



# ARBITRATION AWARD

Case no: NC3961-24  
Commissioner: Khuduga Tlale  
Date of Ruling: 02 July 2025

In the Arbitration between

***Solidarity obo Breedt, Rachel Gertruida***  
(Applicant)

And

***South African Police Service - 1<sup>st</sup> Respondent***

***Mungani, MP - 2<sup>nd</sup> Respondent***  
(Respondent)

## Details of hearing and representation

1. The arbitration hearing between Solidarity obo Breedt, Rachel Gertruida ("Applicant"), and South African Police Service ("1<sup>st</sup> Respondent"), and Mungani, MP ("2<sup>nd</sup> Respondent") was held on 23 May 2025, and concluded on 24 June 2025 in Kimberley. The Applicant appeared in person and, Mr. T Van Staden, union official, represented her. Mr. MM Munyai, Lieutenant-Colonel, represented both the 1<sup>st</sup> and 2<sup>nd</sup> Respondents'.
2. These proceedings were conducted in English, and were manually and digitally recorded. The parties agreed to submit the written heads of argument in writing on Monday, 30 June 2025, and they both submitted.

### Issues to be decided

3. The issue to be decided is whether the 1<sup>st</sup> respondent committed an act of an unfair labour practice relating to promotion against the applicant when filling the position of unit commander: serious corruption investigation (colonel).

### Background to the issue

4. The 1<sup>st</sup> respondent advertised the post of unit commander: serious corruption investigation (colonel) with reference number DPCI/NC/81/2022, with the salary band of R838 407, 00, per annum on 06 October 2022, with a closing date of the 21<sup>st</sup> of October 2022. The applicant was employed by the 1<sup>st</sup> respondent on 10 January 1995. At the time of the application for promotion she held the rank of lieutenant colonel. The applicant is currently employed at the serious corruption investigation unit in Kimberley. She has been in the rank of lieutenant-colonel since the 10<sup>th</sup> of October 2019, a total of five (5) years, and seven (7) months' experience.
5. The applicant, and the 2<sup>nd</sup> respondent applied for the said position, and they were both shortlisted and interviewed. After the interviews, the applicant was ranked number one (1), and the 2<sup>nd</sup> respondent was ranked number two (2). They were both recommended as suitable appointable candidates. The interviews panel sent their recommendation to the moderation committee, and their recommendation was overturned by the committee due to equity. The 1<sup>st</sup> respondent approved the promotion of the 2<sup>nd</sup> respondent, and she was promoted with effect from 01 May 2023. The applicant earned R531 807, 00, per annum.
6. The applicant referred an unfair labour practice dispute relating to promotion to the Commission for Conciliation, Mediation and Arbitration ("Commission"), alleging that her non-promotion was procedurally and substantively unfair. This dispute was not resolved at conciliation, and it was then referred for an arbitration. The parties submitted a bundle of documents, and it were marked bundle "A", "R1", "R2", and "R3".

## Survey of evidence

Applicant

First Witness: Ms. Rachel Gertruida Breedt

7. The witness testified under oath that she was the applicant in this matter. She was in the supervisory position from the year 2017, and she acted in the position of a colonel as per "A54-A66". Document "R2.10-11" was the 2<sup>nd</sup> respondent curriculum vitae. Document "R2.7" was the 2<sup>nd</sup> respondent duties. The position of a captain occupied by the 2<sup>nd</sup> respondent was not a supervisory level, and she occupies the supervisory position when she was promoted to the post of a lieutenant-colonel in the year 2020, as per "R2.7". The disputed position was advertised on 06 October 2022 as per "A8". The 2<sup>nd</sup> respondent was having two (2) years, and ten (10) months as a supervisor when she applied for the said position.
8. She did not meet the requirements of the advertisement in relation to supervisory experience. Document "A1-A3" was the advertisement of the disputed position. She had a three years' degree in criminology, and diploma in policing. The 2<sup>nd</sup> respondent was having a bachelor of commerce as per "R2.2", and her qualification had nothing to do with policing or criminology. The 2<sup>nd</sup> respondent had no relevant qualification for the disputed position. Four (4) years must be in the field of investigation. The selection committee considered the equity profile as per "A22". There is no white female in the position of a colonel in Northern Cape Province. The 1<sup>st</sup> Respondent was asked why using the national equity profile, instead of provincial one.
9. The interviews panel members indicated that the equity does not favor her, but she could do the work as per "A23". The moderation committee did not recommend her because she would not enhance employment equity as per "A24". The moderation committee only considered equity, nothing else. Document "A25" was the Directorate for Priority Crime Investigation ("DPCI") national equity profile, and it shows that african female are underrepresented by 39, and white female overrepresented by 7. Document "A26" was the Northern Cape equity profile, and it shows that there are no whites on salary level 12 upwards. Document "A155" was the national instruction 3 of 2015. According to this instruction the post could be reserved for representivity as per "A162", but the 1<sup>st</sup> respondent did not reserve it. Document "A183" was the organizational structure of Northern Cape, and it shows that there are vacant colonel positions.

