



# ARBITRATION AWARD

Panellist: M Naidoo  
Case No: PSCB694-16/17  
Date of Award: 28 November 2017

**In the ARBITRATION between:**

**NEHAWU obo  
M J MOKAEANE & 1 OTHER**  

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(Union / Applicant/s)

And

**DEPARTMENT OF COOPERATIVE GOVERNANCE – NATIONAL (1<sup>ST</sup> RESPONDENT)**

**DEPARTMENT OF PUBLIC SERVICE & ADMINISTRATION (2<sup>ND</sup> RESPONDENT)**  

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(Respondent/s)

### Details of hearing and representation

- [1] The arbitration took place on 23 November 2017 at the offices of the Public Service Co-ordinating Bargaining Council (“PSCBC”), 260 Basden Road, Lyttleton Village Office, Centurion. The proceedings were digitally recorded. The first applicant, Mr Joshua Mokaeanane, was present. The second applicant, Mr Thato Khaha, was present. The first applicant, in his capacity as an official of NEHAWU, represented both himself and the second applicant.
- [2] The first respondent, the Department of Cooperative Governance – National, was represented by Mr Sonwabe Shibane, its director of labour relations. The second respondent, the Department of Public Service and Administration, was represented by Ms Deborah Khoathane, its deputy director. The proceedings were conducted in English. No interpretation services were used.

### Issues to be decided

- [3] I am required, in this *interpretation* and *application* dispute; to make a finding on whether clause 18.1 of PSCBC Resolution 1 of 2012 (“**the resolution**”) (“**clause 18.1**”) is applicable to the applicants and, if so, whether the applicants are entitled, in terms of clause 18.1, to be placed on job level (“**JL**”) 12 with effect from 1 August 2012 (“**the dispute**”).

### Background to the issue in dispute

- [4] On 22 March 2011 the first respondent appointed the first applicant as its **manager: network services** and the second applicant as its **manager: ICT infrastructure management**. Both applicants resumed work on 1 April 2011 on an annual income of R406 839 (which is on JL11) at the first respondent’s policy, research and knowledge management branch. The applicants have remained, in their employment with the first respondent, on JL11.
- [5] In October 2016 the applicants lodged respective grievances claiming that the first respondent must upgrade them to JL12 with effect from 1 August 2012 in compliance with clause 18.1. In January 2017 the second respondent informed the applicants they were graded to remain on JL11 and therefore clause 18.1 was not applicable to them.
- [6] On 24 February 2017 the applicants referred the dispute to the PSCBC. On 23 March 2017 PSCBC panelist Tshepo Mashigo issued a certificate, in terms of section 135(5) of the Labour Relations Act of 1995 (“**the LRA**”), to the effect that the dispute remained unresolved. On 28 March 2017 the applicants referred the dispute to the PSCBC for arbitration.

- [7] On 4 July 2017 the PSCBC sent a notice to the parties setting the dispute down to be arbitrated on 7 September 2017. On 7 September 2017 and in consultation with the parties; I issued a directive that the parties make written submissions by 3 October 2017. I also postponed the arbitration.

### **Summary of the evidence and arguments**

#### *The applicants' version and arguments*

- [8] The applicants pointed out that the posts of ***manager: network services*** and ***manager: information security*** were graded in 2009 to be on JL12. The applicant's explained, however, that due to the coming into operation of Resolution 3 of 2009, JL12 was abolished. This had the effect of both the *manager: network services* and *manager: information security* posts being confined to JL11. The applicants were, therefore, placed on JL11 when they were employed on 1 April 2011 in the posts of *manager: network services* and *manager: ICT infrastructure management* respectively.
- [9] On 1 August 2012, however, when clause 18.1 came into operation; the erstwhile abolishment of JL12 was reversed. This had the effect of reverting the posts of *manager: network services* and *manager: information security* to JL12. The applicants conceded that their posts of *manager: network services* and *manager: ICT infrastructure management* were regraded in 2017 to be on JL11; but argued that, as the regrading was not approved by the delegated authority, the 2009 grading remained applicable. Hence, they were entitled to be paid on JL12 with effect from 1 August 2012.

#### *The respondents' version and arguments*

- [10] The respondents argued that the applicants' posts of *manager: network services* and *manager: ICT infrastructure management* were regraded in 2017 to be on JL11. They conceded that the delegated authority has not yet approved the regrading. The recommendation of the regrading is, however, pending the delegated authority's approval.
- [11] The respondents explained that, when clause 18.1 came into operation, the applicants' posts of *manager: network services* and *manager: ICT infrastructure management* comprised of both JL11 and JL12. The respondents had, in 2017, conducted a re-evaluation of the applicants' key performance indicators against their experience and competencies; and had established that they should remained in JL11. This recommendation was then sent to the delegated authority for approval.
- [12] The respondents argued that clause 18.1 did not automatically place them on JL12. That escalation had to be earned through a promotion. The re-evaluation that was conducted in 2017 demonstrated that they were indeed not qualified for such a promotion.

