



ARBITRATION AWARD

Panelist/s: Adv PM Venter
Case No: PSHS 427-11/12
Date of Award: 30 January 2012

In the ARBITRATION between:

PULE & 1 OTHER
(Applicant)

and

DEPARTMENT OF HEALTH: FREE STATE
(Respondent)

ARBITRATION AWARD

DETAILS OF HEARING

1. The matter was set down for arbitration on **19 January 2012** (where after parties had one week to submit written heads of argument) at the offices of the Respondent in Bloemfontein.
2. The Applicants were represented by Mr Mofokeng, an official from NEHAWU, whilst the Respondent was represented by Molokoane, from the Labour Relations Directorate.

3. No interpreter was required and the matter was mechanically recorded.
4. At the commencement of the proceedings it was agreed that no witnesses would be called and that parties would argue their respective matters by means of written argument only.

ISSUE TO BE DETERMINED

6. I was called upon to determine whether or not the Respondent committed an unfair labour practice within the ambit of section 186(2)(a) of the Labour Relations Act, 66 of 1995 (hereinafter referred to as "the LRA").

BACKGROUND TO DISPUTE

7. The matter was referred as an unfair labour practice dispute (section 186.2.a) and relates to unfair conduct (promotion, demotion, benefits, **training**).
8. The Applicants indicated that they are dissatisfied about the fact that the Respondent does not wish to subject them to a certain training course.
9. The Applicants, Mr Mangoejane Joria Pule and Mr Maile Sebotsa are employed by the Respondent as Emergency Care Practitioners. On the 30th June 2011, the Applicants applied for study leave, for a four months special leave to study AEA at Tshedimoseetso Company outside the province.
10. The application was not met favourably and led to this dispute.

SURVEY OF ARGUMENTS PRESENTED

ARGUMENTS OF APPLICANTS

It was argued on behalf of the Applicants that:

11. On the 30 June 2011 the Applicants applied for a four months special leave to study AEA at Tshedimoseetso Company outside the province. The applications were received by the Applicants' station manager.

12. In all the letters of the Respondent, The respondent failed to respond to the application of a study leave except that the matter was referred to two persons which also did not want to take a decision on the study leave.
13. The Respondent is not acting consistent because they allowed other employees to utilize study leave outside the province and in this case the Respondent refused to grant study leave whereas the training would improve service delivery.
14. The Public Services Regulations, 2001 (government notice no. 1 of 5 January 2001 clause E.3 (a) stipulates that a Head of a Department may grant bursaries for higher education to both serving prospective employee, but may allocate bursaries for general education and further education and training only to serving employees. I was referred to **Transnet LTD V CCMA (2001) 22 ILJ 1193(LC)** where an employer's conduct in respect of training constitutes an unfair labour practice if it is inconsistent.
15. The union argued that the Respondent's refusal to grant the Applicants leave must be declared an unfair labour practice in terms of section 186(2)(a) because the Applicants were merely requesting study leave, which will benefit the department health.

ARGUMENTS PRESENTED BY THE RESPONDENT

It was argued on behalf of the Respondent that:

- 16 Tshedimosetso Trauma Training Ambulance Academy submitted a quotation for training, which is confirmation that Mr Pule Mangoejane has successfully passed his entrance examination with the academy the document is dated 22 June 2011. According to the Applicants' referral documents page, 10 of bundle "B" in particular paragraph 5.2, "We, as applicants we wrote our entry examination and passed in June 2011". The Applicants therefore wrote the entrance examination before they know whether their application will be successful or not, and the fact that they paid an amount of R300.00 to write the entrance examination is probably the reason behind their dispute in that they wanted to rush the Respondent to grant approval for them to study in North West without following or discussing their wish with the Respondent first.
- 17 The Applicants received feedback that their applications were received. The Applicants were never denied any opportunity to further their studies. To leave their employment for a protracted period is however a prerogative of the Respondent. The Respondent is also at liberty to decide when training would be in the interest of the Respondent.

ANALYSIS OF ARGUMENTS PRESENTED

- 18 The onus to establish that an unfair labour practice was committed was vested on the Applicants. They had to establish, on a balance of probabilities, that the Respondent treated them unfairly.
- 19 The Applicants simply demonstrated that they are eager and keen to register for a 4 months course and that the Respondent refused to grant them study leave for this period. They failed to establish any *causa* for their claim and simply stated that it would better their performance and that the course would benefit the Respondent; a claim that is denied by the Respondent.
- 20 The Applicants did not refer me to any policy, regulation or act that entitled them to any recourse. To simply obtain a quotation for training and then to demand that the employer must grant study leave is ridiculous.
- 21 I was not convinced that the Respondent acted unfairly and that an unfair labour practice was committed.

AWARD

22.1 The Respondent committed no act of unfair labour practice and the application is dismissed.

22.2 I make no order as to costs.



Adv PM Venter
PHSDSBC Arbitrator