10. Under cross-examination, she stated that it was fair to be shortlisted, and interviewed. She was promoted to the position of a lieutenant-colonel on 01 October 2019, she applied for the disputed position on 14 October 2022, and she stationed at the corruption unit. The lieutenant-colonel was the supervisory position, and even the warrant officer could be on the supervisory level. The advertisement indicated that the representivity would take preference. She scored more than the 2<sup>nd</sup> respondent on management.
11. She confirmed that the advertisement does not state which diploma/degree required. The 2<sup>nd</sup> respondent qualification was three years, and accredited by SAQA and it was on NQF level 6. She stated that the selection panel members had experience in investigations, and they knew what was required from the candidates. She had no knowledge of how the 2<sup>nd</sup> respondent was shortlisted. She confirmed that the function of the selection panel was to make recommendations. She confirmed that the 1<sup>st</sup> respondent used the national equity profile, not provincial one.
12. The moderation committee confirmed what the selection panel said in terms of the equity. Document "A26" shows that there were no whites on salary level 12. The disputed position was advertised in terms of the national instruction 6 of 2005. She confirmed that african female were underrepresented, and white female were overrepresented. Equity has been a practice within the 1<sup>st</sup> Respondent. She was acting unit commander when the organizational structure was discussed as per "A183".
13. Under re-examination, she stated that the selection panel was knowledgeable, and they recommended her as the suitable appointable candidate. The 2<sup>nd</sup> respondent application showed no managerial experience.

Second Witness: Ms. Mitchele Damons

14. The witness testified under oath that she was responsible for human resources in Northern Cape, and she was aware of document "A16". She was the secretary of the selection panel. Documents "A16-A21" was the interviews minutes, and the panel did consider the equity during the selection processes. Document "A26a-A26j" was the Northern Cape equity profile. The equity profile shows that only african female appointed on salary level 12 in Northern Cape as per "A26". The equity profile changes from time to time. They worked with the equity profile submitted by the national office. Document "A25" was the equity profile submitted to the selection panel, but it does not show the provincial figures.

15. Under cross-examination, she confirmed that she was the secretary of the selection panel. They used the equity profile received from the national office. Document "A26a-A26j" was compiled around 01 April 2023. She stated that the submitted equity profile was not signed, but she had the signed one at the office. The equity profile must show the provincial target, not only national targets. She had no knowledge whether the Northern Cape equity was considered as per "A25".

Third Witness: Mr. Kholekile Dirk Galawe

16. The witness testified under oath that he was employed by the 1<sup>st</sup> respondent as provincial head: dpci in Northern Cape. He was appointed as the chairperson of the selection processes for the disputed position. He stated that the panel recommended the applicant as the first suitable appointable candidate. They considered the equity profile provided by the 1<sup>st</sup> respondent. The equity profile was for national figures, and there were no provincial figures. Their recommendation was sent to the moderation committee for consideration.
17. Under cross-examination, he confirmed that their duties as the selection panel were to do shortlisting, interview, and recommendation. He could not remember how many candidates interviewed. It was not the first time he formed part of the selection panel. It was not a knew thing that the moderation committee changed the recommendation of the selection panel. He retired in September 2022.

Respondents'

First Witness: Mr. Mogoma Bally Monyela

18. The witness testified under oath that the 1<sup>st</sup> respondent employed him as brigadier for human resources at dpci. They were responsible for advertising posts, and they provide the provinces with direction to fill the positions. They provide the selection panel with relevant information, and equity profile. He served as the secretariat at the moderation committee. Document "R3" was the 1<sup>st</sup> respondent equity plan. The equity guidelines assist with the gap in filling of posts. The equity plan indicated that the 1<sup>st</sup> respondent would use the national economically active for promotions irrespective where the employees are based.
19. The colour red indicates groups that were overrepresented, and green indicates the groups that were underrepresented as per "A25". Document "A25" shows that the african female were

underrepresented by 39, while the whites' females' were overrepresented by 8. If two or more candidates are suitable to be appointed, the equity must be taken into account as per "R1.283". In this matter, the selection panel did not consider the equity guideline. The moderation committee realized that the equity was not considered, and they had to do something.

