



**PHSDSBC
PUBLIC HEALTH AND
SOCIAL DEVELOPMENT
SECTORAL BARGAINING
COUNCIL**

ARBITRATION AWARD

Panelist/s: Advocate Ronnie Bracks
Case No.: PSHS158-10/11
Date of Award: 23 November 2010

In the ARBITRATION between:

Wright Rose i. Inc obo Bricker S.L.

(Employee)

and

Department of Health- Gauteng Province

(Respondent)

Employee Representative: Wright Rose i. Inc obo Bricker S.L.

Employee's address: _____

Telephone: 011 788 7907

Telefax: 086 635 8494

E-mail: richardm@wrightrose.co.za

Company/Employer representative: Department of Health- Gauteng Province

Company's address: Private Bag x39

Johannesburg

2000

Telephone: 011 488 3794

Telefax: 011 488 4638

E-mail: _____

DETAILS OF HEARING AND REPRESENTATION

- A. The Arbitration was scheduled for hearing on the 12th November 2010 at the offices of the Respondent in Johannesburg at Bank of Lisbon Building, corner Sauer and Market Streets.
- B. The Applicant was represented by Mr. Richard Maddern, a legal representative. Mr. Modisane Lelaka represented the Respondent. The proceedings were recorded both manually and electronically.

ISSUE TO BE DECIDED

- B.C. Whether or not the Applicant is entitled to an upgrade of salary to level 7 pursuant to the provisions of Section 37(c) of the Public Servants Act; and whether the Applicant's post should be upgraded to implement the benchmark job description of Personal Assistant (PA).

BACKGROUND TO THE ISSUE

- C.D. The Applicant is currently employed by the Respondent as a Senior Admin Secretary on salary level 6 notch 6. In 2004 the Minister of Public Services issued a directive providing for a process in terms of which the upgrading of professions should be coordinated amongst certain departments. The directive was communicated to the various departments via letter dated 26th March 2004.
- D.E. Following this the Minister approved the implementation of certain benchmark job descriptions. The letter also mentioned that the implementation might require certain posts to be re-graded or restructured.
- E.F. The Applicant alleges that this exercise was never done in the area where she is employed since they would have noticed the volume of work performed by her if this was the case. In addition because of the Respondent's failure to implement the requirements of the directive the Applicant approached the Head of the Department of Surgery for a salary adjustment for special recognition. However this was turned down and hence she referred the matter.
- F.G. The Respondent submitted that the Applicant was not a PA. In terms of the DPSA's instructions all staff had to be translated to the levels in which they were functioning. The Applicant was found to be functioning at the level of secretary. However, the DPSA had also determined that all secretaries should be placed at level 5. Unfortunately in the Applicant's case she was already operating at level 6 thus no translation was required. If the Applicant wanted to move to the next level she would have to apply for a higher post.
- G.H. The matter was referred to Council on 23rd October 2009. It was conciliated on the 20th November 2009 when it remained unresolved.

-

SURVEY OF EVIDENCE AND ARGUMENT

EVIDENCE

Documentary

- I Documents marked A, R, R1 and R2 were submitted.

Employees' Evidence:

Sheryl Lynn Bricker after being sworn in testified as follows:

