



**CONCILIATION, MEDIATION & ARBITRATION  
COMMISSION (CMAC)**

**HELD AT MBABANE**

**MB 046/06**

In the matter between:-

**THEMBEKILE DLAMINI & 7 OTHERS** APPLICANT

And

**THE PRINCIPAL SECRETARY:**

**MINISTRY OF PUBLIC SERVICE**

**& INFORMATION**

1<sup>ST</sup> RESPONDENT

**THE EXECUTIVE SECRETARY: TEACHING**

**SERVICE COMMISSION**

2<sup>ND</sup> RESPONDENT

**THE ATTORNEY - GENERAL**

3<sup>RD</sup> RESPONDENT

CORAM:

<b>Arbitrator</b>	:	Mr. Aaron Dlamini
<b>For Applicant</b>	:	Mr. Ndumiso Mthethwa
<b>For 1<sup>st</sup> Respondent</b>	:	Mr. Hezekial Dube
<b>For 2<sup>nd</sup> Respondent</b>	:	Mr. Moses V. Zungu
<b>For 3<sup>rd</sup> Respondent</b>	:	Ms Thulie Nkwanyana
<b>Date held</b>	:	7 <sup>th</sup> August 2007

---

## **ARBITRATION AWARD**

---

### **1. PARTIES AND THE HEARING**

1.1 The applicants in the matter are Thembekile Dlamini and 7 Others who are posted by the respondent in various areas of the country as Teacher Leaders. The seven applicants include :

- ❖ Alice N. Dube - Teacher Leader - Adult Education
- ❖ Dudu Hlophe - Teacher Leader - Pre School
- ❖ Amos B. Hlophe - Teacher Leader - Adult Education
- ❖ Julius Ginindza - Teacher Leader - Adult Education
- ❖ Alzinah N. Khumalo - Teacher Leader - Pre Schools
- ❖ Thuli C. Dlamini (Sihlongonyane) - Teacher Leader - Pre - Schools
- ❖ Paulos Mbuyisa - Teacher Leader - Adult Education

Mr. Ndumiso Mthethwa from P.R. Dunseith represented the applicants.

1.2 The applicants are employed by the Teaching Service Commission for the Swaziland Government.. Their dates of employment vary.

- 1.3 I shall refer to the applicants as Teacher Leaders, the employees or the applicants, as and when circumstances dictate. The applicants in this case when they filed the dispute were all still employed by the respondent.
- 1.4 The respondents in the matter are the Chief Executive Secretary, Teaching Service Commission, the Principal Secretary, Ministry of Public Service & Information and the Attorney General of the Swaziland Government of the Kingdom of Swaziland.
- 1.5 Ms Nkwanyana from the office of the Attorney General represented the respondents.
- 1.6 The initial report of dispute including the certificate of unresolved dispute indicated that the first respondent to be the Teaching Service Commission and the representative of the said Commission raised an objection in the manner the sequence of the respondents was arranged. He said he did not see the Teaching Service Commission as the first respondent but the Ministry of Public Service & Information which is responsible for the terms and conditions of all Civil Servants.
- 1.7 The applicants, while agreeing to a postponement raised concern about the possible delays which will be

caused by having their documentation amended in accordance with the proposals of the Teaching Service Commission. The citation was arranged in the manner in which it appeared above. Subsequent to this agreement by the parties the certificate of unresolved dispute no. 104/06 (was amended in accordance with the applicants' counsel letter of application to the conciliator of the case Commissioner Phindile Ginindza, dated 10<sup>th</sup> May 2006. Following the above amendments the matter was set on to continue on pre - arbitration on the 15<sup>th</sup> May 2006.

## **2. BACKGROUND INFORMATION**

2.1. The matter relates to employees who are employed by the Teaching Service Commission (TSC) as Teacher Leaders under the departments of (i) Adult and Nonformal Education and (ii) Early Childhood Care and Education; who raised a grievance which they alleged was an unfair labour practice by the respondent in that after the job analysis and Job Revaluation Exercise carried out by the respondent at his own instance; which exercise resulted in the birth of a government document namely: Circular No. 3 of 2004; the said Circular placed the salary grade for the position of applicants (Teacher Leaders) to Grade C5. The respondent however, for whatever reason failed and or

- neglected to implement the said circular in its entirety the result of which allegedly deprived the applicants of a new favourable upgrade in salary from grade 9 to C5.
- 2.2. The applicants are seeking the assistance of the Conciliation, Mediation and Arbitration Commission (CMAC) arbitrator to compel the respondents to comply with their own Circular No. 3 of 2004. The respondents on the other hand deny this allegation arguing that while Circular No. 3 of 2004 dated 9<sup>th</sup> September 2004 is applicable to all Civil Servants it did not apply to the Teacher Leaders. The respondents' case is that the job of the Teacher Leaders was erroneously omitted when the circular was implemented. It followed therefore that the C5 grade which appears on Circular No. 3 of 2004 did not apply to the applicants.
- 2.3. The respondents had raised a point in limine objecting to proceed with the matter at arbitration arguing that the same matter was appearing before the Industrial Court of Swaziland and the fact that the Commission had bound itself not to hear such matters before same are finalized by the Industrial Court. The respondent referred the arbitration to documents TP1, TP2 and TP3 as evidence. Further, the respondent counsel argued that in any case the applicants had filed their appeal against the results of the salary review which was

conducted by the consultant. As evidence TP4 being an extract from the KPMG report, a consultant which was dealing with all appeals from various employees of the respondents was presented.

2.4. According to the respondents' counsel the applicants appeal against Circular No. 3 of 2004 was to be heard in Court on the 15<sup>th</sup> May 2006 as per annexure TP1 dated 3<sup>rd</sup> May 2006. The applicants' counsel argued successfully against this objection on the basis that the dispute before the Industrial Court had nothing to do with the case at arbitration as this is an application to compel the respondent to implement the results of Circular No.3 of 2004 which Circular placed applicants' job on grade C5 instead of C3. The respondent had effected all the changes for other categories in accordance with the circular but left out the job of the applicants.

2.5. Subsequent to the above, the ruling of the arbitrator was that the two issues were not the same and hence ruled in applicants' favour that the matter should proceed at arbitration (see ruling dated 30<sup>th</sup> May 2006).

2.6. After the delivery of the ruling the matter was to proceed at arbitration on the 5<sup>th</sup> June 2006. On this date

the applicants' counsel requested for a postponement which was not objected by the respondents' counsel. The new set on date was the 19<sup>th</sup> June 2006. Again on this date the parties raised different concerns with applicants' counsel complaining that he had not had enough time to interview his clients while the respondents submitted that their legal person was indisposed. The arbitrator advised the parties that he was no longer keen to have the matter postponed and further requested the parties that at the least the pre - arbitration should continue so that progress should be achieved. The matter proceeded to pre - arbitration wherein the parties identified their common and issues in dispute as follows:

2.7. The issues that were agreed as common were:-

- ❖ That the matter was properly before CMAC
- ❖ That the applicants were employed by the Teaching Service Commission (T.S.C.) as Teacher Leaders (Adult and Pre - schools)
- ❖ That Circular No. 3 of 2004 dated 9<sup>th</sup> September 2004 pages 1 - 36 and appendix 1 - 12 with particular reference to page 16 was relevant.
- ❖ That the job code EDN 043 was indeed applicable for the position of Teacher Leader.

2.8. Issues that were in dispute were:

- ❖ Whether or not the respondents complied with their Circular No. 3 of 2004 in respect of implementation of salaries and grades.
- ❖ Whether the Teacher Leaders who are applicants in the matter were entitled to be upgraded to C5 Grade from C3.
- ❖ Whether the applicants are entitled to the payments retrospective should the award be in their favour.

2.9. The parties agreed to submit all relevant documents as their bundle not later than 5<sup>th</sup> July 2006. They further agreed on the number of witnesses to be used with applicants' counsel submitting three yet he was going to rely on the two main witnesses while the respondent also submitted two.

2.10 The applicants' counsel bundle of documents ran from A1 to A8 while that of respondent ran from TP1 to TP15. The parties further agreed to analyse the applicants' qualification which they possessed at the time as follows:

- ❖ The applicants held Diploma qualifications while two of the them Mr. Julius M. Ginindza and Alzinah Khumalo held B.A Degrees in Adult Education.



2.11 The applicants' submissions are that the respondents embarked on a salary review for all the Civil Servants jobs which gave birth to the Circular No. 3 of 2004. The said Circular issued by the respondent allocated grade C5 to the position of Teacher Leaders. Subsequent to the issuance of the Circular No. 3 of 2004 the respondent implemented the results of the Circular across the board. Notwithstanding that the Circular had allocated grade C5 to the position of applicants (Teacher Leaders) the respondents did not implement this in the case of the applicants. When they inquired the applicants were informed by the respondent that it was because they were not degree holders. The applicants found themselves being remunerated at grade C3 instead of grade C5.

