



**IN THE PUBLIC SERVICE CO-ORDINATING BARGAINING COUNCIL  
HELD AT CAPE TOWN**

**CASE NO: PSCBC606-19/20**

PSA obo Kubheka, F C S

**APPLICANT**

and

Department of Agriculture and Rural Development

**FIRST RESPONDENT**

and

DPSA

**SECOND RESPONDENT**

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**ARBITRATION AWARD**

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| DATE OF HEARING   | : | 28 November 2022       |
| CLOSING ARGUMENTS | : | 05 December 2022       |
| AWARD             | : | 13 December 2022       |
| ARBITRATOR        | : | I de Vlieger-Seynhaeve |

**1. DETAILS OF HEARING AND REPRESENTATION**

- 1.1 An arbitration hearing was set down on 28 November 2022 at the first respondent's offices in Cedara. The applicant was represented by Mr Fisher from the PSA. The first respondent was represented by Mr Nxumalo. The second respondent joined the hearing virtually and was represented by Ms Teresa. The hearing was recorded digitally.

**2. ISSUE TO BE DECIDED**

- 2.1 The issue to be determined is whether the first respondent correctly interpreted and applied Resolution 3 of 2009.

**3. SURVEY OF EVIDENCE AND ARGUMENT**

- 3.1 The following facts were common cause: The applicant is employed as an SCM Production Clerk and wishes to grade progress to salary level 8 because she has completed 15 years at salary level 7 with satisfactory performance results. The issue in dispute is whether the applicant qualifies to grade progress based on section 3.6.2.2 of Resolution 3 of 2009.

Applicant's submissions

- 3.2 The applicant, Ms Kubheka, was the only witness and testified under oath that there she has been on salary level 7 since 1 October 2003. Circular 2 of 2009 states in section 7.9.3 that *"if a post is upgraded and the current incumbent is absorbed into the upgraded post, the qualifying period for grade progression to the next higher (permissible) salary level starts from the date of absorption into the upgraded post."* In 2002, a job evaluation was done and a grievance was submitted. As a result, the first respondent had upgraded employees. She was upgraded to salary level 7 from 01 October 2003. A job evaluation was done in 2003 which was approved by the HoD on 28 September 2003. The Incentive Policy Framework for Employees in the Public Service states in section 28.4 the same as in section 7.9.3 of Circular 2 of 2009.
- 3.3 During cross-examination, it was said that the salary level is not disputed. However, the post is graded on a lower level. It was then asked if the applicant has any subordinates. The applicant denied that.

First Respondent's submissions:

- 3.4 Ms Oram, the HR Manager, was the only witness and testified under oath that the applicant's position is graded at level 5 although she is paid at salary level 7. The DPSA

did a national job evaluation in 2012 and downgraded the post from level 6 to level 5. The applicant can therefore not grade progress to salary level 8.

- 3.5 During cross-examination it was put to her that the job evaluation was signed by the Minister. The witness stated that she did not dispute that. The post was then graded at level 6 and the applicant's salary level was changed to level 7. However, the DPSA downgraded the post in 2012 to level 5.

Applicant's heads of arguments:

- 3.6 The applicant stated that the HoD approved her upgrade in 2003. The printout that was submitted which placed the post on level 5 was dated 02 June 2021, which is after she approached HR for the 15 years' service award. PSCBC Resolution 3 of 2009 clause 3.6.2.2 read together with section 27.4 of the DPSA incentive policy framework for 2017 and DPSA Circular 2 of 2009 applies to the applicant's dispute. The first respondent should be ordered to grade the applicant to level 8 and must back-pay the applicant with an amount of R 142 599,48.

First & Second Respondents' submissions

- 3.7 The respondents submitted that the applicant does not qualify for grade progression because the post of SCM Production Clerk is graded at salary level 5 and was downgraded from level 6. At the time of the introduction of the national benchmark job descriptions and grading levels for the production and supervisory post levels of Clerks, the applicant was already remunerated at salary level 7 due to the transitional movement that took place within the department in 2003. The post of SCM Clerk at salary levels 7 and 8 is for clerks who perform supervisory duties and the applicant does not perform those. The definition of grade progression is mentioned in s 6.5 of the 2017 Incentive Policy Framework for Non-Occupation Specific Dispensation (OSD) Employees on salary levels 1 to 12 and employees covered by OSD: *"progression in terms of grade progression model from a grade attached to a post, as per the results of job evaluation, to the next higher grade after completing the stipulated period of service on the salary level attached to the post, based on the prescribed level of at least satisfactory performance."* The salary level of the applicant is not attached to the post and therefore cannot progress to salary 8 because the post she occupies is graded at salary level 5. The matter should be dismissed.

