



# ARBITRATION AWARD

**IN THE PUBLIC HEALTH & SOCIAL DEVELOPMENT SECTORAL BARGAINING  
COUNCIL**

**HELD IN DUTYWA ON 20 JANUARY 2012**

**CASE NO: PSHS348-10/11**

**IN THE MATTER BETWEEN**

**DENOSA/ POPCRU obo Nokwali  
and 3 Others**

**APPLICANT**

**And**

**Department of Correctional Services – Eastern Cape**

**RESPONDENT**

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## **ARBITRATION AWARD**

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### **DETAILS OF HEARING AND REPRESENTATION**

1. This matter was set down for arbitration on 20 January 2012 at the Dutywa Correctional Services facility in Dutywa.
2. The applicants: Ms. N Ngalo, Ms. P Tetyana and Ms. N Nosilela appeared in person and were represented by Mr. X Kasana from DENOSA trade union.
3. The respondent was represented by Mrs. L Tyani.
4. The parties were given time to file supplementary written closing arguments by 27 January 2012.

### **ISSUE TO BE DECIDED**

5. I am required to determine whether the respondent committed an unfair conduct in not paying the applicants the 'rural allowance' in accordance with the determination of the Department of Public Service and Administration and Resolution 4 of 2004 for the PH&SWSBC, and if so, to determine the appropriate relief.

## **BACKGROUND TO THE ISSUE**

6. The applicants are employed by the respondent as professional nurses. They are based at the following Correctional Centres:
  - a) Ms Ngalo           Dutywa Correctional Centre,
  - b) Ms. Nosilela      Willowvale Correctional Centre, and
  - c) Ms. Tetyana      Ngqamakwe Correctional Centre.
7. They challenge that on or about October 2005 the respondent approved the implementation of the payment of rural allowance in the public service with effect from 1 September 2005.
8. They have not been paid such allowance up until to date. This is so despite their numerous complaints regarding their eligibility to payment to the respondent.
9. They challenge that the failure to pay this rural allowance constitutes an unfair conduct by the respondent.
10. They seek to be paid the said rural allowance as their counterparts under the Department of Health (based in the same Dutywa area) are receiving same.

## **SURVEY OF ARGUMENT AND EVIDENCE**

### **Submissions by the Applicants**

**The applicants submitted a bundle of documents marked as the Employees' Bundle "A". One witness testified in support of their case.**

### **Ms. Ngeniswa Valencia Ngalo**

11. Ms. Ngalo testified that she commenced working for the respondent as a Professional Nurse on 1 October 1997.
12. She testified that she was not happy with way the respondent was implementing Resolution 2 of 2004.
13. She stated that she was not getting the rural allowance whereas other professional nurses in the Department of Health (the DOH) within the Dutywa area (in hospitals and clinics) were getting it.
14. She testified that professional nurses employed by the DOH in town in Dutywa were receiving the rural allowance.
15. She found strange that Dutywa was designated to receive the rural allowance under the DOH whereas this was not the case with the respondent.
16. She further testified that at some stage (on about 2007) she was under the Butterworth management area before she was moved to Dutywa but still was not paid the rural allowance

17. She lodge a complaint and the response which she received on 13 May 2008 was that only Butterworth and Engcobo were designated to pay rural allowance.
18. At the time her management area was Sada.
19. She testified that Cofimvaba, Lady Frere and Sterkspruit were paying the rural allowance.
20. She was of the view that the respondent should be informed by the DOH document in its implementation of Resolution 2 of 2004.
21. She could not believe why Dutywa would be left when it was more rural than Butterworth.
22. The witness further testified that another employee of the respondent in Tabankulu (similarly situated like them), professional nurse Nzima, was receiving the allowance since last year.
23. She could not understand why they (including the other applicants in the matter) were treated differently to her.
24. Ms. Nosilela and Ms. Tetyana confirmed that their evidence was the same as that of the witness in all material respects.

## **SUBMISSIONS BY THE RESPONDENT**

**The respondent submitted a bundle of documents marked as Employer's Bundle "B" and called one witness to prove its case.**

### **Mr. Johannes Edwin Job**

25. Mr. Job is employed by the respondent as the Manager Human Resources: Administration. He is responsible for the implementation of policies relating to salaries and benefits in the respondent (Eastern Cape Region).
26. He testified that before joining the Eastern Cape Correctional Services Region, he worked for the respondent for fifteen years at national level as the Remuneration Policy and Training Manager.
27. He was responsible for the development of remuneration policies, which included, *inter alia*, doing research and implementing the said policies. He was also responsible for the training of all 6 Regional Offices on these policies.
28. He testified that the respondent on or about October 2005 received an approval from the respondent's National Office to implement the PH&WSBC Resolution 2 of 2004.
29. This related to the payment of rural allowances for scarce skills occupational classes.