2.12 According to the respondents' submissions the post for applicants does not appear on the Circular No. 3 of 2004 as it was erroneously omitted which error was subsequently corrected in the Government Human Resources System. It is the respondents' submission that the post of Teacher Leaders was initially multigraded in that there were those who were allocated grade C3 who were diploma holders and grade C5 for those who were degree holders in qualification respectively. The post which appeared on

the Circular No. 3 of 2004 was therefore not relevant to the applicants.

2.13 It is the applicants' submission that their job description among other things entailed:

- ❖ Daily management of the Rural Education Centre.
- ❖ Supervision of the staff which operates at the center namely, the Institutions
- ❖ Project planning and management
- ❖ Carry out project, follow up and evaluation
- ❖ Designing of the syllabus for the center
- ❖ Apart from these they would conduct needs analysis.
- ❖ Budgeting.

2.14 The applicants submitted page 9; a document which bears their post code which was EDN 043. It was the applicants' submission that before the salary review was carried out they were remunerated on grade 9 and were placed on post code EDN 043. It is further applicants' submission that grade 9 was converted to C5 in terms of the Circular No. 3 of 2004. Paragraph 3 of the document referring to conversion reads:-

**Method of conversion;** *The method of conversion is that a transfer of each Public Servant from his/ her current pay amount to the first notch or next higher amount within the category and grade to which his/ her*

*post had been allocated to. In cases where an individual employee's current salary appears to be outside the categorized grade allocated to his or her post, that individual officer will retain his current salary as a personal right until the salary amount of the category and grade allocated to his/her post catches up with his/her salary where possible. The conversion method will ensure that every job holder will realize a minimum percentage of increase of 7.3 %. According to applicants their category is indicated in the extract marked C from the same page 13 document dated 9<sup>th</sup> September 2004 column 2 which reads EDN 043, Leader Teacher; C5.*

2.15 The applicants further submitted that it follows therefore that the effective date of the implementation of these results was 1<sup>st</sup> April 2004 for the category A,B,C,D,E, and F whilst for the category 8, 9 and 10 would be the 1<sup>st</sup> September 2004. However despite this provision the pay rise was never effected to applicants to date. On the other hand the applicants admitted to at least having realized the minimum of 7.3 %.

2.16 As stated earlier, the respondent denied that the applicants stood to benefit from Circular No. 3 of 2004 because they were erroneously omitted from the implementation of the Circular. That the post code EDN

- 043 which is reflected in the circular does not refer to them. It is the respondents' submission that the said omission was corrected administratively by correctly placing the applicants at the correct C3 grade on the main frame.
- 2.17 The respondent gave the historical background of the Teacher Leader job to the effect that prior to the issuance of the Circular No. 3 of 2004 they shared the same post title but multigraded as grades 9 and 11 which denoted a diploma and degree holder respectively. According to the respondent applicants were not in variance with this fact.
- 2.18 The respondents submitted that the post code was simply meant for administrative reasons in order to facilitate the separation of posts as well as payment of salaries.
- 2.19 According to the respondents, page 22 of the applicants' bundle of documents is an extract of an establishment register which came into existence before the Circular No. 3 of 2004. In that establishment register the shaded area where it says EDN 043, Teacher Leader 1 refers to the degreed teachers hence grade 11.
- 2.20 It is the respondents' submission that at the time of restructuring, applicants' position moved from grade 9

to C3. The respondent explanation of a restructuring exercise was that it entails re - evaluation of positions into categories using a new system of categories. The categorization placed the applicants onto category C which is a technical category. He said the categorization was the first stage which later gave birth to annexure TP14 from respondents' bundle of documents which was implemented in the year 2003.

2.21 According to the respondents TP4 came into existence before the Circular no. 3 of 2004. It is their case that TP4 maintained the multigrading of posts and this position shared the cost code with those employees who were now on grade C5 hence the indication of C3/C5.

2.22 He further submitted that with the Circular No. 3 of 2004 the respondent was doing the final implementation which contained the job evaluation of positions on top of the categories wherein the weighting were applied. He submitted that in the C category the consultant had more weighting on the qualifications than the duties performed by the job incumbent.

2.23 The respondent continued to state that having discovered that there had been an omission of the position of Teacher Leaders who were diploma holders and who were then, prior to the new dispensation placed on grade 9 went to the mainframe of the computer system and corrected the omission by creating a new post code EDN 148.

2.24 It was also the respondents' submission that the process of the job evaluation, salary review and job categorization was a joint exercise carried out by JNT, (Joint Negotiation Team) whose results transformed itself to the Circular No. 3 of 2004.

2.25 Further, it is the respondents submission that postcodes are meant for administrative purposes and as such would not appear on any employees' letter of appointment as was the case with annexures 1-8 being the letters of appointment of the applicants.

### **3. OVERVIEW OF EVIDENCE AND ARGUMENTS**

**3.1.** As stated earlier this case was marred with a lot of delays from both parties for various reasons. It should further be noted that yet another attempt by the respondent was made on or about the 16<sup>th</sup> April 2007 to have the arbitration hearing suspended pending the

outcome of an Industrial Court case no. 156/07 at the Industrial Court of Swaziland. The Conciliation, Mediation and Arbitration Commission (CMAC) arbitrator of this case was cited as the 5<sup>th</sup> respondent while the applicants in this matter before arbitration were cited as further respondents with their association, Swaziland National Association of Teachers as the 2<sup>nd</sup> respondent.

- 3.2.** The intention of the applicant in that case, Swaziland Government, was to obtain a Court Order interdicting the respondents to in part stop the arbitration hearing. It read in part; ***“that the afore-listed respondents are interdicted from reporting disputes relating to dissatisfaction with the grading arising out of the Job Evaluation Process agreed to and adopted by the applicant and 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents in the Industrial Court case who are respondents in this arbitration hearing; that the Conciliation, Mediation and Arbitration Commission (CMAC) is interdicted from entertaining by way of conciliation/arbitration any report of dispute filed by the applicants”***. This application by the respondent in the Industrial Court which was raised as a ground for not proceeding with the arbitration process necessitated yet another ruling from the arbitrator which was issued on the 30<sup>th</sup>

May 2007 in writing. In essence while the party was exercising its right at law the matter was delayed even further at arbitration. The respondents' application to have the matter stayed and/ or suspended *sine die* was unsuccessful simply because there was no instrument or Court Order stopping the arbitration proceedings.

**3.3.** Returning to the matter at hand I must say that voluminous evidence was brought to the fore by both parties to argue their case both in document form and viva voce. It is highly unlikely that all what was said will be summarized in this document. However, only the important aspects of the evidence referred to.

**3.4.** The applicants evidence is that according to them the Circular No. 3 of 2004 awarded them, Teacher Leaders, grade C5 in accordance with page 9 of applicants bundle and page 13 item 2 where it reads EDN 043 Leader Teacher, C5. Page 13 is an extract of Circular No. 3 of 2004. However, at implementation respondent chose to exclude applicants.

**3.5.** The applicants' first witness Thembekile Dlamini further referred the arbitration to page 10 paragraph 4 which relates to Method of Conversion.

**3.6.** Applicants' witness testified that their position as Teacher Leaders is provided for as category C which was awarded C5 at the time of grading the jobs. The



witness further referred the arbitration to the post code EDN 043 a post code which have always been used for paying their salary and was not disputed by the respondent. Thembekile testified that the only increment they got was the 7.3 %. The witness admitted that their job grade was previously grade 9. When asked whether there were other Teacher Leaders or Leader Teachers who were paid on a different post code than the EDN 043. The witness denied this and reiterated that all were using post code EDN 043.

**3.7.** The witness Thembekile referred the arbitration to page 15 which is an extract of the Establishment register dated 2<sup>nd</sup> April 2002 which bear the names of the applicants namely Alzinah Khumalo, Alice Dube, Thulie Sihlongonyane to name but a few, whose names are recorded against the postcode EDN 043 and the job title “Leader Teachers”. She further testified that the code came from the circular in force at the time.

**3.8.** The witness further referred the arbitrator to page 22 paragraph 2 which depicts EDN 043 - Leader Teacher but on grade C5 and it further gives the complement of such people to be 8 and indeed they are eight on strength. The witness went on to explain that on this document page 22 under **Education Responsibility Centre 8104- Adult Literacy Programme**

It reads -Post Code : EDN 043  
-Description : Leader Teacher 1  
-Grade : C5  
-Complement : 8  
-Strength : 8

The witness went on to submit that this information referred to them as a whole. She went on to say that the Circular was only effected on the three employees in the Literacy Programme and left the other five (5).

