



ARBITRATION AWARD

Panellist/s: Paul Kirstein
Case No.: PSHS153-10/11
Date of Award: 6-Apr-2011

In the ARBITRATION between:

**IN THE PUBLIC HEALTH AND SOCIAL DEVELOPMENT SECTORIAL
BARGAINING COUNCIL (HELD AT GEORGE)**

CASE NO: PSHS153-10/11

In the matter between

PSA obo V MULLER

Applicant

and

**DEPARTMENT OF CORRECTIONAL SERVICES:
WESTERN CAPE**

Respondent

ARBITRATION AWARD

DETAILS OF HEARING AND REPRESENTATION

1.

The matter was set down for arbitration on 24 March 2011 in George. The applicant was represented by attorney D Barnard. The respondent was represented by LD Japtha, a legal officer in the employment of the respondent. The parties submitted a bundle of documents marked "A". The arbitration was mechanically recorded. Both parties submitted written heads of argument.

ISSUE IN DISPUTE

2.

The applicant referred an interpretation and application dispute in terms of Section 24 of the Labour Relations Act, 66 of 1995 ("LRA") regarding the occupational specific dispensation ("OSD") for social services professions and occupations (Resolution 1 of 2009).

SUMMARY OF EVIDENCE

3.

The applicant testified and indicated that he complied with the qualifications and requirements of a social worker supervisor grade 1 as referred to in paragraph 8 in the annexure attached to Resolution 1 of 2009. The applicant complied with the qualifications and requirements on 1 April 2008 when Resolution 1 of 2009 became effective. The applicant referred to the managerial structures of social workers in

the Southern Cape. In terms of the organogram the applicant is employed as a social worker supervisor. The applicant acts on a regular basis as social work manager. All social work supervisors were translated in terms of the OSD to grade 1. The applicant was translated in terms of the OSD to grade 2. The social work supervisors that were translated to grade 1 in terms of the OSD were on level 9. The applicant was on level 8. The applicant declared a dispute about the grade progression but the OSD was implemented before the dispute could be resolved. The applicant indicated that there was no reason to differentiate between grade 8 and 9. The applicant indicated that he should be translated in terms of Resolution 1 of 2009 to grade 1. Grade 2 of the OSD dispensation does not make provision for supervision work. The applicant conducted supervision work prior to and subsequent to the implementation of Resolution 1 of 2009. During cross-examination it was put to the applicant that there is no social work supervisor post available and that he will have to apply for such a post.

4.

The respondent closed its case without calling a witness.

ANALYSIS

5.

The applicant contends that he was incorrectly placed in terms of Resolution 1 of 2009 regarding the occupational specific dispensation (OSD) for social service

professions and occupations. The respondent's representative raised a point *in limine* and indicated that the dispute does not relate to the interpretation and application of a collective agreement. It is common cause that Resolution 1 of 2009 is a collective agreement. The applicant disputes the application of Resolution 1 of 2009 regarding his specific circumstances. The point *in limine* is dismissed.

6.

It is common cause that the applicant was on level 8 prior to the implementation of the OSD and employed as a social work supervisor. The applicant was translated in terms of the OSD to grade 2. It is common cause between the parties that the applicant complies with the qualifications and requirements of a social work supervisor grade 1. It is common cause that the applicant acted as social work supervisor on grade 8 prior to the implementation of the OSD and was translated to a social work supervisor grade 2. A social work supervisor on grade 9 was translated to grade 1 in terms of the OSD. In terms of clause 3.2 of Resolution 1 of 2009 the translation will be subject to the following:

- Employees must meet the appointment requirements (i.e. possess the relevant qualification(s), registration requirements where relevant and prescribed years of experience);
- The employee must be performing the functions of the job;

- Employees will translate to appropriate posts and salary grades in accordance with the posts that they occupy at the time of translation.

It is common cause that the applicant meets the appointment requirements in that he possesses the relevant qualifications, registration requirements and prescribed years of experience. It is common cause that the applicant performed the functions of a social work supervisor and in addition to that acted in the capacity as social work manager. There is no indication in Resolution 1 of 2009 that the applicant was required to be on level 9 as a social work supervisor to be translated to a social work supervisor grade 1. The applicant's evidence that there is no differentiation between the work conducted by a level 8 and a level 9 social work supervisor is not in dispute. Having considered the common cause facts and the requirements of Resolution 1 of 2009 the indication is that the applicant was indeed incorrectly placed at a social work supervisor grade 2. The applicant is therefore entitled to be translated in terms of Resolution 1 of 2009 to a social work supervisor grade 1 with effect from 1 April 2008.

AWARD

1. The applicant must be translated to a social work supervisor grade 1 with effect from 1 April 2008. The outstanding remuneration on the level of social

work supervisor grade 1 must be paid to the applicant within 30 (thirty) days after receipt of this award.

2. No order as to costs.

SIGNED AT PRETORIA ON THIS THE 5TH DAY OF APRIL 2011



PH KIRSTEIN
ARBITRATOR