



ARBITRATION AWARD

AC

PHSDSBC
PUBLIC HEALTH AND SOCIAL
DEVELOPMENT SECTORAL
BARGAINING COUNCIL

Panellist/s: THULANI AKIM
Case No: PSHS 270-10/11
Date of Award: 5th OCTOBER 2011

In the ARBITRATION between:

DENOSA OBO AUSTINE

(Union / Applicant)

and

DEPARTMENT OF HEALTH-GAUTENG

(Respondent)

Union/Applicant's representative: **MR.DA.JACOBZ** _____

Union/Applicant's address: _____

Telephone: _____

Telefax: _____

Respondent's representative: **MR. SIPHIWE MAZIBUKO** _____

Respondent's address:

Telephone:

Telefax:

1. DETAILS OF HEARING AND REPRESENTATION

1.1. The matter was set down on the 22nd September 2011 as arbitration process at 10:00 at Rehabilitation Centre next to Tshwane District Hospital, Pretoria. The parties agree to submit the written closing of arguments on the 30th September 2011.

1.2. The employee party, Ms. Moira Austin (hereinafter referred to as “Applicant”), appeared in person and was represented by Mr. D.A. Jacobs the union official.

1.3. The employer party, Department of Health -Gauteng (hereinafter referred to as the “Respondent”), was represented by Mr. S. Mazibuko the IR Manager.

1.4. The proceedings were electronically recorded and the Interpreter was not required in these proceedings.

2. ISSUES TO BE DECIDED

2.1. Whether the Respondent’s conduct constitutes an unfair labour practice relating to promotion.

3. THE BACKGROUND OF THE ISSUE

3.1. The following issues were common cause between the parties:

3.1.1. The Respondent employed the Applicant on the 1st January 1978 as a Unit Manager at unit 6:10, which was the Orthopedics High Care Unit at Pretoria Academic Hospital.

3.1.2. The Applicant was earning plus or minus R15 000 per month.

3.1.3. On or about 2006 the Pretoria Academic Hospital re-located to new premises, which are known today as Steve Biko Academic Hospital. In October 2007 the Steve Biko Academic Hospital took a decision to close the Orthopedic High Care Unit. The

Applicant was verbally requested to work as the Unit Manager of ward 4.3.

3.1.4. The Orthopedic High Care Unit reopened after 7 months and its Unit Manager was now Sr. Phillips. The Applicant verbally requested to return to Orthopedic High Care Unit and the management agreed.

3.1.5. In August 2009 the Orthopedic High care Unit was merged with the Renal Transplant Unit. The Steve Biko Academic Hospital Management verbally requested the staff Applicant currently works at Orthopedic High Care Unit to apply for a position of being the over- all Unit Manager for the newly merged units.

3.1.6. The Applicant, Sr. Phillips, and other staff members applied for the position and the Applicant became a successful candidate for the position. After the Applicant had occupied her position she received a written communication indicating to her that she was withdrawn as a Unit Manager, because Sr. Phillips had lodged a grievance against the Respondent.

3.1.7. Sr. Phillips became in charge of unit 6.10 and the Applicant was still working as a Manager in the very same unit 6.10.

3.2. The Applicant contended that the Respondent's conduct of failing to allow the Applicant to work as a Unit Manager of ward 6.10 as appointed constitutes an unfair labour practice in relation to promotion.

3.3. The Applicant sought to remain at ward 6:10 as a Unit Manager as relief.

4. SURVEY OF EVIDENCE AND ARGUMENTS:

4.1. I would like to indicate that I would only concentrate on the summary of salient points of the evidence, which bears relevance to the issue.

4.2. The Applicant testified in person and she submitted bundle marked “A” and annexure “A”, “B”, and “C”.

4.3. The Respondent led the evidence of Dr. S.J. Marais (hereinafter referred as “Dr. Marais”).

5. THE SUMMARY OF APPLICANT’S EVIDENCE

5.1. MS. MOIRA AUSTIN

5.1.1. She testified that she was no longer in charge of ward 6.10, however she was still working at ward 6:10. After her position was recalled she realized that she was going to be moved from ward 6.10 since Sr. Phillips took over the unit and she was now in charge of the ward. She further mentioned that she was now a Deputy Unit Manager.

5.1.2. During cross examination she testified as follows:

5.1.2.1. She conceded that she was not demoted.

5.1.2.2. She conceded that she was managing the ward 6.10 together with Sr. Phillips.

5.1.2.3. She conceded that when she was moved from ward 4.3 to ward 6.10 her job description never changed. She further conceded that if she was elevated from her position she would be working as an Area Manager.

5.1.2.4. She conceded her main concern was not about the position, but to remain and work at ward 6.10.

6. THE SUMMARY OF RESPONDENT’S EVIDENCE

6.1. DR. S.J. MARAIS

6.1.1. She testified that the Respondent employed her as a Head of Nursing. She mentioned that she was responsible to manage all the units within Steve Biko Academic Hospital.

