



# JURISDICTIONAL RULING

Arbitrator: Neil Paulsen  
Case Reference No.: PERFBC27507  
Date of ruling: 28 October 2013

In the matter between:

CHARLENE FREDERICKS Union/Employee party

and

SUPERGROUP Employer party

Union/Employee's representative: Self

Union/Employee's address: 150 Denson Street  
Bloemendal  
Port Elizabeth 6059  
Telephone: 083 640 4002 fax: none

Employer's representative: Louis Vermaak (GEO)

Employer's address: Algoa Road  
Uitenhage  
6229  
Telephone: 041-996 2063 fax: 041-994 6686/ 086 557 2205

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

1. The Applicant, Ms. Charlene Fredericks referred an unfair labour practice dispute under **Section 186(2)(a) of the Labour Relations Act 66 of 1995** (hereinafter referred to as “the Act”) to the Bargaining Council (hereinafter referred to as “the Council”), which was conciliated on 24 October 2013. The Applicant represented herself. The Respondent was represented by Mr. Louis Vermaak of the Guardians Employers Organisation.

The Respondent raised a preliminary point that the Council does not have jurisdiction to conciliate the matter as the Applicant referred the matter late to the Council. Both parties made oral submissions.

## **ISSUE IN DISPUTE:**

2. I have to determine whether the Council has jurisdiction to attend to the matter.

## **BACKGROUND OF THE DISPUTE:**

3. The Applicant was employed as a billing clerk in 2007.

4. She was thereafter employed as a supervisor from 2009 to 2010. (No specific months are known)

5. She is currently employed as a store man.

6. In her referral form the Applicant mentioned that she wants the situation to be rectified as a new supervisor was appointed on 30 August 2013 and this person would earn more than she was earning.

## **SURVEY OF ARGUMENTS & EVIDENCE:**

7. The Applicant presented salary advices showing that she filled the positions of billing clerk in 2007, supervisor from 2009 to 2010 and store man in 2013.

8. According to the Applicant other supervisors were earning R10.00 per hour more than her in 2010. She ascribed this to her being outspoken and taking part in strikes. She engaged the Respondent about this and submitted grievances. The Respondent promised to deal with the matter but the issue was swept under the carpet at all times. She never at that stage referred the matter to the Council as she believed the matter would be dealt with internally.

9. She submitted that she was demoted to a store man and she is earning the same as she did when she was a billing clerk.

10. The Respondent submitted that the Applicant never fulfilled the position of supervisor in the sense that she had a group of workers who were accountable to her.

She never gave instructions to workers as to how he work had to be performed. She was only a supervisor in name. She only had the function of keeping an attendance register.

11. Mr. Le Grange travelled frequently to Germiston in the past and therefore the Applicant had to perform certain functions. He does not travel much any longer and attends to much of the functions himself.

12. The Applicant's referral to the Council reflects that a new supervisor was appointed on 30 August 2013 and that the incumbent would earn what she did not earn when she was a supervisor.

13. The Respondent submitted that there is currently a supervisor position pending and that the Applicant is one of the shortlisted candidates for the position. No one was appointed in the position as yet.

### **ANALYSIS OF ARGUMENTS & EVIDENCE:**

14. **Section 191(1)(b)(ii) of the Act** states that a dispute about an unfair labour practice "must be made within 90 days of the date of the act or omission which allegedly constitutes the unfair labour practice or, if it is a later date, within 90 days of the date on which the employee became aware of the act or occurrence".

15. From the submissions before me it seems as if the Applicant has two issues which need to be addressed. The first is that she was earning less than other supervisors in 2010 when she was a supervisor. The second was her alleged demotion from being a supervisor to a store man.

16. The Applicant has only referred this matter to the Council on 19 September 2013, wherein she refers to the current situation with the alleged appointment of another supervisor.

17. I am of the opinion that the Applicant had to refer both her issues to the Council within the stipulated time frame as prescribed in the Act. She was aware at that stage already that she was allegedly being treated unfairly. She hoped the matter would be resolved internally.

18. I do not think the current situation with the new supervisor position being offered should open the door for the Applicant to address matters which occurred in 2010.

19. The Applicant could of course state that she engaged the company and hoped for an internal resolution of the matter, but this never happened.

### **RULING:**

20. The Applicant referred this matter late to the Council. Her referral was not accompanied by a condonation application.

21. The Council does not have jurisdiction to hear the matter.

**Signed and dated at PORT ELIZABETH on 27 October 2013.**

**NEIL ASHWELL PAULSEN**

**NBCRFI Arbitrator: \_\_\_\_\_**