



**IN THE PUBLIC HEALTH AND SOCIAL DEVELOPMENT SECTORAL  
BARGAINING COUNCIL HELD AT KROONSTAD**

**COMMISSIONER: C L DICKENS  
CASE NO. : PSHS 300-10/11  
DATE OF AWARD: 5 AUGUST 2011**

**In the Arbitration between:**

**DENOSA obo PHILIP MPHO SETHABELA**

**APPLICANT**

**and**

**DEPARTMENT OF CORRECTIONAL SERVICES: FREE STATE RESPONDENT**

---

ARBITRATION AWARD

---

**1. DETAILS OF HEARING AND REPRESENTATION:**

- 1.1 An Arbitration hearing was scheduled for the 6<sup>th</sup> of July 2011 at the Department of Correctional Services – College, Kroonstad.
- 1.2 The Applicant was represented by Mrs. Fransman–Hendricks, an Official of DENOSA. The Respondent, Department of Correctional Services: Free State, was represented by Mr. Van Wyk, Legal Services.
- 1.3 The parties requested to file Written Submissions only and the dates were agreed to as follows:
  - The Applicant to file their submissions by the 15<sup>th</sup> of July 2011.

- The Respondent to file their submissions by the 22<sup>nd</sup> of July 2011.
- The Applicant to file their replying papers by the 29<sup>th</sup> of July 2011.

## **2. ISSUE TO BE DECIDED:**

- 2.1 The dispute which has been referred to the Bargaining Council is the Interpretation or Application of a Collective Agreement, namely Resolution 3 of 2007: Agreement on Implementation of an Occupational Specific Dispensation (OSD) for Nurses.
- 2.2 The question which I am required to determine is whether the Applicant was translated correctly and whether his remuneration has been accordingly translated.

## **3. BACKGROUND TO THE ISSUE:**

- 3.1 The Applicant is employed by the Department of Correctional Services, College Sick Bay since 1993.
- 3.2 During 2007, the Respondent implemented Resolution 3 of 2007, which Resolution is titled: "Agreement in Implementation of an Occupational Specific Dispensation (OSD) for Nurses".
- 3.3 The Applicant was initially translated to an Operational Manager Nursing level on salary notch R 235 659-00 (TWO HUNDRED AND THIRTY FIVE THOUSAND SIX HUNDRED AND FIFTY NINE RAND).
- 3.4 After an audit was conducted the Respondent found that the translation had erroneously been done and the Applicant's translation was changed to that of Clinical Nurse Practitioner.

## **4. SURVEY OF EVIDENCE AND ARGUMENT:**

### **4.1 SUBMISSIONS ON BEHALF OF THE APPLICANT:**

**4.1.1 The Applicant testified that he has been a nurse since 1984 and that he has been employed at Correctional Services College Sick Bay since 1993. He testified that he was appointed as Division Head of Sick Bay since March 1996.**

4.1.2 He stated that since the beginning he has been providing primary health care to both members and students. He stated that there are two nurses employed in the sick bay and that he has been in charge of the sick bay since 1996. He stated that he was given a letter of appointment to this effect. He held that he does all the assessments and supervising in the sick bay.

4.1.3 He held that even though he was in charge of the sick bay when OSD came into operation, he and his colleague were both placed in Operational Managers posts on the same salary.

4.1.4 At a later stage they were both advised that they had been incorrectly placed and that they must pay back the money that was incorrectly paid to them. Their salaries were down graded and their posts were changed to that of Clinical Nurse Practitioners.

4.1.5. The Applicant stated that even after his salary was downgraded he was still in charge of the sick bay.

4.1.6 Under cross-examination he agreed that general nursing and primary health care are not the same thing.

4.1.7 The Applicant testified that when he went to the Personnel Department to enquire about his letter of appointment, he was advised that the letter was missing. He stated that the letter confirmed that he was appointed as Section Head: Sick Bay.

4.1.8 He stated that he could not confirm whether p 49 of the bundle of documents was the approved organogram, as he had never seen the document before.

4.1.9 The Applicant was referred to the Financed Establishment of the College and he stated that he does not know the document. He perused the document and confirmed that no reference was made to the post Section Head.

