



# ARBITRATION AWARD

## MOFOKENG AND 6 OTHERS

(Applicant)

and

## DEPARTMENT OF HEALTH: FREE STATE

(Respondent)

**Union/Applicant's representative:** Mr Kaibe  
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## **ARBITRATION AWARD**

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### **DETAILS OF HEARING**

1. The matter was set down for an arbitration hearing on **1 December 2010** at the Qwa Qwa EMS offices.
2. The applicants were represented by Mr Kaibe, an attorney from Radebe Attorneys, whilst the respondent was represented by Mr Molokoane, a labour relations officer in the employment of the respondent.
3. Mr Radebe acted as interpreter and the matter was mechanically recorded.
4. The parties agreed not to lead evidence but to submit their respective cases by means of heads of argument and submitted documents in this regard. There was no dispute concerning any bundle of documents and I have therefore deemed it appropriate to regard all the documents that were presented to me as part of evidence and/or arguments.
5. The parties were granted opportunity to 12 December 2010 to submit their respective heads. My appreciation goes to both representatives for their professional conduct and timeous submission of their heads of argument.

### **ISSUE TO BE DETERMINED**

6. I was called upon to determine whether or not the respondent contravened a collective agreement, namely resolution 3 of 2009.

### **BACKGROUND TO DISPUTE**

7. The applicants in this matter are as follows:
  - 7.1 Mohale, D J Buthelezi, R A Mosia, T D Mosia, P A Motaung, A H Motaung and M K Mofokeng.

These applicants are employed by the respondent as station managers at Manapo Mopele Regional Hospital.

8. The applicants were previously employed by the Municipality before their absorption or transfer to the respondent somewhere in 1994. At that stage their salary levels were higher than those of emergency care practitioners of the respondent.
9. After the implementation of resolution 3 of 2009 the applicants were translated to shift leaders.
10. Resolution 3 of 2009 deals with occupational specific dispensation (OSD for medical officers, medical specialists, dentists, dental specialists, pharmacologists, pharmacists and emergency care practitioners). It would be the applicants case that the respondent is contravening the resolution by not placing them on the correct salary level.
11. At the commencement of the arbitration proceedings it was agreed that the details of the applicants are correct as per name list and that they are all shift leaders. It was also common cause that they are currently on a salary level of R112 020.00 per annum. The parties were also in agreement that resolution 3 of 2009 is applicable to them and they have agreed that there are no further disputes in this matter.
12. The parties have therefore submitted respective cases by means of heads of argument.

## **SURVEY OF ARGUMENTS PRESENTED**

### **ARGUMENTS OF APPLICANT**

Mr Kaibe submitted heads of argument, dated 10 December 2010, and his arguments, were in essence, as follows:

13. Applicants were previously employed by the Department of Public Works, Roads and Transport and they were transferred to the respondent during 1994.
14. Applicants were placed on personal salary notches and their previous employment was recognised by the respondent. Their salaries were not negatively affected.
15. With the implementation of resolution 3 of 2009, the applicants held the ranks of emergency care practitioners and their salary notches ranged between R111 042.00 and R112 000.00 per annum. I was referred to clause 1.2 of the collective agreement which states that: "paid progression: the salary movement from one salary grade to the higher salary notch

attached on the salary grade". I was also referred to clauses 4.1.10.1 and 4.1.10.2 and also to clauses 7.2 and 7.2.1. Mr Kaibe also referred me to clause 1.6 of the resolution.

16. It was argued that the proper and correct application of resolution 3 of 2009 would be to translate the applicants and place them on a R161 707.00 per annum and that their job title be that of EM Manager – Grade 3. The applicants were however kept on a salary notch of plus minus R120 000.00 per annum and their job titles changed from emergency care practitioners divisional management to that of EMS shift leaders – Grade 2, a title which is not provided for in resolution 3 of 2009. It was argued that the job titles of the applicants were amended by their salaries remain unchanged.
17. Mr Kaibe furthermore argued that an award should be granted in the applicants favour, with costs, but he failed to mention what such an award should include. I can only assume that it is meant that the applicants should be placed on a salary level of R161 707.00 per annum.

### **ARGUMENTS PRESENTED BY THE RESPONDENT**

Mr Molokoane presented written heads of argument, dated 10 December 2010, and his arguments were, in essence as follows:

18. Mr Molokoane argued that the applicants were not carrying on the responsibilities of divisional managers prior to 30 June 2009. The applicants were merely paid on the salary notch of divisional officers owing to the fact that the salary band or notches of the officials of the Municipality were always at a higher level and that the applicants were accommodated in that regard. That was also the reason why the applicants were kept the same notch as the divisional managers but it was argued that they did not render the duties of divisional managers.
19. It was argued that the applicants were doing production work, i.e. they were employed as emergency care practitioners and have signed and accepted their job descriptions. I was referred to a copy of such job descriptions. It was argued that there is a vast difference between the job descriptions of those of divisional officers.
20. Mr Molokoane argued that the responsibilities of the applicants remained the same with the implementation of resolution 3 of 2009 and that their duties did not change.
21. Mr Molokoane also argued that divisional managers of the respondent do not execute production work but they are managers of EMS stations in the province. None of the

applicants worked as station commanders and it is therefore not correct that they be paid on the salary level of divisional managers. He also argued that none of the applicants were ever employed as divisional officers by their previous employer and that they were transferred to department in the same positions as those they held at the Municipality.

22. Mr Molokoane referred me to paragraph 4.1.5 of the resolution and argued that the applicants also lacked the necessary qualifications to be paid or utilised as divisional managers.
23. It was argued that an employee who is translated to an EMS station manager, Grade 3, must have successful completion of the ILS support course that allows registration with the HPCSA as an advanced emergency assistant. The applicants all lacked these qualifications and can therefore not be translated to the specific rank in terms of the resolution.
24. Mr Molokoane also argued that the applicant seeks an order that they should be promoted as their dispute relates to interpretation and/or application of a collective agreement. He argued that I would therefore lack jurisdiction to determine the matter on that basis.
25. Mr Molokoane subsequently argued that the matter should be dismissed.

### **ANALYSIS OF ARGUMENTS PRESENTED**

26. It should firstly be borne in mind that I was tasked to determine whether or not the respondent contravened resolution 3 of 2009. The parties have furthermore agreed that there are no factual disputes and I was therefore bound to accept the respective arguments as presented in their heads of argument. It should also be considered that the *onus* in this matter was vested upon the applicants. It was incumbent to prove, on a balance of probabilities that the respondent was in contravention of resolution 3 of 2009.
27. It was not disputed that the applicants are not being utilised as station managers. Their salaries are seemingly on the same notch as station commanders as a result of their previous employment at a Municipality.
28. The applicants simply lack the necessary qualification to be utilised as station commanders and I could not understand their claim that they should be paid on the salary levels although they are not performing the same duties.

29. Paragraph 4.1.5 of the resolution is abundantly clear and the applicants failed to convince me that they would qualify for higher salary notches.
30. For these reasons the application stands to be dismissed

**AWARD**

31. The respondent is not in breach of resolution 3 of 1999 and the matter is dismissed.
32. I make no order as to costs.

A handwritten signature in black ink, appearing to be 'Adv PM Venter', is written on a light blue rectangular background.

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**Adv PM Venter**  
**PHWSBC Arbitrator**