



ARBITRATION AWARD

Panelist: John Cheere Robertson
Case No.: PSCB565-14/15
Date of Award: 3 December 2015

In the ARBITRATION between:

SAPU obo Nortier & Terblanche
(Union / Applicants)

and

South African Police Service
(Respondent)

Union / Applicants' representative: Mr Leon Naude (SAPU) _____
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Newton Park _____
Port Elizabeth _____
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Respondent's representative: Brig. P. De Kock _____
Employer's address: Private Bag X 94 _____
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0001 _____
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DETAILS OF HEARING AND REPRESENTATION

- 1 This matter was set down for arbitration on 13 October 2015 in Port Elizabeth. Mr Naude of SAPU represented Ms J Nortier & Ms C Terblanche (applicants). Brig. P. De Kock represented the South African Police Service (respondent). The parties' representatives agreed to submit written closing arguments by 26 October 2015, which I have received. I requested an extension within which to submit my award.

ISSUE IN DISPUTE

- 2 The issue to be determined is whether the respondent complied with PSCBC Resolution 3/2009 (R 3/2009) and dependent thereon-appropriate relief.

BACKGROUND TO THE ISSUE

- 3 The applicants referred a dispute in terms of R 3/2009 claiming that they be grade (salary level) progressed from salary level 6 to 7 with effect from 1 July 2013 and 2014 respectively, consequent on completion of 15 years continuous service as provided for at paragraph 3.6.2.2 of R 3/2009.
- 4 The applicants are both administrative office employees employed in terms of the Public Service Act, 1994 in the South African Police Service in the occupational category of clerks. Prior to 1 July 2013 and 2014 respectively the applicants were level 6 clerks remunerated at salary level 6. Ms Nortier was appointed on salary level 6 on 23 November 1997 (A61) and completed 15 years service on 23 November 2012 and would have qualified for grade (salary level) progression on **01 July 2013**. Ms Terblanche was appointed on salary level 6 on 1 September 1998 (A63) and completed 15 years service on 1 September 2013 and would have qualified for grade (salary level) progression on **01 July 2014**. It was common cause that they both had obtained the necessary satisfactory rating in their respective performance assessments.
- 5 The applicants argue *inter alia* that the respondent has unilaterally amended the provisions of R 3/2009 and by way of the application of the outcome of job grading exercises, which they argue were not foreseen by the drafters of R 3 /2009, denied the applicants' grade (salary) progression in terms of R 3 /2009. As relief the applicants seek that the respondent be ordered to grade (salary level) progress them to salary level 7.
- 6 The respondent disagrees and argues that it has applied the provisions of R 3/2009 and that R 3/2009 is premised on the outcome of job evaluation and job grading. The respondent further takes issue with the failure to join the department of public service and Administration (**dpsa**), who was the signatory, on behalf of the State as employer, to R 3/2009, as a party to this matter. The respondent seeks that the *status quo ante* remains

SURVEY AND ANALYSIS OF EVIDENCE AND ARGUMENT

- 7 A bundle of documents Exhibit A1-A64 was handed up on the basis that the contents were admitted and required no further proof as to authenticity, delivery and receipt. It was agreed between the parties that only the respondent's witness, Col. GJ Kemp, Sub Section Head, Remuneration Services, attached to National Head

Office, South African Police Service, would testify and that they would submit written closing arguments based on his testimony and the documents handed up.

- 8 I have considered all the evidence and argument, but because the Labour Relations Act no. 66 of 1995 (LRA) requires brief reasons (Section 138 (7)), I have only referred to the evidence and argument necessary to substantiate my finding/s and award.
- 9 The Minister for the Public Service and Administration (**dpsa**) issued a directive in 2004 to provide for a process in terms of which the upgrading of occupations utilized across various departments in the public service should be coordinated amongst the departments themselves (A36). Following on this, it was determined on the basis of the way that work is generally managed in departments, in five broad categories of clerks that two performer (work) levels were required for clerks i.e. a production and a supervisory level (A36). Benchmark job descriptions were developed for the two performer levels in each of the categories and the information was used to evaluate the jobs, which were then graded accordingly. In terms of a directive (A41-50 dated 12 December 2012) from the **dpsa** (which was implemented by the South African Police Service on 01 April 2013) the applicants who were post level 6 clerks (in the production category), had their posts/jobs downgraded / regraded to the benchmark grading of 5, but with retention of salary level 6.
- 10 The effect of the above and as implemented by the respondent on 01 April 2013, is that production clerks, who were regraded to level 5 with retention of their salary level, in the instant case with retention of their salary at level 6, can no longer grade (salary level) progress to salary level 7 as there are now only two positions for the occupational class of clerks namely; production level clerk 6 and supervisory level clerk 7. The position of the supervisory level clerk at level 7 is now post bound and accordingly can only be filled via advertisement and selection processes.
- 11 The applicants' argue to the effect that they are entitled to grade (salary level) progress to salary level 7 in terms of R3 /2009 on the basis:
- That the only two criteria required for them to grade (salary) progress in terms of R 3/2009 are:
 - 15 years continuous service on salary level 6
 - A satisfactory rating in respect of their performance.
 - The job evaluation process resulting in the system of salary grading, was initiated by the **dpsa** during 2004 (A40) and amended 14 June 2007 (A41 / 43) when the process to be followed was set out (A46).
 - R 3/2009 was entered into on 24 July 2009 and did not take into account or provide for a system of salary grading and further that it could not have been foreseen that employees on salary level 6 would be downgraded and that this could not have been the intention of the parties to R 3/2009 (i.e. that some employees in the future may be denied the right to grade (salary level) progression due to job evaluation).
 - The implementation of the new benchmark job descriptions and division into the two performer (work) levels of production level clerk (salary level 5) and supervisory level clerk (salary level 7) amounted to a unilateral

