



**PHSDSBC**

PUBLIC HEALTH AND SOCIAL DEVELOPMENT  
SECTORAL BARGAINING COUNCIL

# ARBITRATION AWARD

Commissioner: W G S Shabalala

Case No: PSHS1139-16/17

Date of Award: 14 May 2017

In the matter between:

**PSA OBO BUTHEBETHU ANDILE ZONDO**

**Applicant/ Employee**

and

**DEPARTMENT OF HEALTH – KWAZULU NATAL**

**Respondent/ Employer**

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## DETAILS OF THE HEARING AND REPRESENTATION

1. This is an award in the arbitration between Buhlebethu Andile Zondo, the employee and the Department of Health – KwaZulu Natal, the employer.
2. The arbitration was held at Emmause Hospital on 24 April 2017. The applicant was represented by Mr.Nhlangulela, an official of PSA whilst the respondent was represented by Mr Sithole it's HR Manager. The representatives requested to submit written arguments and were ordered to do so by not later than 01 May 2017.

## **ISSUES TO BE DECIDED**

3. The first issue to be decided is whether the respondent perpetrated an unfair labour practice against the applicant by failing to translate her to the specialty with effect from the date on which she obtained the relevant post basic qualification required for appointment in the specialty.

## **BACKGROUND TO THE DISPUTE**

4. The applicant was employed by the respondent as a professional nurse as from 02 February 2009. As from 2011 to the applicant worked in a maternity ward and performed duties associated with maternity. On 01 March 2014 she was sent by the respondent to do a post basic course in Midwifery and Neonatal Science.
5. She successfully completed the course and was and was awarded her diploma on 28 February 2015.
6. Pursuant to her qualification in midwifery the respondent translated her to the specialty stream on 01 March 2016 and adjusted her salary from R 201690.00 to R275571.00.
7. The applicant contends that she should have been translated with effect from 28 February 2015, the date on which she received her qualification.

## **SURVEY OF EVIDENCE AND ARGUMENTS**

### **APPLICANT'S CASE**

8. The following is the survey of the evidence of Miss Buhlebethu Andile Zondo, the applicant:
9. She qualified as professional nurse in February 2009. She has been working in the maternity ward since 2011 and she performed duties associated with maternity. In March 2014 she started training in midwifery and she qualified on 28 February 2015.
10. In terms of circular number 29 of 2012 she was supposed to be translated with effect from the date of certification. She has been working as a midwife since March 2015.

## **RESPONDENT'S CASE**

11. The following is the summary of the evidence of Mr Sifiso Victor Siminya:
12. He is employed by the respondent as an HR manager. A post for a specialty was not available in March 2015, it only became available in March 2016. The applicant was translated in terms of circular number 29 of 2012. In terms of the policy an employee must have worked for four years in that specialty and must have acquired a qualification in that specialty. The applicant had worked for three years and nine months in the maternity ward. The other employees were translated because the posts were available and were back dated to the date of qualification.

## **ANALYSIS OF EVIDENCE AND ARGUMENTS**

13. All the facts in this matter are common course. At the center of this dispute is the interpretation of the respondent's circular number 29 of 2012 in particular, clause 2 thereof. The heading of the circular states.  
"Re; translation of professional nurses working in identified specialty and PHC nursing areas." Clause 2 reads as follows:  
"Those Professional Nurses after obtaining the relevant post basic qualification required for appointment in the identified specialty and PHC Nursing areas and have acquired four years of experience as a professional nurse should be translated to the Specialty and PHC Nursing Stream respectively with effect from the date on which they obtained the relevant post basic qualification required in the Specialty and PHC Nursing areas as the case may be."
14. The applicant was employed as a professional nurse as from February 2009. Therefore at the time she obtained a qualification in midwifery, she had six years of experience as a professional nurse. The circular does not require that the four years of experience must have been acquired in the Specialty area. The applicant obtained the relevant qualification on 28 February 2015. The circular states that such a nurse must be translated with effect from the date on which the qualification was obtained. Therefore there is no merit in the respondent's argument that there was no existing post and that the applicant did not have four years of experience in the Specialty. I therefore find that the translation of the applicant a year later after she had obtained the relevant qualification instead of with effect from the date on she obtained the

qualification and not back date such translation amounted to an unfair labour practice within the meaning of section 186 (2)(a) of the Labour Relations Act 66 Of 1995.

## **AWARD**

15. The respondent's translation of the applicant a year later after the applicant has obtained relevant post basic qualification and not back dating such translation amounted to an unfair labour practice.
16. The respondent, Department of Health- KwaZulu Natal is ordered to back date the translation of Buhlebethu Andile Zondo to 28 February 2015 and pay her the amount she would have earned as a result of translation between the period 28 February 2015 and 28 February 2016.
17. The respondent must comply with this order on or before 15 June 2017.
18. No order as to cost is made.

W.G.S Shabalala (Panellist)