**3.9. Similarly under *Activity Code 3091 which is Pre - School Education under Responsibility Centre 9101 Nursery Schools;***

There is - Post code : EDN 043  
- description : 9101 Nursery Schools  
- Grade : C5  
- Complement : 4  
- Strength : 4

She submitted that even in this activity there are four personnel who are Leader Teachers. It is her evidence that even in this group one was affected by the implementation of the Circular No.3 of 2004 while three of them were left out and are applicants in the matter giving the total to four (4).

When she was asked whether they were all degreed teachers, the witness testified that with the Adult Literacy Programme, the three non-applicants were degreed teachers while one among the applicants, Julius Ginindza, has also a degree with the other four holding diplomas.

Further, under the Pre-School Education also - two of the applicants namely Alzinah Khumalo and Dudu Hlophe are degreed person. According to the applicants witness the above information was sourced from the Establishment register dated 2002/04/01 - 2003/04/01 page 22 of the bundle of with its original page as 99. On further examination the witness submitted that the document was an extract from page 17 of the bundle of applicants' documents. Page 17 is the Establishment register supporting the estimates of public expenditure for financial year 2004/2005. The witness went on to submit that the source of the Establishment register is the Circular No. 3 of 2004 which was in force at the time. The witness stated that her understanding was that the Establishment register is a document in which and through which government identifies her posts and the complement and strength per post in

employment and her liabilities. For further identification and distinguishing, post codes are used.

3.10 When asked what action did she take after discovering that the respondent was not remunerating them according to Circular No. 3 of 2004, the witness testified that they approached Mr. Musa Macwele a Senior Inspector for Adult Education who in turn prepared a document, call it what you may, marked "H" to the Executive Secretary of the Teaching Service Commission dated 28<sup>th</sup> September 2004.

The document reads "**RE-ANOMALITY IN THE IMPLEMENTATION OF CIRCULAR NO. 3 OF 2004**". ***"The department of Adult Education and Non-Formal Education has noted with concern that teacher leaders were not paid according to Circular no. 3 of 2004. This Circular no. 3 of 2004 clearly states that Leader Teachers (EDN 043 are paid on Grade C5 not Grade C3. The affected officer are:***

- |                              |                  |
|------------------------------|------------------|
| <b>1. Paulos V. Mbuyisa</b>  | <b>TSC 20730</b> |
| <b>2. Amos B. Hlophe</b>     | <b>TSC 19616</b> |
| <b>3. Julius Ginindza</b>    | <b>TSC 21483</b> |
| <b>4. Thembekile Dlamini</b> | <b>TSC 18442</b> |
| <b>5. Alice Dube</b>         | <b>TSC 3192</b>  |

***This minute serves to request your authority to correct this anomaly.***

***M.S. Macwele***

***Senior Inspector Adult and Non-Formal Education.***

3.11 Attached to this document is another marked “I” in which the remuneration shortfalls were calculated. She went on to testify that all the people listed in the documents mentioned above were applicants in the matter.

3.12 The witness testified that despite this correspondence, there were no fruitful results which then necessitated that they (applicants) sought audience with the Executive Secretary of the Teaching Service Commission Mr. Zungu around October 2004. Thembekile testified that they were informed by the Executive Secretary that he had written correspondence to the Ministry of Public Service & Information requesting same to correct the discrepancy. Three of the applicants attended that meeting namely, Paulos Mbuyisa, Amos Hlophe and Julius Ginindza.

3.13. According to the witness prior to the issuance of the said Circular No. 3 of 2004, applicants were

remunerated on Grade 9 and were awarded an increase of 7.3 % which when converted it equated to C3. She stated further that after the issuance of the Circular there was no other instrument issued advising applicants of the justification why they were remunerated at grade C3, instead Mr. Zungu, the Executive Secretary would continuously inform applicants that he was waiting for the response from the Public Service and Information Ministry.

3.14. Seeing that there was no positive response from Mr. Zungu after sometime and around 2005, the witness continued, the applicants decided to approach the Public Service and Information Ministry where they met two officers Mr. Masuku and Mr. Ginindza who told them that the reason why there were not placed on C5 grade was that they were not degree holders.

3.15. When the witness was asked what then was in issue because she had been briefed of the reason why there was no change to a C5 grade. She testified that the qualification was not in issue here as the position was a management position. She further submitted that there was, as an example, someone at Dvokolwako who had the same qualification (Diploma) like her but was earning lower than the witness.

3.16. Asked whether she believed that this move by the respondent was a demotion, the witness confirmed this with further substantiation, using the case of Thulie, who was initially a primary teacher on grade 7, she was promoted to Grade 9 then. After the establishment of Circular No. 3 of 2004, Grade 9 was converted to C5. Had the respondents implemented the said Circular accordingly, Thulie would have been placed on Grade C5. The Teacher Leaders Grade 9 was converted to Grade C5 like other posts where there was integration of the multi-grading system in the old dispensation.

3.17. When asked by the respondents' counsel in cross-examination whether there was a distinction between the three officers that were excluded from the pre-school programme and the five from the Adult and Non-Formal Education, the witness made the following analysis;

That there were applicants in the Pre-School who are degreed but were excluded hence the issue of qualification did not make any difference namely:-

- Dudu Hlophe - held a BA Degree
- Alzinah Khumalo - held a BA Degree
- Julius Ginindza - held a BA Degree

- The rest were holders of the diplomas. She repeated herself that the circular was not effected to all eight of the applicants.

3.18. The witness admitted that the Leader Teacher job was multi-graded in the old dispensation. The respondents' counsel referred the witness Thembekile, to document TP 14 which is Circular No. 8 of 2003 and asked her whether she was not paid on grade 9 which was later converted to C3 in terms of this circular. The witness categorically denied to have been paid at grade C3 between April 2003 and 31<sup>st</sup> March 2004 in terms of TP 14. Instead she referred the respondents' counsel to document no. 9 first paragraph. This document, dated 9<sup>th</sup> September 2004 is ***Establishment Circular No. 3 of 2004 Salary Restructuring to Implement the Evaluation of Government Posts in the already established categories and the pay scales for the financial year 2004/2005.***

3.19. The essence of the paragraph referred to by the witness reads in part ***"The Implementation of this Circular No. 8 of 2003 was suspended following submissions, representations about its contents and it was later re -issued without the job evaluation component of the salary restructuring. Following from that decision***



**Government engaged ESAMI.....** This work resulted in this Establishment. The TP 14 referred to by respondents' counsel is dated 7<sup>th</sup> August 2003 and its title is '**Re-Issuance of Establishment Circular No.8 of 2003 with amendments: Salary Restructuring to implement the categorization of Government Posts and their Pay Scales in the financial year 2003/2004.**' In her view the Establishment Circular No.3 of 2004 was withdrawing Establishment Circular No. 8 of 2003. In addition to the above the witness produced as evidence document no. 29 which is a payment Enquiry dated 21<sup>st</sup> September 2004 which had the details of her payment for that month including the backpay and she asserted that was the time when she realized that she was being paid through a different post code instead of the EDN 043 which she was paid from since her appointment to the position of Leader Teacher by the respondent.

3.20. Asked what was the purpose of the multigrade, the witness stated that as much as the question could easily be answered by the respondent who is the author, however, be that as it may, in the old dispensation grade 9 was meant for diploma holders while grade 11 was for degreed Teacher Leaders. The witness went on to mention that in the new Circular No. 3 of 2004 the multigrade system was changed and it

merged the grades into one, not only for Teacher Leaders but also for other positions like Head Teachers of the primary schools who were all moved to grade D4 irrespective of whether degreed or diploma holders. The latter method was to promote the spirit for equal pay for equal work. In short the new Circular remunerated employees in accordance with what they do not what they are qualified to do.

3.21. She further testified that there was nothing wrong with the Circular No. 3 of 2004, there was no omission of the Teacher Leaders because document No. 22 which indicates clearly that Leader Teacher 1 on post code EDN 043 on grade C5, planned for 8 and they were 8 incumbents, so the circular could not be said to have been incorrect.

3.22. When the respondents' counsel insisted to the witness that EDN 148 was already in existence prior to the issuance of the Circular No. 3 of 2004, the witness testified that her understanding is that the register would reflect the current circular. It then followed that no other circular came into existence that had the post code EDN 148 for Teacher Leader position, hence only the document page 22 existed. The witness insisted that the applicants were always placed on EDN 043. She referred the arbitration to the document in page 15

and 16 of the applicants' bundle of documents wherein the names of the applicants are placed against the post code no. EDN 043. The documents 15 and 16 are copies of the Establishment Register dated 22<sup>nd</sup> April 2002.

