



# ARBITRATION AWARD

Panelist: RG Pieterse \_\_\_\_\_  
Case No.: GPBC582/2020 \_\_\_\_\_  
Date of Award: 24 August 2020 \_\_\_\_\_

**In the ARBITRATION between:**

PSA obo PF Sander \_\_\_\_\_  
(Union obo Applicant)

and

Department of Community Safety \_\_\_\_\_  
(Respondent)

**Union/Applicant's representative:** Henry Hall \_\_\_\_\_  
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Braamfontein \_\_\_\_\_  
2017 \_\_\_\_\_  
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**Respondent's representative:** Zandile Mbatha \_\_\_\_\_  
**Respondent's address:** 64 Pritchard Street \_\_\_\_\_  
Johannesburg \_\_\_\_\_  
\_\_\_\_\_  
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## **DETAILS OF HEARING AND REPRESENTATION**

- [1] This is the award in the arbitration between PSA obo PF Sander, (hereinafter referred to as the Applicant) and the Department of Community Safety, (hereinafter referred to as the Respondent) that was held on 28 July 2020.
- [2] The arbitration was held under the auspices of the General Public Service Sectoral Bargaining Council (GPSSBC) in terms of section 191 of the Labour Relations Act 66 of 1995 as amended (LRA) and the award is issued in terms of section 138(7) of the LRA.
- [3] The arbitration was a virtual hearing. The Applicant was present and was represented by Mr Henry Hall an official from the Public Servants Association (PSA) and the Respondent was represented by Mrs Zandile Mbatha, Deputy Director, in the Gauteng Department of Community Safety.
- [4] It was agreed that the matter will be dealt with in the form of a stated case.
- [5] It was agreed that the parties will hold a pre-arb and submit pre-arb minutes and closing arguments on or before 07/08/2020.
- [6] The Applicant submitted their closing arguments and the pre-arb minutes on 14 August 2020 and the Respondent submitted their closing arguments on 17 August 2020.

## **ISSUE TO BE DECIDED**

- [7] Interpretation and application of Collective Agreement, Resolution 1 of 2002, as to whether or not the Applicant who acted in the position of Chief Provincial Inspector since 01/08/2018 to date is entitled to receive an acting allowance.

## **BACKGROUND TO THE ISSUE**

- [8] The following matters were established as common cause:
  - (a) That the applicant received delegation of Authority letter from his employer to act in the position of Chief provincial Inspector with effect from 1 August 2017 until further notice;
  - (b) That the applicant did not receive any compensation as stipulated in GPSSBC Resolution 1 of 2002;
  - (c) That the applicant submitted a grievance dated 21 February 2018;

(d) That the grievance remained unresolved;

(e) That POPCRU trade union represented the applicant during the grievance session and;

(f) That the trade union POPCRU handled the matter since February 2018 until PSA took the matter over in June 2020.

[9] The applicant is a Principal Provincial Inspector in the Gauteng Department of Community Services at the Heidelberg TCC weighbridge.

[10] The applicant acted as Chief Provincial Inspector after receiving letter of delegation of authority. The applicant acted since 01 August 2017 till date.

[11] The applicant did not receive any acting allowance for the period of acting as Chief Provincial Inspector.

[12] The applicant submitted a grievance (on 21 February 2018) to try and resolve the matter, in which event the grievance remained unresolved.

[13] The applicant referred the dispute to the GPSSBC on 09 June 2020 for Conciliation.

[14] The dispute was conciliated on 22 June 2020 and remained unresolved.

[15] The dispute was then scheduled for arbitration on 28 July 2020 as a virtual hearing.

## **SURVEY OF EVIDENCE AND ARGUMENT**

### **APPLICANT'S CASE**

[16] The applicant is a Principal Provincial Inspector in the Gauteng Department of Community Services at the Heidelberg TCC weighbridge and was duly appointed to act Principal Provincial Inspector at the Gauteng Department of Community Services at the Heidelberg TCC weighbridge.

[17] Mr E Strassberg was the Deputy Director, Department of Community Safety. Mr Strassberg went on retirement on 30 June 2017 and appointed Mr JM Mosia (who was the Chief Provincial Inspector at the time) to act as Deputy Director from 01 June 2017.

[18] Mr JM Mosia, in his position as acting Deputy Director, (who acted as Deputy Director from 01 June 2017) then issued the first delegation of authority letter, dated 25 July 2017, to the applicant to act in the position as Chief Provincial Inspector from 01 August 2017 till further notice.

- [19] The Applicant started to act in the position of Chief Provincial Inspector from 01 August 2017.
- [20] The second delegation of authority letter, dated 01 July 2018 was signed by AB Nxumalo, Deputy Director, Gauteng Province Community Safety, Heidelberg TCC. This was an internal Memo.
- [21] The applicant continued to act in the position as Chief Provincial Inspector to date.
- [22] The Applicant was not paid an acting allowance from 01 August 2017 to date for acting in the position of Chief Provincial Inspector.
- [23] The applicant is and was duly appointed by the respondent to act in the position of Chief Provincial Inspector from 01 August 2018 until further notice.
- [24] The applicant lodged a grievance about the non-payment of his acting allowance as far back as 21 February 2018, in which event the grievance remained unresolved.