6.1.2. She mentioned that the Applicant was not demoted and she was still earning the same salary. She further mentioned that the Respondent does not have a Deputy unit Manager position within the workplace.

6.1.3. During cross examination she testified as follows:

6.1.3.1. She conceded that the Applicant was moved from ward 4.3 to 6.10 and Sr. Phillips was moved from ward 6.10 to 4.3.

6.1.3.2. She mentioned that at the time when the Applicant was transferred to ward 6.10, Sr. Phillips raised a grievance and indicated that she does not want to be moved from ward 6.10. The Respondent was then required to take Sr. Phillips back to her position at ward 6.10.

7. ANALYSIS OF EVIDENCE

7.1. In an enquiry of this nature, I am required to determine whether the Respondent's conduct constitutes an unfair labour practice relating to promotion.

7.2. The Applicant bears the onus to prove on a balance of probabilities that the conduct of the Respondent constituted an unfair labour practice relating to promotion.

7.3. Promotion is the process, which involves selection of the most suitably qualified employee from a pool of candidates to a position of higher status, responsibility, and

authority as compared to the employee's previous position within the organisation.

This would mean that the employer's unfair failure or refusal to promote the employee to an existing vacancy would constitute an unfair labour practice relating to promotion.

7.4. The following facts were common cause between the parties:

7.4.1 The Respondent employed the Applicant on the 1st January 1978 as a Unit Manager at unit 6:10, which was the Orthopedics High Care Unit at Pretoria Academic Hospital.

7.4.2. The Applicant was earning plus or minus R15 000 per month.

7.4.3. On or about 2006 the Pretoria Academic Hospital re-located to new premises, which are known today as Steve Biko Academic Hospital. In October 2007 the Steve Biko Academic Hospital took a decision to close the Orthopedic High Care Unit. The Applicant was verbally requested to work as the Unit Manager of ward 4.3.

7.4.4. The Orthopedic High Care Unit reopened after 7 months and its Unit Manager was now Sr. Phillips. The Applicant verbally requested to return to Orthopedic High Care Unit and the management agreed.

7.4.5. On or about August 2009 the Applicant, Sr. Phillips, and other staff members applied for the Orthopedic High care Unit position, which was merged with the Renal Transplant Unit position.

7.4.6. The Applicant became a successful candidate for the position.

7.4.7. After the Applicant was appointed, she received a written communication indicating to her that she was withdrawn as a Unit Manager, because Sr. Phillips had lodged a grievance against the Respondent.

7.5. The Applicant conceded during cross examination that when she was moved from ward 4.3 to ward 6.10 her job description never changed. She further conceded that if she was elevated from her position she would have become an Area Manager.

7.6. It is thus my view that the abovementioned evidence clearly shows that the Applicant was not appointed to a position of a greater status, responsibility and authority than the previous position because the Applicant had been in this position since 1978. I therefore find that her movement to another ward would be a lateral movement.

7.7. The Applicant testified that after she was withdrawn from the position at ward 6.10, she became a Deputy Unit Manager, because Sr. Phillips took over her responsibilities. This version was challenged and the Respondent indicated that the Respondent does not have a Deputy Unit Manager position within the workplace. This version was not placed in dispute.

7.8. I therefore find that the Applicant's version was improbable that she was a Deputy Unit Manager. Furthermore her version was unlikely because during cross examination she conceded as follows: (i) that she was not demoted after her appointment was withdrawn as a Unit Manager at ward 6.10, and that (ii) she continued managing the ward 6.10 together with Sr. Phillips.

This version shows clearly that the Applicant's position was not changed and it remain the same after she received a letter indicating the withdrawal of her position at ward 6.10.

7.9. The Applicant conceded during cross examination that her main concern was about her removal from ward 6.10, it was not about her position.

6.10. This version clearly shows that the dispute before me was not about the Respondent's failure to appoint the Applicant to a senior level, but it was about her removal from the site. It is further clear that the Applicant had challenged the issue of her

removal from ward 6.10 prematurely because according her version in chief she mentioned that she was still working at ward 6.10.

7.10. In light of the abovementioned analysis It is thus my view that the Applicant had failed to show that the nature of dispute relates to unfair labour practice relating to promotion. I therefore find that the Respondent's conduct did not constitute an unfair labour practice relating to unfair labour practice.

8. AWARD

8.1. 6.1. I find that the Respondent's conduct did not constitute an unfair labour practice relating to promotion,

8.2. The application is dismissed, and

8.3. There is no order as to costs.

SIGNED AND DATE AT PHSDSBC OFFICES, CENTURION, ON THE 13th OCTOBER 2011.



PART-TIME PANELIST

Signature: _____
PANELIST: Thulani Akim
SECTOR: PUBLIC HEALTH & WELFARE