

# ARBITRATION AWARD



**PHSDSBC**

PUBLIC HEALTH AND SOCIAL DEVELOPMENT  
SECTORAL BARGAINING COUNCIL

CASE NO: **PSHS200-17/18**

PANELIST: **P DHLODHLO**

DATE OF AWARD: **4 AUGUST 2017**

In the matter between:

**PAWUSA obo MOLETSANE F**

APPLICANT

and

**DEPARTMENT OF HEALTH- EASTERN CAPE**

RESPONDENT

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## **DETAILS OF THE HEARING AND REPRESENTATION**

1. The arbitration of the dispute between the applicant, Ms Florence Moletsane and the Department of Health- Eastern Cape, the respondent was scheduled at the respondent's Martjie Venter hospital boardroom in Tarkastad on 18 July 2017.
2. Mr M Nkomo, PAWUSA official represented the applicant.
3. The respondent was represented by its Assistant Director (Chris Hani District office Labour Relations), Mr T Moni.
4. These proceedings were digitally recorded and finalised on the above –mentioned date.
5. Closing arguments were filed as agreed before 27 July 2017.

6. Ms X Xulu interpreted from English to Xhosa and vice versa.

### **ISSUE IN DISPUTE**

7. I am required to establish whether the respondent committed an unfair labour practice, in relation to its non -failure to pay the applicant her acting allowance and her removal from the Human Resources procurement unit (a position she held for four years), and if so, to determine an appropriate remedy.

### **BACKGROUND**

8. The applicant is currently the respondent's housekeeper at salary level 3. She was approached by the Elliot (Hospital manager) in 2011 to perform level 5 duties.
9. It is her version that was promised payment in vain and when she made enquiries, management ordered her to return to her original level 3 responsibilities.
10. The applicant is seeking her acting allowance and prays for reinstatement to the Human Resources (HR) Procurement responsibilities.
11. On the other hand the respondent contends that the applicant's level 5 responsibilities were part of the development and empowerment exercise. The applicant was never promoted to a higher-level contrary to her claims. Further in the absence of a vacant position in the organogram and /or proper acting arrangement (in line with the policy) the applicant is not entitled to an allowance and /or promotion.

### **SURVEY OF EVIDENCE AND ARGUMENT**

#### **Applicant's version**

12. Ms Florence Moletsane testified that she commenced employment as a housekeeper in 2007. Elliot (hospital manager) requested her to assist with procurement duties, which she did.
13. The applicant stated that she and other identified colleagues worked as a team in processing the batches and would travel to Cradock for further training. Whenever she complained about the work load, Mrs Elliot assured her that she will be appointed in the position as soon as it becomes available. She even informed her that both provincial and districts office had not yet responded to her (Elliot) post creation submission.

14. The applicant then decided to lodge a formal grievance to the respondent. Instead of addressing her grievance, she was ordered to return to her original position. To her surprise another employee (her subordinate) was approached to take over the procurement function, contrary to the respondent's instruction that Debbie (Administrative officer salary level 8 employee) should execute them.
15. The applicant presented annexure "D", a memo dated 25 January 2017 from the District manager addressed to Mrs Elliot. The memo among other things stated that numerous attempts to create the post have not yielded positive results. HR and Procurement duties were part of the Administrative officer's duties. The correspondence ordered that the applicant be relieved from performing the HR and procurement functions.
16. The applicant reiterated that Elliot on numerous verbal discussions undertook to appoint her in the position.
17. She presented Annexure F, a notice advising employees to obtain leave forms from the applicant and attach all necessary documentation for proper filing. Furthermore, the applicant was adamant that Annexure B dated 31 March 2015 created an expectation that she had been promoted and /or appointed to the procurement officer's position.
18. The above correspondence addressed to the applicant read as follows:
19. **As discussed with you last week I have submitted the documents to Chris Hani District Office requesting the creation of the Procurement officer's post. The files were submitted on 5 September 2014, 5 November 2014 and on 16 January 2016. This process has to go to the Department of Health in Bisho for approval therefore we need to wait for the approval. I am grateful that you are doing the procurement task and it has been reported at numerous meeting and on the monthly report to the District Manager that this institution does not have dedicated staff for procurement. I request that you be patient regarding this post.**
20. In cross- examination the applicant stated that she wanted to return to procurement duties because her subordinate was seconded contrary to the respondent's submission that the overload she complained about had to be performed by Debbie.
21. She further reiterated that she was appointed verbally to the procurement position and that the order that she should return to her original duties was a demotion. She

conceded that she had a verbal arrangement with Mrs Elliot to perform the duties in question. The procurement position in question was not in the institution's organogram

22. The applicant submitted that the respondent's acting and recruitment policies were not brought to their attention. She failed to present proof of that she was acting and/or promoted to the procurement position.