## Analysis of evidence and arguments

[13] Clause 18.1 states:

**“18 AMENDMENT TO PSCBC RESOLUTION 3 OF 2009**

18.1. *Clause 3.6.3.2 of PSCBC Resolution 3 of 2009 is hereby amended to allow employees whose posts are graded on salary levels 10 and 12 to be appointed and remunerated on salary levels 10 and 12 respectively.”*

(my emphasis)

[14] Clause 3.6.3.2 of PSCBC Resolution 3 of 2009 (**Clause 3.6.3.2**) states:

**“3.6.3 Salary levels 9-10 and salary levels 11-12**

...

3.6.3.2 *The commencement salary for all employees on posts not covered by any OSD as per PSCBC Resolution 1 of 2007 and 3 of 2008, and appointed as Assistant Directors and Deputy Directors shall, with effect from 1 July 2010, be on salary levels 9 and 11 respectively.”*

[15] Panellist Matji considered clause 18.1, read with clause 3.6.3.2, in an *interpretation* dispute, in the following award: *PSA obo Z Gashe and 40 Others / Department of Rural Development and Land Affairs and Department of Public Service and Administration*, case number PSCB150-15/16 (**“the Gashe award”**). Panellist Matji reasoned, in the Gashe award, at paragraphs [24] and [25]:

[23] *I took the liberty to refer to PSCB88-13/14 at paragraph [64] and found the following: ‘The Respondent must apply the clause indiscriminately to all employees whose posts on 1 August 2012 were graded on salary levels 10 and 12 and to appoint and remunerate them accordingly on salary levels 10 and 12 respectively’. It does not need the wisdom of Solomon to realise that an employee must have been employed on 1 August 2012 to be entitled to the benefits arising from Resolution 1 of 2012.*

[25] *It is immaterial whether the post existed or not as on that date. (W)hat the resolution clearly aimed to address was the employees who as at the date of 1 August 2012 occupied posts graded on level 10 or 12 who were remunerated on salary level 9 and 11 as per resolution 3 of 2009. Therefore clearly, the resolution is not applicable to the applicants as they were appointed after 1 August 2012.”*

(My emphases)

[16] Panellist Mbileni similarly reasoned in the following award: *PSA obo Zuko April & Seven Others / Department of Trade & Industry*, case number PSCB648-141/15 (**“The Zuko award”**). Panellist Mbileni concluded in the Zuko award at paragraph [14]:

*“The correct interpretation or application of clause 18.1 ... is that it has been made applicable to all employees of the State provided that they occupy positions which have been graded at levels 10 and 12 prior to the resolution ...”*

(My emphasis")

- [17] In tandem with Panellists Matji's and Mbileni's reasoning, it is clear that clause 18.1 is applicable to the applicants in the current matter; as they have been in the first respondents' employ, on JL11, since 1 April 2011. The applicability of clause 18.1, however, does not stop here.
- [18] Clause 18.1, clearly, only allows the applicants an upgrade from JL1 to JL12 if their posts are graded on JL 12. Clause 18.1 uses the present tense. The fact that the posts of *manager: network services* and *manager: information security* were graded to have been on JL12 in 2009, does not mean that such grading was still applicable on 1 August 2012 and beyond. It was not. This is because JL12 was in effect abolished when clause 3.6.3.2 came into operation in 2009. JL12 was *re-introduced* as an increment within the public service with effect from 1 August 2012. Clause 18.1 did not, simultaneously, *abolish* JL11 and incorporate all employees earning on JL11 into JL12.
- [19] The only practical and reasonable obligation that clause 18.1 place on the public service was that its departments must, in the normal course of promoting its employees, grade them to establish whether they met the requirements of the JL12 increment. The respondents had indeed conducted such a grading exercise in 2017. The applicants had been found to have not met the standard for the upgrade.
- [20] Panellist Hanekom very aptly reasoned, in this regard, at paragraph [17] of the following award: *PSA obo R Hall / Department of Premier – Western Cape and Department of Public Service and Administration*, case number PSCB148-16/17 ("**the Hall award**"):
- "Mokgalapha further gave a plausible explanation as to why years of service may lead to higher salaries for equal work performed and why an Assistant Director like the Applicant would initially be appointed on salary level 9"*
- [21] The applicants did not dispute that the grading exercise, that took place in 2017, was in any way flawed. Nor was I seized with such a dispute. The fact that the delegated authority has not yet *approved* such a grading does not place its existence or weight in question. It is compelling evidence of the applicants' ability to perform on JL11, rather than on JL12.

## **AWARD**

- [22] Clause 18.1 of PSCBC Resolution 1 of 2012 ("**the resolution**") is applicable to the first applicant, Mr Joshua Mokaeanane, and the second applicant, Mr Thato Khaha, as they were employed by the first respondent before 1 August 2012, when the resolution came into operation.

- [23] The applicants, however, do not qualify to be upgraded from job level (“JL”) 11 to JL12 in their posts of *manager: network services* and *manager: ICT infrastructure management*; as the results of their job grading in 2017 was to the effect that they remain in JL11.
- [24] The first and second applicants’ claim that the first respondent, the Department of Cooperative Governance – National, and the second respondent, the Department of Public Service and Administration, upgrade them to JL12 with effect from 1 August 2012, when the resolution came into operation, is accordingly dismissed.



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**PSCBC Panellist**  
**M Naidoo**