3.23. When the respondents' counsel put it to the witness that the Consultant, Du Puis, who was ranking the jobs as per TP 12 document in the respondents bundle of documents placed the applicants job on grade C3 because of their qualifications. However, when the Circular was established it erroneously omitted this position. The witness responded that she did not agree that this was an omission or error but submitted that the then Circular No. 3 of 2004 did away multigrading posts which were multigraded. Those who were multigraded were merged together into one grade and it was a fact that the respondents were aware of this fact to comply with the principle of paying for the job that is carried out by the employee not only his qualifications. She went on and made an example of computer programmers who were initially multi-graded as grade 8/9 who, with the new dispensation they were all placed on C5 grade.

3.24. The respondents' counsel asked the witness as to how would she explain the multi-grading even with the new

dispensation of the post of General Staff Nurse and Staff Nurse. The witness's response was that these posts carried out different functions and different job descriptions and were correctly graded and those who were not merged were specified and further paid accordingly but not according to qualifications.

3.25. When asked why would she think they should be grouped together with different qualifications unless it was an error. The witness stated again that in the Leader Teacher position whether one was degreed or not they were doing the same job and in compliance with the ILO Convention Principle the circular sought to award equal pay for equal work.

The applicants' counsel raised an objection to this line of questioning as the onus lied with the respondents to prove their case that indeed it was an erroneous omission. The objection was upheld.

3.26. Asked what she did after they discovered that they were not being remunerated according to their expectations, the witness told the arbitrator that they approached their Senior Inspector, Adult Non-Formal Education as per page 31 of applicants' bundle of documents and page 32 respectively. Both documents

were addressed to the Executive Secretary of the Teaching Service Commission and were received by him on the 28<sup>th</sup> September 2004. Eventually, according to the witness, seeing that there was no positive response on or about the 4<sup>th</sup> May 2005 they approached Msibi who was acting Principal Secretary at the time.

3.27. When asked by the applicants' counsel to explain the relationship between the Circular and the Establishment Register, the witness stated that her understanding was that TP 15 is an extract of the Establishment Register of 2004/2005 financial year and it came after the Circular no. 3 of 2004 which was published in September 2004.

3.28. She was further asked to explain why she believed the document was referring to them when it said Teacher Leader 1. The witness stated that according to the document (page 22) the post code EDN 043 for the Adult Literacy Programme it showed grade C5 for a number of eight (8) incumbents and indeed there were eight (8) of them (Leader Teachers) for this category. Similarly for the Pre - School Education the EDN 043 postcode indicate that it was allocated to four incumbents and indeed there were four in number who were graded at C5. She further highlighted that the

documents page 22 and the circular were compatible as they were talking the same language of the job being placed on grade C5.

3.29. The witness further testified that the circular was implemented to three (3) of Leader Teachers in the Adult and Non- Formal Education Programme. She admitted that all of these were degreed employees but further submitted that even amongst the applicants there were those that are also degreed, namely Julias Ginindza, Alzinah Khumalo and Dudu Hlophe.

3.30. The question was put to the witness that the respondents' counsel had referred her to TP15 which is an extract of the Establishment Register dated 1<sup>st</sup> April 2004 to 1<sup>st</sup> April 2005 in which document the Leader Teacher's position is categorized twice, first with Leader Teacher II grade C3 and Leader Teacher I grade C5, how would she explain this. The witness testified that during the period of circular no. 3 of 2004 the one which is named page 22 "applicants' bundle of documents", showed the post code as EDN 043 which was in line with the circular in issue. She further testified that TP15 an extract of 2004/2005 Establishment Register which came into being after the Circular No.3 of 2004 which was published in September 2004.

3.31. The evidence of the second witness for the applicants Thulie Sihlongonyane under cross - examination by both the applicants' counsel and the respondents' counsel was of a corroborative nature to that of Thembekile Dlamini such that it is repetitive information. She testified though that she started seeing the cost code applied to her payslip early 2006. Infact she re-iterated that before this document TP15 the Teacher Leaders were never categorized as I and II but were classified under one post code EDN 043. She further testified that in the Circular No. 3 of 2004 which act as a directive of how civil servants are to be remunerated there is no provision for EDN 148. In any event the witness continued, the Establishment Register would not take precedence to the circular because it is a product of that circular. She further testified that in her view the Establishment Register which is a product of the Circular to come out with a different post code for their job was an anomaly in itself.

3.32. Asked why the others were paid on grade 11 even in the old dispensation the witness Thulie, testified that those who were paid at grade 11 came from the National Curriculum Centre because of a specific

different activity in their job description which they carried out prior to joining these programmes.

3.33. Asked why did she think a degreed person should be paid the same with the one with a diploma, she replied that it was simply because they would be carrying out the same job and functions of the same level.

3.34. This witness further testified that placing the job on grade C5 was not an error because for comparison purposes a head teacher for a school does far less than the Teacher Leaders who oversee over 800 teachers per region especially the pre - school Leader Teachers.

3.35. This witness again re - iterated the submission to the effect that the Establishment Register that came as a result of the circular was very explicit in that (page 22) under Responsibility Centre 8104 the post code is EDN 043,

*Description : Leader Teacher 1*

*Grade : C5*

*Complement : 8*

*Total in Strength 8 (Adult Literacy Programme)*

*Similarly at Responsibility Centre 9101 on same document.*

*Post Code : EDN 043*

*Description : Leader Teacher 1*

*Grade : C5*



*Complement* : 4  
*Strength* : 4 (*Pre - school Education*)

- 3.36. The respondents' counsel asked AW2 why she thought the Circular was so important. The AW2 stated that it was simply because the establishment register came into being because of the information from the circular. Without the circular there may be no establishment register.
- 3.37. Asked why were they (applicants) advancing themselves academically to obtain degrees, the witness replied that the question of degree or no degree did not arise because the applicants do not only comprise of Leader Teachers with diplomas but even degreed ones. She further stated that being placed on C3 would have meant that they were being demoted because they were promoted from those levels and some were from being heads of departments.
- 3.38. Through the agreement of the parties' counsels a third witness Mr. V. Mbuyisa was called to testify. As in the above witness, I will only capture evidence that had not been captured or alternatively not corroborated, if not new evidence.
- 3.39. The document TP1 was introduced to AW3 and he was asked under what circumstances he wrote the

document. The AW3 stated that there was publication of Circular No, 3 of 2004 placing Teacher Leaders at grade C5 yet when they got paid they found that their salaries were not in accordance with that grade. He stated that they approached the Teaching Service Commission (T.S.C.) who advised that there was no problem as the matter would be addressed through Public Service. This did not happen timeously leading to him and others eventually visiting the Public Service Ministry in the MSD section. On the day in question he found Mr. Masuku and Mr. Gumedze who in turn allegedly did not know what had happened because their understanding was that Teacher Leaders post code is EDN 043. In fact Mr. Masuku checked from the computer. It became obvious that he needed the next senior person, Mr. Ndlangamandla who issued him with a form of job evaluation and who further, allegedly told him that it had been decided to remove applicants from using post code EDN 043 to EDN 148.

3.40. Asked whether he was told the basis for doing that, he stated that Mr. Ndlangamandla had said they were told to pay degreed Teachers on C5 while non - degreed at C3. He testified further that when he tried to explain to him that they were not teachers but Teacher Leaders whose status was equivalent to Heads of Department.

The officer gave him a blank form to fill in and that he should take some of these forms to the others (TP1).

3.41. The AW3 submitted that instead of completing the form individually they decided to do it collectively in the office of the Chief Inspector and further submitted same to Mr. Ndlangamandla. Mr. Ndlangamandla then asked for the cancellation of AW3 individual job evaluation form. The form was submitted marked as “J”.

3.42. Asked how come the form was signed by one Mr. Mahlalela, the witness testified that as a group they elected Mr. Mahlalela to be their scribe and Mr. Ndlangamandla had said there was no need for each person to sign. In other words the form completed collectively included all three categories namely: Teacher Leaders who came from the National Curriculum Centre (N.C.C.), the Pre - School and the Adult - Non - Formal Education. The title of form “J” read **“Government of Swaziland Job Analysis and Evaluation Form”**. He testified that the document under paragraph 1, it refers to their job code as EDN 043. The conclusion of all three categories is also indicated in paragraph 1.

3.43. When he was asked by his counsel whether he was advised of the outcome of this form from the appeals

consultant KPMG, he answered to the affirmative and further advised that they were placed on grade C6 and the post code remained as EDN 043. This document was submitted to the arbitration as document "K" named Establishment Circular No.1 of 2007 (dated 15<sup>th</sup> January 2007). It further reads **"Implementation of the KPMG Consultancy Report on the Job Evaluation Appeals Process"**.

