



PHSDSBC

PUBLIC HEALTH AND SOCIAL DEVELOPMENT
SECTORAL BARGAINING COUNCIL

ARBITRATION AWARD

COMMISSIONER: KHEHLA KHANYILE

CASE NO: PSHS1138-16/17

DATE OF AWARD: 17 JULY 2017

In the matter between:

PSA OBO ZAMA ZULU

APPLICANT

and

DEPARTMENT OF HEALTH – KWAZULU NATAL

RESPONDENT

DETAILS OF HEARING AND REPRESENTATION

1. The matter was held at Emmaus Hospital, on 26 June 2017 at 10h00. The applicant was present and was represented by the union official, Mr Zamani Nhlangulela from the PSA and the respondent, Department of Health was represented by the Assistant Director in the labour relations, Nkosiyapha Clement Qwabe. The proceedings were digitally recorded and I also took notes by hand. Mr Qwabe indicated that the respondent's key witness was not available because he had to attend training in Durban. Mr Nhlangulela requested an invitation letter to attend a training received by the HR manager and CEO of the hospital. I then asked Mr Qwabe which notice to attend was received first by the HR manager. He confirmed that HR manager knew long time about this case before he received an invitation to attend the HR training last week. I stood down the matter to allow Mr Qwabe find a letter. When he came back from checking the same letter, he informed me that he could not get it. However, he informed me that he had secured CEO of the hospital Mrs Yvette Nunes as a witness because she was also aware of the matter. Mr Qwabe then abandoned his

postponement application. We resumed the arbitration proceedings. He asked to be excused to call the respondent's witness. Upon his return, he conveyed the message that the CEO had subsequently refused to come and testify in the proceedings. "She cited these reasons that the HR manager is the custodian of the implementation of the human resources and circulars. Based on the above facts, she advised him that the commissioner could make his arbitration award in the matter".

ISSUES TO BE DECIDED

2. I am required to determine whether the Applicant does or not qualify for the payment of back for a period 30 June 2015 to March 2016.

BACKGROUND TO THE DISPUTE

3. The applicant is employed by the Respondent as a clinical nurse practitioner. She obtained her PHC qualifications on 30 June 2015 as a clinical nurse practitioner. Her salary as it now R340431.00 per annum. She submitted that she qualified in June 2015 to be a Primary Health Care nurse and the respondent should have translated and adjusted her salary level effective from R248 061.00 to R294861.00 in accordance with the circular 29 of 2012.

SURVEY OF EVIDENCE AND ARGUMENT

Applicant's case

4. The applicant stated that she has 22 years of experience as a registered professional nurse. On or before June 2015, she earned R248061.00 per annum. She obtained her PHC Nursing qualifications on 30 June 2015. On the above said date, the respondent was obligated to translate the applicant. According the circular no: 29 of 2012 clause 2 reads" These Professional Nurses after obtaining the relevant post qualification required for appointment in the identified Speciality and PHC Nursing areas and have acquired four years of experience as a Professional Nurse should be translated to the Speciality and PHC Nursing Stream respectively with effect from the date on which they obtained the relevant post basic qualification required for appointment in a Speciality and PHC Nursing areas as the case may be the respondent should had translated the applicant would had earned

R294861.00 per annum. The respondent translated her in March 2016 after eight months later. She submitted that her colleagues with the same qualifications as hers had their salaries adjusted in accordance with a circular 29 of 2012. The applicant seeks to be back paid a difference of what she should have received if a salary was correctly paid to her. The respondent's representative, Mr Qwabe chose not to cross examine the applicant.

The respondent's case

5. The respondent did not call any witnesses to testify on its behalf. The Respondent simply stated that its witness has refused to come and testify in the proceedings.

ANALYSIS OF EVIDENCE AND ARGUMENT

6. Circular 29 of 2012 provide that the Applicant should be translated to the post Professional nurse (PHC nursing) with effect from 30 June 2015. However, the Applicant was translated, and paid, by the Respondent only with effect from March 2016. The Respondent did not dispute that the Applicant qualifies for back pay for the period from 30 June 2015 to 03 March 2016. Therefore, I accept the version of the applicant that she qualifies for the back pay for 8 months. In monetary terms R196574.00-R165374 or $R3900 \times 8 = R31200.00$

AWARD

7. I make the following award:
8. I find that the Applicant, Zama Zulu, qualifies to be translated to the post of Professional nurse- PHC Nurse stream with effect from 30 June 2015.
9. I find that the applicant qualifies for back pay for the period 30 June 2015 to March 2016 for a period of 8 months. The respondent being Department of Health- Kwazulu Natal is ordered to pay the amount of R31200.00 difference due to the Applicant, by no later than 30 August 2017.
10. I make no order as costs.

**COMMISSIONER
SIGNATURE**