20. Under cross-examination, he stated that the decision must be in line with the equity guidelines. He was not part of the shortlisting process. According to the shortlisting minutes, the panel considered the equity profile. The selection panel was supposed to consider the equity profile when making the recommendation. The applicant's recommendation was not in line with the equity gaps. The decision to establish the moderation committee was because most of the selection panel members does not comply with the 1<sup>st</sup> respondent policy. There was no barrier in this position, and it was not unfair. The selection processes were guided by the national instruction.
21. Document "A1" was the advertisement, and there was no reflection of representivity on the generic requirements. He was familiar with the national instruction 3 of 2015, but it does not deal with external advertisement. This national instruction was not applicable to the disputed position. The national instruction 3 of 2015 was dealing with the promotions and grading. The national instruction 6 of 2005 was applicable to this matter. The selection panel recommended three suitable appointable candidates as per "A22".
22. It would not be correct to say the 2<sup>nd</sup> respondent was not suitable to be appointed. He confirmed that the applicant was the first suitable appointable candidate. The moderation committee decided that the appointment of the applicant would not address the equity gap. The chairperson of the selection panel was not consulted during the moderation. The equity guideline was issued when the post was advertised.
23. Under re-examination, he stated that the moderation could either vary or support the selection panel recommendation. The national instruction 6 of 2005 was followed when filling this position. All the recommended candidates got above 50%. There was no directive that says the moderation committee must consult with the selection panel. The selection panel was aware that the whites' females' were overrepresented, and african females' were underrepresented.

## Survey of Arguments

### Applicant

24. The applicant's representative submitted that the reason for the non-appointment of the applicant was based on equity, and it was irrational, and unfair. The 2<sup>nd</sup> respondent's application for employment form does not support that she had any relevant supervisory experience. The supervisory experience could not be drawn from having a certain rank. It is connected to a position, and the functions of that position. It is the applicant undisputed evidence that the supervisory experience was connected to the rank of lieutenant-colonel.
25. The 2<sup>nd</sup> respondent does not have qualifications in policing, law, forensic investigation and criminology. The qualification should be applicable or relevant to the core functions of the position. The moderation committee failed in their oversight in this matter. The respondents' did not lead evidence whether the 2<sup>nd</sup> respondent's meet the minimum requirements of the disputed position. There was no evidence from the respondents about the suitability of the 2<sup>nd</sup> respondent to be shortlisted. The economically active population statistics would only be one of many factors that would be taken into account in the compliance analysis of affirmative action in the workplace. In this matter, the applicant was not promoted because she was white. The applicant prays that the above was the unfairness she was subjected to, and the promotion of the 2<sup>nd</sup> respondent was unfair. The applicant's sought retrospective protected promotion with effect from 01 May 2023, or an appropriate compensation.

### Respondents'

26. The respondents' representative submitted that the african females, and colored females were underrepresented, and white females were overrepresented. The interviews panel recommendation did not address equity. The moderation committee did not support the interviews panel recommendation based on equity. Paragraph 7 of the national instruction 6 of 2005 states that the selection process must promote equal opportunities, fair treatment, employment equity and advance service delivery.
27. Paragraph 8(2)(b) states that the chairperson must determine the level of representivity of the division or province in which the vacant post exists to ensure that employment equity is taken into account and supported. It was the applicant's burden to prove that she was unfairly overlooked when a suitable candidate whose promotion addressed equity over her. The applicant's failed to prove that she was

unfairly treated. There was no evidence led during the proceedings that could order the promotion of the applicant. It would be unjust to continue to suppress african females in positions they qualified. The national guidelines are used during the advertisement of posts. The applicant's dispute must be dismissed.