### **RESPONDENT'S CASE**

- [25] The correct procedure / process prior the appointment of any officials to act in higher vacant funded positions is that the Head of the Chief Directorate (in this case Traffic Management) prepare a written memorandum, substantiate the operational reasons / needs for an employee to act in higher vacant funded position for the approval by the Head of Department.
- [26] A letter of appointment will then be issued to the employee.
- [27] There is no approved submission by the Head of the Department to appoint Mr Sander to act in the post of Chief Provincial Inspector.
- [28] In terms of clause 3.1.1 of Resolution 1 of 2002, the applicant was not appointed by a person duly authorised and as such, the applicant is not entitled to an acting allowance.
- [29] The position of Chief Provincial Inspector was not vacant since August 2017.
- [30] Mr J Mosia was working at Heidelberg TCC as the Chief Provincial Inspector directly reporting to Mr Strasberg as a Control Provincial Inspector at Deputy Director Level.

- [31] Mr Strasberg retired, and the post became vacant and Mr Mosia was appointed to act as the Control Provincial Inspector while occupying a post of Chief Provincial Inspector.
- [32] During the grievance session in February 2018, the applicant was informed that there was no vacant funded post of Chief Provincial Inspector at Heidelberg TCC and that Mr Mosia was occupying the post.
- [33] Acting period of “until further notice” should also be nullified on the basis that clause 3.1.6 state that acting in higher position cannot exceed 12 months, the period of acting ceased automatically when 12 months period elapses.

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

- [34] It is not in dispute that the applicant received delegation of Authority letters from his employer to act in the position of Chief Provincial Inspector with effect from 1 August 2017 until further notice.
- [35] It is also not in dispute that the applicant did not receive any compensation as stipulated in GPSSBC Resolution 1 of 2002.
- [36] What is in dispute is that the applicant was not appointed by a person duly authorized to do so, that the position was not vacant and that the acting period cannot exceed 12 months.
- [37] Clause 3.1.1 of Resolution 1 of 2002 stipulates that an employee appointed in writing to act in a higher post, by a person who is duly authorised, shall be paid an acting allowance. The resolution does not go further to specify exactly who are those duly authorised persons who may appoint other employees to act in higher positions. The argument of the respondent is that the Head of Department (HOD) is the authorised person in terms of clause 3.1.1, but the respondent failed to indicate who was the HOD at the time who ought to have appointed the applicant in the higher position.
- [38] The applicant received the delegation of authority letters, respectively from Mr JM Mosia (as acting Deputy Director) on the 25<sup>th</sup> June 2017 and the second letter from Mr AB Nxumalo (as Deputy Director) on the 1<sup>st</sup> July 2018. Both Mr JM Mosia and Mr AB Nxumalo was seniors to the applicant.
- [39] The applicant accepted the letters of delegation of authority from Mr Mosia and Mr Nxumalo as his superiors and in my view, he accepted that they are in a position to appoint him to act in a higher position to wit the position as Chief Provincial Inspector.

- [40] The issue of not being appointed by a duly authorised person calls for comment. During the grievance in February 2018, the only issue communicated to the applicant was that, the position was not vacant. The respondent never informed the applicant at any given stage during the grievance or thereafter that he was not appointed by a duly authorised person. If that was a real genuine concern to the respondent, they should have and could have raised that during the grievance (as they did with the vacant position) or at any time thereafter, but they did not.
- [41] I am not in agreement with the argument of the respondent that only the HOD can appoint an employee to act in a higher position. Having read section 32(2)(b)(ii) of the Public Services Act, it is clear that such acting appointment can be made by the person occupying the post, in other words, Mr Mosia could have made such an acting appointment.
- [42] Turning to the issue of the vacant position. Of note is that the Resolution 1 of 2002 does not give us a definition of “vacant”. The Oxford dictionary explains the word “vacant” as “not filled or occupied, empty”.
- [43] The respondent is arguing that the position of Chief Provincial Inspector was not vacant since August 2017 and that Mr J Mosia was working at Heidelberg TCC as the Chief Provincial Inspector directly reporting to Mr Strasberg as a Control Provincial Inspector at Deputy Director Level.
- [44] Mr JM Mosia was the Chief Provincial Inspector. On 29 May 2017, Mr Strassberg (Deputy Director) appointed Mr JM Mosia to act as Deputy Director from the 1<sup>st</sup> June 2017. Mr Mosia then appointed Mr PF Sander (Principal Provincial Inspector) to act as Chief Provincial Inspector from 1<sup>st</sup> August 2017 till further notice. There are no supporting documents indicating to me that Mr Mosia was appointed to act as Control Provincial Inspector.
- [45] Irrespective if Mr Mosia was acting as Control Provincial Inspector or Deputy Director, the position of Chief Provincial Inspector was vacant, it was not filled or occupied at the time (when Mr Mosia was acting in a higher position), the position was empty, hence the delegation of authority letters from Mr Mosia and Nxumalo (to Mr PF Sander) to act in the position as Chief Provincial Inspector.
- [46] The respondent informed the applicant during the grievance meeting in February 2018 that the position is not vacant and then 5 months later the respondent issued yet another letter to the applicant to extend the acting in the position of Chief Provincial Inspector. In my view, the intention of the respondent is clear, they wanted the applicant to act in the position of Chief Provincial Inspector.

