

IN LIMINE RULING

Case Number: PSCBC398-09/10
Senior Commission / Panellist: Martinus van Aarde
Date of Award: 14-Sep-2010

In the **MATTER** between

PSA obo J. Loubser & 10 Others

(Applicant)

and

Department of Education (FS)

(Respondent)

Applicant's representative: Jaco Greeff

Applicant's address: C/o: PSA
PO Box 7673
BLOEMFONTEIN, 9300

Telephone: (051) 403 1300

Telefax: (051) 403 1315 / 9

E-mail: —

Respondent's representative: Khudusa Tlale

Respondent's address: Department of Education
Private Bag X20565
BLOEMFONTEIN, 9300

Telephone: (051) 404 4286

Telefax: 086 517 4930 / 086 218 8689

E-mail: —

1. Details of hearing / representation

The case was set down for an arbitration hearing on 14 September 2010 (09h00) at Bloemfontein, Department of Education (FS). Mr. Jaco Greeff: Official PSA represented the Applicants (Loubser *et al*). Mr. Khudusa Tlale: Deputy Director Dispute Resolution represented the Respondent (DOE).

2. Issue(s) to be decided

2.1 This is an application in terms of the **Labour Relations Act 66/1995, section 24(2)/(5)** regarding the interpretation/application of a Collective Agreement/Resolution 3/1999, clause 4(4.3) with specific reference to Loubser *et al* (School Clerks).

2.2 For easy reference, clause 4.3 reads as follows—

“4. Remuneration and regarding

4.1 ...

4.2 ...

4.3 *If a job evaluation as provided under the Public Service Regulations indicates that a job has been undergraded, the employer shall either*

- a. *within a reasonable period of time, endeavour to upgrade the position of an incumbent employee, or*
- b. *with the agreement of the affected employee, restructure her or his duties to reflect the grade determined by the job evaluation.”*

2.3 As pointed out, I am called upon to make an appropriate award in this regard.

3. Background to dispute

3.1 The Applicants in this matter is J. Loubser and 10 Others. Said Applicants are employed as School Clerks at various schools in the Free State Province. Although the dispute was filed on behalf of the eleven (11) employees, the issue/question at stake apparently concerns all the School Clerks in the Province.

3.2 Said posts were subjected to a job evaluation-exercise in June 2008 and the results presented to

the Job Evaluation Panel (JEP) on 11/09/2008 for recommendation (it was recommended that the posts be upgraded from job level 3 to job level 4-6). Due to the Sustainable Resource Management Circular No. 2/2008 and the Departmental financial constraints, the MEC: Education however did not approve the recommendations of the JEP (Annexure A.p.5 dated 09/12/2009).

3.3 Subsequently, the Applicants lodged a dispute (LRA 7.11) on 13/11/2009 on the basis set out above (par. 2 *supra*). The case was then set down for conciliation on 11/12/2009. The parties however failed to solve the dispute and a certificate of non-resolution was accordingly issued in terms of **section 135(5)/LRA '95**. The Applicants then filed a Request for Arbitration on 11/01/2010.

3.4 The case was initially set down for arbitration on 12/03/2010 before Panellist A. Osler. During the proceedings the parties engaged into an agreement on the basis that “the Respondent will notify the Applicants in writing on/before 31/03/2010 whether or not the salary upgrades of the relevant employees will be implemented and on what terms”. The Respondent failed to follow suit and the Applicants then requested Case Management to reinstate the case for arbitration (case set down before myself on 14/09/2010).

4. Survey of Evidence / Argument

4.1 The parties submitted a combined bundle of documents marked Annexure A. I have also heard oral arguments in this regard.

4.2 The parties however consented to supplement their arguments by further written submissions to be dealt with on paper. In an endeavour to finalise the case within the context of **section 138(1)/LRA '95** I believe it would be appropriate to guide the parties/set the time frames for the filing of the papers (as consented to by the parties).

5. Ruling

In case PSCB398-09/10 the following ruling is rendered—

5.1 The parties are hereby ordered to file their respective final submissions as follows—

5.1.1 the Applicant to file on/before 17 September 2010 (copies to be send to the Respondent and myself as indicated below);

5.1.2 the Respondent to file on/before 23 September 2010 (copies to be send to the Applicant and myself)—

Applicant: J. Greeff

Fax: (051) 403 1315 / 9

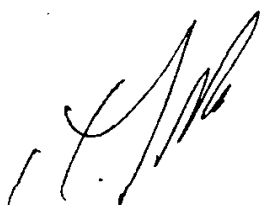
Respondent: K. Tlale

Fax: 086 517 4930

Commissioner: M. C. van Aarde

Fax: 086 670 7747

5.2 The merits of the case to be dealt with on paper (before 07/10/2010) and an award to be issued.



Signature: _____

Senior Commissioner: Martinus van Aarde

Sector: Education