### **Analysis of evidence and arguments**

28. Section 186(2)(a) of the Labour Relations Act, as amended ("the Act"), states that an unfair labour practice is any unfair act or omission that arises between an employer and an employee involving-
- unfair conduct by the employer relating to the promotion, demotion, probation (excluding disputes about dismissals for a reason relating to probation) or training of an employee or relating to benefits to an employee.
29. The dispute before me relates to an alleged unfair conduct by the 1<sup>st</sup> respondent relating to promotion. In the case of promotion, the onus is on the applicant to prove that she was a suitable, and better candidate for the position in question. In short, the applicant has to demonstrate that the failure to promote her was unfair. On the other hand, the 1<sup>st</sup> respondent, is in the same token, obliged to defend challenges on the substantive, and procedural fairness, if it wishes to avoid a negative outcome. Had the applicant been successful, her appointment would have constituted a promotion.
30. The 2<sup>nd</sup> respondent was joined as a party to the proceedings. Promotion is an area of managerial prerogative unless the applicant can prove bad faith or improper motives were present. It is not the commissioner's function or responsibility to choose the best candidate for promotion for the 1<sup>st</sup> respondent, but simply to ensure that in selecting candidates for promotion, the 1<sup>st</sup> respondent does not act unfairly. All that the 1<sup>st</sup> respondent was required to do in these proceedings was to show that it had a rational basis for its decision.
31. It is clear from the testimony of the applicant that her complaint is two-fold. Firstly, she takes issue with the successful candidate being shortlisted as she alleges that she did not possess the relevant qualification and three (3) years' supervisory experience. Secondly, the applicant takes issue with the 1<sup>st</sup> respondent's for considering equity when appointing the successful candidate, and the equity profile. It is therefore important to analyze these issues separately.

Whether the 2<sup>nd</sup> respondent has relevant qualification?



32. The applicant referred to page 3 of bundle A as the advert and post description. The advertised post required a candidate with an applicable three (3) year diploma/degree accredited by SAQA on NQF level 6 or higher. When one looks at the 2<sup>nd</sup> respondent qualification, she has a bachelor of commerce. The applicant's case is that this qualification is not relevant for the post in question. It is further the applicant's evidence that the advertisement does not state which diploma/degree required. The 2<sup>nd</sup> respondent qualification was three years, and accredited by SAQA and it was on NQF level 6.
33. The central question will then be, whether the 2<sup>nd</sup> respondent meet the post requirements? Although on the face of it such testimony may appear to be reasonable, the applicant did not refer me to any document which required a specific formal qualification of policing. The labour court in **The Minister of Police v SSSBC & others JR 2339/15 (handed down on 29 March 2018)** held that:
- [15] "...It is not within the powers of an arbitrator to determine what relevant qualification is and what is not. Such is the task of an employer." Therefore, no relevant qualification was stated on the advert. What is required is an applicable three (3) year diploma/degree accredited by SAQA on NQF level 6 or higher, of which the 2<sup>nd</sup> respondent has. I, therefore conclude that the attack on the formal qualification cannot stand.

Whether the 2<sup>nd</sup> respondent has the required experience?

34. The advertisement required a candidate with three (3) years on supervisory level as per "A3". It was the applicant's testimony that the 2<sup>nd</sup> respondent was not supposed to be shortlisted as she lacked three (3) years' on supervisory level. The position of a captain occupied by the 2<sup>nd</sup> respondent was not on a supervisory level, and she occupies the supervisory position when she was promoted to the post of a lieutenant-colonel as per "R2.7" in the year 2020. The disputed position was advertised on 06 October 2022, with the closing date of the 21<sup>st</sup> of October 2022. The 2<sup>nd</sup> respondent was having two (2) years and ten (10) months as a supervisor when she applied for the said position. She further testified that even the warrant officer could be on the supervisory level.
35. There was no evidence leading to whether the positions of warrant officer, and captain were on the supervisory level. The 2<sup>nd</sup> respondent's application for appointment and her curriculum vitae does not state her supervisory/managerial experience as per "R2.7 & R2.10-11". The 2<sup>nd</sup> respondent application for appointment does not state from when she managed and utilized human and physical resources allocated to the unit as per "R2.7". The question that needs to be asked is how the 2<sup>nd</sup> respondent was

shortlisted without stating the required supervisory experience? There was no evidence led during the proceeding about this issue.

36. In **LAC in Monyakeni v SSSBC & others JA64/13 (delivered on 19 May 2015)**, the court had the following to say: "(47) the substantive issue as regards the appellant's dispute with his employer relates to the issue of his core experience in the field of disability management. The determination of whether the appellant's experience including the recognized experience was such as to make him suitable for promotion is primarily a matter for the employer and the arbitrator was required to defer to this decision when it is taken following a fair and proper process. It is the applicant's undisputed evidence that the position of lieutenant-colonel was at a supervisory level, and the 2<sup>nd</sup> respondent was not in that position for more than three (3) years, when the applications close on 21 October 2022. Based on evidence presented during the proceedings in relation to this issue, it is reasonable to conclude that the 2<sup>nd</sup> respondent, since she did not possess three (3) years' supervisory experience, she ought not to have been shortlisted.