### **Respondent's version**

23. Mrs Colleen Elliot testified that she is the hospital manager. She approached the applicant to assist with HR procurement duties (capturing of leave etc) three times a week due to staff shortage. The applicant together with other colleagues performed as a team to execute these duties.
24. Elliot stated that the applicant lodged a grievance in January 2017 complaining about the non –payment of her acting allowance for the additional responsibilities. She disputed that the applicant was declined promotion because the position she demanded the acting allowance for was not funded and /or in the establishment's organogram.
25. The witness averred that she informed the applicant that, despite her (Elliot) numerous submissions for additional positions, the district office failed to accede to her requests. Elliot refuted the applicant's claims that she was promised payment and /or the position.
26. In the event of a vacant position, the applicant would have to apply and compete with other applicants in line with the respondent's recruitment policy. Elliot was adamant that the applicant's demands for an acting allowance were not justified. There was no proper arrangement for her to act in a vacant funded position, as prescribed by the respondent's guidelines.
27. Regarding the instruction from the respondent that Debbie should perform procurement duties, Elliot was adamant that the capturing and signing of batches could not be done by one person. Furthermore, the applicant was not the only employee performing procurement duties, she was part of a team.
28. During cross-examination she submitted that the acting allowance and recruitment policies were general knowledge and there was no need to induct the applicant on

them. The District office employees were responsible for the induction of employees on important policies from time to time.

29. The applicant and team members were informed that they were only providing voluntary services to HR: Procurement due to shortage and they agreed to assist. Further, promotion(s) whatsoever to any higher level(s) was not discussed. Their participation was a skills development/empowerment exercise, aimed at equipping all involved for them to be able to compete, whenever the positions were advertised.
30. Elliot denied the applicant's claims that she created a reasonable expectation that the applicant will be paid an acting allowance. She also disputed that the applicant was demoted, arguing that the district office resolved that she must be relieved of the additional responsibilities subsequent to her unjustified demands of an acting allowance.
31. Elliot vehemently denied that the applicant would be disciplined if she refused to execute the additional duties, insisting that the applicant was aware of the internal voluntary arrangement.

### **ANALYSIS OF EVIDENCE AND ARGUMENT**

32. It is the applicant's main contention that the respondent actions constitute an unfair labour practice in that she was entitled to an acting allowance and that she was demoted from her position.
33. The respondent disputed the applicant's claims in its closing arguments and submitted that the applicant was not the only employee assisting in the procurement unit. Secondly, she was not entitled to an acting allowance because there was no vacant funded position.
34. The applicant conceded that she was not the only one assisting in the procurement unit due to shortage. In weighing both submissions, I dismiss the applicant's averments made in these proceedings that a reasonable expectation of a future appointment in the position was created in the absence of documentation and/or the position in question in the establishment. She argued in closing that she is entitled to the acting allowance as promised. I submit that the public service had recruitment and acting allowance policies applicable to all employees. Acting allowance policy states that allowance is only payable in respect of a vacant and funded post. I am not

- convinced that the applicant was entitled to the acting allowance, without a formal undertaking from the respondent that she will be remunerated for a specific position.
35. The acting process is always concluded formally in writing and signed by all parties. It is highly improbable that an employee would continue to "act" in a position for such a long time without compliance with the respondent's procedures. I reject the applicant's unfounded claims in the absence of a position that she claims to have acted in. The applicant's version was riddled with inconsistencies in that she had conceded that her discussions with Elliot were verbal.
36. It was common cause that the institution was understaffed and that Elliot had made numerous requests for the creation of a position of procurement clerks in the district and provincial office in vain. Again, I find that the applicant was aware that the "position" she claimed to have acted on was not existing. The applicant ought to have known that she would have to compete with others, if the "position" became available.
37. The respondent's uncontested evidence that procurement functions were executed by a team of employees and not the applicant alone corroborates the respondent's claims that there was no position and that the applicant offered her services voluntarily.
38. Further, the applicant did not challenge the respondent's version that the procurement functions could not be executed by one-person (Debbie), hence there was a need to seek additional assistance from colleagues. Her claims that a junior had been placed in her "position" subsequent to her "demotion" lack merit in the light of the respondent's credible version. It is highly improbable that one can claim demotion without any promotion and /or appointment to a higher position. The applicant is currently in the housekeeper's position she was initially appointed in.
39. I am not convinced that the notice (presented in these proceedings) advising staff to obtain their leave forms from the applicant created the impression that the applicant had been appointed in the position as claimed. Her claims lacked substance and not corroborated with credible facts. Elliot did not have authority to create a position and/or appoint anyone in any position contrary to the recruitment policy. I concur with the respondent that the applicant was never appointed in any position, except for the one she is currently occupying and that she could not be reinstated in a non-existent position.

40. I therefore dismiss the applicant's contention that she was entitled to an acting allowance and claims that she should be "reinstated" to the position.

I therefore deem it appropriate to make the following award:

**AWARD**

41. The applicant failed to prove that the respondent's conduct constituted an unfair labour practice. The application is dismissed.

42. No order as to costs is made.

A handwritten signature in black ink, appearing to read "J. Elliott", written over a horizontal line.

**PHSDSBC PANELLIST**