



**IN THE PUBLIC SERVICE COORDINATING BARGAINING COUNCIL**

**HELD AT KIMBERLEY**

**ON 18 AUGUST 2014**

**IN THE MATTER BETWEEN:**

**PSA obo BUFFEL M D**

**AND**

**DEPARTMENT OF WATER & ENVIRONMENTAL AFFAIRS**

**PSCB 280-13/14**

**CONSIDERED ON PAPERS**

## **ARBITRATION AWARD**

### **DETAILS OF HEARING AND REPRESENTATION**

1. The present dispute between PSA obo M D Buffel (hereinafter referred to as the applicant) and The Department of Water & Environmental Affairs- Free State (hereinafter referred to as the respondent) was referred to Arbitration in terms of Section 24 (2) of Act no 66 of 1995, as amended (the Act).
2. The present matter was considered on written arguments.
3. Both parties filed submissions and were considered.
4. Both parties handed up bundles of documents and were accepted to be what they purported to be on 18 June 2014, the initial date of the arbitration.
5. The matter was initially considered in default. Subsequent to successful rescission application, the matter is considered afresh.
6. Herewith brief reasons for my decision in terms of Section 138 (7).

### **THE ISSUE**

7. The issue to be decided by myself is whether the applicant, Mr. Buffel M D is entitled to be upgraded in terms of Resolution 3 of 1999.

### **SURVEY OF SUBMISSIONS**

#### **APPLICANT'S SUBMISSION**

8. It is the applicant's argument that he was job evaluated and it was found that the applicant's post be upgraded to Level 6, to the rank of Senior Accounting Clerk from 1 November 2008.
9. The applicant submitted that Resolution 3 of 1999 in Clause 4.3 reads "*If a job evaluation as provided under the Public Service Regulations indicates that a job has been under graded the employer shall either*
  - a) *Within a reasonable time, endeavour to upgrade the position of an incumbent employee, or*
  - b) *With the agreement of the affected employee, restructure his or her duties to reflect the*

*grade determined by job evaluation.”*

10. He suggested that the respondent since 22 October 2008, after the approval of the job evaluation had failed to upgrade him. The respondent had sufficient time to apply their minds and communicate a response to him. By failing to respond the respondent placed the applicant under the impression that there was nothing procedurally or substantively wrong with the upgrade. The respondent had had substantial time to budget for the expense since 2008.
11. Attached to the argument was the applicant's Performance Agreement for the past financial year and has been same for the past 6 years. Moreover, he argued that posts were advertised on salary level 6 for the same position and referred to pages 26 & 27 of the applicant's bundle.
12. The applicant had been in the same position since 2004. The applicant's colleagues who had been employed without any experience were given on the job training whilst they earned higher salaries than the applicant.
13. The applicant's cluster is the highest ranked in terms of revenue collection as it collects more than R 500 million per month. The Free State region is the third in overall revenue collection. The applicants' colleagues in other regions are appointed on higher salary scales even though they had smaller budgets.
14. Whilst other provinces had split responsibilities between the Main Account and the Trading Account, there is no clear segregation in the Free State. The applicant's responsibilities overlap between the two accounts.

## **RESPONDENT'S SUBMISSION**

15. The respondent contested the job evaluation certificate handed up in the applicant's bundle is not the same as agreed to between parties. The applicant relied on Job Evaluation Certificate 3406 whilst the respondent had relied on Job Evaluation Certificate 3017. He nonetheless argued that both certificates were not applicable to the applicant's position.
16. He submitted that three posts were advertised in 2004. Senior Accounting Clerks Grade 1; 11 and 111. The salary levels were level 4; 5 & 6 respectively. The applicant was appointed in the post of Senior Accounting Clerk salary level 4.
17. He argued that the core description of the Certificate handed in by the applicant is **Management and General Support** whilst the core description of the applicant is **Financial Clerk and Credit Controller**.
18. He submitted that the core descriptions appearing in both certificates were not the same as the

core description of the applicant's position. In terms of the grading system of the time that the applicant was appointed, the applicant was appointed to salary 4 and not 6. Only revenue positions in finance were graded in terms of Grade 111 salary level 6; Grade 11 salary level 5 and Grade 1 on salary level 1. The requirements of the Post would not be the same since Grade 1 was the entry level.

19. In December 2012, the DPSA bench marked all the Clerical Posts. Hence posts including that of the applicant were upgraded to salary level 5. The applicant was paid the difference of salary retrospectively since June 2012.
20. The above measure had phased out salary levels 4 and 6 in the Public Service and therefore implied that civil servants would not be employed in either levels 4 or 6. The DPSA directive was attached to the respondent's bundle.
21. The fact that the applicant handled an excessive budget and that his cluster was the largest was not a qualifying factor to upgrade the applicant any further. There are vacant posts in the Revenue section with different core descriptions and that the applicant's workload would be reduced as soon as those posts were filled. The applicant's recent Performance Agreement was confirmation that the respondent had discharged of its responsibility of ensuring that its employees were treated fairly.

## **ANALYSIS OF SUBMISSIONS**

22. I am obliged towards the version of the respondent in the absence of any challenge that the applicant has since 2013 been upgraded to salary level 5.
23. Clearly, the applicant suggests that the Collective Agreement makes provision that if an employee's job position is under graded, it must be upgraded to the relevant position to reflect the grade determined by the job evaluation.
24. I am not persuaded that either Job Evaluation Certificates 3017 or 3406 are applicable to the applicant's position.
25. It is not plausible that the applicant may be upgraded to salary level 6 after having accepted an upgrade on salary level 5 since 2008.
26. It is not disputed by the applicant that he was indeed upgraded after the DPSA directive to salary level 5 since June 2013.
27. Resolution 3 of 1999 is headed "**Remunerative Allowances and Benefits**". Moreover in Clause 4, the Resolution deals with "**Remuneration and Re-grading**". I am persuaded to read its literal meaning. It requires that the employer upgrade the position of an employee if it is

- found that the position of an employee is under graded subject to a job evaluation.
28. I am convinced that the applicant was not evaluated in respect of his current job description.
  29. I am persuaded by the applicant's submission that his colleagues doing the same functions are paid on a higher salary level because they had been appointed in a higher position.
  30. The applicant is not entitled to be upgraded to salary level 6 as per his job evaluation which reads Management and General Support whilst it is by the applicant's own submission that he generates revenue albeit an excessive one at that too.
  31. I am further not inclined to accept the argument that the applicant is handling both the Main account and the Trading account that that should qualify him for the upgrade.
  32. I am not persuaded that the applicant has been on the same salary level since 2004 in light of his upgrade in June 2013. Moreover I am also not convinced by the respondent's submission that salary level 6 is not existent when in fact the adverts on pages 26 & 27 of the applicant's bundle show that these salary levels indeed exist.
  33. I am not convinced that the applicant's job in revenue has been evaluated as per the provisions of Resolution 3 of 2009 which provide that "if an employees' job has been under graded". The applicant's job has not been under graded.

## **AWARD**

34. The applicant, Mr. M D Buffel is not entitled to be upgraded to salary level 6.
35. There is no order as to costs.

**Signed at Kimberley on this 29<sup>th</sup> day of August 2014**



**PSCBC COMMISSIONER  
SHIRAZ MAHOMED OSMAN**