variation of R 3/2009 and effectively denied the applicants, their right in terms of paragraph 3.6.2.2 to grade (salary level) progress to salary level 7. The respondent cannot unilaterally vary the terms of Resolution 3 of 2009 and should it wish to do so, the matter should be re-negotiated.

- The fact that the applicants, graded as salary level 5 clerks with retention of their salary at level 6, could not progress to salary level 7 was untenable as employees who had been appointed at salary level 5 could salary progress to salary level 6. (I.e. while such employees could grade (salary level) progress, the applicants could not)

12 The respondent argued to the effect that the grade progression model established in terms of R 3/2009 is based on:

- The grading of posts based on the outcome of the job evaluation system in the public service
- Recognition of performance
- Completed continuous years of service on a relevant salary level

and further that:

- Posts are graded on the outcome of job evaluations.
- R 3/2009 regulates not only the occupational categories of clerks but also other occupational categories. R 3/2009 binds all public service employees, including those in the occupational category of clerks.
- Grade progression is not automatic and is subject to grading based on job evaluations, performance and the required period of continuous service. Consequently other classes of employees, subsequent on a job evaluation, may also not be able to grade (salary level) progress.
- R 3/2009, at paragraph 3.6.2, *inter alia* provides for grade (salary level) progression through salary levels 5-8. On completion of 15 year's continuous service and subject to obtaining a satisfactory assessment, employees on salary levels 4, 5, 6 or 7 shall grade (salary level) progress to salary level 5, 6, 7 or 8 respectively. This is not subject to the availability of posts. I.e. the jobs are not post bound and required to be filled by way of advertisement and selection processes.
- Consequent on the job evaluation and job grading for the occupational category of clerk, there are now only two levels for clerks i.e. production level clerks at grade 5 and supervisory level clerks at grade 7. The post of clerk level 7 (supervisory level) is post bound and can only filled where there is a vacancy and after an advertisement and selection process. This has been the position since the introduction of the new grade levels on 1 April 2013. In the circumstances paragraph 3.6.2.2 (which deals with where employees can grade progress to salary level 5, 6, 7 and 8) is not applicable as grade (salary level) progression is not subject to the availability of posts.
- R 3/2009 has not been unilaterally amended.
- With regard to the occupational category of clerks the post levels of clerks have been regraded in line with the job evaluation and this, i.e. the job evaluation and grading, is contemplated in R 3/2009 as evident from paragraphs 3.5.1 and 3.6.2.10. In the circumstances R 3/2009 referred to and integrated the process and outcome of job evaluation in the process of grade progression.

13 The relevant portions of paragraphs 3.5, 3.6.2 and 6.2 of R 3/2009, referred to above read as follows:

“Grade Progression Model

3.5 ***The Grade Progression Model is based on the following principles:***

3.5.1 ***Posts are graded based on the outcome of Job Evaluation,***

3.5.2 ***Recognition of performance; and***

3.5.3 ***Completed continuous years of service on a salary level irrespective of the notch.***

...

3.6.2 ***Salary Levels 4-5, Salary Levels 5-6; Salary Levels 6-7 and Salary Levels 7-8***

3.6.2.1 ***Subject to the Public Service Regulations and based on the outcome of the Job Evaluation exercise, posts are advertised and filled at the minimum notch of the first appropriate salary level.***

3.6.2.2 ***With effect from 01 April 2010 (salary adjusted with effect from 01 July annually), 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 (the average assessment over the last 2 year period will determine the performance rating), shall grade (salary level) progress to salary level 5, 6, 7 or 8 respectively. This is not subject to the availability of posts.***

3.6.2.3 ***Grade Progression will be capped for employees on salary level 3, 8 and 10. Therefore, employees cannot grade from salary level 3 to 4, from salary level 8 to 9 and from salary level 10 to 11.***

3.6.2.4 ***Employees can only grade progress from salary level 4 to 5 or from salary level 5 to 6, or from salary level 6 to 7, or from salary level 7 to 8.***

3.6.2.5 ***When an employee is appointed on a post graded on salary level 4, he/she shall only progress to salary level 5.***

3.6.2.6 ***When an employee is appointed on a post graded on salary level 5, he/she shall only progress to salary level 6.***

...

