

IN THE LABOUR COURT OF SOUTH AFRICA, DURBAN

D441/2021

Not Reportable

In the matter between:

NEHAWU obo MABIZELA V.M.

APPLICANT

and

**MINISTER: DEPARTMENT OF WATER
AND SANITATION - HONOURABLE SENZO
MCHUNU**

FIRST RESPONDENT

**GENERAL PUBLIC SERVICE SECTORAL
BARGAINING COUNCIL (GPSSBC)**

SECOND RESPONDENT

COMMISSIONER NOZIPHO KHUMALO N.O.

THIRD RESPONDENT

HEARD: 26 MAY 2022

DELIVERED: 22 June 2022

JUDGMENT

B. Purdon AJ

Introduction:

[1] This is an application to make an Order of Court an arbitration award issued under the auspices of the Second Respondent by the Third Respondent on the 20th of December 2020.

Background:

[2] The award of the Second Respondent is the following:

“23. The Respondent is ordered to translate the Applicant to a post and salary grade in accordance with the post which the Applicant occupied at the time of translation being the Senior General Foreman.

24. The Respondent must give effect to clause 13.1. of GPSSBC Resolution 4 of 2009 on or before 01/03/2021.

25. I make no order as to costs”.

[3] The dispute was referred to the Second Respondent in terms of Section 24 of the Labour Relations Act in order to interpret and apply a collective agreement, being the GPSSBS Resolution 4 of 2009.

[4] That interpretation (and consequent application) concerned the job status of the Applicant's member V.M. Mabizela.

[5] The First Respondent opposes the grant of the Order indicating, *inter alia*, that were the Applicant's interpretation of the Second Respondent's award to be implemented, it would constitute effectively a demotion for the Applicant with detrimental financial consequences.

[6] This Court is not in a position to make that determination.

[7] In order to give effect to the award of the Third Respondent, the Court would have to look elsewhere for what “give effect to clause 13.1. of the GPSSBC Resolution of 2009” would entail. This Court would be indulging the very act of interpretation of a Collective Agreement that is the statutory prerogative of the Second Respondent to determine.

[8] The Order is neither clear nor executable.

[9] The award begs the very question which the Third Respondent is obliged to resolve.

[10] The Third Respondent is required, on her interpretation of the provisions of the collective agreement which is the subject matter of the dispute, to clarify in what position the Applicant's member ought to be placed by virtue of her interpretation of the Resolution.

Order:

The Court therefore deems the following Order appropriate:

[1] The application is dismissed.

[2] The matter is remitted to the Second Respondent for reconsideration and clarification of its award.

B. Purdon AJ

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Advocate Tshikani Maluleke instructed by NEHAWU

For the First Respondent: Advocate N. Nako instructed by The State Attorney