#### Equity profile

37. It was not disputed that page "A25" was a national equity profile. The applicant testified that the equity profile indicated that African females were underrepresented by 39, and that white females were overrepresented by 7. Brigadier Monyela also confirmed the testimony of the applicant as he explained that they do not have the provincial profile, but only using the national profile. It is the applicant's testimony that there were no white females in the position of a colonel in Northern Cape Province. It is further Brigadier Monyela's testimony that the equity plan indicates that the 1<sup>st</sup> respondent would use the national economically active for promotions irrespective where the employees are based.
38. In **Solidarity and others v Department of Correctional Services and others (2016) ZACC 18; (2016) 37 ILJ 1995 (CC); 2016 (5) SA 594 (CC); (2016) 10 BLLR 959 (CC); 2016 (10) BCLR 1349 (CC) (handed down on 15 July 2016)** the Constitutional Court was faced with the question whether the Department, in not appointing the individual employees to the positions they were interviewed for, amounted to an unfair labour practice and unfair discrimination based on race and gender. Solidarity contended that the Employment Equity Plan did not comply with, amongst others, section 42 of the EEA. The Department contended that it was entitled to use only the demographic profile of the national population because it is a national department. Further that it was entitled to have refused

appointment of the individual Employees because they belonged to categories of persons that were already overrepresented at the occupational levels to which they had sought to be appointed.

39. The Constitutional Court held that the Department had acted in breach of its obligations under section 42 of the EEA in its failure to take account of the demographic profile of the regionally and nationally economically active population in assessing the level of representation of the various groups and in setting numerically targets. It was further held that the Department used a wrong benchmark not to appoint the Employees, and therefore had no justification for using race and gender to refuse appointment for most of the Employees. The decision of the Employer was held to constitute acts of unfair discrimination.
40. I am aware that the case before me is not a discrimination dispute, but the Department of Correctional Services (*supra*) case does find application as the 1<sup>st</sup> respondent used the same reason Department of Correctional Services used in justifying the promotion of the successful candidate. In this case, evidence clearly indicates that the 1<sup>st</sup> respondent did not consider the regional economically active population when the promotion was made. Therefore, the 1<sup>st</sup> respondent acted unfairly against the applicant when it denied her promotion.
41. In the absence of any evidence justifying the deviation done by the moderation committee, it is therefore clear that, had the moderation committee applied the equity profile correctly, then the applicant would have been promoted.

#### Conclusion

42. Taking all the evidence into consideration, I find that the applicant has on balance of probabilities proved that an unfair labour practice was committed against her. The 2<sup>nd</sup> respondent did not meet the requirements of the disputed position, and she should not have been shortlisted, let alone appointment.

#### Remedy

43. I order that the applicant be promoted to post of a unit commander: serious corruption investigation (colonel) with reference number DPCI/NC/81/2022, with the entry salary level of R838 407.00 as from 01 May 2023. The applicant salary was R531 807, 00, and the difference between her salary and the

disputed position salary is R306 600, 00, per annum. The period from 01 May 2023 to 30 April 2025 is two years, which means the back pay would be R613 200.

$R306\,600 / 12 \text{ months} = R25\,550, 00, \text{ per month} \times 2 \text{ months (May 2025 to June 2025)} = R51\,100, 00.$

Based on the above, the Applicant must be paid the difference in salary from 01 May 2023 to 30 June 2025 in the amount of **R664 300**.

This total amount excludes the salary adjustment for the period 01 May 2023 to 30 June 2025.

### **Award**

44. The 1<sup>st</sup> respondent, South African Police Service is ordered to promote the applicant, Breedt, Rachel Gertruida to the position of a unit commander: serious corruption investigation (colonel), and to pay her the remuneration and benefits applicable to that position and grade.
45. The promotion referred to in the preceding paragraph shall operate with retrospective effect from 01 May 2023.
46. As at the date of this award the additional remuneration as a result of the retrospective operation of the promotion, amounts to R664 300, 00, minus such amounts as the 1<sup>st</sup> respondent is in terms of the law obliged to or entitled to deduct.
47. The 1<sup>st</sup> respondent is ordered to pay Breedt, Rachel Gertruida, the amount referred to in the above paragraph by no later than 31 July 2025.
48. The 2<sup>nd</sup> respondent, Mungani, MP, did not meet the requirements of the advertised position, and she should not have been shortlisted.



Signature: \_\_\_\_\_

Commissioner: **Khuduga Tiale**

Sector: **Public Safety & Security**