



PHSDSBC

PUBLIC HEALTH AND SOCIAL DEVELOPMENT
SECTORAL BARGAINING COUNCIL

Arbitration Award

Case Number: PSHS1054-13/14

Commissioner: Bongiwe Nkohla

Date of Award: 7 July 2014

In the **ARBITRATION** between

***NEHAWU obo Syce A and the 1 other
Applicant***

And

***Department of Health- Eastern Cape
Respondent***

Applicant's address: P.O.Box 27667

Greenacres

6057

Telephone: 041 4088154

Telefax: 041 4088276

E-mail: N/A

Respondent's address: Department of Health

P.O.Box 27667

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6057

Telephone: 041 4088154

Telefax: 041-4088176

E-mail: N/A

DETAILS OF HEARING AND REPRESENTATION

1. The dispute was set down for arbitration on the 7 July 2014. The applicant; Ms Syce was present and was represented by Ms Mtwazi, a union representative from NEHAWU.
2. On enquiring about the other applicant I was informed by the union representative that she has since left the employ of the department. I then proceeded with the matter without her.
3. The respondent, Department of Health- Eastern Cape was represented by Mr D. May.
4. I proceeded by explaining to the parties what Arbitration is all about and then enquired from the parties if there is any interest to do conciliation before we proceeded and both parties agreed that they were ready to proceed to Arbitration.
5. The proceedings were digitally recorded.

ISSUE TO BE DECIDED

6. I am required to determine whether the conduct of the respondent of not paying the applicant a benefit constitutes an unfair labour practice or not as indicated in s186 (2) (a).

SURVEY OF EVIDENCE AND ARGUMENT

SUBMISSION BY THE APPLICANT

7. The applicant's side introduced one witness and submitted a bundle of documents relating to guidelines for awarding performance and documents for assessment performance.
8. The witness introduced was the applicant and her testimony was as follows:
9. The applicant went on maternity leave on the 10 August 2010 for four months returning on the 9 December 2010.

10. She testified that during that period there were no guidelines for performance management in their department.
11. The applicant further testified that she came back from maternity leave and was moderated for 2010/2011 and signed in April 2011.
12. She stated that when she was moderated and signed it meant that she qualified to get her payment progression.
13. She stated that to qualify for payment progression one has to submit 3 quarterly reports and she submitted 4 quarterly reports.
14. She also testified that the guidelines for performance were only received in August 2011 and therefore do not apply to her maternity period.
15. Under cross examination when asked by respondent representative if it was fair to pay the payment progression the applicant testified that it was fair as it was only 4 months of the performance period that she was not there.
16. She further testified that the payment progression affects the salary notch if not effected.

SUBMISSION BY RESPONDENT

17. The respondent's representative Mr May testified that it was the view of the Department that because Ms Syce was on maternity leave for 4 months she therefore did not qualify for the progression payment.

ANALYSIS OF EVIDENCE AND ARGUMENT

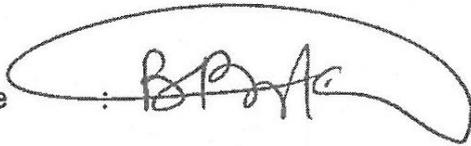
18. In terms of section 186 (2) (a) "unfair labour practice means any unfair act or omission that arises between an employer and an employee involving, unfair conduct by the employer relating to the promotion, demotion, probation (excluding disputes about dismissals for a reason relating to probation) or training of an employee or relating to the provision of benefits to an employee".
19. The evidence led by the applicant is that she was overlooked for a benefit she knew she was entitled to.
20. The testimony of the applicant which was not challenged shows that there was no proper procedure followed in not awarding her the progression payment.

21. Based on the unchallenged evidence of the applicant by the respondent's representative I am of the view that the non payment of the benefit to the applicant was unfair and therefore amounts to unfair labour practise.
22. The applicant prayed for the retrospective application of the payment progression as she has qualified for it after her assessment was done. I have no reason not to grant her prayer and deem it reasonable to make the following award:

AWARD

23. I find that the non payment to the applicant, Ms A Syce to be an unfair labour practice.
24. I therefore order that the respondent must effect the progression payment and pay over to the applicant from the financial year 11/12 to date.
25. The respondent must comply with the order made above on or before 26 September 2014.
26. I make no order of costs.

Signature

A handwritten signature in black ink, appearing to read 'Bongiwe Nkohla', is enclosed within a large, hand-drawn oval scribble.

Commissioner : Bongiwe Nkohla