



ARBITRATION AWARD

Panellist/s: Karen Kleinot _____
Case No.: PSCB767-14/15 _____
Date of Award: 13 of Jul 2015 _____

In the ARBITRATION between:

PSA obo Majiza _____
(Union / Applicant)

and

Office of the Premier-Western Cape _____
(Respondent)

Union/Applicant's representative: Mr. Theunissen _____
Union/Applicant's address: _____

Telephone: _____
Telefax: _____
Email _____

Respondent's representative: Mr. Bogenhaven _____
Respondent's address: _____

Telephone: _____
Telefax: _____
Email _____

DETAILS OF THE HEARING

1 The matter was heard on 29 Jun 2015 at the Office of the Premier-Western Cape. Both parties appeared, Mr. G Theunissen a trade union official appeared on behalf of Mr. Majiza, Mr. Bogenhagen, the Labour Relations Officer appeared on behalf of the Department. The matter was recorded. Two bundles of documents were submitted and constitute part of the record. The parties agreed to hand in closing arguments by close of business on 10 Jul 2015.

ISSUE IN DISPUTE

2 To determine the interpretation and application of resolution 1 of 2012 and clause 4 of resolution 3 /1999.

BACKGROUND TO THE DISPUTE

3 Mr. Majiza fills a network technician post graded at salary level 9. Prior to the case he acted in the position of Chief Network Technician which is graded at level 10. It is common cause after this Mr. Majiza resumed duties as team leader which is graded at level 10. Mr. Majiza is still graded at level 9 earning the salary of a level 9 but performing work of a job graded at level 10. A grievance was lodged 9 October 2014 requesting equal remuneration.

SURVEY OF THE EVIDENCE

Respondent's version

4 Mr. A. Coetzee testified in essence as follows:

Mr. Majiza is a network technician acting as a team leader in north district. The network technician post is graded at level 9. Mr. Majiza has been the team leader for the past three years. Mr. Coetzee explained that acting in a post was not a permanent position. The position of Chief Technician was abolished. This was not the only post to be abolished level 12 also disappeared. The structure changed in 2011. From 2011 to 2015 there were various submissions made from various departments to re-introduce level 10 for the post Chief Network Technologist. Mr. Coetzee emphasized that there could not be an appointment in level 10 as there was no official level 10 post. In 2015 the DPSA reintroduced level 10 and 11 however there are no level 10 posts advertised. Mr. Coetzee indicated that the post Chief Network Technologist was vacant but has not been advertised. Mr. Coetzee agreed that Mr. Majiza had performed duties as a team leader and had acted in the position as Chief Network Technologist. Mr. Coetzee agreed that Mr. Majiza has been acting in this position since 2010. Mr.

Majiza performed the duties of the level 10 post and performed beyond average. Mr. Coetzee denied that Mr. Majiza was assessed at level 10. Mr. Coetzee stated that Mr. Majiza would be a good candidate the moment he obtained his qualification. Mr. Coetzee disputed that a person could be placed in a post without advertising it. All staff had to be able to apply for the post.

5 According to Mr. Coetzee when an employee acts in a position they do not get an acting allowance. However they are nominated for a merit bonus due to excellent work. Up to this stage Mr. Majiza has not had the correct qualifications for a level 10 post. The requirement for level 10 post is NQF6 a three year degree or similar. Mr. Majiza is currently studying and will obtain his NQF 6 in September 2015 when he will then qualify for a level 10 post.

6 Mr. Coetzee agreed that there was only one job evaluation conducted in 2005 for network technologist. Mr. Coetzee stated that the policy did not allow for a person to be accommodated at a different level unless there had been a process of advertisement and selection for the post. He maintained further that as Mr. Majiza lacked the qualification he could not be absorbed. Mr. Coetzee denied that regulation 3 of 1999 clause 4.3 allowed for under graded positions to be upgraded irrespective of qualifications.

7 Mr. R Kreuser, the Deputy Director Chief of Organizational Development and Design testified as follows: The last job evaluation indicated that Chief Network Technologist was graded at level 10 and Network Technologist was graded at level 9. Currently Mr. Majiza is in the post of Network Technologist. At no point in time has he been graded at level 10. Mr. Kreuser confirmed that if an acting allowance is not given a merit bonus is provided.

8 Mr. Kreuser stated that if a person was on a level 9 grade and performed the duties of a level 10 a recommendation would be made to appoint this person at level 10 provided that a vacant post existed and that the individual applied. If this is not viable, a job evaluation needed to be performed. Mr. Kreuser agreed that the Public Service Regulations rules and principles bound them, specifically the equal pay for equal work principle. Mr. Kreuser agreed that if the incumbent met the criteria in terms of qualifications, and performed level 10 functions and duties then the parity principle should apply and the level 9 should be changed to level 10.