3.44. Paragraph two of this Circular reads ***"Following the professional job evaluation done by KPMG Management Services (PTY) LTD and the discussion of the JNT (Joint Negotiation Team) on the outcome of the appeals report, Government has approved the re-grading of the posts that needed adjustments. The re - graded posts are listed in the attached appendix 1. Positions that appealed but do not appear on appendix 1, are those that did not change their grades after the evaluation by KPMG Management Services (PTY) LTD and negotiations by JNT"***.

3.45. According to this witness the report did not only confirm that Teacher Leaders should be salaried on C5 and their job code be re-instated as EDN 043 but further awarded an improved grade of C6. Asked whether in this document there was mention of the job

code END 148 the witness stated that there was no such and that he was not surprised why.

3.46. Mr. Mbuyisa submitted that the effective date of the Circular was 1<sup>st</sup> April 2005. However, according to him it was still not effected on applicants inclusive of the grade C5 which is in issue in this case. Following the revelation of the above evidence by the applicant witness which touched on the respondents officer Mr. Masuku who had not been identified as one of the witnesses and had continued to sit in during the proceedings and in view of the fact that Mr. Ndlangamandla was no more, the respondents' counsel applied that Mr. Masuku should be used as a witness solely on the issue of

- Duties
- Job code
- Withdrawal/substitution
- Qualifications of the applicants.

In essence he was to testify on what transpired when applicants in particular Mr. Mbuyisa visited the Public Service & Information Ministry (MSD). The parties agreed.

3.44 On cross examination by the respondents' counsel whether he could confirm that Teacher Leaders report to the Head Teacher. The AW3 testified that as much as

it was not his evidence, Teacher Leaders did not only report to Head Teachers but also to the Senior Inspector of Education.

3.45 When he was asked for what purpose did he submit TP1 in respondents' bundle of documents which is annexure J for applicants' bundle of documents. The AW3 testified that the intention to submit this form to MSD firstly was that he was advised by Mr. Ndlangamandla that because their job had not been evaluated it needed to be submitted to the consultant KPMG Management Services. Asked to confirm the number of incumbents who report to the Teacher Leader, the witness reconfirmed that there were more than thirty.

3.46 The respondents' counsel asked the witness when was TP1 submitted to Public Service & Information ministry following that the Circular No. 3 of 2004 was issued in September 2004. The applicants witness stated that it was on or about 5<sup>th</sup> January 2005. The respondents counsel referred the witness to page 2, and further asked whether in terms of the circular the filing of the document was still within the stipulated time of 30 days from the date of issue of that circular. The AW3 testified that this was not the case because as far as they were concerned, they were paid according to post code EDN 043 and only discovered when they did not get their

salary based on grade C5. In addition the witness addressed the arbitration that the circular was relating to appeals and their case was just an anomaly. He only learnt at the MSD through Mr. Ndlangamandla that they needed to submit the form 3 and cancel the former TP1.

3.47 The witness further elaborated and said that when they filed the form they were now doing it for the appeals yet their actual claim was about respondents' failure to implement circular no. 3 of 2004 which awarded them grade C5. This did not have any time limit in terms of the procedure provided for in the circular no. 3 of 2004. They were also over and above this anomaly not happy with the grade C5 itself hence the filling in of the job evaluation form for the attention of the KPMG Management Consultant for re - evaluation purposes.

3.48 Asked whether then it meant they had two appeals. The witness clarified that they had only one appeal against the C5 and considered the issue of being paid on C3 as an administrative anomaly or mistake by the Public Service & Information, hence they only needed to see the accounts department to address the shortfall on grade C5 salary. He admitted that the appeal about C5

being not acceptable took long to be filed largely because of their geographical location throughout the regions while immediate action was taken on the issue of anomaly in the pay for C5.

3.49 The respondents' counsel asked the AW3 as to what was the relationship between annexure "J" and annexure "K" as the witness has mentioned that "J" was filed for the change in title and further it had been stated that TP1 was withdrawn and substituted with "J" and it would seem that the result of the job evaluation had nothing to do with annexure "J". The applicants' witness responded by saying "I do not know how best I can respond to your question for your satisfaction because I have stated clearly that the main purpose of "J" was for a job evaluation following that we were not happy with the very grade C5". Wherefore, annexure "K" is the result of the job evaluation of the job for Teacher Leaders which however did not change the title.

3.50 On further re-examination the witness Mr. Mbuyisa testified that the TP1 document was completed at the instruction of the Public Service and in particular Mr. Ndlangamandla for the purposes of having their job re-



evaluated because Public Service had taken them away from post code EDN 043. He re- iterated that they had gone to Public Service to find out why Circular No. 3 of 2004 was not implemented in their case only to be told that their post code had been changed and that they must fill in TP1. The witness stated that Mr. Ndlangamandla stated to them that it was now difficult for him to fix the anomaly that had occurred suggesting that there must be a completion and filling of a job evaluation form.

3.51 The witness further stated that in paragraph one of TP1 he had to write the postcode as **EDN 148** as per instruction from Mr. Ndlangamandla as he did not know about it until then.

3.52 The overview of the respondents' evidence is contained mostly and largely in the testimony of Mr. Titus Khumalo, whose position is that of Principal Management Analyst. His duties includes inter alia; providing internal consultancy to the respondent, creation of posts, grading, setting up systems of payment, administration and overseeing two units within the Public Service Ministry.

3.53 Mr. Khumalo was the respondents' key witness who provided the arbitration with voluminous information in an attempt to prove that the applicants were omitted in

the Circular No. 3 of 2004 and that the grade C3 and postcode EDN 148 was for the applicants even though it did not appear on the said circular. He was to prove that the grade C5 which appeared in the circular against the position Teacher Leaders 1 did not relate to the applicants.

3.54 When he was asked to explain the provisions of annexure "C" page 13 of applicants' bundle of documents which indicates post code EDN 043 which is assigned to Teacher Leaders and in turn assigning applicants to grade C5. He explained that when the Circular No. 3 of 2004 was established the applicants' position was not included but left out by mistake.

3.55 Asked further what he meant by this because the applicants claimed to have used EDN 043 as Teacher Leaders from time immemorial. He testified that the applicants do not appear and that the post code EDN 043 no longer referred to applicants. He went on to state that the job of Teacher Leaders was multigraded in the old grading system as grade 9/11 and the intention by respondent was to accommodate a Teacher Leader who holds a diploma and degree qualifications respectively. In this case the grade 11 referred to the degreed while the grade 9 referred to the diploma holders and that the Circular No. 3 of 2004

did not publish the new grade of equivalence to the old grade 9.

3.56 The witness went on to explain that the post codes are meant for administrative purposes with the intention to separate posts as well as payment of the applicants' salaries. Asked when did the use of post code start Mr. Khumalo stated that it started around 1975 when the grades were first refined from grade 1 - 28 to grade 1 to 19 and during this time Teacher Leaders were multi-graded as grades 9/11 from grades 15/16.

3.57 The witness was referred to page 16 of the applicants' bundle of documents to try and identify what it meant. The witness pointed out that page 16 was not an establishment register but it was a computer print out which is used by respondent for administrative purposes. It was not an establishment register as stated by the applicants. On the other hand he stated that page 22 of applicants' bundle of documents is an extract of the Establishment register, which is a public document while page 16 is a computer print out which is a confidential administrative document and wondered how it got to the hands of the applicants.

3.58 The RW1 went on to testify that the establishment register came out first before the Circular No. 3 of 2004. He further stated that this was the normal

practice. The purpose of the circular was to pronounce additions and changes that referred to the terms and conditions of employment for Civil Servants.

3.59 He was asked by the respondents' counsel to explain applicants' claim that the page 22 document relates to them because it has the post code EDN 043, Teacher Leaders 1, grade C5, complement of 8 and the total employed is 8 and that they are eight of them in the adult and non - formal education and further below again had the post code EDN 043 for Teacher Leaders 1, grade C5 , the complement is five (5) and the total employed is five (5) which is identical to the number of Teacher Leaders employed by the Pre - school Education Programme. His response was "that would not be the case but would relate to grade 11 former dispensation.

3.60 The RW1 was asked to assist on which of the two documents was important between the circular and the establishment register as applicants had asserted that the circular was the most important document. He said that he would not be sure because both documents compliment each other flowing from both angles. This was such that an error committed in the circular would also be inherent in the establishment register.

