



**PHSDSBC**

PUBLIC HEALTH AND SOCIAL DEVELOPMENT  
SECTORAL BARGAINING COUNCIL

# ARBITRATION AWARD

Commissioner: **JOSEPH MPHAPHULI**

Case No: **PSHS3-17/18**

Date of Award: **27 July 2017**

In the matter between:

**NEHAWU obo Ledibane H.R**

(Union / Applicant)

and

**Department of Health- North West**

(Respondent)

---

## 1. DETAILS OF HEARING AND REPRESENTATION

1.1 The hearing took place on 19 July 2017 at Bodesntein Hospital – North West. The proceedings were conducted in terms of Section 191 of the Labour Relations Act 66/1995.

1.2 Mr. Mzamo Adoons appeared for the Respondent. The Applicant was represented by Mr. Thamsanqa Mbeba, NEHAWU official.

1.3 The proceedings were digitally recorded.

## 2. ISSUE IN DISPUTE

2.1 I had to determine whether there was an unfair labour practice or not, if so, what remedy would be appropriate.

### **3. BACKGROUND TO THE DISPUTE**

3.1 The Applicant was employed on 02 August 2002. The Applicant served in the capacity of Enrolled Nursing Assistant and was remunerated at R 150 606.00 per annum. The Applicant wished to be retained in her position as an Enrolled Nursing Assistant at the current salary notch.

### **4. SURVEY OF EVIDENCE**

#### **4.1 APPLICANT'S CASE**

4.1.1 Mrs. Ledibane, the only Applicant in the matter gave evidence. She received a letter from the Respondent stating that she had to resume her previous position of Administrative Clerk Senior effective 01 July 2017. Her current position was on a higher salary scale.

4.1.2 She had occupied the Enrolled Nursing Assistant position for three years. She has not been officially appointed to the position. The Respondent insisted that her remuneration for the Enrolled Nursing Assistant position should be at the entry level of R 108 690.00, Nursing Assistant Grade 1.

4.1.3 Prior to being transferred to the Enrolled Nursing position she was an Administration Clerk at a salary rate of R 150 606.00.

4.1.4 The Applicant felt that the Respondent was being inconsistent in the implementation of its remuneration policy read against the fact that other employees such as nurses in Klerksdorp Hospital have retained their admin clerk salaries when appointed as Enrolled Nurses.

4.1.5 The Applicant admitted under cross examination that her desired outcome was that the Respondent be estopped from implementing its intention to reduce her pay rate scheduled for 01 July 2017.

4.1.6 It also became evident under cross examination that the mainstay of the Applicant's case was that she was opposed to a salary payment at the entry level

of the Enrolled Nursing Assistant rate and would not take the option of reverting to the senior administrative clerk.

## **4.2 RESPONDENT'S CASE**

4.2.1 The Respondent restricted its reply to the Applicant's case to cross examination.

## **5. ANALYSIS OF EVIDENCE AND ARGUMENT**

5.1 Unfair labour practice disputes are regulated in terms of Section 186 of the Act. Demotion is expressly stated as a form of unfair labour practice if proved to have been unfair.

5.2 The salient features of the current dispute where common cause and read: that the Applicant took up a position as an Enrolled Nursing Assistant and has served in the position for three years. Previously the Applicant was employed as senior administrative clerk at R 150 606.00 per annum...

5.3 The Respondent has now indicated that her salary will be commensurate with the regulated Enrolled Nursing Assistant entry rate of R106 00.00, a position which the Applicant cannot reconcile herself with.

5.4 The question to be answered was whether the established remuneration calculated at R 106 000.00 for an Enrolled Nursing Assistant should be adjusted to favour the Applicant's desire or not.

5.5 In the second place whether Council had jurisdiction to interdict the Respondent from implementing the salary rate commensurate with the job in question.

5.6 The answer to the above proposition is in the negative.

5.7 Salary grades attach to jobs not job holders. Given this as a fact the salary of the Enrolled Nursing Assistant may not be inflated to accommodate the Applicant.

5.8 Where it concerns Council jurisdiction to interdict it is safe to say that the Council is not ordained to do such as its role is to determine existing disputes.

5.9 The question of whether there were other employees in other institutions who were treated favourably in similar circumstances was not substantiated and could not advance the Applicant's case for an unfair labour practice.

5.10 There was no evidence of circumstances for justifying a deviation from the established salary level for an Enrolled Nursing Assistant.

5.11 As matters stood the Applicant was given an option to revert to her senior administration clerk position where she would retain her current salary rate. Instead the Applicant wished to pursue a career in Nursing but did not take kindly to the Respondent's insistence that she would be remunerated at the entry level.

## **6. AWARD**

6.1 There was no unfair labour practice dispute, alternatively the Applicant failed to make a case for an unfair labour practice.



---

Joseph Mphaphuli

Signed