SURVEY OF ARGUMENT

9 Mr. Bogenhaven argued that at no point in time was Mr. Majiza appointed in a level 10 post. It is accepted that Mr. Majiza is performing level 10 duties and functions and performing them well, for collective agreement which he receives a bonus. The dispute involves an application and interpretation of resolution 1 of 2012. It was argued that there was no proof that Mr. Majiza was appointed at level 10. The fact that Mr. Majiza is doing additional work and compensated for such does not mean that he must be appointed at level 10 without possessing the requisite qualifications and applying for the post . The Applicant has not proved that he is on a level 10 grade and therefore the matter stands to be dismissed.

10 Mr. Theunissen argued that Mr. Majiza performed the same duties and functions of a salary level 10 post without being remunerated for such. It was argued that the Respondent is in breach of Clause 18.1 of 1/2012. Further in terms of the Regulations clause 4.3 of 3/1999 if a job is under graded, the employer will within a reasonable time upgrade the position of the incumbent employee. It is argued that Mr. Majiza's position is under graded. Mr. Theunissen argued that the evidence revealed that Mr. Majiza's position could have been upgraded and consequently it was argued that the Respondent is in breach of clause 18.1 of the Collective Agreement.

ANALYSIS OF EVIDENCE AND ARGUMENT

11 The issue is whether clause 18.1 of resolution 1/2012 and clause 4 of resolution 3/1999 are interpreted and applied correctly. Clause 18.1 of resolution of 1/2012 states as follows; " *Clause 3.6.3.2 of PSCBC 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*". Clause 4.3 states that " *If a job evaluation as provided under to the Public Service Regulations indicates that a job has been under graded, the employer shall either (a) within a reasonable period of time endeavor 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.*"

12 The evidence reflects that Mr. Majiza is appointed at a level 9 post. It appears to be common cause that he has been performing the duties and functions of a level 10 post. Due to his good performance he has received merit bonuses. At no stage was his current post, network technician graded at level 10. At no point in time is there any evidence that he was appointed in the level 10 post. The post Chief Network Technician is graded at level 10. This post had not been in existence for at least two years. The post Chief Network Technician was only reinstated in 2015. Currently Mr. Majiza

does not meet the qualification requirements for the post. Clause 18.1 of resolution 1 of 2012 mentions posts that are graded on level 10. In this case Mr. Majiza's appointed post and the post he is performing in are on different levels. Clause 18.1 specifies that the post must be graded at 10 or 12 and that the employees who occupy those posts be appointed on level 10 and 12. Therefore in terms of this provision the post Chief Network Technician is graded at level 10. The post is currently in existence as of January 2015 and this provision makes allowance for the person in the post, which is graded at 10 or 12 to be appointed at level 10 or 12. The clause is silent on the scenario where the incumbent holds a different level to the job grade and as such can be interpreted to allow for this eventuality given that there was a job evaluation and recommendations were made to change various job levels.

13 It was argued that in terms of the Regulations C6 "If an executing authority increases the salary of a post as provided under regulation V C5 she or he may continue to employ the incumbent employee in the higher graded post without advertising the post of the incumbent-(a) already performs the duties of the post; (b) has received a satisfactory rating in her or his most recent performance assessment; and (c) starts employment at the minimum notch of the higher salary range." The post was reinstated with a market related salary and as such this can be seen as an increase given that the post was abolished for three years and then reintroduced at a different salary.

14 Consequently I find that the Dept of the Office of the Premier has incorrectly interpreted clause 18.1 of Resolution 1 of 2012. The Dept of the Office of the Premier is ordered to appoint Mr. Majiza to the post Chief Network Technician from January 2015 with the back pay, being the difference between what Mr. Majiza earned as a level 9 and what he would have earned as a level 10 in the post Chief Network Technician.

15 In summary I find that clause 18.1 makes provision for the appointment of an employee into level 10 or 12 where the post is graded 10 or 12 irrespective of the employee's current level but subject to his/her performance and the availability of the post, as per the Regulations.

AWARD

16 The Dept of the Office of the Premier is ordered to appoint Mr. Majiza to the post Chief Network Technician from 01 January 2015 with the back pay, being the difference between what Mr. Majiza earned as a level 9 and what he would have earned as a level 10 in the post Chief Network Technician.

A handwritten signature in black ink, appearing to read 'K. Kleinot', with a stylized flourish at the end.

Karen Kleinot (Commissioner)