- 3.61 The respondent counsel introduced the document TP2 from the respondents' bundle of documents and inquired from the witness whether he knew it. The RW1 claimed to have no knowledge of this document. This was a document showing Rec School Structure. Asked whether the multigrade applied to the Teacher Leaders only, the RW1 testified that this was not peculiar to the applicants. He further made the example of the welder I, II and III which he later withdrew and submitted a multigrading in the case of printers; that there is printer I which is grade A6 and printer II which is graded as A5.
- 3.62 When he was asked what one needed to do to move from the grade 9 to 11 in the old dispensation, the witness testified that one would need to acquire B.ED degree and further suggested that it is the case even today.
- 3.63 The RW1 was referred by respondents' counsel to TP14 and further asked to clarify what it meant. The witness stated that it meant the same dispensation in terms of the salary which was still multigraded with post code EDN 043 still applicable. The witness further testified that TP14 came into being before the issuance of Circular No. 3 of 2004.
- 3.64 When he was asked what would he say about the claim of the applicants that they only became aware that

their grade was C3 around September 2004 the witness differed with this and said it would not be correct because of Circular No. 8 of 2003, (TP14). He further explained that the applicants' position came to be graded as C3 because the government was re - evaluating jobs using a new system of categorizing which placed the job category of applicants to a "C" category. A "C" category was a technical category for government. Such were packed according to their pay so that the lowest paid would be C1, C2, C3, while maintaining the multigrading system. However, they still shared the same post code EDN 043. The witness went on to say that the issuance of Circular No. 3 of 2004 was the final implementation of the job evaluation of the jobs over and above the job categorization. That meant that the respondent was allocating weights to factors, one of which was the know how which entailed the qualifications which Teacher Leaders should have. That meant linking the jobs with the salary.

3.65 Asked which factor took precedence, the witness stated that with the category C the technical knowhow because one would need to obtain highly skilled persons and retain them as well. When it was put to him that the Teacher Leaders had testified that they do more than just a teacher as their work was too involved, the RW1 pointed out that this was not the

case because this type of category has the same general duties and hence you would put more weight on qualification.

3.66 It was his testimony that the Teacher Leaders did not suffer any financial prejudice with the placing of their job to grade C3. When asked further what was the result of the job evaluation, the RW1 stated that it was Circular No. 3 of 2004 which placed them on grade C3. When Circular No. 3 of 2004 was announced this grade was omitted by mistake and was discovered by the Public Service and Information Ministry at the implementation stage of this circular.

3.67 Asked whether during the evaluation exercise this job continued to be multi-graded, the witness turned around and said no it did not instead it did away with the multigrading. Asked what then was to become of Teacher Leaders, he said they were to be given two separate grades by creating two separate post codes. According to the witness the steps they took to address this mistake, was that as provided for in the Circular No. 3 of 2004 that the omissions and errors would occur the Ministry of Public Service & Information created a new job code which referred to the specific lower grade Teacher Leaders as EDN 148.

3.68 Asked whether by creating a new postcode the respondent intended to continue making the distinction that existed, the witness Mr. Khumalo, said yes except that the new dispensation had to do away with multigrading but not to merge the positions. When asked what would be his response on the submissions by the applicants that the idea of Circular No. 3 of 2004 was to do away with multigrading of jobs or posts and to merge those which were multigraded. His response was that **“yes and no”**, it was to do away with multigrading but not merging grades.

3.69 Asked to explain why amongst the applicants there were those who were degreed but were still paid on C3 grade. He stated that this was possible because it may happen that there had been no instrument appointing them and that it would also depend on whether there is a vacancy. He further testified that they evaluated the jobs and not people and it would be the responsibility of the Teaching Service Commission to generate the instrument for those who had since acquired degrees for the attention of the Ministry of Public Service & Information.

3.70 Asked how and when did annexure TP15 come into being with the job of Teacher Leaders divided into two as Teacher Leader 1 and Teacher Leader 11. The



witness testified that the sequence of events were as follows: - First it was Circular No. 8 (TP14) then the establishment register; followed by TP15 a formal instrument correcting the anomaly after it had been addressed and was backdated to 1<sup>st</sup> April 2004.

3.71 When referred to TP12 and asked to explain its purpose, the analyst witness stated that TP12 was a report by KPGM after analyzing the government salary structure and in particular it was showing the allocation of points during an evaluation of each job and the overlaps therein. For example it was found that the jobs in grades B6 and C3 scored weighting points of between 43 and 51 which were mostly two year diploma holders which referred to applicants' case. He further said if they were to be in the 12 category they would be graded as B6 but because they are in the C category they were graded C3. He further explained that those Teacher Leaders 1 grade C5 would have earned the weighting of 57 -70 points and equate to grade D2 and the minimum entry level is that the incumbent must obtain a degree.

3.72 Asked whether it would happen during the evaluation of jobs that a diploma holder would equate to the weighting of a degreed person, he replied to the

negative and said that if such would occur it would be anomalous.

3.73 Asked to give clarity about the document annexure “K” which is page 104 of applicants’ bundle of documents and is Establishment Circular No. 1 of 2007 dated 15<sup>th</sup> January 2007. The applicants claimed that it referred to them as well. The RW1 emphatically said even the circular which was as the result of the appeals to the KPMG Consultancy, it did relate to applicants but those Teacher Leaders whose post code is EDN 043. He further said that the fact that they are not included means that there was no change to their status (grade).

3.74 Asked whether the applicants suffered any financial prejudice with the introduction of the Circular No. 3 of 2004, RW1 stated that they did not, instead through the method of conversion provided for by the same circular they got the minimum increase of 7.5 %. He further testified that the intention of the Circular No. 3 of 2004 was still to retain the differentiation of degreed holders from those who had a diploma, which necessitated the introduction of the separation of grades instead of multi-grade.

3.75 He was asked to refer to page 22 of the applicants’ bundle of documents where applicants had stated in their evidence that it is an extract of the Establishment

Circular of 2004/2005. The RW1 responded that yes it was, but when requested to explain what the date 2002 meant on this document, the witness changed his mind and said “no no, that I think would not be the case, but think it would be year 2002/2003 establishment register extract. He further testified that this document was not as a result of the Circular No.3 of 2004.

3.76 Asked again to consider TP15 and to state which document came out first between the circular and the establishment register. He responded as follows “It is the circular and no no it is the register TP15. It was issued as a correction of the Circular No. 3 of 2004”. He further testified that he made a mistake when he earlier on gave testimony to the effect that it is the register that came first and was being corrected by the Circular No. 3 of 2004.

3.77 According to the applicants they submitted that they were entitled to the C5 grade because their job was not about degrees but entailed management as an important element, the RW1 response was that in the case of category C and E skill was given more weighting because of its importance.

3.78 The applicants’ counsel asked RW1 to give a detailed procedure followed when a post is created and the RW1 responded that the procedure followed is as follows:-

- That they receive a request from the ministry concerned
- Conduct a review of the need
- Receive a letter from the ministry etc generally.

3.79 Again he was asked (RW1) whether before allocating the post code EDN 148 to applicants' post did the respondent evaluate that job and if so when, after the KPMG report. The witness testified that it was before the KPMG appeals and the evaluation was carried out by ESAMI while the categorization was carried out by Du Pius.

3.80 Asked whether it would happen that a job would be evaluated without taking into account the knowhow and qualification of the individual. The RW1 stated that you do not **evaluate the individual but the job**. However, it would be allowed in the technical and professional categories. These would be moved up through acquiring more skills.

3.81 Asked how would he explain the position of Teacher Leaders who were promoted from the positions of ordinary teachers and others from being heads of departments then to Teacher Leaders whose grade and pay was higher in the old dispensation, who with the new job evaluation found themselves going back to be

graded the same as ordinary teachers the positions from which they were promoted before. The RW1 replied that they would not suffer any prejudice as their salary will remain unchanged (personal right) even though the new grade and salary scale of the new dispensation will be higher than theirs. Instead they will receive only the cost of living adjustment of 7.5% increase.

3.82 Asked to make a comment on the question of the status regarding the above scenario, the RW1 stated that he would approach that question professionally and say the Teacher Leaders position was a function that was introduced by government as a project and as such had to get experienced teachers to this new function and pay them a better retention salary. As the years went by it sort of settled into the conventional way of things to the main stream of teacher grades.

3.83 Asked if it was not a downward spiral, the expert was unsure. Asked whether he would not agree that they were brought down to be the same grade as ordinary teachers he said he would not agree with that.

#### 4. **ANALYSIS OF EVIDENCE AND ARGUMENTS**

4.1 A lot has been said by the applicants and the respondents regarding this case to try and prove their

case. What should be obvious to the parties is the fact that the arbitrator is unlikely to summarise and make comments on all the evidence submitted to this arbitration. However, efforts have been made to cover all the most important evidence and arguments relevant to the decision of the arbitrator. It does not mean either that the arguments and counter arguments not mentioned in my summary will have not been considered.

4.2 What needed to be decided in this case is whether the Teacher Leaders who are applicants in the matter are entitled to their claim that the respondent should :-

- (a) Implement the C5 grade allocated to applicants by Circular No.3 of 2004
- (b) Consistency in the application of the principle of equal pay for equal work as per set precedent in the remuneration of Primary School Head Teachers.
- (c) That Teacher Leader be paid for the post not qualifications that is, Diploma and Degreed alike without exceptions.
- (d) Whether, following the above, the applicants are eligible for the payment retrospective thereof.

