



IN THE PUBLIC SERVICE CO-ORDINATING BARGAINING COUNCIL

CASE NO: PSCB367-14/15

In the matter between

L.T. COSSIE

Applicant

And

THE DEPARTMENT OF LABOUR

Respondent

ARBITRATION AWARD

DATE OF AWARD: 23 DECEMBER 2014

PANELLIST: NOMSA MBILENI

DETAILS OF HEARING AND REPRESENTATION

- [1] This is an application in terms of Section 24(2) and 24(5) of the Labour Relations Act 66 of 1995 read with resolution 3 of 2009. The applicant is L.T. Cossie who appeared in person and the respondent is the Department of Labour represented by its employee Stanley Makharinge. The hearing was held on 9 December 2014 at the offices of the Department of Labour in Braamfontein.

ISSUE TO BE DETERMINED

- [2] Whether or not the applicant was entitled to a salary upgrade in terms of Resolution 3 of 2009.

BACKGROUND TO THE ISSUE

- [3] The applicant is employed by the respondent as a Senior Administrative Clerk. He was refused further upgrade to salary level 6 and he referred a dispute to the Public Service Coordinating Bargaining Council (PSCBC) requiring it to determine whether the respondent was interpreting or applying Resolution 3 of 2009 correctly. The dispute could not be resolved through conciliation and the applicant has requested that it be resolved through arbitration.
- [4] It is common cause that the respondent had written a letter to the applicant informing him that he had been upgraded to salary level 6 and that he would earn R170 799.00 per annum. It is further common cause that in terms of Resolution 3 of 2009 an employee has to complete a minimum of 15 (fifteen) years at a particular salary level before qualifying for a further upgrade to the next salary level and that the applicant had not completed 15 (fifteen) years at salary level 5. It is also common cause that the respondent wrote a letter to the applicant informing him that he had been upgraded in error and the letter written to him earlier was withdrawn.

SUMMARY OF EVIDENCE AND ARGUMENT

- [5] The applicant submitted that he received a letter from the respondent on 4 September 2013 informing him that approval had been granted for his grade progression in terms of PSCBC Resolution 3 of 2009. This was done subsequent to

his enquiry after waiting for a response from the respondent for a while. Subsequent to him receiving the letter of 4 September 2013, another letter was written to him withdrawing the offer, stating that it had been issued in error.

- [6] On behalf of the respondent it was submitted that the applicant has admitted that the policy requires that a person applying for a salary progression should have been on a particular level for at least 15 (fifteen) years. He further agreed that he had not completed the required 15 (fifteen) years at grade level 5. The respondent realised this after it had written to the applicant to inform him that his application has been granted. It was compelled to withdraw the letter also because the Public Service Act Section 38 provides for correcting any salary or upgrade that has been erroneously issued. It was further argued that the dispute of the applicant is therefore not one regarding application and interpretation.

ANALYSIS OF EVIDENCE AND ARGUMENT

- [7] The dispute of the applicant is one of failure by the respondent to upgrade his salary level in terms of the letter initially given to him on 4 September 2013. It was agreed by both parties that the correct interpretation of Resolution 3 of 2009 clause 3.6.2.2 was that an employee has to work a minimum of 15 (fifteen) years at a particular grade prior to qualifying for an upgrade to the next salary level. It was further common cause that the applicant had not completed the required 15 years at salary level 5.
- [8] A dispute about interpretation and application of a Collective Agreement occurs when the parties to the Collective Agreement are not in agreement about what a particular clause means or how it should be applied. If the parties do not have a disagreement on the above, then the dispute brought to the PSCBC is not about interpretation and application of the Collective Agreement. The fact that the respondent agreed to pay the applicant the upgraded salary but then withdrew the letter stating this fact does not make this a dispute regarding interpretation or application of a Collective Agreement.
- [9] Although the PSCBC has jurisdiction to determine a dispute regarding application and interpretation of Collective Agreements, the dispute at hand is not about interpretation and application of a Resolution. The respondent made an honest error in issuing the letter to the applicant informing him that it had granted him an upgrade

in salary. In his own submissions he acknowledged that he did not qualify for an upgrade yet he wanted to hold the respondent to the letter. It was therefore not unfair on him that he was not upgraded.

AWARD

[10] The application of the applicant is accordingly dismissed.

A handwritten signature in black ink, appearing to read 'Nomsa Mbele', is written over a faint, rectangular stamp. The signature is fluid and cursive, with a long horizontal stroke at the end.

PANELLIST: _____

NOMSA MBILENI