



# ARBITRATION AWARD

Case Number: PSHS26-11/12

Panelists: Malusi Mbuli

Date of Award: 19-08-2012

In the **ARBITRATION** between

DENOSA obo B. Nyamela

(Applicant)

And

Department of Health – Eastern Cape Province

(Respondent)

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

1. The matter came before the PHSDSBC for arbitration under section 24{2} 24 {5} as an Interpretation and Application of a Collective Agreement. It was set down for arbitration hearing at the Department of Health, Amahlathi LSA Office in King Williamstown.
2. The applicant Mrs. B. Nyamela attended the hearing and was represented by Mr. Z. Tom an official of the applicants trade union DENOSA.
3. The respondent Department of Health was also present at the hearing and was represented by Mrs. P. Simanga, an official of the respondent.
4. The matter was finalized on the same day and the parties agreed to file their closing arguments on the 18<sup>th</sup> of April 2012.

## **ISSUE TO BE DECIDED**

5. I am required to Interpret and Apply the Collective Agreement, and determine whether the applicant was entitled to receive Acting Allowance.

## **SURVEY OF EVIDENCE**

6. The parties did not lead any evidence on the matter but submitted closing arguments because the facts in this dispute were common cause. It follows that the matter was not recorded and the parties arguments will form the record of the proceedings.
7. Issues that are common:
  - That the applicant is employed by the respondent as a Chief Professional Nurse.
  - When she was appointed she performed duties of the Operational Manager, a position higher than that of a Chief Professional Nurse which she occupied.
  - On the 07<sup>th</sup> of August 2009 she was issued with a letter of Delegation of responsibilities to the post of Operational Manager together with the other employees in other clinics.

- . The said letter on the last paragraph indicated as follows “NB The delegations are for the smooth running of a facility without any financial remuneration”

8. Issues that are in dispute:

- Whether the applicant was acting as an Operational Manager from the date when she was employed to date.
- Whether the applicant was therefore entitled to be paid Acting Allowance for the period that she was performing the duties of the Operational Manager.

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

9. Both the applicant and the respondent filed their arguments in this matter. The applicants representative argues that the applicant was appointed as a Chief Professional Nurse but from the date when she was employed she was performing the duties of an Operations Manager.
10. The applicant argues that the fact that the applicant was performing those duties at a higher position than that of an Operations Manager means that she was acting on that position.
11. The applicants representative further argue that because the applicant was acting in that position she was entitled to receive acting allowance. The applicants representative further agreed that the applicant was not formally appointed to act in the position of an Operations Manager.
12. The respondent on the other hand argues that Mrs. B. Nyamela was never appointed to act at the position of an Operations Manager but performed the duties for the above position and was then formally delegated to perform the responsibilities attached to the position of the Operations Manager from the 07<sup>th</sup> of August 2009.
13. She further argues that the letter of delegation clearly indicates that the applicant will not receive any financial remuneration for performing those duties. She submits that the acting in a higher position in the department is regulated by the Department of Health, Eastern Cape Acting Allowance Policy.

14. She stated that in terms of the acting policy a person can only act and receive acting allowance if she has been formally appointed to act in writing to a higher position in the Department. She further stated that the position in which the applicant was performing duties was not a funded position.
15. The acting and payment of the acting allowance of the Department of Health Eastern Cape is regulated by clause 11 of the of the Eastern Cape Department of Health Acting Allowance Policy. Clause 11.1 provides that a member may only act in a higher post for a maximum uninterrupted period of 6 months. The acting allowance maybe paid to an acting member for a maximum of six months, after which only permanent appointment will be considered for the relevant vacant and funded higher post unless prior approval is obtained from the relevant Executing Authority for re-appointment of the acting member or appointment of a new member in the said post in an acting capacity.
16. The applicant was not acting in the said position as also alluded to by the applicants representative even though she was performing such duties.
17. The fact that the applicant was not acting means that she is not entitled to receive acting allowance because she was not acting in the said position.
18. I therefore make the following award.

## **AWARD**

19. The applicant was not acting in the position of Operational Manager and is therefore not entitled to receive acting allowance for the above named position.
20. Applicant is not entitled to any relief.

Signature:



Commissioner:

**Malusi Mbuli**