#### 4. ANALYSIS OF EVIDENCE AND ARGUMENT

- 4.1 I have considered all the evidence and argument, but because the LRA requires brief reasons (s 138(7)), I have only referred to the evidence and argument necessary to substantiate my findings and decision.
- 4.2 Section 24 of the LRA deals with how disputes about collective agreements should be dealt with. Section 138 (9) LRA provides that *“the Commissioner may make any appropriate 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 award.”*
- 4.3 The scope of an arbitrator in an interpretation/application dispute is to determine whether the respondent failed to apply or interpret the provisions of a particular Collective Agreement. A dispute over the interpretation of a collective agreement arises only when the parties disagree over the meaning of a particular provision of an agreement, whilst a dispute about the application of that agreement pertains to disagreement over whether the agreement applies to a particular set of facts or circumstances, or whether it should be applied in a particular way. (See J. Grogan: Workplace Law 2009 at pp361 to 362).
- 4.4 In *North-East Cape Forests v SA Agricultural Plantation and Allied Workers Union and Others (1997) 18 ILJ 971 (LAC)*, Froneman DJP stated that a collective agreement is unlike other ordinary contracts and that the primary objects of the Act are better served by an approach that is practical to the interpretation and application of such agreements. This, it was stated, was better suited to promote the “effective, fair and speedy resolution of labour disputes”. In *NEHAWU v Department of Social Services and Population Development [2005] 11 BALR 1140 (PSCBC)*, it was further acknowledged that a collective agreement is a written memorandum which is meant to reflect the terms and conditions to which parties have agreed at the time that they concluded the agreement. The courts and arbitrators must therefore strive to give effect to that intention. Thus the courts frequently apply the “parole evidence” rule - that is when interpreting collective agreements, evidence outside the written agreement itself is not generally permissible when the words of the memorandum are clear.
- 4.5 The essential elements of Resolution 3 of 2009, to the extent that they are relevant for the determination of this application, are to provide for a grade progression model, to be based on, inter alia, the principle of completed continuous years of service on a salary

irrespective of the notches, and for the employees who have performed (above) satisfactory over a certain period of years. The intervention of the Minister of the DPSA in the implementation of collective agreements concluded in the Public Service, is permissible within the context of section 5 of the Public Service Act. These provisions permit the Minister to issue directives to elucidate or supplement collective agreements, with the proviso that any act performed by the Minister under the PSA may not be contrary to the provisions of any collective agreement concluded at a bargaining council for the Public Service as a whole or for a particular sector.

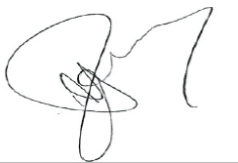
- 4.6 Clause 3.6.2.2 of the Resolution states that *with effect from 1 April 2010, an employee on salary level 4, 5, 6 or 7, who has completed 15 years of continuous service on a salary level, irrespective of the notch, and has obtained at least satisfactory rating in his/her performance assessments, shall grade progress to salary level 5, 6, 7 or 8 respectively.* A proper interpretation of clause 3.6.2.2 of the Resolution needs to take into account other provisions of the Resolution, more specifically the other parts of clause 3. This was confirmed by the Labour Court in **Tabane v De Vlieger - Seynhaeve N.O. and Others (C27/15) [2017] ZALCCT 43 (28 September 2017)** where it was stated that Clause 3.5 should be read together with clause 3.6 which sets out the salary structure of the model. Accordingly, the fact that an employee has served 15 cumulative years in a grade is not a basis for an automatic grade progression, as any grade progression is based on a variety of factors, including job evaluation, recognition of performance and obviously the cumulative 15 years.
- 4.7 The MPSA's Directive, 2019 Incentive Policy Framework for Employees in the Public Service which was issued in December 2018 states in paragraph 7.5 that *“grade progression for non-OSD employees means progression in terms of the Grade Progression Model from a grade attached to a post, as per the result of a job evaluation, to the next higher permissible grade after completing the stipulated period of service on the salary level attached to the post, based on the prescribed level of a least satisfactory performance”.*
- 4.8 The applicant was upgraded to level 7 on 01 October 2003. The job evaluation, which was done on 18 August 2003, placed the post of Senior Admin Clerk on level 6. The DPSA then issued Directive 16/6/2/1 on 12 December 2012 which provided benchmark job descriptions and grading levels for clerks. There it states that the position of Production Level Clerk is graded on level 5.

- 4.9 It must be stressed that the outcome of the job evaluation exercise is the basis of the grade progression model. Although the applicant was remunerated on level 7, this does not mean that the post was graded on level 7. The first respondent stated that the applicant's post was graded on level 5 which is confirmed in the Directive of the DPSA, although she received a salary on level 7. Section 28.2 of the Incentive Policy mentioned above, states that *"grade or accelerated grade progression for non-OSD employees is limited to progression to the next higher stipulated salary level above the salary level attached to the post in terms of the job evaluation system (e.g. an employee who occupies a post graded on salary level 4, may only grade progress from salary level 4 to 5, and not eventually to salary level 6)"*.
- 4.10 This means that because the applicant's post is graded on level 5, she can only grade progress to level 6. The applicant is already on level 7 and can therefore not progress further. Even, in the event that the post was not downgraded by the DPSA in 2012, the applicant would not have been able to progress to level 8. Although she was on salary level 7, the post was, at that time, graded at level 6. Seeing that one cannot upgrade two levels but only one, she could only have grade-progressed at that time to level 7. So, even if the post had not been downgraded, the outcome would have been the same. The applicant cannot grade progress to level 8.

## **5. AWARD**

- 5.1 The first respondent did not breach Resolution 3 of 2009;
- 5.2 The matter is hereby dismissed.

**Signed at Cape Town on this 13<sup>th</sup> day of December 2022**



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**I De Vlieger-Seynhaeve**  
**PSCBC Panellist**