



# DEFAULT AWARD

Panellist/s: J.J.ERASMUS  
Case No.: PSCB221-14/15  
Date of Award: 24 October 2014

**In the ARBITRATION between:**

**POPCRU obo VERMAAK**

(Union / Applicant)

and

**SAPS - GAUTENG**

(Respondent)

**Union/Applicant's representative:** Mr. Ashondolf - POPCRU

Union/Applicant's address:

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Telephone:

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**Respondent's representative:** ABSENT

Respondent's address:

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## **PREAMBLE**

- [1] This is an arbitration award issued in terms of Section 138 of the Labour Relations Act 66 of 1995 (as amended) and herein after referred to as the LRA.
- [2] This award is not intended to be a verbatim transcript of the evidence led at the arbitration hearing but rather a determination with brief reasons for such determination.
- [3] Evidence relevant to the determination or to support any of the elements of fairness as required may be referred to. This however does not mean that I failed to consider other evidence or ignored such evidence in coming to my decision.

## **DETAILS OF HEARING AND REPRESENTATION**

- [4] The arbitration was conducted on the 22<sup>nd</sup> of October 2014 at the offices of the PSCBC in Pretoria.
- [5] The Applicant was present at the arbitration and was represented by Mr. Ashondolf, an official of POPCRU.
- [6] The Respondent was in turn absent despite proper notice by fax (to the number 012 -3937159) on the 11<sup>th</sup> of September 2014.
- [7] The proceedings were conducted in English, a digital recording was made and I also kept handwritten notes.
- [8] I was provided with a pre-arb agreement which the parties have previously concluded and used this as the basis for deciding the relevant issues.

## **ISSUE TO BE DECIDED**

- [9] I am required to decide on the interpretation and application of paragraph 3.6.2.12 of Resolution 3 of 2009 and specifically whether the Applicant qualified for a grade progression i.t.o this paragraph.

## **BACKGROUND TO THE ISSUE**

- [9] The Applicant was employed by the SAPS since 1990 on a grade level 6.
- [10] In her opinion she in terms of the Resolution qualified for a grade progression already in 2009. No employee in the SAPS was however grade progressed and no reason or explanation was ever given to the Applicant.
- [11] Believing this to be unfair, she first lodged a formal grievance and when this was unsuccessful she (with the help of her union) first referred a dispute to the SSSBC which was later transferred to the PSCBC. When the dispute remained unresolved during conciliation, a certificate was issued and the matter then proceeded to arbitration.

## **SURVEY OF EVIDENCE AND ARGUMENT**

- [12] In the absence of the Respondent, the Applicant party only made oral submissions and referred me to different documents. Their submissions were briefly as follows:
- [12.1] The Applicant in terms of Paragraph 3.6.2.12.1 qualified for a grade progression already in 2009. At that stage she was on a level 6 and should have progressed to a level 7.
- [12.2] As can be seen on pages 51, 52, 53 & 67, she always got a mark of at least 4 which is above satisfactory for each performance assessment. Her performance was always above satisfactory even when the current performance system was not yet in place.
- [12.3] Despite the fact that she and others qualified for grade progression no one was however progressed. Other state departments however did implement the resolution. The Respondent never informed her why she was not grade progressed.

[12.4] Even if there are no records to prove 12 years of above satisfactory performance, the Applicant still qualifies for a grade progression in terms of Paragraph 3.6.2.2 as she has now completed 15 years of continuous service with the SAPS.

[12.5] The Applicant therefore request to be grade progressed back to the date when she first qualified for such progression.

### **ANALYSIS OF EVIDENCE AND ARGUMENT**

[13] The dispute was primarily referred in terms of Paragraph 3.6.2.12.1 of Resolution 3 of 2009 which stipulate that:

*“An employee who has performed above satisfactory for 12 years cumulatively in a specific salary level, shall grade (salary level) 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. Only 30% of the employees per year may be awarded grade progression in this regard.”*

[14] In terms of Paragraph 3.6.2.12.2 this recognition for accelerated grade progression commences with effect from 1 April 2010.

[15] In my view the said paragraphs is quite clear and stipulate that once the following requirements are met, an employee shall progress to a higher salary level:

[15.1] The employee must have been in a specific salary level for at least 12 years.

[15.2] The employee must have performed above satisfactory for the said 12 year period.

[15.3] Not more than 30% of all employees must have been awarded such progression.

[16] In this matter the Applicant has been on Salary Level 6 for more than 12 years and had performed above satisfactory for at least 11 years (see Page 52). No evidence was presented that the 30% quota had been reached for any of the years since 2010.

In fact according to the Applicant no employees whatsoever were grade progressed up to date.

[17] Although the Applicant had only proof of her performance for the last 11 years, she submitted that she also prior to the current performance system performed above average. In the absence of any submissions or proof to the contrary, I accept the Applicant's version that she also met this requirement.

[18] Furthermore due to the delay in solving her grievance and resolving this dispute the Applicant in my view now anyhow also qualifies for a grade progression in terms of Paragraph 3.6.2.2 of Resolution 3 of 2009 which stipulate that:

*“With effect from 1 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 ratings 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.”*

[19] The evidence presented to me confirms that she had completed 15 years on level 6 and has obtained at least satisfactory performance ratings over this period. As such, irrespective of whether a suitable post is available, she qualifies for a grade progression to level 7.

[20] When the relevant paragraphs are properly interpreted and applied, the Applicant is entitled to be grade progressed to Salary Level 7.

**AWARD**

[21] The Respondent (SAPS) is ordered to immediately rectify the Applicant's position (to a level 7) retrospectively to the date that she first qualified for such grade progression.

[22] No order as to cost is made

A handwritten signature in black ink, appearing to read "Erasmus", with a large, sweeping stroke above it.

Panellist/s:

J.J. ERASMUS