- J She was employed as a typist by the Department in August 1985. She explained in detail the process of her employment and to whom she reported at the Charlotte Maxeke Johannesburg Academic Hospital. As this is part of the record the detail will not be repeated. She was referred to A19 which was the memorandum from the Department of Public Service and Administration regarding the benchmarking of job descriptions and implementation of grading levels. The witness stated that the document was not completely implemented as no exercise was done in the area where she worked. She referred also to A26 – A29 which are draft job descriptions. According to the witness she did everything listed in the job description and other additional duties. She then referred to A50 which she said were the guidelines to the implementation for PA's. She said the department had failed to do an assessment of her post and hence failed to upgrade her post properly. Then she referred to A51 and said she was presently on salary range 6.
- K She referred to A70 which was a letter from Prof. Beale setting out the additional work being done by her and in which he mentioned that many of the duties pertained to that of a PA. She then referred to A76 which was the salary levels and pointed out the difference between her present salary level and where she believed she should be.
- L The witness stated that the department had failed to assess her post despite many letters being written in this regard. A collective grievance was also lodged as none of the employees who were part of the grievance had had their posts assessed. The reason for them lodging the grievance was that the posts of some of their colleagues who were in the posts of PA were assessed.
- M She was referred to A68 which was a letter from Prof. Boffard to the CEO. This letter was written because there had been no response from her administrator to the previous attempts to have the positions assessed. The letter was a request for a salary adjustment for special recognition. The application was supported by Prof. Beale. The recommendation of A69 was that she be granted the post of Senior Secretary. There was no response from the Department.
- N This was followed by various e-mails on A84 in which she was promised that the matter would be investigated (A86). She referred to A91 and stated that in this letter she was advised there would be a report on the matter. She then made reference to various e-mails in respect of this issue (A92 - A99). On the 15th May 2009 she lodged a grievance.
- O The Applicant stated that her post was supposed to be upgraded in 2006; it was not done despite her meeting all the requirements of a PA.
- P Under cross-examination it was put to the Applicant that Human Resources had translated the employees in terms of the DPSA guidelines into the posts of either secretary or PA. This was denied by the witness. The witness was then referred to the job description and it was put to her that the functions she performed were those of a secretary. She was then asked what extra duties she performed and she innumeraed them. It was then put to her that those duties did not meet the requirements of PA but were secretarial duties.
- Q The witness was then referred to R25 which she identified was her performance evaluation form. She was then requested to compare that with A29 which was the draft job description for secretaries. The witness conceded that although she had signed the performance evaluation form there were no additional duties listed in that form. She

explained that after the form had been completed she was called to sign it which she did without having read the content. She was then challenged as to why she had not raised questions about having to sign a form without reading it. She said she was informed that the document was in line with that of senior secretary.

- R She was referred to R27 and asked if those were her duties and she agreed they were. She was then challenged as to whether those were the duties of a PA.; she agreed that they were the duties of a secretary. However, she said she did more but this was not taken into account and she could not understand why she had not been recognised.
- S Then she was referred to A68 which was the salary adjustment application and stated that she wanted special recognition because of the extra duties she performed. She was then asked if she was aware there were rules regarding upgrading. She said she was but she had received no response. It was then put to her that she could not be translated to level 7 because her present post was at level 5. The witness said that no-one had evaluated her post in terms of the equate system. It was then put to the witness that her position had been translated in terms of the DPSA document. The witness disagreed and said it should have been done in terms of Annexure D paragraph 3; only half the process had been done.

Employer's Evidence

The Respondent called one witness who testified after being duly sworn in:

Prudence Sikakane, Deputy Director Organisational Development and Transformation, testified as follows:

- T She confirmed that a memorandum was sent from the DPSA as a guideline to grade secretaries as there had been discrepancies in some departments in this regard. The document required secretaries' posts to be graded at level 5 and if there was a PA in the department the post was to be graded at level 7.
- U The recommendations were implemented in Gauteng. The witness said that when the job description of the Applicant was considered and compared to the DPSA she is a secretary. The witness personally went to the institution to investigate how the grading worked. She also considered the structure and communicated with the Applicant via e-mail. All of this proved that the Applicant and her colleagues were correctly placed. She advised the manager that an evaluation of the post was not necessary as it had already been done. The problem with the secretaries in that area was that they regarded themselves as PA's. She identified R1 and R2 as the structures for the hospital and said that the Applicant was placed under the heading secretarial post. There were 33 posts. Then she was referred to R17 and stated that the Applicant was translated into the last block: Senior Secretary grade 3. The range in which the secretaries were was level 5 and because the Applicant was at level 6 this meant they had to leave her there.
- V According to the witness there were no promotions in their department and the only way a person could be upgraded was to apply for an advertised position. The Applicant could not be placed in the position of PA as she was a secretary. This was confirmed when one looked at her performance evaluation form (R23) which clearly showed her output was that of a secretary. The Applicant was graded in level 6. If she were graded at level 7 different documents would have been used to grade her and she would have had subordinates reporting to her.