- 4.1.10 The Applicant confirmed that the contents of his performance plan dated 2006 was exactly the same as that of his colleague, Miss Ekron. He confirmed that prior to the implementation of OSD his functions were the same as that of Miss. Ekron. He was however still the supervisor taking accountability of the section.
- 4.1.11 The Applicant confirmed that he could not sign Miss. Ekron's assessment as he was appointed on the same level as her. This was the reason why Makura signed the assessment.
- 4.1.12 He denied that he represented the department on an ad hoc basis, as he was appointed as the Section Head. Under cross-examination he confirmed that there is no post such as Section Head on the institution's organogram or on the Financed Establishment plan.
- 4.1.13 He confirmed that the Correctional Centre's organogram made provision for the post of Section Head.
- 4.1.14 The Applicant testified that prior to OSD he and Miss. Ekron were both appointed on Level 8 and they had the same rank.
- 4.1.15 The Applicant held that he represented the section at meetings and otherwise.
- 4.1.16 **Mrs. Fransman-Hendricks** held in argument that the Applicant had been appointed as Unit Head of Sickbay since 14 March 1996. She referred to Annexure "B", pages 1, 2, 3, 5, 6 and 7 and held that these are all proof that the Applicant was appointed in this position. She argued that the Applicant has filled the position as Supervisor or Division Head to date.
- 4.1.17 Me. Fransman-Hendricks argued that the Respondent's witness knows the Resolution and also the reason behind the award to assist parties in the fair and correct implementation of the OSD. Specific reference was made to Annexure "B" pages 12, 3 a and pages 16, 34 of the matrix 3.4 that states that all nurses who were performing duties of the Unit Manager duly appointed or not must translate automatically as Operations Manager and be placed according to the streams

applicable She agreed that all nurses who meet the requirements of the OSD must translate to the OSD based on the duties they performed as at 30 June 2007.

4.1.18 Mrs. Fransman-Hendricks argued that over and above the duties on pages 99 and 100 the Commissioner's attention is drawn to page 101 of Annexure "A" where it clearly states who the supervisor of Me. Ekron is and to further observe the differences in the main objectives of the posts of the two employees on pages 97 and 101.

4.1.19 She held that with reference to pages 32, 13.2.2, there is no dispute and nurses should be translated as reflected on page 33. She argued that paragraph 13.2.3 is applicable to the Applicant, him being in an existing post of Chief Professional Nurse in the designated post of Unit Manager.

4.1.20 She held that the Respondent's witness testified that the cut-off for experience was at R 180 621-00 (ONE HUNDRED AND EIGHTY THOUSAND SIX HUNDRED AND TWENTY ONE RAND), but he failed to prove whether that was the correct process. Instead she testified that the National Commissioner took a decision to retranslation and not the document at hand. She stated that further proof could not be produced as to why nurses were put on R 180 621-00 (ONE HUNDRED AND EIGHTY THOUSAND SIX HUNDRED AND TWENTY ONE RAND) for 12 (TWELVE) years, only to be taken irrespective off for not having the relevant qualifications, as it was testified that for Grade progression a person must have the relevant qualification of which the latter is not in dispute. She held that by allowing this practice, the Employer will now be formed to move over to the grade Progression notch which is going to violate the Resolution in terms of the provision made for Performance Development and Management System (PDMS).

4.1.21 She argued that based on the proof and transparent communication over the years that the Applicant was the Divisional Head, the Employer never corrected or informed the Employee that he does not hold any post or position as Divisional Head until the Resolution of OSD.

4.1.22 She held that it is their submission that the Applicant be translated correctly together with the correct remuneration as from the 1<sup>st</sup> of July 2007.

4.1.23 Mrs. Fransman-Hendricks held in reply that the Applicant was never advised that his appointment as Section Head was only on an ad hoc basis. She held that the Respondent never contested the documentary proof submitted by the Applicant which indicated that he was appointed as Section Head.

4.1.24 She stated that the fact that Mrs. Ekron's performance was not assessed by the Applicant is not the criteria of being a Section Head.

4.1.25 She argued that Post basic qualification was not needed for the work to be done. The same time as when he was appointed as Section Head, nor was a post-basic qualification an inherent requirement.

#### 4.2 SUBMISSIONS ON BEHALF OF THE RESPONDENT:

4.2.1 **Mr. David Thabo Chiloane** testified on behalf of the Respondent. He testified that he is employed at the National Head Office as Deputy Director, Remuneration Control.

4.2.2 He testified that it was his role to implement OSD for Nurses in December 2007. He stated that he was the team leader and his whole department dealt with the implementation of OSD.

4.2.3 He testified that the Applicant translated on the 1<sup>st</sup> of July 2007 to a Clinical Nurse Practitioner (Primary Health Care) in terms of the OSD for Nurses. He confirmed that the notch the Applicant translated to on the said date was R 180 621-00 (ONE HUNDRED AND EIGHTY THOUSAND SIX HUNDRED AND TWENTY ONE RAND) per annum as reflected on page 1 of Bundle A.

