

IN THE PUBLIC SECTOR CO-ORDINATING BARGAINING COUNCIL
HELD AT CENTURION

CASE NUMBER:

In the matter between:

PSC MLL
SADTU, POPCRU, ~~SAPU~~, DENOSA
NEHAWU

Applicants/Trade Unions

and

The Department of Public Service and
Administration

First Respondent

National Treasury

Second Respondent

PRE-ARBITRATION MINUTE

The parties held a pre-arbitration meeting at the PSCBC on 2 June 2020 at 10h00.

In attendance were the following persons:

Applicants: SADTU, POPCRU, DENOSA, ~~SAPU~~ *PSC MLL*

1. N H Maenetje SC; and
- MLL*
- m.m*
[Signature]

2. Mr P S Masilo (Cheadle Thompson & Haysom Inc.)

Applicants: NEHAWU,

1. Adv E Masombuka
2. Mr Mlungisi Mzobe (Mdhluli Pearce Mdzikwa Inc.)
3. Mr Matome Mameetja (Mdhluli Pearce Mdzikwa Inc.)

First Respondent

4. Adv Tim Bruinders SC
5. Adv Erin-Dianne Richards

Second Respondent

6. Afzal Mosam SC
7. Adv Reghana Tulk
8. Adv Yanela Ntloko

SETTLEMENT

2. Settlement discussed. Not reached.

FACTS THAT ARE COMMON CAUSE

The parties agree that the following facts are common cause:

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3. The description of the parties by the applicants.
4. On 21 May 2018 the draft public wage agreement had been circulated to the Employer and Labour.
5. Between 21 may 2018 and 8 June 2018, the State ("**the Employer**"), represented by Mr Romeo Adams, and labour (i.e. NAPTOSA, SADTU, NEHAWU, POPCRU, and DENOSA) signed Resolution 1 of 2018 ("**the Collective Agreement**").
6. The Collective Agreement has been signed by the Employer and by a number of admitted trade unions who represent the majority of votes on the side of Labour.
7. The Resolution came into effect on the date it enjoyed majority support and shall remain in force unless terminated or amended by agreement in writing. The Resolution enjoyed majority support on 8 June 2018.
8. The Collective Agreement has not been terminated or amended.
9. The agreement binds the employer and employees who are employed by the State and fall within the registered scope of the Council.
10. The objective of the Collective Agreement is to provide for a three-year multi-term agreement on salary adjustments and improvements to conditions of

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service for employees, in the financial years 2018/2019; 2019/2020 and 2020/2020.

11. Clause 3 of the Collective Agreement deals with salary adjustments. Clause 3.1 provides as follows:

"The salary adjustment for the period 1 April 2018 to 31 March 2019, effective from 1 April 2018, for employees on salary levels 1 – 12 will be as follows:"

11.1. Level 1 to 7: 7%;

11.2. Level 8 to 10 – 6,5%;

11.3. Level 11 to 12 – 6%.

12. Clause 3.2 provides as follows:

"The salary adjustment for the period 1 April 2019 to 31 March 2020, effective from 1 April 2019, for employees on salary levels 1 – 12 will be as follows:"

12.1. Level 1 to 7: Projected CPI + 1%;

12.2. Level 8 to 10: Projected CPI + 0,5%;

12.3. Level 11 to 12: Projected CPI.

13. Clause 3.3 provides as follows:

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"The salary adjustment for the period 1 April 2020 to 31 March 2021, effective from 1 April 2020, for employees on salary levels 1 – 12 will be as follows:"

