



AT THE PUBLIC SERVICES COORDINATING BARGAINING COUNCIL

In the arbitration between:

NEHAWU obo I Netshivungululu & 1 Other

Applicant

and

STATISTICS South Africa

Respondent

ARBITRATION AWARD

Case Number: PSCB745-14/15

Date of the Award: 10 February 2016

Panellist: Thembekile Nsibanyoni

DETAILS OF HEARING AND REPRESENTATION

This matter was scheduled for arbitration on 11 November 2015 and 20 January 2016 at the offices of the PSCBC in Centurion. The applicants, Mr. I Netshivhungululu and Mr. Kenneth Ngubengusha were at all times represented by Mr. Titus Ditsamai, an official from the NEHAWU and the respondent was represented by Mr. Mike Tsiri, Manager; Labour Relations. The proceedings electronically recorded and the parties were requested to submit closing arguments.

The applicant parties called two witnesses and that was Netshivhungululu (the first Applicant) and Mr. Marumo Manyathela; the Manager, Organisation Design and Development (ODD).

THE ISSUE TO BE DECIDED

The dispute relates to the interpretation and application of a collective Agreement in terms of Clause 18.1 of the PSCBC Resolution 01 of 2012. It is the contention of the applicants that they were appointed by the respondent as Team Leaders: Census Publicity and Stakeholder Relations at Salary Level 11. It was the applicants' argument that their posts were advertised at salary level 12. The applicants seek to be upgraded to level 12.

The respondent stated that it is true that the posts were advertised at salary level 12; however, before the applicants to accept the positions, they were informed that the posts had been offered to the applicants at salary level 11 and they accepted the positions. Furthermore, the applicants' posts were not graded; therefore, Resolution 1 of 2012 did not apply to them.

Under cross examination, it was put to the first applicant that his post was not graded. The applicant stated that the post was advertised at salary level 12 and they accepted the post at salary level 11 because PSCBC Resolution 3 of 2009 had suspended salary levels 10 and 12. However, after Resolution 1 of 2012 reinstated salary levels 10 and 12, they were entitled to be placed on salary level 12.

SURVEY OF EVIDENCE AND ARGUMENTS

The first applicant was the one who gave evidence on behalf of the applicants. He confirmed that they applied for the stated position which was advertised at salary level 12. They were offered the positions but it was at salary level 11. He conceded that they accepted the posts at salary level 11 because they had believed that due to Resolution 9 of 2009, salary levels 10 and 12 had been abolished.

In 2012, Resolution 1 of 2012 was passed and the salary levels 10 and 12 were reinstated. It is therefore the contention of the applicants they should be upgraded to level 12.

It was put to the applicant that by virtue of the fact that their posts were not graded, they could not be graded to salary level 12. Furthermore, it was put to the applicant that he had a cross transfer to a post Stakeholder and Marketing Division so he was not occupying the position of Team Leader: Consensus Publicity and Stakeholder Relations. It was further put to him that the position he transferred to was at salary level 11. The first applicant stated that he transferred to a different department because he was requested to act at a higher position in that department. He indicated that he acted for several years and when the position was advertised he was not successful.

The second applicant did not testify and the applicants confirmed that the evidence of the first witness was sufficient for their case.

The second witness for the applicant was Mr. Marumo Nyathela: Manager: Organizational Design and Development. He confirmed that the posts of the applicants were advertised at salary level 12. He however stated that the posts were not graded at the time.

He further stated that when the positions were put on salary level 11, all the candidates were notified and both the applicants accepted the position despite the fact that the posts were not at salary level 12.

He stated that the first applicant had applied for a cross transfer and swapped positions with a certain Mrs. Onicah Seemise. The position that was occupied by Seemise is graded at salary level 11. Even under cross examination, he conceded that when the positions were advertised, they were advertised at salary level post 12 but before the positions were offered to the applicants, they were told that the posts are at salary level 11 and they accepted the positions.

He reiterated that the posts of the applicants were not graded; they therefore did not qualify to have the posts regraded in terms of clause 18.1 of Resolution 1 of 2012. He conceded that the posts should have been graded before they were advertised but it was because of the urgency of filling the vacancies.

ANALYSIS OF EVIDENCE AND ARGUMENT

The applicants stated that the respondent failed to comply with clause 18.1 of Resolution 1 of 2012 which is the clause that addresses salary levels 10 and 12. This clause states as follows: “Clause 3.6.3.2 of PSCBC Resolution 3 of 2009 is hereby amended to allow employees whose posts are graded level 10 and 12 to be appointed and remunerated on salary level 10 and 12.”

The evidence before me that was given by Nyathela, who was the witness of the applicants and a very credible witness, was that their posts were never graded in the first instance. Their posts were indeed advertised at level 12 but when the posts were offered to the applicants; they were informed that the posts were now at salary level 11. The applicants accepted the posts at salary level 11. There had been several communications with Nyathela, who reiterated that their posts were never graded and that was because of the urgency of filling those vacancies.

Secondly, the first applicant was transferred to the Stakeholder Relations and Marketing and this position was grade at salary level 11. The first applicant conceded that his transfer was as a result of the fact that he was requested to act in a senior position, which he duly did. He acted in this position for several years but was ignored when the position was filled. One cannot help but come to a conclusion that the applicant is disgruntled by the non-appointment to a senior position.

However, the principal issue raised by the applicants was that they were supposed to be regraded to salary level 12 from salary level 11. The convincing evidence of Nyathela was that the positions of the applicants, being Team Leaders: Consensus was not graded from the beginning.

The positions were indeed advertised at level 12, however, the evidence of Nyathela was that the candidates were told that during the interview and after they were offered the position that the position is a salary level 11. This evidence was not disputed by the

applicants. It is therefore disingenuous for the applicants to state that at all times they were of the view that their post were at salary level 12 and it was only degraded to level 11 because of Resolution 3 of 2009.

They were at salary level 11 at all times and their positions were never graded and it will be prejudicial for the respondent to put the applicants on salary level 12 whilst their posts had not been graded.

It is therefore clear that clause 18.1 of Resolution 1 of 2012 as stated above does not apply to the applicants for a simple reason that their posts were not graded.

This application is therefore dismissed on the grounds that clause 18.1 of Resolution 1 of 2012 does not apply to them because their posts were never graded.

This matter is therefore dismissed.

I make no order as to cost



Thembekile Nsibanyoni
Arbitrator