3.6.2.9 ***No employee who was appointed on salary level 4, 5 and 6 can grade progress to salary level 6, 7 and 8 respectively. i.e. grade progress over 2 salary levels. These employees must apply for vacant funded posts graded on those salary levels.***

3.6.2.10 ***This provision does not do away with the provisions of the Job Evaluation system in the public service.***

6. ***Interpretation and Application***

...

6.2 ***No amendments to this Agreement shall be of force unless reduced to writing and agreed upon the council as a Resolution of the Council.”***

(Emphasis added)

14 The question to be addressed is whether the respondent complied with the provisions of R 3/2009 or put another way as argued by the applicants, whether the respondent unilaterally departed from the terms of R 3/2009 in regrading the occupational category of clerk, resulting in two categories of clerks namely production level clerk level 5 and supervisory level clerk 7. The applicants argues in essence that there are only two criteria required to grade progress, namely the necessary period of continuous service at the particular salary level and a satisfactory performance assessment and that it was not foreseen that the outcome of the job evaluation process could deprive the applicants of their right to grade (salary level) progress in terms of R 3/2009. The respondent argues that the principle of grading of posts, based on the outcome of job evaluation, is an inherent requirement of grade progression in terms of R 3/2009.

15 Paragraph 3.5 provides that the grade progression model is based on amongst other things the principle that jobs are graded based on the outcome of Job Evaluation. At paragraph 3.6.2.10 it is stated that this provision does not do away with the provisions of the Job Evaluation system in the public service.

- 16 It is evident from the above that R 3/2009 was entered into based on the job evaluation system as applied in the public service from time to time by the employer and accordingly where a job is regraded following on the outcome of a job evaluation, whether or not the employees in question will be entitled to grade (salary level) progression will be subject to the provisions of R 3/2009 at the regraded level, as based on the outcome of the job evaluation.
- 17 Arising out of the coordination process, benchmark job descriptions were developed for two performer levels of clerks and this information was used to evaluate the category resulting in the posts / jobs of a production level clerk at grade 5 and a supervisory level clerk at grade 7. Although this process was completed in December 2012 the South African Police Service introduced the new gradings on 1 April 2013 (the applicants' positions were regraded at level 5 (production level clerk) although they retained their salaries at salary level 6). The applicants argue that it is not possible for the provisions of R 3/2009 to apply to situations that could not have been foreseen at the time it was entered into. This cannot be so in that R 3/2009 in express terms makes provision for the incorporation of the outcomes of job evaluation, which by definition will continue into the future and it is evident from a perusal e.g. of paragraphs 3.4, 3.5 and 3.6.2 that the collective agreement is written and couched in the present tense. As such the provisions of R 3/2009 are applicable to events as they unfold over the passage of time. The objective or purpose of R 3/2009 is to introduce a revised salary structure, career pathing and a grade progression model more fully detailed in paragraph 3. By definition a purpose has a teleological or forward-looking perspective and this is in line with the understanding that the provisions of R 3/2009 are applicable to events as they unfold over the passage of time. Accordingly while it may not have been foreseen that the outcome of the job evaluation of the occupational category of clerks would lead to a situation where clerks graded at level 5 would no longer be entitled to grade (salary level) progress as they could have, had they met the requirements of R 3/2009 prior to the implementation of the regrading (based on the outcome of the job evaluation of the occupational category of clerks), this does not invalidate R 3/2009. In any event the provisions of R 3/2009 expressly provide for and include the outcome of job evaluation processes in the process of grade progression.
- 18 Ms Nortier qualified to grade progress on 1 July 2013 and Ms Terblanche on 1 July 2014. The regrading was done in December 2012 and implemented by the South African Police Service on 1 April 2013. It is apparent that the levels were regraded before they qualified and accordingly they cannot claim that they grade (salary level) progress to salary level 7 on the basis of R 3/2009 as claimed. In the circumstances it is not necessary for me to deal with the issue of non-joinder of the **dpsa** and I make the following award.

AWARD

- 19 The applicants, Ms JCJ Nortier PERSAL No. 0801752-2 and Ms C Terreblanche PERSAL No. 0800049-2, have failed to show that they are entitled to be grade (salary level) progressed from salary level 6 to salary level 7 in terms of PSCBC Agreement, Resolution 3/2009, and their respective claims are accordingly dismissed.

20 The respondent, the South African Police Service, correctly interpreted and applied the provisions of PSCBC Agreement, Resolution 3/2009

A handwritten signature in black ink, appearing to be 'J.C.R.' with a stylized flourish.

John Cheere Robertson
PSCBC Panelist