13.1. Level 1 to 7: Projected CPI + 1%;

13.2. Level 8 to 10: Projected CPI + 0,5%;

13.3. Level 11 to 12: Projected CPI.

14. The Employer complied with clause 3.1 and 3.2 of the Collective Agreement.
15. On 25 February 2020, the Employer made a presentation at the Council on the management of the Public Service wage bill. The Employer also sought the review of clause 3.3 of the Collective Agreement on the ground that it was unaffordable.
16. On 17 March 2020 at a Special Council meeting the Employer tabled a presentation to review clause 3.3 of the Collective Agreement on the ground that it was unaffordable. The Employer proposed that all public service employees receive no salary increment for 2020/2021.
17. The above proposal was rejected by labour, which insisted that the Employer must comply with clause 3.3 of the Collective Agreement.
18. On 25 March 2020, a subsequent Special Council meeting was convened at which the Employer tabled a revised proposal that:

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18.1. Employees at salary levels 1 to 8 receive a CPI increase of 4.4%, which will be funded from funds budgeted for employee pay progression, which will have to be suspended, and capped leave;

18.2. There be no salary increment for employees at salary levels 9 to 12;

18.3. The above offer was to be supplemented by granting of capped leave in lieu of the 1.4% shortfall, redeemable at retirement.

19. On 15 May 2020, the employer:

19.1. summarised the economic outlook, and presented an offer constituting 50% of the threshold percentages per salary level that was in the agreement amounting to R13,536 billion and the remaining 50% as 7 and 6 leave days for employees on levels 1-7 and 8-12 respectively. The leave could be utilised as leave days or cashed for the commensurate leave day value at the time of exit from the public service.

19.2. The employer also indicated that the additional funds were derived from cuts and reprioritization.

20. Labour rejected the Employer's revised proposal and refused to engage in the review of clause 3.3 the Collective Agreement.

21. The Employer has failed to implement salary adjustments on 1 April 2020 as required by clause 3.3 of the Collective Agreement.

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22. On 02 April 2020, the Applicants referred a dispute to the PSCBC on the application of the Collective Agreement.
23. The dispute was conciliated on 20 May 2020 and remained unresolved.
24. The dispute has now been referred to arbitration.

FACTS IN DISPUTE

25. The applicants contend that the Employer is obliged to implement clause 3.3 of the Collective Agreement.
26. The Employer argues that the wage bill has become unaffordable. On this basis, the employer contends that:
 - 26.1. enforcement of clause 3.3 of the Collective Agreement is against public policy, *alternatively*
 - 26.2. performance by the employer of clause 3.3. is impossible.

ISSUES TO BE DECIDED BY THE ARBITRATOR

27. The issue is whether the Employer must be directed to comply with the terms of the collective agreement and implement clause 3.3 of the collective agreement on its terms.

PRELIMINARY POINTS

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28. The DPSA records its intention to file a written application for postponement in terms of rule 28 of the PSCBC dispute resolution rules.
29. The DPSA reserves its rights to raise any necessary jurisdictional points in an application.
30. The DPSA undertakes to file all necessary applications by no later than Friday 26 June 2020.

EVIDENCE ON AFFIDAVIT

31. The parties will not present evidence on affidavit.

DOCUMENTARY EVIDENCE

32. The parties agree on a consolidated bundle of documents to be presented at the arbitration. The applicants' attorneys will consolidate, index and consecutively paginate the consolidated bundle of documents.
33. The consolidated bundle of documents will be filed at council by no later than 3 July 2020.

DUTY TO BEGIN AND ONUS OF PROOF

34. The applicants will begin to adduce evidence and prove what they are required by law to prove.

WITNESSES

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35. Each party undertakes to secure the presence of its own witnesses at the arbitration.

MEANS OF SHORTENING THE PROCEEDINGS

36. The proposed common cause facts and any inquiries that may be directed by the parties to each other are intended to shorten the proceedings.

37. ~~The parties agree to endeavour to raise any inquiries by the end of business on _____ and to respond to each other's inquiries by the end of business on _____ 2020.~~

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NECESSITY FOR INSPECTION IN LOCO

38. It is not necessary for any inspection in loco.

DURATION

39. The parties estimate that two (2) days will be sufficient to conclude the matter.

INTERPRETER

40. There is no need for an interpreter.

Dated at Centurion on this 22nd day of June 2020.

Demelger
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And to: The Arbitrator

11:01