



# ARBITRATION AWARD

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Case Number: PSHS294-11/12  
Commissioner: Abraham Nthako  
Date of Award: 10-November-2011

In the matter between

**Union/Applicant's representative:** Mr. A. J. L. Greef

Union/Applicant's address: C/o PSA  
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Bloemfontein  
9300

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**Respondent's representative:** Mr. W. Phahlane

Respondent's address: Department of Health Free State  
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9300

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## **DETAILS OF REPRESENTATION**

1. This is an award in the arbitration between Mr. L. W. Motaung and Mr. T I Hlomeli, the Employees and Department of Health – Free State, the Employer.
2. The arbitration was held under the auspice of PHSDSBC in terms of the Collective Agreement.
3. The conciliation process was dealt with and the matter could not be resolved.
4. The Employee requested that the matter be resolved through arbitration process.
5. The matter was set down for arbitration on the 28<sup>th</sup> of October 2011 and it was finalized.
6. Employees were represented by Mr. J. Greef and the Employer, Department of Health was represented by Mr. W. Phahlane.
7. The matter was mechanically recorded and the parties submitted a bundles of documents which were marked A and B.
8. The parties agreed that they will make submissions in writing and their arguments will be submitted on the 04<sup>th</sup> of November 2011. The last day of submission was the 16<sup>th</sup> of November 2011.

## **ISSUE TO BE DECIDED**

9. The issue to be decided on relates to Interpretation and application of Public Health and Social Development Sectoral Bargaining Council Resolution 03 of 2009, part 1 at annexure A at pages 5 to 8 of the of the Employer's bundle.

## **BACKGROUND TO THE ISSUE**

10. Employees alleged that they are presently employed by the Employer as Station Managers EMS at Pelonomi Hospital Call Centre.
11. They referred the matter to the Council and as it could not be resolved a certificate of non resolution was issued.
12. The matter was set down for arbitration at Bophelo House, Department of Health in Bloemfontein on the 28<sup>th</sup> of October 2011 and it was finalized.
13. The matter relates to application and interpretation the Council Resolution 03 of 2009.

## **SURVEY OF EVIDENCE**

### **EMPLOYEE'S SUBMISSIONS**

14. Employees made submissions without calling any witnesses.

## **EMPLOYEES**

15. Employees submitted as follows:
16. They submitted that they are stationed as Station Managers EMS at Pelonomi Hospital Call Centre. Before Occupational Specific Dispensation (OSD) they were at salary level 6. When the OSD

translation/upgrades came into effect on the 01<sup>st</sup> of July 2009 as per Collective Agreement 03 of 2009 the Employees were translated to Station Managers grade one salary level 6 and fellow colleagues were translated to Station Managers grade 2 salary levels 7. Employees submitted that the translations were done incorrectly and Employer acted unfairly and inconsistently in translating staff at EMS.

17. They submitted that E. M. Masidi and M. J. Mmele at Annexure A page 9 were translated to Station Managers grade 2 levels 7 but they have the same qualifications and experience. The Employees and their colleagues do the same job and or functions. They submitted that the idea behind OSD resolution was to remunerate employees at the correct levels.
18. The resolution was developed to create career pathing for employees within the ranks of the Employer. The improvements of the career oaths for various categories through the introduction of each category. The salary grades will display longer career progression opportunities, as part of the definition of career path, on order both to recruit and retain emergency care practitioner in the relevant areas of need and also to cater for the retention of staff in the emergency practice for longer periods.
19. The OSD Resolution came into effect from the 01<sup>st</sup> of July 2009 and all backdating should be done on the same date as per annexure A at page 5 to 8. They submitted that the agenda of OSD is to retain and remunerate staff at correct levels and the Employer failed to implement the OSD resolution correctly. They would like to be correctly translated to Station Managers Grade 2 salary level 7 from 01<sup>st</sup> of July 2009. They submitted that the Employer is acting unfairly in terms of the OSD translation. When the post was advertised the qualification requirements were a BAA and or AEA, attached proof to that effect at Annexure A of the Employee's documents. They submitted that the Employer differentiates between staff. That was the Employees' submission in brief.

### **EMPLOYER'S SUBMISSION**

20. Employer made submissions without calling any witnesses.
21. The Employer submitted as follows:
22. That with the change that came with Occupational Specific Dispensation (OSD), all Divisional Officers in the Control room, including Employees at Pelonomi hospital were translated into managers. In accordance with OSD, grades of station managers will be determined by their medical qualifications and reference was made to annexure A of the Employer's documents. Mr. Mosidi and Me. Mmele are in possession of an Ambulance Emergency Assistant (AEA) qualifications and were accordingly placed on grade 3 in accordance with OSD.
23. Furthermore, Me. Hlomeli and Mr. Motaung were in possession of a Basic Ambulance Assistance (BAA) qualifications and were accordingly placed on grade 1 in terms of OSD, it would therefore be unfair for the Employees to be translated to grade 3 without the required medical qualifications in terms of the OSD. The Employee are correctly placed in terms of the OSD and their plea to be placed in grade 2 should fail. That was the Employer's submission in brief.