4.3 The next issue that needs to be determined is whether indeed the respondents claim that the applicants post was omitted on the Circular No. 3 of 2004. Whether this omission was an error as claimed or deliberate.

- whether these were the results of the actual job evaluation prepared by the consultant or the Joint Negotiation Team which information or results would be said to have erroneously been omitted prior to the establishment of Circular no. 3 of 2004.
- Whether it is fair and equitable to remunerate differently for the same position and function on the basis of qualification.
- To further determine the claim by the applicants that the intention of Circular no. 3 of 2004 was to merge the posts for Teacher Leaders into one Grade. This was not only for Teacher Leaders but also for other positions. Whereas the previous circular was aimed at paying people according to their qualifications.

4.4. Of importance in the matter is that it is common cause that the job of Teacher Leaders was multi-graded from its inception, that is to say, Diploma Teacher Leaders were graded 9 while the degreed were graded 11.

4.5. The arguments by the respondents' counsel against the applicants' claim relied heavily on the evidence of Mr. Khumalo the RW1.

4.5.1. He testified that applicants position was mistakenly left out when the circular was issued. In short the circular did not relate to applicants. This is Circular No. 3 of 2004 dated 9<sup>th</sup> September 2004 marked page 9 in the bundle of applicants' documents. His further argument was that applicants' position was evaluated and obtained C3 grade and referred the arbitration to TP14 and TP15 of the respondents' bundle of documents. TP14 is circular no. 8 of 2003 which is titled **“Re-issuance of Establishment Circular no. 8 of 2003 with amendments: Salary Restructuring to Implement the categorization of Government Posts and Their Pay Scales in the financial year 2003/2004.”** This document is dated 7<sup>th</sup> August 2003. One of its page which is unnumbered is an extract document which shows job code, post title, new post code, old grade, new grade and a column for comments. The fourth row of this document bears the job code EDN 043, the job title is left blank, the old grade is 9/11 and the new grade is shown as C3/C5. In terms of the respondents arguments that through a job evaluation exercise the grade would be established. However, what seems to fail the mind is that the decision remained unchanged that there be Teacher Leaders and the job code of same would only be EDN 043. Reading



this document further the arbitrator finds that there were more than just one post titles which were still multi-graded as Grade 9/11 and converted to new grade as C3/C5. A typical example is that of the Assistant Planning Officer, job code PLN 011. This job is also classified as C category.

- 4.6. The same can be said of the job title of Assistant Physical Planning Officer whose code is shown as LND 016. It is also multi-graded as 9/11 and the new grade shown as C3/C5 and is classified as a category C Job. However, of note is that in the Circular No. 3 of 2004 dated 9<sup>th</sup> September 2004 both these jobs assumed new higher grades in the following manner;

Assistant Planning Officer - with job code PLN 011 the new grade is C6.

Assistant Physical Planning Officer with job code LND 016, the new grade is C4. The same trend can be said of the Teacher Leaders position which also on the circular no. 3 of 2004 remained with job code EDN 043 but also changed from grade 9/11 converted to C3/C5 on circular no. 8 of 2003 with amendments (TP14, stated above) and to C5 with the same job code. In short I found it difficult to comprehend the respondents' arguments that in the applicants' case it

was an omission and not an omission for the other jobs as per the above two examples.

4.7. The respondent went on to argue that on page 22 of applicants' bundle of documents which is an establishment register which came into being before Circular No. 3 of 2004. The shaded area does not relate to applicants. It reads EDN 043 Teacher Leader 1 and it denotes the higher grade that was formally grade 11. I would have liked to concur with the respondents' arguments but the respondents witness did not address the applicants' counter arguments that circular no. 8 of 2003 was suspended. In fact the Circular No. 3 of 2004 first paragraph confirms just that (annexure "D" of applicants' bundle).

4.8. Further, the argument by the respondent witness Mr. Khumalo that the qualification and know-how played a significant role in the evaluation of the Teacher Leaders job contradicts the respondents earlier assertion to the applicants Principal Secretary (Ministry of Education) from the Principal Secretary, Ministry of Public Service & Information in a memorandum dated 4<sup>th</sup> May 2004 submitted by applicants as annexure "G" in a similar case. This was a request from the Ministry of Education which read **"Request for Adjustment of Underpayment of Freddy Dlamini salary from DP1**

**to DP8". Paragraph two of this memo reads, "Job Evaluation concerns itself with the post and not the individual in the post".** My emphasis on this sentence. It is common cause that throughout the arbitration the respondent argued about these individuals as having only obtained diplomas instead of degrees. Obviously that argument refers to the individual not the job. Incidentally, the document mentioned above was signed by T.M.J Khumalo, the RW1 himself.

- 4.9. Further, the respondents' witness testified that in terms of Circular No. 8 of 2003 which was issued with amendments "TP14" of respondents' bundle of documents dated 7<sup>th</sup> August 2003 the applicants grade came out as multi-graded but sharing the same job code EDN 043 graded 09/11, on old grading system and converted to C3/C5, new grade. On the other hand the later Circular No. 3 of 2004 paragraph 2 provide more clarity of what became of the former circular no. 8 of 2003. It reads ***"The Principle of categorizing government posts was implemented by Government through circular no. 8 of 2003 but the placing of the jobs within these categories through a job evaluation exercise was not done. Since a scientific job evaluation of all existing jobs had been done in Establishment Circular No.***

**8 of 2003 before it was re - issued, Government has employed another system of job evaluation called the “job classification” method “to validate the results of circular no. 8 of 2003. This means that all the grades within the categorized structure were re-defined and all the existing jobs within each category and grade were re-considered to ensure that they fitted the definition of their category and grade. Those positions that did not fit the definitions were moved to grades with a fitting definition. Some jobs even moved categories based on these definitions. An amended table with a listing of all the government positions together with their current grading and the categories to which they have been allocated, is attached.....”.** My interpretation of the first sentence of this paragraph suggests that circular no. 8 of 2003 issued with amendments was nullified. Therefore, it could not be used as evidence by the same respondent who nullified it.

4.10 There was argument and counter argument between the parties with regard to what comes out first between the circular and the establishment register. The applicants’ evidence maintained throughout the proceedings that the Establishment Circular comes out

first immediately after the JNT has come to an agreement and subsequently followed by the Establishment Register. While the respondents' expert witness first said it was the Establishment Register and later said it was the Circular and again changed his mind to say the two documents complement each other. He however, went on to state that a mistake which occurred on one will be inherent to the other.

4.11 Following the documentation that was presented as evidence vis-a-viz the Establishment Circular no. 8 of 2003, the Re-issuance of Establishment circular no. 8 of 2003 with amendments and Establishment Circular No. 3 of 2004, it is clear that an establishment register for the financial year will follow after the circular giving rise to the register has been effected in the mainframe of the respondent. A typical example are the documents submitted by the respondent as TP14 and TP15. The Establishment Circular No. 8 of 2003, is dated 7<sup>th</sup> August 2003 which is TP14 and attached to it is TP15 which is an establishment register extract dated 2004/04/01- 2005/04/01. However, as stated above this is the circular that was nullified by Establishment Circular No. 3 of 2004 paragraph 2.

4.12 In answering therefore the question whether the job of applicants were indeed erroneously omitted to be

included in Circular No. 3 of 2004. I hold the view that it was not omitted but formed part of the results of Teacher Leaders post code EDN 043 and grade C5 as indicated by the same circular.

4.13 The respondent has failed to present evidence in a documentary form which would have been from the evaluating consultancy or evaluation exercise or JNT indicating that the applicants post came out as grade C3 and that information to have erroneously been omitted when establishing Circular No. 3 of 2004. An omission to be included in the circular suggests to me that it was recorded elsewhere. In any event the respondents' expert witness was given the opportunity to present same but failed.

4.14 The respondent witness testified that a similar situation existed with the position of Senior Lecturer and Deputy Principal of SCOT. However, on further scrutiny the arbitrator found that this is not the case. Circular No. 3 of 2004 clearly have distinct grades and post codes for these namely - Vice Principal (SCOT) is graded D5 and post code EDN 090 whilst Senior Lecturer is graded E 1 post code EDN 120.

4.15 The applicants argued that their post was bound to obtain the single grade because it was too involved than a job of an ordinary teacher is as it also had

managerial functions while the respondent argued that applicants' managerial function was conventional as opposed to direct. Reading their job description as presented by the respondent TP1, I have no doubt in my mind about their argument that it is true. However, I do not believe the purpose of the arbitration was to evaluate the job but instead to determine whether there was an omission as alleged by the respondent.

