



PHSDSBC

PUBLIC HEALTH AND SOCIAL DEVELOPMENT
SECTORAL BARGAINING COUNCIL

ARBITRATION AWARD

CASE NO: PSHS1329-17/18

COMMISSIONER: QUEENDY GUNGUBELE

DATE OF AWARD: 11 SEPTEMBER 2018

In the **matter** between:

NEHAWU obo EDASSY SIBANYONI & YVONNE NKWE

APPLICANT

and

DEPARTMENT OF HEALTH-GAUTENG

RESPONDENT

BACKGROUND TO THE DISPUTE

1. This matter was heard on 27 August 2018 and it was at S G Lourens Nursing College in Pretoria.
2. The applicant was represented by Mr. Patrick Rangongo, the Shop Steward, whilst the respondent was represented by Mr. Zam Shange, the Labour Relations Officer.

DETAILS OF HEARING AND PRESENTATION

3. The applicants, Ms. Edassy Sibanyoni and Ms. Yvonne Nkwe are employed by the respondent as Enrolled Nurses Grade 2, on 01 April and 01 March 2018, respectively, and they are remunerated at R17 035.00 per month. They referred their dispute to the Bargaining Council under section 24(2) [24 (5)], of the Labour Relations Act, 66 of 1995, "the LRA," regarding the Collective Agreement Interpretation.

ISSUE TO BE DECIDED

4. Whether the respondent's failed to interpret the Collective Agreement correctly, thereby depriving the applicants of their Accelerated Progression in accordance with the Occupational Specific Dispensation "OSD", under Resolution 3 of 2007.

APPLICANT'S CASE

5. The applicant submitted 1 bundle of documents marked X
6. The applicants nominated Mr Patrick Rangongo, their Shop Steward to testify on their behalf. He said that the applicants are employed at Odi Hospital as Grade 2 Enrolled Nurses for a period of 5 years. They performed above average by scoring 3.5%, which made them eligible for the grade progression to Grade 3, as per the Occupational Specific Dispensation "OSD" on page 21 of the bundle. He referred to the applicants' Performance Ratings on page 30 for the First Applicant Ms Sibanyoni and on page 39 for the Second Applicant, Ms Nkwe on page 39. Furthermore, their Registration Certificates with the South African Nursing Council dated 31 May 2011, respectively, on pages 27 and 27 and 25.
7. He said that the applicants met the requirements because they also had 5 years of actual service or an appropriate post registration experience by 2016. He added that the respondent alleged that the applicants would only qualify for progression to Grade 3 staff Nurse in 2027, which was inaccurate. They prayed that they be progressed to Staff Nurses Grade 3 retrospective to 01 April 2016.
8. Under cross examination, Mr Rangongo conceded that the applicants' matter was regulated by OSD, which categorized Nurses in terms which of the pre-requisites they should meet qualifying for the Accelerated Grade Progression. He referred to page 8, paragraph 3.3.1 of the bundle. He also conceded that a person was registered as per the category and that the term post registration meant the period over which one registered as a Staff Nurse.
9. Mr Rangongo denied that a staff Nurse had to be registered for 5 years after registration as a Staff Nurse and perform above average for a period of 4 years, out of the "post registration of 5 years. He also denied that paragraph 6.1 on page 8 of the bundle referred to Staff Nurse Grade 1 specifically. He also denied that the

Requirements of Staff Nurses Grade 2 on 21 of the bundle were that the applicants needed to have a total of 15 years of actual/appropriate service with the respondent as Staff Nurses Grade 2. He argued that “service” meant the period when the applicants started working for the department and not a particular grade they were on. He added that the applicants worked for about 20 and 24 years, got promoted to Staff Nursing positions, which meant that they had already completed the 4 years required by the OSD provisions. However, he conceded that if the position of Staff Nurse Grade 2 was not expected to meet the requirements as per paragraph 6.2 of the bundle, they would not have been included therein.

10. It was put to him that the OSD document clearly required the applicants to have been in the actual service as Staff Nurse Grade 2 for a period of 15 years and 4 years of which they performed above average because each category had its own requirements. It was put, further, that the purpose of OSD was not to talk about nursing in general but as different grading of Nurses. Mr Rangongo conceded that nurses were categorized.

RESPONDENT’S CASE

11. The respondent submitted 2 bundles marked A and B
12. The respondent called Mr Mahlatse Morifi, the HR Clerk to testify and he said that he advised clients and provided them with information on how to translate qualifying employees for Grade Progressions. He submitted that the OSD document provided clear guidance. He also submitted the applicants had to meet the requirements of 15 years of actual service as Staff Nurse post registration, i.e. after obtaining their qualification as Staff Nurses in 2011 following their certification as Enrolled Nurses. (See pages 27, for the first applicant and page 33 for the second applicant’s, who were both registered as Enrolled Nurses on 31 may 2011).
13. Mr Morifi averred that the applicants were both translated from being Assistant Nurses for a period of 5 years “post registration” and having to their current positions of Staff Nurse Grade 2. He stated that they skipped the position of Staff Nurse Grade 1, as per their requests on pages 38 and 33 of the bundle (See their Letters of Translation on pages 29 and 23, respectively).

14. Mr Morifi submitted that “service” meant an experience obtained in a particular rank as per page 21 of the bundle. He argued that although the 2 applicants had about 25 years of service with the respondent, they needed 15 years of actual service “post registration” as Staff Nurse Grade 2, 4 of which they performed above average before they could be translated as Staff Nurse Grade 3.

ANALYSIS OF EVIDENCE AND ARGUMENTS

15. It is the duty of the applicant to prove, on the balance of probabilities, that the respondent incorrectly applied or interpreted the Collective Agreement.
16. The applicant’s allegations that they have been demoted was not substantiated by any evidence. The respondent has unequivocally demonstrated that its refusal to accelerate the applicants’ translation was due to the fact that they did not meet the requirements of the “OSD,” which governed the decision to do so.
17. It is absurd that the applicants gladly accepted their acceleration through the same “OSD” per their category as Assistant Nurses but currently challenge the same system, simply because it was not favourable for them to follow the “OSD” now that they fell within a different category, which necessitates a longer waiting period. They misdirected themselves with the view of chopping and changing the provisions of the Grade Progression/Post Promotion Requirements on page 21, paragraph 6.2 of the bundle, which stipulated in no uncertain terms as follows: ***“..a combination of 15 years actual service and / or appropriate/recognizable post registration experience. At least 4 years of this period must be actual service as Staff nurse Grade 2”***.
18. It is common cause that the applicants had less than 15 years of actual service as Staff nurses Grade 2 and, although their performance was above average for 4 years, they could not be translated as they wished because they did not meet the stipulated “post registration” years of actual service in their current category.
19. It was not appropriate for the applicants to argue that the word “service” as per category could be ascribed 2 conflicting meanings, viz; the length as service in the department (since the employment contracts), while it also meant the category in which the applicants fell as Staff Nurse Grade 2. The applicants’ argument was mutually

destructive and could not be sustained because the provision of the paragraph 6.2 above must prevail.

AWARD

20. The respondent's interpretation of the "OSD" Resolution, thereby refusing to translate Mss Edessy Sibanyoni and Yvonne Nkwe to Staff Nurse Grade 3 was correct.
21. This matter is dismissed.

A handwritten signature in black ink, appearing to read 'Queendy Gungubele', written in a cursive style.

QUEENDY GUNGUBELE