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

24. **Section 185 of The Labour Relations Act 66 of 1995 provides that every employee has the right not to be unfairly dismissed and subjected to unfair labour practice.**
25. The issue that should be decided on is the interpretation and application of Public Health and Social development Sectoral Bargaining Council Resolution 03 of 2009 part 1 at Annexure A. It is the duty of the Employees to prove on a balance of probabilities that the translation was done incorrectly. Grade 2 salary level 7. The Employee submitted that when the OSD translation/upgrades came into effect on the 01<sup>st</sup> of July 2009 as per Collective Agreement 03 of 2009 the Employees were translated to

- Station Managers grade one salary level 6 and fellow colleagues were translated to Station Managers grade 2 salary levels 7. The Employer argued that in accordance with OSD, grades of station managers will be determined by their medical qualifications. On the other hand the Employees submitted that E. M. Masidi and M. J. Mmele at Annexure A page 9 were translated to Station Managers grade 2 levels 7 but they have the same qualifications and experience. The Employees and their colleagues do the same job and or functions.
26. Part 1 of resolution 03 of 2009 provides that translation of registered Basic Ambulance Assistants (BAAs) on salary levels 6 to 8 who occupy posts of EMS Station managers to Grades 1 and 2 of the post EMS Station Manager. On page 6 to page 8 of the attached Employees' documents it is indicated that translation is with effect from 01<sup>st</sup> of July 2009 and there are post/rank, salary level and translation. On the second column of page 6 of the Employees' documents it states that EMS station Manager (Registered Basic Ambulance Assistants).
  27. The salary level is 6 and in column three it states EMS Station Manager Grade 1 with salary levels. The Employees alleged that they were translated to grade one level 6 and their colleagues were translated to grade two level seven. They argue that the translation was done incorrectly. The Employer submitted that in accordance with OSD, grades of station managers will be determined by their qualifications as per annexure A. In terms of this annexure registered ambulance Assistant only applies to grade 1 and 2. The Employer submitted that Mr. Mosidi and Me. Mmele are in possession of Ambulance Emergency Assistant qualifications and were accordingly placed on grade 3 in accordance with OSD.
  28. According to the Employer, Mr. Mosidi and Me. Mmele are on grade 3 and according to Employees, they were in possession of Basic Ambulance Assistance qualifications. From the evidence given, it is not in dispute that Employees have Basic Ambulance Assistant qualifications. If the Employees had the same qualifications and experience at the time of translation, then they should have been translated to same level and grade with their colleagues. The evidence submitted shows that Mosidi and Mmele have Ambulance Emergency Assistant qualification and Employees do not have the said qualifications.
  29. There is no evidence as to why Employees were not placed at the grade two level seven and since that colleagues are at grade 3 due to qualifications as submitted by the Employer and since that the Employees have the same experience as their colleagues, it is my view that it would have been just and fair to translate them to a grade that is equivalent to experience and qualification and in this case it would have been grade 2 level seven. In terms of Part 1 of resolution 03 of 2009, translation of registered Basic Ambulance Assistant salary level 6 to 8 who occupy posts of EMS Station Managers to grade 1 and 2 of the post.
  30. The Employer submitted that Me. Hlomeli and Mr. Motaung were in possession of Basic Ambulance Assistance (BAA) qualifications and were accordingly placed on grade 1 in terms of OSD, it would therefore be unfair for the Employees to be translated to grade 3 without the required medical qualifications in terms of the OSD. From the submissions made, Employees would like to be placed at grade 2 level seven not grade 3 as submitted by the Employer.
  31. It is the duty of the Employees to prove that they should be translated to grade two level seven. There is no evidence as to when did Mosidi and Mmele acquire their qualifications in Ambulance Emergency Assistant and how were they placed in grade 1 as submitted by the Employee. The only evidence before the Council is that the Employees were part of translation period and if they were, they should not be placed at a disadvantage.
  32. Employees submitted that they were Station Managers EMS at Pelonomi Hospital Call Centre. Before Occupational Specific Dispensation (OSD) they were at salary level 6. When the OSD translation/upgrades came into effect on the 01<sup>st</sup> of July 2009 as per Collective Agreement 03 of 2009 the Employees were translated to Station Managers grade one salary level 6 and fellow colleagues were translated to Station Managers grade 2 salary levels 7. Employees submitted that the translations were done incorrectly and Employer acted unfairly and inconsistently.

33. The Employees submitted the OSD resolution was developed to create career pathing for employees within the ranks of the Employer. The improvements of the career oaths for various categories through the introduction of each category. The salary grades will display longer career progression opportunities, as part of the definition of career path, in order both to recruit and retain emergency care practitioner in the relevant areas of need and also to cater for the retention of staff in the emergency practice for longer periods.
34. Having regard to what has been indicated and the fact that the Employee were had the same experience as their colleagues, it is my view that they should have been placed at grade 2 level 7 and not grade three. In the absence of evidence as to how the Employees were placed on grade 1level 6, of which is the lower level from the documents submitted. I am of the view that the Employees have proven that they were incorrectly translated and that they have proven their case on a balance of probabilities.

### **FINDING**

35. Based on the above, it is my finding that the Employees have proven that they were incorrectly translated as per OSD because they had the same experience and they qualified as per OSD.
36. It is my finding that they have to be place at the correct level for the main purpose of the resolution and to ensure fairness.

### **AWARD**

37. The Employees, **Mr. L.W. Motaung and Me. H. I. Hlomeli** should be translated to grade 2 level 7.
38. The Employer, **Department of Health - Free State** is ordered to translate the Employees, Mr. L. W. Motaung and Me. H. I. Hlomeli immediately.
39. The translation should be done immediately upon receipt hereof.
40. I make no other as to costs.

Signature: \_\_\_\_\_  
Commissioner: Abraham Nthako  
Sector: Health