



PHSDSBC

PUBLIC HEALTH AND SOCIAL DEVELOPMENT
SECTORAL BARGAINING COUNCIL

ARBITRATION AWARD

CASE NO: PSHS119-13/14

PANELIST: P DHLODHLO

DATE OF AWARD: 19 SEPTEMBER 2014

IN THE MATTER BETWEEN:

DENOSA obo MNYAKA P and 4 others

APPLICANT

and

DEPARTMENT OF HEALTH- EASTERN CAPE

RESPONDENT

Applicant's Address:

605 Stanza Bopape Street
PRETORIA
0001
TEL: (012) 343-2315
FAX: (086) 6568811

Respondent's address:

PRIVATE BAG X 0038
BISHO
5805
TEL: 0762616144
FAX: 0865629362

DETAILS OF THE HEARING AND REPRESENTATION

1. This arbitration was scheduled at the respondent's Tower Hospital Board Room on 29 August 2014.
2. The applicants: Ms P Mnyaka , Mr M Magidiwana, Ms N Ndlazi, Mr L Tom, Mr M Nosolo were represented by Mr P Motsepe, a DENOSA official.
3. Mr J Mama, a practising attorney appeared on behalf of the Department of Health- Eastern Cape.
4. Both parties agreed not to lead oral evidence, but to file written heads of argument to the Council on 12 September 2014.

ISSUE IN DISPUTE

5. I am required to determine if Resolution 3 of 2007 relating to the Occupational Specific Dispensation, (OSD) was interpreted and implemented correctly by the respondent, and if not to determine accordingly.

BACKGROUND

6. It is common cause that the applicants were employed by the respondent on 2 February 2007 (Bundle B1)
7. The correspondence dated 2 February 2007 provided that newly qualified professional nurse trainees should be placed in vacant posts in line with the memorandum of agreement with the Respondent, Lilita Nursing College and the consortium of universities. The said memorandum conditions section 3 (g) provides that that the trainee upon completion of the course shall serve the respondent for a period equivalent to the contract and the study period.
8. Clause 3.2.5.3(i) (b) of Resolution 3 of 2007 (OSD) **Translation of Professional Nurse (Registered Nurse) to speciality posts.**
 - i) **A professional nurse (Registered Nurse) who occupies a post in a nursing speciality and who –**
 - b) **is not in possession of a post basic clinical nursing qualification listed in Government Notice R212 , as amended, but who has been performing these duties of the speciality post satisfactorily on 30 June 2007, shall be translated as a once –off provision to the first salary scale attached to the production level”**
9. The respondent is opposing the translation of the applicants on the basis that they were not permanent employees on 30 June 2007
10. Further there were no satisfactory assessments reports entitling them to be translated in terms of the OSD and that Tower Hospital is an institution and not a speciality unit.

ANALYSIS OF ARGUMENTS

11. The applicants were appointed on 1 February 2007 subsequent to the correspondent from the respondent. It is my observation that the said correspondence and /or the contract of appointment is silent on the probation period that the applicants should be subjected to, prior to the confirmation of their appointment. I have no doubt that if the said probation was intended and/ or had been common practice in the respondent's workplace, it ought to have been stipulated clearly in these contracts of employment.
12. On the other hand these appointments were aimed at addressing the staff shortage in the province.
13. The respondent contended that the applicants were not permanently employed, but failed to submit the proof of confirmation of permanent employment for the applicants, upon completion of the said probation as claimed.
14. In support of the respondent's version Form C (Probation: Quarterly Performance Assessment) was presented during the proceedings to highlight that all new employees had to be subjected to assessment on a quarterly basis with the form, which must be completed within the bi-monthly assessment cycle of the PMDS. As indicated above, I am not convinced that the applicants were on probation in the absence of an express provision in their appointment and contracts of employment.
15. Furthermore the duty to assess the applicants, if they were on probation rested upon the respondent, however nothing was presented by the respondent to corroborate its version regarding the execution of the said exercise.
16. The purpose of Resolution 3 of 2007 was to introduce an occupational specific remuneration and career progression system for professional, enrolled nurses and nursing assistant with a view to attracting and retaining nursing professionals in all the identified occupations to the public health sector.
17. Regarding the submission that the respondent's hospital is not a speciality unit, I find that it is a psychiatric hospital which offers psychiatric services, contrary to an ordinary hospital.
18. Again no submissions were provided by the respondent to contradict the version that the applicants were offering their services within the respondent's speciality unit.
19. The only probable inference is that these applicants occupied positions in a speciality unit, although not in possession of post basic clinical nursing qualifications, but had performed these duties satisfactorily on 30 June 2007.
20. Clause 3.2.5.3(i) (b) of Resolution 3 of 2007 (OSD) **Translation of Professional Nurse (Registered Nurse)** to speciality posts.

i) A professional nurse (Registered Nurse) who occupies a post in a nursing speciality and who

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b) is not in possession of a post basic clinical nursing qualification listed in Government Notice R212 , as amended, but who has been performing these duties of the speciality post satisfactorily on 30 June 2007, shall be translated as a once –off provision to the first salary scale attached to the production level”

21. In the light of the above clause in the Resolution, I find that the applicants are entitled to translation as a once off provision to the first salary attached to the production level.
22. I therefore deem it appropriate to make the following award:

AWARD

23. The applicants : Ms P Mnyaka , Mr M Magidiwana, Ms N Ndlazi, Mr L Tom, Mr M Nosolo be translated as a once –off provision to the first salary attached to the production level retrospectively.
24. The Respondent must effect the translation on or before 31 October 2014.
25. No order as to costs is made.

SIGNED IN EAST LONDON ON 19 SEPTEMBER 2014



PHSDSBC PANELLIST