



PHSDSBC
PUBLIC HEALTH AND SOCIAL DEVELOPMENT
SECTORAL BARGAINING COUNCIL

ARBITRATION AWARD

Case No: **PSHS346-17/18**

Commissioner: **Theresa Malgas-Senye**

Date of award: **11 April 2018**

In the matter between:

Hospersa obo Jika & 6 others

(Union/ Applicant)

and

Department of Health-Eastern Cape

(Respondent)

DETAILS OF HEARING

1. This matter was enrolled for arbitration in terms of section 24(2) & 24(5) of the Labour Relations Act 66 of 1995 (“the Act”) in the Public Health and Social Development Sectoral Bargaining Council in Aliwal North on 7 March 2018.
2. The Applicants was represented by Mr. Matshoka from Hospersa and the Respondent by Mr. Busakwe.

ISSUES TO BE DECIDED

3. The purpose of this arbitration is to interpret Resolution 1 of 2002 regarding whether the Applicants are entitled to receive Acting allowance for the 2016 to 2017 period.

4. The Applicants referred a Collective Agreement interpretation and application dispute.

BACKGROUND FACTS

5. The Applicants' dispute arose out of the interpretation application of a collective agreement namely Resolution 1 of 2002.

6. The Applicants' case is that the Respondent interpreted the Collective Agreement wrongly and that if the Resolution 1 of 2002 was correctly interpreted they would receive their Acting allowance payment.

7. The parties agreed that the contents of the submitted common bundle is what it purports to be.

SURVEY OF EVIDENCE

8. This is a summary and does not reflect all of the evidence and argument heard and considered in reaching a decision.

9. The Applicants, Jika & 6 others elected to file written submissions on 30 March 2018 and not to testify.

10. They submitted that that the Respondent failed to comply or apply the provisions of clause 3 of the Resolution relating to acting allowances. Much emphasis was placed that the Applicants was appointed in writing by the Sub District Manager to act in a post higher than the grade they were in, the post of operational manager.

11. They should therefore be paid an acting allowance.

12. The Respondent submitted that the only a person that is duly authorized to appoint employees on acting capacity is the Head of the Department, which is the Superintendent General.

13. The District Manager does not have authority to appoint any employees to act, but merely recommends.

14. The Respondent further submits that an employee only acts on a vacant and funded post and the period described by the Applicants no vacant, funded position existed.
15. The Respondent submitted that the Department cannot pay employees who allegedly acted on higher positions that was not vacant and funded.
16. Both parties agreed to file closing arguments.
17. Upon writing of this award all arguments were received by both parties.

ANALYSIS OF EVIDENCE

18. The issue to be decided is whether Resolution 1 of 2002 was correctly applied and interpreted by the Respondent.
19. The Applicants case is that they were entitled to Acting Allowance as per Resolution 1 of 2002.
20. I took into account the arguments filed by both parties.
21. I will first look at clause 3 of the Resolution 1 of 2002 that speaks to acting allowance 3.1.1 that states as follows:

An employee appointed in writing to act in a higher post, by a person who is duly authorised, shall be paid an acting allowance provided that the post is vacant and funded.

22. The Resolution at clause 3 states that:

3.1 An employee appointed in writing to act in a post of a higher grade than the grade of the employee by the Head of Department or his/her delegate at provincial or national level shall be paid acting allowance to act in a vacant post provided that:

3.1.1 The post is a vacant funded post

3.1.2 The acting period is longer than 6 weeks

3.1.3 The appointing authority is a level higher than the acting appointee

3.1.4 The Employee must accept the acting appointment.

23. Amongst documents submitted by the Applicants representative, were letters relating to a grievance lodged and letters from the Acting Sub District manager that merely indicates that Ms. Jika was identified to coordinate the hospital and not appointed by the appointing authority to act in that position.
24. No supporting documents was filed with regard to the other Applicants listed in the application.
25. In the light of the above and all arguments advanced I find that Resolution 1 of 2002 was correctly interpreted by the Respondent and the Applicants did not qualify to be considered for payment of Acting allowance for the period 2016 to 2017. The Applicants failed to provide proof that the indeed acted and was authorized to do so.
26. Furthermore, Resolution 1 of 2002 clearly states that an employee should act in a vacant, funded post and such authority to act must be given by the Superintendent General. This was not so in the Applicants case.
27. The Applicants in the relief sought requested to be paid acting allowance benefits as per Resolution 1 of 2002.
28. I find that the Respondent correctly interpreted the Resolution.

AWARD

29. The application of the Applicants, Ms. Jika & 6 others, is dismissed.
30. I make no order as to costs.

Signature:



Commissioner: ***Theresa Malgas-Senye***

Sector: ***Public Health***
