



ARBITRATION AWARD

Case No: **PSHS199-18/19**

Commissioner: **Catherine Willows**

Date of award: **25 July 2018**

In the matter between:

DENOSA obo MS K KETELO

(Union/ Applicant)

and

DEPARTMENT OF HEALTH- EASTERN CAPE

(Respondent)

DETAILS OF HEARING AND REPRESENTATION

1. This is an arbitration award issued in terms of Section 138 of the Labour Relations Act 66 of 1995 (as amended) and herein after referred to as the LRA. The matter was set-down for arbitration in terms of Section 24 (2), 24 (5) of the LRA. That is, interpretation and application of a collective agreement. The collective agreement being Resolution 1 of 2014 “*Agreement on the Recognition of Improved Qualifications*”.
2. The arbitration hearing was held on the date of 17 July 2018 at Empilweni Gompo Clinic, Buffalo Flats, East London.
3. The Applicant appeared in person at the arbitration hearings and was represented by her Union Official, Mr S B Sikwe of DENOSA. The Respondent was represented by Mr S Blayi, Deputy Director: Labour Relations of the Respondent.

4. The proceedings were conducted in English and were digitally recorded. I also kept handwritten notes.
5. The Applicant utilised a bundle of documents, marked “Applicant Bundle A” and the Respondent utilised a bundle of documents, marked “Respondent Bundle A”. The documentation handed in by the parties in the utilisation of their respective cases was not placed in dispute.

ISSUE TO BE DECIDED

6. The Applicant has referred a dispute to the Bargaining Council relating to interpretation and / or application of Collective Agreement, in terms of Section 24 (2) and (5) of the LRA.
7. I am called upon to determine whether or not the Respondent has correctly interpreted and applied PHSDSBC Resolution 1 of 2014 and whether the Applicant was eligible for application of “Agreement on the recognition of improved qualifications”.
8. Specifically, the Applicant alleges she was eligible for a 10% once-off cash bonus for recognition of additional qualification.
9. The Applicant commenced employment as a Professional Nurse on 1 February 2011 (Level 7 Professional Nurse PNA-2 Grade 1). She was practicing in the maternity / delivery ward and made application for special leave in 2015 to pursue a post-basic qualification at Lilitha College in Bhisho.
10. She was granted such special leave and pursued her studies funded by herself. In 2016 she obtained the qualification and in October 2017 made application for such cash bonus but was advised by Human Resources via telephone call that her application was rejected.
11. She has been stationed at Bhisho Hospital since 1 June 2018 after receiving a promotional post as PNB-1 Professional Nurse (Speciality).

12. The Applicant claims that she is eligible and met the requirements for the cash bonus as provided for in Resolution 1 of 2014.

SURVEY OF ARGUMENTS

ARGUMENT FOR THE APPLICANT

13. The Applicant submitted that she embarked upon a Diploma at Lilitha College in Bhisho (an accredited institution by the SA Nursing Council) in 2015 and was awarded an additional qualification of "*The Diploma in Post Basic Midwifery and Neonatal Nursing Science*" Lilitha College of Nursing, 2016 dated 29 February 2016.

14. The Applicant submitted the original certificate of registration together with her "*Post Basic Diploma: Advanced Midwifery and Neonatal Nursing Science*" which confirmed that she successfully complied with the requirements for the Course in Clinical Nursing Science leading to registration of an "*Additional Qualification*". This was dated 13 July 2016.

15. The Applicant's representative submitted that the Diploma was for a period of twelve (12) months and was recognised by the SA Nursing Council as a post-basic qualification and a National Diploma "*in which the nursing council determines the scope of practice for nurses for their employment as listed in Resolution 3 of 2007*".

16. It was therefore requested in terms of relief that the Applicant be paid her 10% cash bonus of her annual notch.

ARGUMENT FOR THE RESPONDENT

17. The Respondent submitted that they were of the view, in terms of Resolution 1 of 2014, that the qualification obtained by the Applicant is not recognised as an improved qualification.

18. It recognises the qualification as a minimum requirement qualification and it does not amount to a National Diploma. It was on this basis that the Applicant's application was rejected.

19. Furthermore, the Respondent could not ascertain how many credits the Diploma the Applicant obtained was worth.

20. Therefore, it was requested by the Respondent that the Applicant's application be dismissed accordingly.

ANALYSIS OF EVIDENCE AND ARGUMENT

21. The Applicant referred an interpretation and application of a collective agreement dispute in terms of PHSDSBC Collective Agreement No. 1 of 2014. It relates to the payment of a once-off cash bonus when an employee attains an improved qualification that relates to his/her work and that has the effect of enhancing an employee's performance and services delivery.

22. Therefore, the question is whether or not the Respondent correctly applied the Resolution when it failed to pay the Applicant a once-off cash bonus when she attained "*The Diploma in Post Basic Midwifery and Neonatal Nursing Science*".

23. The golden rule in interpreting collective agreements is that words must be given their everyday ordinary meaning. If the language is clear it must be given effect to, even if the results may be harsh, unfair or inconvenient.

24. The nature of the dispute before me is whether the first respondent was in breach of Resolution 1 of 2014, when it failed to pay the applicant a once-off cash bonus in terms of Clause 4.1.1 read with 4.1.2 of Resolution 1 of 2014.

25. It is common cause that clause 4.1.1 read with 4.1.2 of Resolution 1 of 2014 provides that the Respondent will recognise when an employee attains an improved qualification that relates to that employee's scope of work and that has the effect of enhancing that employee's performance and service delivery.

26. Upon the attainment of such qualification, the Respondent will pay the employee a once-off cash bonus that is equivalent to 10% of that employee's annual salary notch, except if it exceeds the minimum notch of salary level 8.
27. The issue in dispute is whether the *Diploma in Post Basic Midwifery and Neonatal Nursing Science* amounts to a "Minimum Appointment Qualification" or an "Improved Qualification" in terms of "Annexure A: Qualification List: PHSDSBC Resolution 1 of 2014 Section B Clause 3". A minimum appointment qualification lists a "Basic R425 Qualification (Diploma / Degree in Nursing) or equivalent" and an improved qualification lists "Relevant: ND / B-Tech/ Bachelor's Degree, Honours, Masters, Doctorate".
28. The Applicant argued that the Diploma attained by the Applicant was a National Diploma with 240 credits. However, no evidence was adduced to this fact.
29. I was unable to ascertain whether the Diploma attained by the Applicant was indeed a National Diploma which would make her eligible for application of the Resolution. The documentation provided by the Applicant listed the qualification as an "Improved Qualification and a Post-Basic Diploma".
30. On the basis of the evidence produced, I am unable to make a determination whether such Diploma amounts to a National Diploma with 240 credits.
31. In the absence of such it can be concluded that the qualification was not over and above the requirements for appointment in the position.
32. There was no denying that the Applicant's qualification related to the Applicant's scope of work as contemplated by the Resolution, clause 4.1 thereof.
33. But the argument that another further Diploma is an improved qualification was misplaced and lacked substance.

34. In conclusion, the argument was inimical to the provisions of the Resolution and could not be sustained.

35. In the circumstances, I make the following award:

AWARD

36. The case of the Applicant had no support in the Resolution.

37. I dismiss the application.

Signed:

A handwritten signature in black ink, appearing to read "Catherine Willows", written in a cursive style.

Catherine Willows