



# ARBITRATION WARD

Panelist/s: Advocate Ronnie Bracks  
Case No.: PSHS382-11/12  
Date of Award: 23 JANUARY 2012

In the ARBITRATION between:

*NUPSAW obo G Takadi and 14 others*

(Employee)

and

*Department of Health- Gauteng Province*

(Respondent)

Employee Representative: *Daniel Mzima obo NUPSAW Gauteng*

Employee's address: *Private Bag 12217*

*TRAMSHED*

*0126*

Telephone: *(012) 327 8989*

Telefax: *(012) 327 8978*

E-mail: \_\_\_\_\_

Company/Employer representative: *Department of Health- Gauteng Province*

Company's address: *Private Bag 085*

*Marshalltown*

*2107*

Telephone: *(011) 355-3517*

Telefax: *(011) 355-3808*

E-mail: \_\_\_\_\_

## DETAILS OF HEARING AND REPRESENTATION

- A. The Arbitration was scheduled for hearing at the Respondent's office at the Dr George Mukhari Academic Hospital in Ga-Rankuwa. The Employees were represented by Mr. Daniel Mzima, a union official. Mr. Mkhaliphi, the Labour Relations Officer of the Employer represented it.
- B. At the commencement of the hearing it emerged that the Applicant had filed an Application to join some of its members who were part of the same cause of action. The parties agreed that the arbitration could not proceed until the other employees had been joined. It was further agreed that since the major part of the evidence was of common cause and no new oral evidence was therefore required, that the parties would address the issues by submitting their evidence in writing. This was to be done as soon as the ruling to join the Applicants was done.
- C. The ruling joining the Applicants was received by the parties on the 21<sup>st</sup> November 2011. The parties were then required to submit their arguments in writing. The Applicants presented their arguments. However, the Respondent did not submit its arguments despite various reminders and then stated that it wanted to lead oral evidence. It presented no persuasive argument as to what had changed since the agreement; nor did it state what new evidence would be presented which was not available on the 1<sup>st</sup> November 2011 when the agreement was reached. For this reason therefore, the matter proceeds in default argument.

## ISSUE TO BE DECIDED

- D. Whether or not the Applicants were demoted.

## BACKGROUND TO THE ISSUE

- E. The Applicants were employed by the Respondent as Chief Diagnostic Radiographers stationed at the Dr George Mukhari Academic Hospital. Their respective details are contained in the Applicants' submissions and will therefore not be repeated.
- F. The dispute arose due to the improper implementation of the OSD Resolution 2 of 2010 which provided the different post and job title codes to which the Applicants were to be translated.
- G. The arbitration was set down for the 1<sup>st</sup> November 2011 when it was agreed by the parties that submissions would be done in writing.

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## SURVEY OF EVIDENCE AND ARGUMENT

### EVIDENCE

#### Documentary

- H A bundle of document was submitted

#### Employees' Evidence:

#### **The Applicant's representative made the following submissions:**

- The Applicants were appointed on different dates as Chief Radiographers also known as Chief Diagnostic Radiographers. Some were therefore in supervisory positions. They held this position

before the implementation of the OSD for Therapeutic, Diagnostic and other Related Allied Health Professionals: PHSDBC Resolution 2 of 2010 which became effective on the 1<sup>st</sup> July 2010.

- The translation letters of the Applicants reflect their job titles as Diagnostic Radiographer which differs from the positions they were appointed in prior to the implementation. The Applicants were accordingly also paid in terms of the translation.
- The representative made reference to translation letters from Jane Furse Memorial Hospital, ODI District Hospital and the Charlotte Maxeke Academic Hospital.
- The Applicants' representative submitted that the Applicants were unfairly demoted by the Respondent from Chief Radiographer to Diagnostic Radiographer. Reference was also made to case authorities indicating the unfairness of demotion.

### Employers' Evidence:

The Respondent's representative made no submissions nor did it provide a plausible reason for its failure to do so.

### ANALYSIS OF EVIDENCE AND ARGUMENT

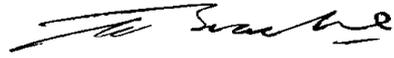
1. The Labour Relations Act (LRA) prohibits unfair labour practices. An unfair labour practice is any unfair act or omission at the workplace, involving:
  - unfair conduct of an employer relating to the promotion or demotion or probation of an employee;
  - unfair conduct relating to the provision of training of an employee;
  - unfair conduct relating to the provision of benefits (for example, pension, medical aid, etc) to an employee;
  - unfair disciplinary action against an employee (short of a dismissal). For example, a final written warning or unfair suspension;
  - the refusal to reinstate or re-employ a former employee in terms of any agreement. For example, a retrenchment;
  - an occupational setback in contravention of the Protected Disclosures Act (No 26 of 2000) because an employee has made a protected disclosure defined in that Act. For example, an employee is denied overtime because he made a disclosure in terms of the 'Disclosure of Information Act'.
- 2 In terms of the definition of what constitutes an unfair labour practice the onus rests with the Applicant to show that the Respondent's actions were unfair.

- 3 From the submissions made it is clear that the Respondent had presented the Applicants with translation letters which demoted them from the Chief Diagnostic Radiographers to Diagnostic Radiographers without providing them with a plausible reason for this. In my view this action of the Respondent is tantamount to a demotion and our labour courts in ***Van Der Riet v Leisure Net t/a Health and Racquet Clubs [1997] 6 BLLR at 721 (LAC)***, held that, “failure to consult with an employee in a non – disciplinary demotion is an unfair labour practice”. In ***Du Toit and Others Labour Relations Law (4<sup>th</sup> Edition at 465)*** the learned authors state that, “In law demotion could also mean a reduction or diminution of dignity, importance, responsibility, power or status even if salary, attendant benefits and rank are retained.” See also in *Solidarity obo Kern v Mudau and Others (JR987/05) [2007] ZALC 3 (22 February 2007)* what **MOKGOATLHENG A.J.** stated referring to the above case law.
- 4 In light of the above it is my view that the Applicants had discharged the onus of showing that they were unfairly demoted.
- 5 Flowing from this is also the fact that as a result they would have been incorrectly translated and should be translated to the position of Chief Diagnostic Radiographers.

## AWARD

1. The Respondent is ordered to appoint the Applicants whose names appear hereunder to the position of Chief Diagnostic Radiographer and to pay them the difference in remuneration and benefits applicable to that position:-
  - a. I Khoza
  - b. A N Matshiya
  - c. E L B Kafautamva
  - d. S E Fothoane
  - e. T R Mofokeng
  - f. L A Ilali
  - g. B. S Ntamo
  - h. G K Takadi
  - i. T A Tsie
  - j. B C Sebate
  - k. M M Pule
  - l. T J Mutombo
  - m. W L Motloung
  - n. R.A Kekana .
  - o. A Motubatse
2. The promotion referred to in 1 above shall operate retrospectively from the 1<sup>st</sup> July 2010.
3. Respondent is further required to pay all remunerations and benefits as back pay, resulting from the retrospective operation of the promotion.
4. The above order should be complied with within 30 days from the date of the Respondent receiving the award.

| PSHSBC Panelist

  
**Adv. RONNIE BRACKS**