



ARBITRATION AWARD

Panelist: F.N.Bantwini

Case Number: PSHS 307-11/12

Date of Award: 20 August 2012

IN THE ARBITRATION BETWEEN

HOSPERSA obo Dingani N.T. : APPLICANT/EMPLOYEE

AND

Dept of Health- EC : RESPONDENT/EMPLOYER

Union/Applicant's Representative : Ms. T. Tonisi
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Respondent's Representative : Mr. P. Qwayiza

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DETAILS OF HEARING AND REPRESENTATIONS

1. This matter was scheduled for arbitration on 19 July 2012 at PE Hospital Complex in Port Elizabeth. It came before the PHSDSBC in terms of Section 24 (2) 24(5) of the Labour Relations Act 66 of 1995 (the LRA). The applicant, Ms. N.T. Dingani was represented by Ms. T. Tonisi, who is an official from HOSPERSA. The respondent, the Department of Health was represented by Mr. P. Qwayiza. Parties agreed to submit written closing arguments on 27 July 2012.

ISSUE TO BE DECIDED

2. The issue to be decided is whether the applicant qualify to be translated to phase 2 in terms of the OSD Resolution 3 of 2007 (occupation specific dispensation OSD).

BACKGROUND TO THE DISPUTE

3. The applicant, Ms. Dingani referred a dispute to the PHSDSBC through her union, HOSPERSA regarding failure of the respondent to translate her to phase 2 in terms of OSD Resolution 3 of 2007. When the dispute could not be resolved at conciliation level, the applicant filed a request for arbitration.

SURVEY OF EVIDENCE AND ARGUMENT

Applicant's case

4. According to Ms. Tonisi's opening statement the applicant, qualified as a Registered Nurse in 1995. During the implementation of the OSD Resolution 3 of 2007, she had 23 years experience and was working in ICU which is a specialized unit. She qualified for translation to the second phase in terms of OSD Resolution 3 of 2007 but she was never translated.
5. Ms Narshel Tembeka Dingani the applicant testified that she qualified as a registered Nurse in 1984 and she worked in ICU from 1986 until 2010. When correction of nurse's salaries was conducted, her salary was not corrected. Although she does not have intensive care, she is performing all the duties that are performed by other employees who possess intensive care.
6. Under cross-examination, the applicant testified that during the time of implementation of OSD (01 July 2007), she had 22 years experience as a registered nurse. The applicant was referred to the record of

service which appears on page 21 of bundle A. She further testified that she started working in the ICU in 1986.

7. Under re-examination the applicant stated that her notch is R160 470, 00 and was registered as a nurse on 31 July 1984.
8. In closing **Ms. Tonisi** argued that the applicant, at the time of OSD implementation was working in ICU, a specialized unit with 20 years experience. The respondent was supposed to use table 2 and the applicant was supposed to have been translated to notch R215 661 per annum instead of R160 470.

Respondent's case

9. According to Mr Qwayiza's opening statement, the applicant was translated to the correct notch in terms of resolution 3 of 2007.
10. **Mr. Masibulele Mrara** the first respondent's witness testified as follows:
 11. He works for the respondent as a Manager: Human Resources and is based in Bhisho. The Resolution 3 of 2007 was implemented in July 2007 based on the DPSA implementation directive. The first payments were made in December 2007. The applicant was translated in terms of Grand Father Clause wherein nurses were given a once payment based on their experience in specialty units.
 12. According to the DPSA document, an employee with 20 years experience without specialty certificates is translated to notch R160 470 per annum.
 13. Under cross-examination, the witness testified that an employee with no speciality qualification is placed at notch R160 470 per annum. This was regarded as a basic salary and in recognition of 20 years experience. Translation in recognition of experience and qualifications was different.
14. In closing, **Mr Qwayiza** argued as follows
 15. The respondent's witness, Mr Mrara outlined the process of translation of nurses based on OSD/ Collective Agreement. His evidence was supported by DPSA Directive and Resolution 3 of 2007. On the basis of Mr. Mrara's evidence, it became clear that the applicant was translated correctly as stipulated in OSD collective agreement.
 16. Mr Qwayiza further stated that the applicant's application must be dismissed.

ANALYSIS OF EVIDENCE AND ARGUMENTS

- 17. It is common cause that the applicant referred a dispute to the PHSDSBC when the respondent failed to translate her to the second phase of OSD in terms of Resolution 3 of 2007.
- 18. It is also common cause that the applicant had about 22 years experience as a Registered Nurse and has been working in ICU unit since 1986.
- 19. It is furthermore common cause that although the applicant has been working at the ICU speciality unit, she does not possess speciality qualifications.
- 20. The respondent's witness, Mr. Mrara testified that he was directly involved in the implementation of OSD Resolution 3 of 2007. He further testified that the applicant was correctly translated as she received a once off payment and was translated to notch R160 470,00 per annum known as a Grand Father Clause which was only based on the fact that she had 20 years experience without speciality qualifications.
- 21. It is evident from the respondent's evidence that the applicant has failed to discharge the onus to prove the claim of unfair labour practice by the respondent based on translation and she failed to interpret the collective agreement Resolution 3 of 2007 correctly.

AWARD

- 22. **I therefore make the following award:**
- 23. The applicant, **Ms. Narshel Tembeka Dingani**, has failed to interpret the OSD Resolution 3 of 2007 correctly and has failed to prove a claim of unfair labour practice by the respondent.
- 24. The application is dismissed.
- 25. There is no order as to costs.



Signature

Faith Ncumisa Bantwini
PHSDSBC PANELIST