30. He testified that the said approval also contained the relevant designated Management Areas (which were eligible for the payment of the applicable allowance).
31. He further testified that in terms of the annexure attached to the approving minute the following were the designated management areas (the Eastern Cape):
- a) Engcobo
  - b) Lusikisiki
  - c) Butterworth
  - d) Cofimvaba
  - e) Sterkspruit
  - f) Lady Frere
  - g) Bizana
  - h) Elliotdale
  - i) Mount Frere (KwaBaca)
  - j) Mount Ayliff (Maxesibeni)
  - k) Umzimkulu
  - l) Mount Fletcher
  - m) Mqanduli
  - n) Flagstaff (Siphaqeni)
32. Mr. Job testified that on receipt of this, the respondent (National Office) wrote to the Department of Public Service and Administration explaining that there were health professionals that were employed by the respondent.
33. The respondent requested that the professional nurses that were employed by the respondent be considered for the rural allowance.
34. After discussions between the respondent (national office), the Department of Health, the Department of Public Service and Administration and the PSCBC, a decision was taken to extend the rural allowance to professional nurses in the respondent's employment.
35. The respondent's National Commissioner approved a list of all management areas that were eligible for payment of the rural allowance (see para. 26 above).
36. Mr. Job testified that the Eastern Cape Regional office realized that there were Correctional Centres in the so-called rural areas that were excluded from the DOH's list of qualifying health institutions.
37. The respondent (that is, the Eastern Cape Regional office) is pursuing the matter with the respondent's National Office.
38. It has submitted to the respondent's National Office a list of all areas (including the applicants' workstation: Whittlesea) that it has identified as being eligible for the payment of the rural allowance.
39. He further testified that although this process had begun, there was no basis to pay the rural allowance to the applicants at this stage because they were not employed in any of the designated management areas.

40. There has been no amendment to the designated management areas yet and as such there would be no basis for the payment.
41. Under cross examination the witness was asked to explain why professional nurse Nzima (Persal number - 52350088) from Ntabankulu was paid rural allowance.
42. Mr. Job responded that this payment was certainly erroneously effected and would be reversed and all the money already paid would be recovered from the employee.
43. He maintained that there was no way that the respondent would deviate from the approved designated management areas.

## **ANALYSIS OF EVIDENCE AND ARGUMENT**

44. In these proceedings the applicants challenge that the respondent committed an unfair labour practice by not paying them the rural allowance in terms of Resolution 2 of 2004.
45. The basis of this claim, the applicants' witness testified that they were equally employed in the rural area as their counter parts in the DOH.
46. The professional nurses, particularly in the Butterworth (which was better than their respective areas of employment) area were all receiving the rural allowance.
47. The respondent's evidence is that when this was approved for the respondent, the approval came with designated management areas.
48. Only the professional nurses employed within these designated management areas are eligible to get the rural allowance.
49. The evidence of the respondent is that it has already found anomalies with the implementation of the rural allowance and has taken steps to address the issue.
50. The respondent maintained that there was no way that the applicants could be paid this allowance up until there has been an amendment to the list of the designated management areas eligible for the payment of rural allowance.
51. No such amendment exists as at now.
52. The applicant's relied on the case of professional nurse Nzima employed in Tabankulu as a case of inconsistency by the respondent in dealing with the matter.
53. The evidence of the applicants is that professional nurse Nzima receives the rural allowance whilst not employed in a designated management area.
54. The respondent's representative testified that this was a payment erroneously made and would accordingly be reversed. All monies paid to date would be recovered from the employee.
55. In view of the respondent's submissions in this matter I agree with the respondent that the respondent cannot pay the rural allowance to the applicants up until such time that the list has been amended to include their management areas.

56. In the circumstances I find that the applicants have failed to discharge their onus of proving that the respondent committed an unfair labour practice when it refused or failed to pay them the rural allowance.

57. In the circumstances, I make the following award:

## **AWARD**

58. I find that the respondent did not commit an unfair labour practice in not paying the applicants the rural allowance as provided for in Resolution 2 of 2004.

59. The applicants are not entitled to any relief.

60. There is no order as to costs.

Signature: \_\_\_\_\_

Commissioner: Mangisi Mrwebi