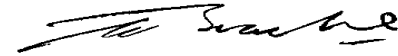
- W She explained that when performance contracting was done the employee and the supervisor would normally agree on the functions performed. There was no way in which functions could have been imposed on the Applicant; if she was not in agreement with the document they would not have been able to force her either.
- X Under cross-examination the witness explained that the term work study meant that an investigation had been done studying the structures and aligning them. When one looked at the functions of the Applicant they were aligned with the DPSA requirements. The witness had evaluated the posts by looking at the posts of secretaries in line with their job descriptions. These were aligned with the structure. The outcome was that the Applicant was out of adjustment. The witness had to look at the structure holistically and when she looked at the job description of the Applicant it was clear the Applicant was a secretary and that her level was determined by the equate system. Their job was to evaluate the post and not the person. When the function of the person was entered into the equate system it will give the correct level where the person should be.
- Y With regard to the performance evaluation it was put to the witness that the Applicant's supervisor did not know what functions the Applicant was performing. The witness replied that if the Applicant's supervisor was not aware of what she was doing it was her duty to bring it to her attention and she should have refused to sign the document.

ANALYSIS OF EVIDENCE AND ARGUMENT

1. The matter before me relates to the question of whether or not the Applicant's post should be upgraded to implement the benchmark job description of PA grade 7.
2. It is the Applicant's contention that the Respondent had failed to evaluate her post as she performed the functions of PA. The evidence presented by the Applicant was that over and above her secretarial duties she also performed other duties. In support of this she referred to commendations from Prof. Beale and Dr. Boffard. However, the performance evaluation form of the Applicant did not support her contention that she had in fact performed these functions. She was referred to the outputs in the form, which according to the Respondent's witness was agreed between the employee and the supervisor. These outputs were performance specific and the undisputed evidence was the sections related to the output were left blank to be filled in by the parties. In terms of the Applicant's evaluation for the periods 2007 - 2008 and 2008 - 2009 the outputs were exactly the same, namely management of the diary of the Head of Department of Pediatric Surgery; administrative support and general management of the office, liaison with the public, private sector and colleagues and general duties as determined by the HOD. Nowhere are any of the extra duties listed in the outputs.
3. The evidence of the Respondent that no evaluation of the posts of senior secretaries was necessary was clear as these were determined by the benchmark job descriptions of the DPSA. The duties and functions of the secretaries at the hospital were in line with this. Further evidence by the Respondent's witness was that the reason the Applicant could not be upgraded to level 7 was that although she was performing extra functions they were not in line with the draft job description of the DPSA. For example she did not present any evidence to show that she: scrutinized routine submissions/reports and make notes and/or recommendations for the manager; clarified instructions and notes on behalf of the manager; managed the leave register and telephone accounts for the unit; assisted the manager in determining funding requirements for purposes of MTEF submissions; checked and correlated BAS reports to ensure that expenditure is allocated correctly and compared the MTEF allocation with the requested budget and informed the manager of changes. Further evidence was that PA's normally had subordinates reporting to them which was not the case as far as the Applicant was concerned.
4. In addition the witness also stated that she was in the process of investigating the issues that had been raised by the secretaries at the hospital regarding the upgrading of their levels.
5. For the reasons stated above it is clear that the Applicant had failed to discharge the onus of showing that her post should be upgraded to implement the benchmark job description of PA. While it is recognised that she was performing additional functions these functions could hardly be seen to justify upgrading her level as there were a number of functions listed in the benchmark job description of a PA that she did not perform.
6. I was further required to consider whether or not the Applicant was entitled to an upgrade of her salary level 7 pursuant to the provisions in section 37(c). I have considered this and while I sympathize with the Applicant it is my considered view that to make a determination as to whether or not she is entitled to an upgrade of her salary would be interfering with the operations of the Respondent. In any case I do not believe that I have been provided with sufficient evidence to make such a determination.

AWARD

The Applicant's matter is accordingly dismissed.



Adv. **RONNIE BRACKS**

PSHSBC Panelist