



**IN THE PUBLIC SERVICE CO-ORDINATING BARGAINING COUNCIL
HELD AT CAPE TOWN**

CASE NO: PSCB 285-13/14

PSA obo Mouton,G

APPLICANT

and

DEPARTMENT OF EDUCATION

RESPONDENT

ARBITRATION AWARD

DATE OF ARBITRATION	:	20 January 2014
CLOSING ARGUMENTS	:	27 January 2014
DATE OF AWARD	:	03 February 2014
ARBITRATOR	:	I de Vlieger-Seynhaeve

1. DETAILS OF HEARING AND REPRESENTATION

1.1 Mr Theunissen, an Official of PSA represented the Applicant. The Respondent, Department of Education, was represented by Ms Malgas.

1.2 The proceedings were recorded digitally.

2. ISSUE TO BE DECIDED

2.1 The issue is about the interpretation and /or application of Resolution 9 of 2001. The issue to be determined is whether the applicant is entitled to pay progression of 1, 5% in terms of clause 4 in Resolution 9 of 2001.

3. SURVEY OF EVIDENCE

3.1 The parties' representatives made the following legal submissions. The facts are as follows:

3.2.1 **Mr Theunissen** stated that the applicant was transferred to the Western Cape and is on level 8. He is not on the maximum notch yet of salary level 8 and he has performed satisfactorily. He therefore qualifies for a pay progression of 1, 5%, backdated until July 2007 in line with clause 4 of Resolution 9 of 2001.

3.2.2 **Ms Malgas** stated that the applicant was working in the Northern Cape on level 8. He then asked for a transfer to the Western Cape. The Head wrote the applicant a letter stating that the applicant could be transferred but only to a position of HR Officer which is on level 7. There were no posts available on salary level 8. The letter further stated that he would be paid R 131 703 per annum but that he would be appointed on a personal notch, meaning that he is on a notch above the maximum of the salary level attached to the salary linked to the post. The applicant agreed to these terms and conditions. It is common cause that although he was appointed on a level 7 he was remunerated on level 8 and received the annual salary adjustments on a salary level 8 scale. Resolution 9 of 2001 needs to be read in conjunction with the Implementation of the Incentive Policy Framework. Part A, par 12 states that *"employees on personal notches shall not qualify for pay progression"*

and par 13 states that employees on personal notches “*will be coded on the PERSAL system that would prohibit departments to award higher notches to affected employees in terms of the pay progression system*”.

4. ANALYSIS OF EVIDENCE AND ARGUMENT

4.1 I have considered all the evidence and argument, but because the LRA requires brief reasons (s 138(7)); I have only referred to the evidence and argument necessary to substantiate my findings and decision.

4.2 Most of the facts were common cause. Resolution 9 of 2001 must be read in conjunction with Implementation of the Incentive Policy Framework. There, the wording “*pay progression*” is explained as “*the progression from a notch within a salary level to the next higher notch within the same salary level*”. Annexure G to this Framework states in clause 12 that: *Employees on personal notches on the salary scale (therefore on a notch above the maximum of the salary level attached to his or her post), shall not qualify for pay progression*. The applicant is therefore not entitled to pay progression. The applicant is currently earning R 231 924 per annum, which is on notch 7 of level 8 while the top notch of level 7 is R 201 195 per annum. He is therefore already earning more than other staff appointed to the same post. The only way for the applicant to have an opportunity at pay progression is applying for a post on level 8.

4.3 The respondent did interpret and apply the Resolution correctly.

5. AWARD

5.1 The respondent is not in breach with Resolution 9 of 2001.

5.2 There is no order as to costs.

SIGNED AT Cape Town ON THIS 3th DAY of February 2014

I De Vlieger-Seynhaeve
PSCBC Arbitrator