



PHSDSBC

PUBLIC HEALTH AND SOCIAL DEVELOPMENT
SECTORAL BARGAINING COUNCIL

ARBITRATION AWARD

Panelist: Adv PM Venter
Case No: PSHS302-14/15
Date of award: 29 September 2014

In the ARBITRATION between:

PSA obo MOHAPI

Applicant

and

DEPARTMENT OF HEALTH: FREE STATE

Respondent

DETAILS OF HEARING:

1. The matter was arbitrated at the offices of the Respondent in Bloemfontein on **11 September 2014**. Parties submitted their respective written heads of argument on **26 September 2014**.
2. The Applicant was represented by Mr. Greeff, a union official, whilst the Respondent was represented by Ms. Mako, a Labour Relations Officer.
3. The matter was not mechanically recorded as no viva voce evidence was presented and no interpreter was required.

BACKGROUND TO THE MATTER:

4. The matter was referred to the Bargaining Council in terms of Section 24 of the Labour Relations Act, 66 of 1995 (hereinafter referred to as “the LRA”).
5. The dispute relates to the interpretation and/or application of a collective agreement (Resolution 2 of 2010).
6. The Applicant is employed as a Radiographer at Pelonomi Hospital but wishes to be translated to the rank of a Mammographer in terms of the Occupational Specific Dispensation (OSD).
7. Parties chose not to lead viva voce evidence but to simply present written arguments.

ISSUE TO BE DETERMINED:

8. I was called upon to determine whether the Respondent contravened a collective agreement and whether the Applicant should be translated to the rank of a Mammographer.

SURVEY OF EVIDENCE AND ARGUMENTS:

9. Mr. Greeff submitted written arguments that were as follows:

*The clause that needs to be interpreted is clause 9.1 of the Collective Agreement that states: “**taking into account their current duties and levels of service/experience.**”*

The Applicant is a Radiographer stationed at Pelonomi Hospital. She performed the duties of a Radiographer and also did mammograms. It has always been her passion to change her field from radiography to mammography. The Applicant did a Mammography course as a specialty. The Applicant completed her certificate 2010 and registered with the HPCSA in 2011. The Applicant applied for the translation to a mammography in 2011 but to no avail. Up to date the Respondent have not effected the translation.

There is currently a Mammographer post at Pelonomi Hospital, but the Respondent refuses to translate the Applicant into the post. In the meantime the Applicant is performing the double functions of Radiography and Mammography. This conduct is unfair.

The Applicant performs the duties of the post; she did specialize in the field and she did obtain her qualification.

As a relief it was prayed that I order the Respondent to translate the Applicant from a Radiographer to a Mammographer from the date of her registration with the HPCSA in 2011. It was argued that the Applicant meets all requirements for translation.

10. Ms. Makoa submitted written arguments that were as follows:

The Applicant was laterally transferred to the Respondent with effect from 1 December 2012. The Applicant must have 14 years appropriate service after registration with the Health Profession Council and she lacks the necessary experience (she only has 4 years relevant experience).

The Respondent considered paragraph 3.2 of Resolution 2 of 2010 and applied same correctly. The Applicant does not meet the minimum requirements and can therefore not be translated.

ANALYSIS OF EVIDENCE AND ARGUMENTS:

- 11 The onus to establish that the Respondent contravened a collective agreement rested on the Applicant party. No evidence was presented and I was only supplied with written heads of argument from both parties.
- 12 It seems that the Applicant applied for a transfer to Bloemfontein and that she assumed her current position as Radiographer on 1 January 2012.
- 13 I was not convinced that the Respondent contravened any collective agreement and my reasons are as follows:
- 13.1 The onus was upon the Applicant to establish on a balance of probabilities that the Respondent contravened a collective agreement. There seems to be a factual dispute between the parties relating to whether she qualifies for translation and I was not able to determine whether she qualifies or not.

13.2 The Applicant requested a transfer to Bloemfontein during 2011 and accepted her position as Radiographer Grade 2 with effect from 1 January 2012. She was therefore willing to resume duties as a Radiographer Grade 2 and I failed to understand her claim to be translated with effect from 2011.

13.3 She now wishes to become a Mammographer but I was unable to determine that the Respondent contravened any collective agreement in dealing with her matter.

AWARD:

14.1 The Respondent did not contravene Resolution 2 of 2010 and the matter is dismissed.

14.2 I make no order as to costs.

A handwritten signature in black ink, appearing to be 'Adv PM Venter', is written on a light blue background. The signature is cursive and includes a long horizontal stroke extending to the right.

Adv PM Venter

PHSDSBC Arbitrator