



IN THE EDUCATION LABOUR RELATIONS COUNCIL HELD AT CAPE TOWN

Case No PSES 199-08/09WC

In the matter between

M MARSH

Applicant

and

DEPARTMENT OF EDUCATION WESTERN CAPE

First Respondent

D LEUKES

Second Respondent

ARBITRATOR: Adv D P Van Tonder

HEARD: 30 JULY 2009

DELIVERED: 30 JULY 2009

ARBITRATION AWARD

- [1] The arbitration hearing in this matter was conducted on 8 April 2009, 28 May 2009 and 30 July 2009. Applicant was represented by a practising attorney, Mr. L. Golding. First respondent was represented by an employee Mr. Hendricks, whereas second respondent was represented by Mr. Carelse from NAPTOSA.
- [2] At the commencement of the hearing on 30 July 2009 the parties advised me that they are desirous of concluding as settlement agreement but that they were unable to reach agreement about certain aspects. At the request of all parties I interrupted the arbitration proceedings and reverted back to conciliation. After conciliation the parties settled the dispute and then entered into a written settlement agreement, annexed hereto as "A", which was signed before me by all parties, with the specific request that the agreement should be made an arbitration award in terms of section 142A of the LRA. The statutory provisions in terms of which written settlement agreements can be made arbitration awards by employment tribunals are found in section 142A and 51(8) of the LRA, which reads as follows:

142A Making settlement agreement arbitration award

(1) The Commission may, by agreement between the parties or on application by a party, make any settlement agreement in respect of any *dispute* that has been referred to the Commission, an arbitration award.

(2) For the purposes of subsection (1), a settlement agreement is a written agreement in settlement of a *dispute* that a party has the right to refer to arbitration or to the Labour Court, excluding a *dispute* that a party is entitled to refer to arbitration in terms of either section 74 (4) or 75 (7).

51 Dispute resolution functions of council¹

51(8) Unless otherwise agreed to in a *collective agreement*, sections 142A and 143 to 146 apply to any arbitration conducted under the auspices of a *bargaining council*.

¹ Referring to Bargaining Councils

- [3] The ELRC Constitution confirms that ELRC arbitrators have jurisdiction to make settlement agreements arbitration awards under the same circumstances as set out in section 142A by providing as follows:

67 Making a Settlement Agreement an Arbitration Award²

67.1 The *Council* may, by agreement between the *parties* or on application by a *party*, make any settlement agreement in respect of any *dispute* that has been referred to the *Council*, an arbitration award.

67.2 For the purposes of clause 67.1, a settlement agreement signed by both *parties* is a written agreement in settlement of a *dispute* that a *party* has the right to refer to arbitration or to the Labour Court, excluding a *dispute* that a *party* is entitled to refer to arbitration in terms of either section 74(4) or 75(7).

ORDER

In the premises I made the following order:

1. By agreement between the parties and at the request of the parties, the settlement agreement entered into between the parties on 30 July 2009, annexed hereto marked "A" is hereby made an arbitration award in terms of section 142A of the LRA read together with section 51(8) of the LRA and clause 67 of Annexure B of the ELRC Constitution and the terms of the settlement agreement are incorporated herein as an order.



adv D P Van Tonder
Arbitrator/Panellist: ELRC
Chambers
Cape Town

² clause 67 of Annexure B of the ELRC Constitution

"A"

THE EDUCATION LABOUR RELATIONS COUNCIL

CASE NO PSES 199-08/09WC

MRS M MARSH

Applicant

and

THE WESTERN CAPE EDUCATION DEPARTMENT First Respondent**D LEUKES**

Second Respondent

SETTLEMENT AGREEMENT

Pursuant to the application lodged by the Applicant in the above council on the 23RD July 2009 under the above case number, the parties hereto agree as follows:

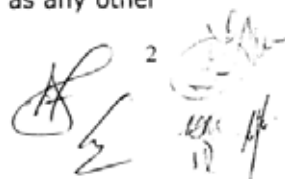
1. Applicant is appointed to the post of Head of Department, additional to the staff establishment of Jamaica Primary School, at post level 2.
2. The appointment of the Applicant as in 1 above will be effective from 1 July 2008, which appointment shall be reflected on her

Handwritten signatures and initials, including a large signature and several smaller ones, located at the bottom right of the page.

service record and the Respondent's personnel and pension fund records and all benefits due be adjusted accordingly.

3. Subject to paragraph 4 below, Respondent will pay the Applicant an amount equal to the difference between 4 and a half months of her present gross salary and the gross salary of a post level 2 educator within 30 (THIRTY) days.
4. The amount payable in terms of the above is R3843, 77, from which a proportionate statutory tax and pension fund contributions shall be deducted. Should the aforesaid amount have been miscalculated, the Respondent will pay any shortfall in the actual amount payable to the Applicant.
5. Despite the appointment of the Applicant, additional to the staff establishment of Jamaica Primary School, the applicant will not be declared in excess for the purpose of any right-sizing exercise based on the 2008 establishment.
6. It is expressly recorded that for the purposes of any right-sizing exercise, Applicant's post will be considered as if it had been, (and she had first been appointed to) the post of the Second Respondent (Mr Leukes) and will be treated exactly as any other

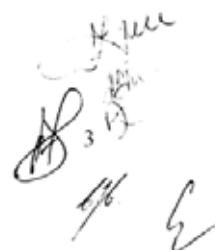
2

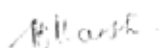
The block contains the number '2' and several handwritten signatures and initials in black ink, located at the bottom right of the page.

educator at the school in terms of the relevant Education Labour Relations Council Resolution.

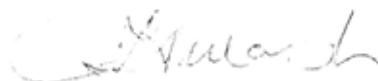
7. That all outstanding issues related to Case No: PSES 1999-08/09WC is settled and that no further action in any court or other forum, including the CCMA, most notably that under CCMA case no: WECT 09123-09 shall continue against the Department and is deemed to have been settled hereby.
8. Each party will bear their own legal and other costs in respect of this dispute and CCMA dispute under case no: WECT 09123-09
9. No variation of this agreement shall be legally binding unless reduced to writing and signed between the parties
10. The parties consent to this settlement being made an arbitration award in terms of section 142A(1) of the Labour Relations Act and this settlement must be made an arbitration award.
11. The parties agree that in the event of non-compliance of this agreement, the party defaulting will pay the full costs incurred by the other party in enforcing this agreement.

DATED AT **CAPE TOWN** ON THIS **30th** day of **JULY 2009**

Handwritten signatures and initials in the bottom right corner of the page. There are several distinct marks, including what appears to be a signature with a large 'H' or 'M' and some initials below it.



Mrs Mathilda Marsh
Applicant



As Witness for Applicant
F. H. MARSH



Mr Daniel Leukes
(2nd Respondent)

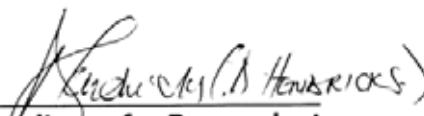


Clint Carelse
NAPTOSA
On behalf of Mr Leukes



Western Cape Education
Department
Respondent

**(the signatory hereto warrants
that he/she has the necessary authority
to conclude this agreement on behalf of the
Western Cape Education Department).**



As witness for Respondent