4.2.4 He testified that the reason why the National Commissioner of the DCS took a decision that all nurses be translated to the Primary Health Care-stream, was a strategy to retain nurses in the Department.

4.2.5 He testified that the Applicant and Me. Ekron were initially incorrectly translated to an Operational Manager Nursing (PHC) level on salary notch R 235 659-00 (TWO HUNDRED AND THIRTY FIVE THOUSAND SIX HUNDRED AND FIFTY NINE

RAND) as their details were incorrectly set out on the list of nurses provided by the Regional Commissioner. The details provided on the lists received from the regions were implemented. After implementation of the OSD for nurses an audit was conducted and it was found that the Applicant and Me. Ekron had been incorrectly placed on the list of nurses for the region. The two nurses resort under Head Office, because the two training colleges resort under Head Office and not under the regions.

- 4.2.6 He stated that it was found that both the Applicant and Me. Ekron translated as Operational Managers and upon a comparison with the establishment of the College it was found that such a post was not allocated on the approved or financed establishment. He testified that in the absence of a Section Head post he had a duty to correct the discrepancies in terms of the Implementation Directive issued by the DPSA to rectify the translation of both the Applicant and Me. Ekron. He confirmed that the rectification was implemented in 2010. He stated that he did not receive any grievances between 2008 and 2010.
- 4.2.7 He testified that Correctional Centers have allocated Section Head posts and accordingly nurses in those posts could translate to Operational Managers posts.
- 4.2.8 He testified that the implementation of the OSD for nurses were performed in accordance with the provisions of the DPSA Implementation Directive of the Occupation Specific Dispensation for Nurses contained on pages 24 to 45 of Bundle "A" in conjunction with Resolution 3 of 2007.
- 4.2.9 Mr. Chiloane described the different phases A to D. He described Phase A as aligning of the PERSAL system with the organizational structures contained in the OSD.
- 4.2.10 He explained that Phase B provides for the alignment of the post establishment of each affected department by converting the current post establishment in line with the post structure contained in the relevant OSD's. He explained that the current post establishment for Kroonstad Training College is contained on page 49 of the bundle. He stated that the post at Health Services does not indicate a section head or managerial post, but a production work post. Therefore the provisions of

paragraph 13.2.2 of the Directive are applicable. The Applicant held a post of a Chief Professional Nurse pre OSD and therefore the post was converted into a Clinical Nurse Practitioner Post.

4.2.11 He argued that paragraph 13.2.3 is not applicable as there was no Unit Managers post prior to the implementation of the OSD.

4.2.12 Mr. Chiloane held that in terms of paragraph 13.2.5 the primary objective of the re-alignment of departmental establishments should be to convert existing posts in line with the post structure contained in the relevant OSD's, and not the expansion of establishments. The existing posts at the Health Services at the College are production level posts and not section head or managerial posts.

4.2.13 The witness testified that section heads posts exist at the Correctional Centers and not at the Training College.

4.2.14 He explained that during Phase C, employees are translated to appropriate posts on the Department's revised post establishment, and the awarding of a revised salary, in terms of the translation tables.

4.2.15 The witness held that in terms of Phase D, the position of each nursing employee is recalculated based on recognition of previous appropriate experience after registration in the relevant nursing category. He held that the Applicant can not be awarded and translated to Clinical Nursing Practitioner Grade 2, although he has more than 12 (TWELVE) years' full service and experience in terms of Phase D, he can only translate to the maximum of Clinical Nursing Grade 1 with a corresponding notch of R 180 621-00 (ONE HUNDRED AND EIGHTY THOUSAND SIX HUNDRED AND TWENTY ONE RAND).

4.2.16 He held that it would be ultra vires for the department to re-grade a post from a production post to a management post, which would be the case if the Applicant's post was to be converted into an Operational Manager post.

4.2.17 Under cross-examination, the witness held that he does not agree that the Applicant performed the duties of a Section Head regardless of the post.

