clause 3.5.1 and 3.6.2.10 of PSCBC Resolution 3/2009

<sup>15</sup> Section 1 & 3 of the Public Service Act, 1994

<sup>16</sup> At paragraph 5 of the document and see Schedule 1 attached hereto

<sup>17</sup> Par. 3.5.1 Resolution 3/2009

<sup>18</sup> Par. 3.6.2.1 and 3.6.2.10 Resolution 3/2009

<sup>19</sup> Paras. 3.6.2.4 to 3.6.2.8, and 3.6.2.5 (salary level 4 to 5, 5 to 6, 7 to 8) read with 3.6.2.10 (Job Evaluation) and 3.6.2.11 (Grade progression after 15 years) Resolution 3/2009

continuous years of service in the post, together with obtaining a satisfactory performance assessment<sup>20</sup>. Of relevance here is that the applicants' posts were graded at level 5.

- 21 The applicants have, since 01 02 2006, been remunerated at salary level 7. The applicant's posts were graded at level 5, see above<sup>21</sup>. No additional proof has been submitted to the contrary. The fact that the applicants were retained in their post level 5 posts at salary level 7 does not entitle them to progress to salary level 8, as this falls outside of the salary levels applicable to posts graded on level 5. In terms of R 3/2009, the salary levels applicable to a post graded at level 5 is salary level 5 and 6. In the circumstances an employee in a post graded at level 5 is only entitled to grade (salary level) progress to salary level 6 after 15 years. This is the correct meaning of paragraph 3.6 of R 3/2009, in particular the highlighted provisions of paragraph 3.6 of R 3/2009 above. In the event the applicants' wish to secure a higher level of remuneration, they would have to successfully apply for vacant funded posts graded on those salary levels.
- 22 Grade (salary level) progression, in terms of R 3 /2009 may only occur, in the case of an employee whose post has been graded at salary level 5; from salary level 5 to salary level 6 and then only when the employee has completed 15 years in the post from the date of Job Evaluation and obtained a satisfactory performance rating. The applicants' posts were job evaluated at Grade 5 with effect from 01 07 2006. They were however, at that stage on personal salaries at salary range 7 and were retained in their posts, with retention of their existing salary notch. They accordingly do not qualify for salary progression in terms of R 3/2009 as their current salary notch exceeds that applicable to their post grade of 5.
- 23 In the circumstances, I find that the respondents have not failed to adhere to or failed to properly apply the provisions of Resolution 3/2009 in not appointing and remunerating the applicants at salary level 8. The 1<sup>st</sup> respondent, in retaining the applicants at their respective personal salary notch (salary range 7), exercised its discretion in favour of the applicants and the issue of non-compliance with R 3/2009 does not arise. I make the following award.

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<sup>20</sup> Par. 3.6.2.10 and Par 3.5.1 (Job Evaluation) Par. 3.6.2.11 and Par. 3.5.3 (15 years continuous service) Par 3.6.2.2 and Par. 3.5.2 (Recognition of performance)

<sup>21</sup> Paragraph 11 above.

## **AWARD**

24 The applicants, Ms K Pretorius (Neé Greybe), Ms T Dladla, Ms M Moloi and Ms J Smit (Neé Vermeulen), have failed to show that they are entitled to be grade (salary level) progressed from salary level 7 to salary level 8 in terms of PSCBC Resolution 3/2009, and their claims referred under Case No. PSCBC430-21/22 are accordingly dismissed.

A handwritten signature in black ink, appearing to read 'J.C.R.' with a stylized flourish.

John Cheere Robertson  
PSCBC Panelist