



PHSDSBC

PUBLIC HEALTH AND SOCIAL DEVELOPMENT
SECTORAL BARGAINING COUNCIL

ARBITRATION AWARD

Commissioner: **JOSEPH MPHAPHULI**

Case No: **PSHS396-17/18**

Date of award: **25 November 2017**

In the matter between:

NEHAWU obo Mabale,M

(Union / Applicant)

and

Department of Health- North West

(Respondent)

1. DETAILS OF HEARING AND REPRESENTATION

1.1 The hearing took place at the Respondent's premises situated in Rustenburg. The hearing was conducted on 17 November 2017 and in terms of Section 191 of the Labour Relations Act 66/1995.

1.2 Mr J Dlamini, an employee in the service of the Respondent represented the Respondent. Mr B Modisane, NEHAWU official appeared for the Applicant.

1.3 The proceedings were digitally recorded.

2. ISSUE IN DISPUTE

2.1 Collective Agreement- Interpretation or application and what the accurate interpretation should be.

3. BACKGROUND TO THE DISPUTE

3.1 The Applicant was employed on 01 June 2008. The Applicant served in the capacity of a professional nurse and was remunerated at R29 000.00. The Applicant filed for appointment as a specialized nurse and to be remunerated according to the Occupation Specific Dispensation.

4. SURVEY OF EVIDENCE

4.1 APPLICANT'S SUBMISSIONS

4.1.1 The Applicant was employed as a general nurse in 2008. Her appointment followed a job advert for a general nurse at the hospital. The Applicant was appointed a team leader a year later.

4.1.2 Notwithstanding the fact that the Applicant was appointed as a general nurse the Respondent placed her in a specialised duties as contemplated by the Occupation Specific Dispensation.

4.1.3 Her supervisor recommended that the Applicant be remunerated at speciality rate as of June 2008.

4.1.4 The Applicant obtained the required qualification and experience for a speciality appointment at the time of employment as provided for in terms of Clause 2.1 of Resolution 3/2007.

4.2 RESPONDENT'S SUBMISSIONS

4.2.1 The Applicant was appointed as general nurse consistent with her job application. The Applicant remains in the said position.

4.2.2 The Respondent was not duty bound to appoint the Applicant in a different capacity in the absence of an advertised vacancy. The Applicant was seeking a promotion. Promotion can only follow an advertisement of an existing post.

4.2.3 Clause 32 of the Department of Administration in the Public Service was the point in reference.

4.2.4 Clause 1.4 of Resolution 3/2007 emphasized the need for a vacant advertised position.

5. ANALYSIS OF SUBMISSIONS AND ARGUMENT

5.1 Unlike in the case of dismissal disputes where the existence of a dismissal is not in dispute, the onus to prove that the prevailing interpretation or application of a Collective Agreement was inaccurate rest with the party claiming same. This being the case the Applicant Party had a duty to discharge the onus.

5.2 To achieve this objective, the Applicant placed reliance on Resolution 3/2007, in particular Annexure A thereof. In terms hereof, qualification in a speciality deserves placing in a speciality ward/ section.

5.3 The Respondent's case was based on a directive from the Department of Public Administration in the Republic of South Africa as well as Resolution 3/2007, in particular Clause 1.4 thereof.

5.4 Clause 1.4 succinctly and in no uncertain terms stated that appointment in a speciality area was dependent on the existence of a funded and advertised post.

5.5 The directive herein above referred to made similar provision.

5.6 It was not disputed that the Applicant applied for a generalist post. The Applicant was appointed in a general post.

5.7 The fact that the Applicant was performing duties pertaining to speciality did not make the Applicant a confirmed specialist which subject was regulated by the directive and the Resolution.

5.8 As matters stood the Applicant's status did not subscribe to both the directive and the Resolution.

5.9 In the circumstances I find that the Applicant did not make a case for the speciality appointment claim.

5.10 The Applicant's submissions were not supported by facts in the form of the directive and the resolution.

6. AWARD

6.1 The application for speciality appointment fails for lack of substance.



Joseph Mphaphuli
Signed