- 4.2.18 The witness testified that it is the prerogative of the department to direct the arrangements with regard to supervisory, reporting and representing functions of its officials. He held that it is not uncommon to allocate ad hoc tasks over and above an employee's performance plan, regardless of the post that the employee is in.
- 4.2.19 Mr. Van Wyk argued that it is their submission that the interpretation and application of the Resolution, as illustrated by Mr. Chiloane is consistent with the provisions of the Resolution.
- 4.2.20 He argued that the post which the Applicant occupied pre-OSD was a production level post and not a designated post of Unit Manager or Section Head. The existing post had to be converted in terms of the Directive, to a Clinical Nurse Practitioner Post. If the post was to be converted to an Operational Manager post, then it would lead to the expansion of the Department's establishment which was not the primary objective.
- 4.2.21 Mr. Van Wyk argued that the Respondent disputes that the Applicant was the Section Head. He argued that the Applicant never lodged a grievance or dispute until the discrepancies were rectified.
- 4.2.22 Mr. Van Wyk argued that paragraph 3.4 of the award is not applicable to the Applicant as he was never appointed as a Unit Manager. He held that it is only applicable to posts of "Sister-in-Charge". He held that the department does not have any posts of "Sister-in-Charge". He held that paragraph 3.4 of the said award refers to the position where a managerial post exists and the employee is not formally appointed in such a post (the post is thus vacant), but performs the duties of such a post.
- 4.2.23 Mr. Van Wyk argued that the Applicant possesses a General Nursing Diploma and this is not a post basic qualification. He can therefore only translate to the maximum notch of a Grade 1.
- 4.2.24 Mr. Van Wyk held that the Applicant did not contest the validity of the Directive and he submitted that the Directive contains the correct interpretation of the Resolution and that the Respondent has correctly interpreted and applied the provisions thereof. He argued that the Applicant was translated correctly and in line with the

provisions of the Resolution and the Directive and that the Commissioner should rule in favour of the Respondent.

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

- 5.1 The dispute which has been referred to the Bargaining Council relates to the Interpretation and Application of a Collective Agreement, OSD for nurses.
- 5.2 It is the Applicant's version that on the 1<sup>st</sup> of July 2007, he should have been translated to the post of Operational Manager Nursing. It is the Respondent's version that the Applicant was correctly translated to the post of Clinical Nurse Practitioner, after the discrepancies were corrected and implemented in 2010.
- 5.3 Resolution 3 of 2007 as well as the Implementation Directive dated the 28<sup>th</sup> of September 2007 give directive as to how the OSD should be implemented.
- 5.4 The dispute in essence boils down to the question of whether the Applicant, prior to the implementation of OSD, was appointed as a Unit Manager or whether he was performing production work.
- 5.5 The Respondent, through Mr. Chiloane, referred us to the Organisation Structure of Kroonstad College, dated the 1<sup>st</sup> of October 2003, which was prior to the implementation of the OSD. It is clear from this Organisation Structure that there is no such position as Unit Manager. With reference to nursing staff, the only position on the structure is "Professional Nurse Health Services". Reference was also made to the Financed Structure of the College and no provision is made thereon for the position of Unit Manager.
- 5.6 Mr. Chiloane argued that Paragraph 13.2.2 of the Implementation Directive was applicable to the Applicant, as he was not a Unit Manager prior to OSD. The Applicant was employed in Primary Health Care as a Chief Professional Nurse and that he should therefore be translated to the position of Clinical Nurse Practitioner (Primary Health Care).

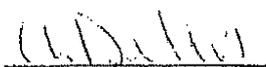
- 5.7 The Applicant argued that he had never seen the Organisation Structure and that he could not comment thereon. He submitted a bundle of documents marked “B”. Certain of the documents referred to him as being the Unit Manager. He argued that he was never advised that this appointment was not in line with the Organisation Structure. He argued that paragraph 13.2.3 was applicable to him and that he should have been translated as Operational Manager Nursing.
- 5.8 Mr. Van Wyk argued that the Applicant had never been appointed as Unit Manager, but that he was requested on an ad hoc basis to represent the section at meetings and such.
- 5.9 I have perused the documentation submitted by the Applicant which makes reference to him being the Unit Head. I have also perused the job description of Me. Ekron. The document makes provision for signature of supervisor. The Applicant has conceded that he did not sign the said document as supervisor as he was appointed on the same level as her and therefore was not in a position to sign. This supports the version of the Respondent that in that he could not have been Unit Head.
- 5.10 I am in agreement with Mr. Van Wyk that had the Applicant’s post been converted to an Operational Manager Post, then the Department’s Establishment would have been expanded which is not the primary objective of the OSD.
- 5.11 In the absence of the position of Unit Head on the Organisation Structure and the Financed Structure, it must follow that the Applicant could never have been appointed as Unit Head. It will therefore be incorrect to say that the Applicant should have been translated to the position of Operational Manager.

**6. AWARD:**

- 6.1 The translation of the Applicant to the post Clinical Nurse Practitioner was correct. The Applicant’s case is accordingly dismissed.

6.2 No order as to costs is made.

**SIGNED AT BLOEMFONTEIN ON THIS 4<sup>th</sup> DAY OF AUGUST 2011**

A handwritten signature in black ink, appearing to read 'C L Dickens', is written over a horizontal line.

**SENIOR COMMISSIONER**

**C L DICKENS**

**PHSDSBC**