



ARBITRATION AWARD

Panelist/s: Harold Ntale Matsepe
Case No.: PSHS443-11/12
Date of Award: 2-Mar-2014

ARBITRATION AWARD

Panelist: NH Matsepe

Case No: PSHS443-11/12

Date of Award: 3 December 2013

In the ARBITRATION between:

PSA OBO MN MALULEKE AND 1 OTHER

APPLICANT

And

DEPARTMENT OF HEALTH AND SOCIAL DEVELOPMENT- LIMPOPO

RESPONDENT

Union/Applicant's representative:

Mr M D Khosa

Union/Applicant's address:

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Respondent's representative: Mr M V Ngoasheng
Respondent's address: 18 College Street
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1. DETAILS OF THE HEARING AND REPRESENTATION

- 1.1 The arbitration hearing took place at Malamulele Hospital on 9 September 2013.
- 1.2 The applicants were represented by Mr MD Khosa, an official from PSA, a duly registered trade union.
- 1.3 The respondent, on the other hand, was represented by Mr MV Ngoasheng, its HR official.

2. ISSUES IN DISPUTE

- 2.1 I had to determine whether the respondent committed an unfair labour practice and to make the necessary orders.

3. BACKGROUND TO THE DISPUTE

- 3.1 The two applicants, both current employees of the respondent, alleged that the respondent committed an unfair labour practice.
- 3.2 The source of the complaint was that the respondent has reversed or cancelled their appointments into senior positions, for which they were duly appointed prior to the reversal or cancellation.
- 3.3 The respondent contended that it was justified to effect the cancellations or reversals as a means of correcting the error that accompanied their appointments. The respondent contended that both applicants were erroneously appointed as they both did not meet the requirements of 10 (ten) years' service.
- 3.4 It was conceded by both applicants that they had not achieved 10 (ten) years of service at the time of their appointments. They however, contended that the appointments ought not to have been reversed or cancelled as other considerations played a role in their appointments.
- 3.5 The matter could not be resolved and we had to proceed with arbitration.
- 3.6 Both parties agreed that no oral evidence would be led but that both parties would rather submit Heads of arguments by 9/9/2013, which were duly submitted.

4. SURVEY OF THE SUBMISSIONS AND ARGUMENTS

4.1 Mr MD Khosa, representative of both applicants, submitted the submission of applicants, which is summarized as follows:

4.2 Applicant MN Maluleke and applicant KO Manganyi were 9 (nine) and 8 (eight) years experienced, respectively, at the time of the advert.

4.3 He argues that the appointments be condoned because the financial implications is minimal compared to the entry level and notches of the said posts. Further that the appointment letters be condoned as both applicants are currently above the entry level of the posts in dispute.

4.4 He further contended that there is no broken relationship as both applicants are still employees of the respondent.

4.5 Mr. MV Ngoasheng submitted for the respondent as follows:

4.6 The applicants were informed that their appointments were not in line with the OSD directives and that they did not meet the minimum requirements of 10 (ten) years after registration as a professional nurse. Further that applicants were offered an opportunity to state their side of the matter and to ask questions and show cause why the appointments should not be withdrawn.

4.7 He further submitted that both applicants did not meet the 10 (ten) years' experience requirement at the time of their applications. It is his submissions that the applicants were given job offers at salary notches and grade inconsistent with their years of experience after registration with the South African Nursing Council, as per the advertisement and the Occupation Specific Dispensation for nurses.

4.8 He further submitted that applicants should have had 10 (ten) years' experience and not less at the time when they applied for the positions.

4.9 He lastly referred to decided Labour Court Cases to support his view that the appointments of applicants should remain withdrawn.

5. ANALYSIS OF THE SUBMISSIONS AND ARGUMENTS

5.1 In this type of cases the onus is always on the affected employee to prove that the employer indeed committed an unfair labour practice. This is the essence of section 186 dispute.

5.2 The onus is therefore on the affected applicant to prove such alleged commission.

5.3 In this case it is my view that applicants did not succeed to discharge the onus of proof.

5.4 The fact that the posts were reversed does not automatically point to the commission of the unfair labour practice.

5.5 The submission of applicants does not sufficiently indicate why the appointments should not have been withdrawn. It does not point at other instances, if any, where no withdrawal took place despite the facts being similar to their cases.

5.6 The facts before me indicate that the respondent merely took action to reverse wrong-doing and cannot be faulted on this.

5.7 There is no evidence on the role played by the selection as well as the interviewing panels and to what extent the respondent was aware of their wrong-doing but kept quiet or encouraged such wrong-doing to actually persist.

5.8 In the absence of such allegation of acts of commission or omission on the part of the respondent I cannot disallow the respondent from carrying out a corrective action once made aware of the irregularities.

5.9 It is therefore my finding that both applicants failed to discharge their onus of proof and their application stands to be dismissed.

6. AWARD

6.1 The applicants failed to prove that the respondent committed an unfair labour practice.

6.2 Referral of applicants is hereby dismissed, and

6.3 No order as to costs.



N H MATSEPE
PHSDSBC COMMISSIONER
1/8/14

NH Matsepe
PHSDSBC Commissioner