4.16 Further, the applicants and the respondents' expert witness had common ground that one of the intentions of the new restructuring was to do away with multi-graded posts. However, they differed on how this was to be done with the respondent suggesting that that it is through using a different post code while the applicants believed it was to be through merging the grades, for instance grades 9/11 or C3/C5 becoming C5.

4.17 Further, in my view the applicants' argument that the appeal they filed with the KPMG Consultant was not about grade C3 but that they were appealing against the very C5 grade. The result of that appeal is that the Teacher Leader post was again elevated to grade C6 as provided for in Circular No.1 of 2007. The respondents' argument about this one was that again it did not relate to the applicants' position. As an arbitrator, I fail

to understand the respondents argument or denial because the job description for appeal submitted is the one that was submitted by applicants namely TP1. There was no other job description submitted by the respondent which is different from that of the applicants which would have suggested that the results obtained in circular no. 1 of 2007 came from another job description.

4.18 The respondent in his heads of arguments denied that the applicants were demoted because previously an ordinary teacher reported to applicants and that applicants were senior to head teachers. He instead said that in terms of TP2, applicants and ordinary teachers are at C3/C5 with diploma holders at C3 while the degreed are placed on C5 and that Head Teachers were obviously at the top of the hierarchy at D5. That this evidence was not challenged. I concur with the respondents' counsel but on the other hand I have taken into account the applicants' unchallenged argument that the position of Head Teacher is graded D4 irrespective of whether he is degreed or not and whether it is lower primary or higher primary as an example. Therefore the arbitrator does not believe the structure in TP2 is relevant to the matter at hand.



4.19 The respondent has put forward a strong argument about post code EDN 148 not appearing on annexure “K”. I again would fully agree with that observation however, I have taken into consideration that throughout the entire arbitration hearing the expert witness stated several times that a post code is for administrative purposes. Therefore it could not be said to have materially affected applicants’ position and grade.

4.20. This is more so because the respondents’ witnesses while submitting that they took the initiative to address the purported anomaly by creating a new post code for the applicants in the mainframe, admitted that they did not have an instrument to do so neither did they eventually get one even afterwards. In fact even at the time of the hearing no document was produced by the respondents witnesses which authorized them to create a special post code for non-degreed teacher leaders. In the absence of that document their own procedure in creating a post code remained flouted and leaves me to believe that the creation of EDN 148 was unprocedural and hence had no force and effect necessitating that the applicants be paid on Grade C3.

4.21I now come to deal with the manner in which the matter was raised by applicants and the arguments by respondents that the applicants failed to follow the procedure provided by the circular. The arbitrator is satisfied with the explanation by the applicants that they were dealing with a query which is not provided for in the circular, that of an anomaly in that the employer did not effect the provision of the Circular No. 3 of 2004 in the case of applicants while the circular provided a procedure for those whose jobs were omitted from this circular. Their position namely **“Leader Teacher”** appeared on the said circular.

For all intent and purpose they were concerned about filing an appeal against the grade C5 allocated to Teacher Leaders in that circular as they believed it was lower than what they expected. Even if they were raising a concern about an omission in the respondents’ understanding, there was enough corroborative evidence that they followed the procedure to advise the employer about their concern. I hold the view that having been promised by their head of department including the Executive Secretary of the Teaching Service Commission (T.S.C.) was more than satisfactory. That the employer decided to handle the matter in the manner she did should not be prejudicial to the employees.

- 4.22 It is also worthwhile to mention the observation of the arbitrator in regard to the evidence provided by the RW1, expert. There are quite a number of instances where he would deny a fact like in 3.59 above or found to give contradicting evidence like in 3.6.7, 3.6.8. and 3.6.9 above as examples.
5. Finally to answer the question and argument by the respondent whether CMAC can promote applicants from C3 to C5. I would answer the question in the abstract and say no that is not the duty of the arbitrator to promote employees for the respondent. However, the duty that was placed before the arbitrator was to determine whether indeed there was failure and or neglect by the respondent to implement Circular No. 3 of 2004 in its entirety and inclusive of its applicability to the applicants.
  6. Given the set of facts and evidence above the arbitrator would answer that question in the affirmative. It is the arbitrator's view that the applicants are entitled to their claim. The argument by the applicants' counsel that the respondents have contradicted themselves in their defence cannot be over emphasized.
  7. On the one hand the respondents have stated that the reason the applicants were not paid on C5 grade was

because they do not belong to post code EDN 043 but their correct post code is EDN 148 and on the other hand they stated that it is because they were not evaluated, is a clear contradiction. The only evidence that was presented to the hearing suggesting that there was a new job code EDN 148 is the extract of the Establishment Register dated 1<sup>st</sup> April, 2004 to 1<sup>st</sup> April 2005 which was changed by the 1<sup>st</sup> respondent in the mainframe and admittedly doing so without following their own procedure, not being directed by any instrument to do so, is a cause for concern. No document which either came from JNT meeting nor the consultant was presented to suggest that there were results that could have proved that applicants were graded C3.

8. I have taken into account all the references mentioned by the respondents' counsel and put forward for arguments. However, I observed that they were relevant only in as far as the decision would have been that there was an omission of the inclusion of applicants' position in the Circular No. 3 of 2004. However, the conclusion is that there were no other results of the evaluation of the Teacher Leader position other than the grade C5 so provided. It follows therefore that the respondents' defense should fail.

9. It further follows that, as the respondents expert witness admitted that it is the **job** that is evaluated not the **individual**, that where the incumbents perform the same and equal job and achieve the same and equal desired results, they should be remunerated the same and equal remuneration arising out of the job evaluation. Should however the employer wish to award for personal academic achievements while in service a different type of incentive should be established directed to that academic achievement as a stand alone reward.
  
10. In this regard the principles enshrined in Convention 100, ***“Equal Remuneration Convention 1951; which concerns Equal Remuneration for Men and Women Workers for Work of Equal Value”***, of the ***International Labour Organisation***, becomes relevant in this case. This Convention was ratified by the Government of the Kingdom of Swaziland on the 5<sup>th</sup> June 1981 and there has been no revocation of same since then. The relevant Article is article 1 (a), Article 2 (1). Further, Article 3 paragraphs 1,2 and 3 also become relevant.

11. In addition to the above observation, the parties are referred to the Industrial Court Case No. 164/05 dated 7<sup>th</sup> September 2005 in the matter between **NIKIWE NYONI VS THE ACTING COMMISSIONER OF ANTI - CORRUPTION UNIT** page 6 first paragraph. In that case and paragraph the respondent had relied on a document titled **“SCHEMES OF SERVICES FOR THE ACCOUNTANCY CADRE”**. The rationale for referring to this case is that at least the respondent had a basis on which to argue why the applicant could not be appointed to the substantive position of Principal Accountant. Similarly in the case before me one would have expected the respondents to submit a similar document on which they were basing their arguments why Teacher Leaders with a diploma qualification should remain in a separate lower grade **ad finitum**, irrespective of the experience and the fact that they achieved equal production with those with degrees.
12. Respondents stated that for the applicants to qualify for the grade C5/C6 the applicants must be in possession of a B.A. ED Degree. We were however given contradicting statements when the respondent witness was asked why amongst the applicants there were at least more than two who have a degree. The respondents turned around and said **“there was no instrument appointing them and even then it**

**would depend on whether there is a vacancy”.**

This in my view was a self defeating argument. It is common cause that applicants were long appointed as Leader Teachers.

13. In the case referred to above the Court referred to the respondents General Orders - which states **“an employee employed on an ” acting” capacity must be confirmed in that position upon expiry of six months”** It is an undisputed fact that the applicants were not even appointed on an “acting capacity” but these were confirmed positions hence it would be unfair to remunerate them differently. In other words if the respondents have a provision for an employee who is on an acting position that he/she would be confirmed after six months irrespective of the qualification, I am convinced that it would be even moreso to pay equal wage for equal work, with no discrimination based on qualification.

14. It is further common cause that the Swaziland Government has not rescinded from the Convention 100 ratified on the 5<sup>th</sup> June 1981.

## **15. THE AWARD**

15.1 Having taken into consideration all the arguments counter arguments and evidence presented before me, I have come to the conclusion that the respondents have failed to present convincing evidence that there was an omission of the applicants from the Circular No. 3 of 2004.

15.2. That the claim that there was no omission and the grade C5 enshrined on the said circular relates to all employees performing the job of Teacher Leaders whose functions are outlined in the job description filed by respondents as TP1.

15.3. That the applicants are entitled to their claims retrospective.

15.4. That the respondents shall have complied with this award not later than the 15<sup>th</sup> August 2008.

**DATED AT MBABANE ON THIS ..... DAY OF JULY 2008.**

---

**AARON M. DLAMINI**  
**ARBITRATOR**