- [47] Turning to the issue of clause 3.1.6 stating that acting in higher position may not exceed 12 months. Indeed clause 3.1.6 of Resolution 1 of 2002 states that: "An employee may not act in a higher post for an uninterrupted period exceeding twelve months".
- [48] It is my view that there is a duty on the respondent to ensure that the period of acting in a higher position does not exceed an uninterrupted period of twelve months.
- [49] If the respondent fails to maintain its duty to ensure that an employee do not exceed the period of acting prescribe for in terms of clause 3.1.6, it cannot be held against the employee. Put differently, it cannot be used as a technicality to absolve the respondent from paying an acting allowance. *In casu*, the respondent allowed the applicant to exceed the period of acting in terms of clause 3.1.6 of Resolution 1 of 2002.
- [50] In my view, if an employee exceeds the period of acting in a higher position in terms of clause 3.1.6 of Resolution 1 of 2002, it does not render the acting period null and void, neither does it preclude the employee from being paid an acting allowance.
- [51] I cannot find any reason why the Applicant should not be entitled and paid an acting allowance as prescribed for in terms of GPSSBC Resolution 1 of 2002.

### **AWARD**

- [52] In the premises I make and deliver the following award:
- [53] The Respondent has not followed the terms of GPSSBC Resolution 1 of 2002;
- [54] The Respondent, is hereby ordered to pay the Applicant the amount of R 303560.00 minus any statutory deductions within 14 days from the date of this award.
- [55] The amount stipulated above is calculated as follows: -
- R7999.50 (01 August 2017 to 31<sup>st</sup> August 2017)
- R7999.50 (01 September 2017 to 30<sup>th</sup> September 2017)
- R7999.50 (01 October 2017 to 31<sup>st</sup> October 2017)
- R7999.50 (01 November 2017 to 30<sup>th</sup> November 2017)

R7999.50 (01 December to 31<sup>st</sup> December 2017)  
R7999.50 (01 January 2018 to 31<sup>st</sup> January 2018)  
R7999.50 (01 February 2018 to 28<sup>th</sup> February 2018)  
R8373.00 (01 March 2018 to 31<sup>st</sup> March 2018)  
R8373.00 (01 April 2018 to 30<sup>th</sup> April 2018)  
R8373.00 (01 May 2018 to 31<sup>st</sup> May 2018)  
R8373.00 (01 June 2018 to 30<sup>th</sup> June 2018)  
R8373.00 (01 July 2018 to 31<sup>st</sup> July 2018)  
R8373.00 (01 August 2018 to 31<sup>st</sup> August 2018)  
R8373.00 (01 September 2018 to 30<sup>th</sup> September 2018)  
R8373.00 (01 October 2018 to 31<sup>st</sup> October 2018)  
R8373.00 (01 November 2018 to 30<sup>th</sup> November 2018)  
R8373.00 (01 December 2018 to 31<sup>st</sup> December 2018)  
R8373.00 (01 January 2019 to 31<sup>st</sup> January 2019)  
R8373.00 (01 February 2019 to 28<sup>th</sup> February 2019)  
R8693.00 (01 March 2019 to 31<sup>st</sup> March 2019)  
R8693.00 (01 April 2019 to 30<sup>th</sup> April 2019)  
R8693.00 (01 May 2019 to 31<sup>st</sup> May 2019)  
R8693.00 (01 June 2019 to 30<sup>th</sup> June 2019)  
R8693.00 (01 July 2019 to 31<sup>st</sup> July 2019)  
R8693.00 (01 August 2019 to 31<sup>st</sup> August 2019)  
R8693.00 (01 September 2019 to 30<sup>th</sup> September 2019)  
R8693.00 (01 October 2019 to 31<sup>st</sup> October 2019)  
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R8693.00 (01 December 2019 to 31<sup>st</sup> December 2019)  
R8693.00 (01 January 2020 to 31<sup>st</sup> January 2020)  
R8693.00 (01 February 2020 to 29<sup>th</sup> February 2020)  
R8693.00 (01 March 2020 to 31<sup>st</sup> March 2020)  
R8693.00 (01 April 2020 to 30<sup>th</sup> April 2020)  
R8693.00 (01 May 2020 to 31<sup>st</sup> May 2020)  
R8693.00 (01 June 2020 to 30<sup>th</sup> June 2020)  
R8693.00 (01 July 2020 to 31<sup>st</sup> July 2020)

[56] There is no order as to costs.





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Panelist: RG Pieterse