



PHSDSBC

PUBLIC HEALTH AND SOCIAL DEVELOPMENT
SECTORAL BARGAINING COUNCIL

ARBITRATION AWARD

Case No: **PSHS1136-17/18**

Commissioner: **Theresa Malgas- Senye**

Date of award: **12 April 2018**

In the matter between:

Hospersa obo Mathibela M.S

(Union/ Applicant)

and

Department of Health-Eastern Cape

(Respondent)

DETAILS OF HEARING

1. This matter was enrolled for arbitration in terms of section 24(2) & 24(5) of the Labour Relations Act ("the Act") in the Public Health and Social Development Sectoral Bargaining Council in Port Elizabeth on 29 March 2018.
2. The Applicant was represented by Mr. Matshoko from Hospersa and the Respondent by Mr. Charles from its Labour Relations Division.

ISSUES TO BE DECIDED

3. The purpose of this arbitration is to interpret Resolution 3 of 2007 regarding whether the Applicant is entitled to be translated in terms of the grandfather clause.

BACKGROUND FACTS

4. The Applicant's dispute arose out of the interpretation application of a collective agreement namely Resolution 3 of 2007.
5. The Applicant's case is that the Respondent interpreted the Collective Agreement wrongly and that if the Resolution was interpreted correctly she would have been translated correctly.
6. A common bundle was handed in from both parties and the parties agreed that the contents of the submitted bundle is what it purports to be.

SURVEY OF EVIDENCE

7. This is a summary and does not reflect all of the evidence and argument heard and considered in reaching a decision.
8. The Applicant did not testify but filed written submissions in support of her case.
9. The Applicant submitted that she is entitled to be translated in terms of the grandfather clause as provided for in Resolution 3 of 2007.
10. She submitted that she was working in a specialty area in 2007 in Saudi Arabia and that the Resolution states that if you are employed in a specialty area as from June 2007, you are entitled to be translated as such.
11. She further submitted that she is entitled to be translated as she was working in a specialty area in Saudi Arabia at the time of the implementation of the Resolution.
12. The Respondent submitted that the Applicants dispute is in relation to the interpretation and implementation of PHSDBC Resolution 3 of 2007, with reference to clause 3.2.5.3(i)b which states that "a professional nurse (registered nurse) who occupies a post in a nursing specialty and who is not in possession of a post basic clinical nursing qualification listed in the Government Notice 212, as amended, but permanently appointed in a post in a specialty unit and has been performing these duties of the specialty post

satisfactorily on 30 June 2007, shall be translated as a once-off provision to the first salary scale attached to production level.”

13. The Respondent further submits that the scope of the PHSDBC Resolution 3 of 2007 clause 2.1 states that “this agreement applies to-

13.1 employer (departments)

13.2 the employees of the Employer who are members of the trade union parties to this agreement and who are registered with the South African Nursing Council(SANC)in terms of section 31 of the Nursing Council Act,2005 (Act no 33 of 2005) the Nursing Act.”

14. The Respondent further submits that that the Department of Public Service and Administration provided directives to the enlisted departments that is Health, Defence and Correctional Services stating the criteria including system to effect the PHSDBC Resolution 3 of 2007.

15. The Respondent further submits that Resolution 3 of 2007 does not apply to the Applicant in that at the time the Collective agreement was effected, 1 July 2007 the Applicant was not occupying any permanent posts in the Hospital units under the above three mentioned departments in conjunction of the scope of the agreement. She was working in Saudi Arabia and the Collective agreement does not cover Saudi Arabia as party to the agreement.

16. Therefore, the scope of the Collective Agreement does not cover the Applicant, and she is therefore not entitled to be translated.

ANALYSIS OF EVIDENCE

17. The issue to be decided is whether Resolution 3 of 2007 was correctly applied and interpreted by the Respondent.

18. The Applicants case is that she was entitled to translation as stipulated in the grandfather clause as per Resolution 3 of 2007.

19. I took into account all submissions by both parties.

20. I will first look at clause 3 of the Resolution 3 of 2007 that speaks to translation and states as follows:

“a professional nurse (registered nurse) who occupies a post in a nursing specialty and who is not in possession of a post basic clinical nursing qualification listed in the Government Notice 212, as amended, but permanently appointed in a post in a specialty unit and has been performing these duties of the specialty post satisfactorily on 30 June 2007, shall be translated as a once-off provision to the first salary scale attached to production level.”

21. Furthermore, the scope of this collective agreement does not cover employees who were employed in foreign countries or private hospitals to benefit in “once-off provision.”

22. Various documentation was referred to during this arbitration, however the question that needs to be answered is whether the Applicant qualified to be translated in terms of Resolution 3 of 2007.

23. In the light of the above and all arguments advanced I find that Resolution 3 of 2007 was correctly interpreted by the Respondent and the Applicant did not qualify to be translated. The Applicant was not in the employ of the Respondent during 2007 and she was only re-employed in 2010.

24. It is clearly a requirement as clearly outlined in the Resolution that the Applicant needed to be in the employ of the Respondent as from June 2007, and she was not.

25. The Applicant in her relief sought requested to be considered for translation in terms of the Resolution.

26. I therefore find that the Respondent correctly interpreted Resolution 3 of 2007 when it dealt with the Applicant.

AWARD

27. The Respondent correctly interpreted Resolution 3 of 2007. \

28. The application of the Applicant Mathibela Sandra M, is dismissed and she is not entitled to any relief.

29. I make no order as to costs.

Signature:



Commissioner: ***Theresa Malgas-Senye***

Sector: ***Public Health***
