



# ARBITRATION AWARD

Panellist/s: Lungile Matshaka  
Case No.: PSHS184-11/12  
Date of Award: 19-Sep-2011

In the ARBITRATION between:

IN THE PUBLIC HEALTH & SOCIAL DEVELOPMENT SECTORAL BARGAINING COUNCIL

HELD AT MAFIKENG

**CASE NO:** PSHS184-11/12

**DATE OF AWARD:** 15 September 2011

In the matter between:

**NEHAWU obo Monere L. S.**

Applicant

And

**Department of Health – North West**

Respondent

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**ARBITRATION AWARD**

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## **DETAILS OF HEARING AND REPRESENTATION**

1. The matter was set for arbitration hearing on 31 August 2011 at the Offices of the Department located at Albert Luthuli Drive in Mafikeng. It took place under the auspices of the Public Health & Social Development Sectoral Bargaining Council. Mr T Makwetu, trade union official of NEHAWU, represented the Applicant, while Mr M S Malane, Employee Relations Manager, assisted by another official Mr Kepadisa, represented the Respondent.

## **ISSUE TO BE DECIDED**

2. I am required to determine whether the conduct of the Respondent constituted an unfair labour practice in not promoting the Applicant from level 6 to 7, if so, to determine an appropriate remedy.

## **BACKGROUND TO THE ISSUE**

3. The Applicant commenced employment with the Department on 1 September 2005 as a Community Liaison Officer (CLO). He was taken on transfer in June 2008 from Maquassi Hills Sub District on a level 6 CLO post and seconded to fulfil the project coordinator function.
4. It is the Applicant's version that a motivation dated 22 November 2010 entitled "Approval to appoint him (Mr L S Monere) as Project Coordinator is indeed an approval that he be appointed as Project Coordinator at a level 7. It should be noted that the Applicant is presently still at level 6.
5. On the other hand the Respondent does concede that a motivation to request that the Applicant and one other be moved from level 6 to level 7 was duly submitted on 10 May 2011. However, the Director: Human Resource Management, Mr Lenong did not support

the motivation. In that regard the Chief Director, Mr S.V.W. Mbulawa, concurred with him. In the end the Acting Head of the Department, Dr A.K. Robinson, did not approve the request in accordance with C.2.1 of the Public Service Regulations 2001, as amended.

6. On the basis that the facts of the matter are not in dispute, the parties were enabled to make written submissions and forward the same within 7 (seven) days directly to me (presiding arbitrator).

## **SUBMISSIONS BY PARTIES**

### ***Applicant's submissions***

7. The Applicant requested an internal transfer to Mafikeng Sub-District on post of level 6 to fulfil the function of monitoring the care givers NGOs and NPOs. The said posts designated as Project Co-ordinators and created at level 7.
8. The Applicant's annual salary was **R120 537** and the proposed salary put at **R140 208** and with the difference of **R19 671**.
9. A formal motivation was received from the Chief Director's Office (Mr J G Henning). It is therefore the Applicant's submission that the Department should pay the full acting allowance effectively from 01 June 2008 to 30 April 2011 as per government policy. It is further regarded as unfair for somebody like the Applicant who has been committed and dedicated to his work not to be remunerated or compensated for the work well done. It is on the above basis that it is humbly prayed that the Applicant be given what is due to him.

### ***The Respondent's submission***

10. In essence the Respondent's submission places emphasis on the request directed to the Acting Head of the Department to approve the correction of the two Community Liaison

Officers that included the Applicant from Level 6 to Level 7 effectively from 1<sup>st</sup> June 2008 to date.

11. The Respondent submits that the Director, Mr S Lenong, did not support the said request. It was the latter's view that the Applicant's post, in particular, be advertised. He further pointed out that the posts of the Community Liaison Officer and Project Co-ordinator / Officer are different. Further, the latter post is new and has been created through a conditional grant funding.
12. The Respondent further submits that the Acting Head of the Department, Dr A K L Robinson, disapproved the request and further directing that the obligation to advertise posts in the Public Service is informed by C 2.1 of the Public Service Regulations 2001, as amended. It is on above basis that the post has been advertised and in turn the Applicant has confirmed he also applied.
13. In conclusion the Respondent submits that the Applicant has dismally failed to prove any act of unfair labour practice by the employer. The Respondent further points out that the Applicant was merely trying his luck and was not given good advice by his union. It is therefore the Respondent's prayer that the Applicant's claim should be dismissed.

## **ANALYSIS OF THE SUBMISSIONS**

14. Section 186(2)(a) of the Labour Relations Act provides that “***Unfair labour practice***’ means any unfair act or omission that arises between an employer and employee involving unfair conduct by the employer relating to the promotion, demotion, probation or training of an employee or relating to the provision of benefits to an employee.”
15. Turning to the present case, the Applicant occupies a Level 6 post of a Community Liaison Officer following an internal transfer to Mafikeng Sub-District to fulfil the function of

monitoring NGOs and NPOs care givers. On the other hand the posts of Project Co-ordinators were funded for sub-district through the conditional grant and managed at the provincial level under the EU PDPHP Directorate.

- 16.** I have had to take note of the formal motivation from the Chief Director's office – Health Services dated the 16<sup>th</sup> March 2011 and submitted to the Acting Head of Department, Dr A K L Robinson to correct the salary levels of Project Officers Tswaing Sub District and Mafikeng Sub- District from level 6 to level 7.
- 17.** I have further noted that a follow-up request from the Assistant Director: Human Resource Management, Mr P W Kepadisa, for approval for the correction of the salary levels of two specific Community Liaison Officers i.e. Mr L S Monere (Applicant) and one Mr S P Mokone from level 6 to level 7 was again forwarded to the Dr A K L Robinson on the 10<sup>th</sup> May 2011.
- 18.** The Acting Head of the Department was further requested to approve payment of salary arrears of R124 553-00 to the Applicant and Mr S P Mokone effectively from 01 June 2008 to 30 April 2011.
- 19.** It is significant to note that the Director of Human Resources, Mr R S Lenong, did not support the recommendation on the basis that the posts of Community Liaison Officer and Project Officer (Co-ordinator) are different. Instead he recommended that the latter post should be advertised. I must also add that the Chief Director: Corporate Services, one Mr V W Mbulawa, concurred with Mr Lenong's advice.
- 20.** In the light of the background highlighted above it is no surprise that at the end the Acting Head of the Department did not approve both recommendation i.e. correction of salary levels as well as payment of salary arrears.
- 21.** I have noted that the Applicant's emphasis in his submission is the issue of acting allowance effectively from 01 June 2008 to April 2011 as per government policy. One would have wished to hear more specifically the application of the said policy in the Applicant's case especially in the light of the background highlighted above.

22. In the same breath I have noted that the Applicant has duly applied for the post following its advertisement as confirmed by both parties. In my view he should stand a better chance than an outsider to be offered the post.

23. On a balance of probabilities I am more inclined to concur with the Respondent's submission that the Applicant has not been able to prove an act of unfair labour practice on the part of the Respondent.

## **AWARD**

24. I therefore find that the Applicant has not discharge the onus of proving that the Respondent's conduct constituted an unfair labour practice. The matter is hereby dismissed.



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Lungile Matshaka

**PHSDSBC Panellist**