



# ARBITRATION AWARD

Panellist/s: Joseph Mphaphuli  
Case No.: PSHS463-11/12  
Date of Award: 30-Aug-2012

In the ARBITRATION between:

DM Snashall  
\_\_\_\_\_  
(Union/ Applicant)

And

Department of Health – Kwazulu Natal  
\_\_\_\_\_  
(Respondent)

Applicant's Address: 35 Linwood Drive  
Boughton  
Pietermaritzburg  
3201

Telephone: \_\_\_\_\_  
Fax: \_\_\_\_\_

Respondent's Representative: Advocate Zondi  
Respondent's Address: Private Bag x 9051  
Pietermaritzburg  
3200

Telephone: 033 395 2391  
Fax: 033 342 6701

## **DETAILS OF HEARING AND REPRESENTATIONS**

The hearing took place at the Respondent's premises in Pietermaritzburg on 20 August 2012. The hearing was conducted in terms of Section 191 of the Labour Relations Act 66/1995, as amended.

The Applicant appeared in person. Mr. Zondi, an Advocate, represented the Respondent.

The proceedings were digitally recorded.

## **ISSUE IN DISPUTE**

Whether there was a dismissal or not and the appropriate remedy, if any.

## **BACKGROUND TO THE DISPUTE**

The Applicant was employed as a temporary employee in 2002. She was given a contract in 2007. She was employed as a co-ordinator midlevel worker training – under the Disability and Rehabilitation Programme at a monthly rate of R 12 000.00.

Her services were terminated on 31 August 2011. The Applicant filed for reinstatement.

## **SURVEY OF EVIDENCE AND ARGUMENT**

The Applicant gave evidence. The Respondent served her with a fixed term employment contract. The contract was with effect from 01 September 2007 to 31 August 2009.

She was moved by the then General Manager, Mrs. Phillips, to another section with the indication that she could be employed permanently in the said post. The post was admin officer level 7 for private and state aided institutions. The move took place in or about February 2009.

The Respondent extended her contract at the expiry date of 31 August 2009 to 28 February 2010 on the same terms and conditions she was initially employed on, the only difference being that she was in a different post.

A further extension was effected 01 March 2010 to 28 February 2011. The post was advertised in December 2010. She applied for the post but was not appointed to the post.

She could not accept the fact that her application was not successful in view of the fact that she was in the post for a year and six months. Her contract expired soon after the unsuccessful application. The Respondent did not renew her contract on the basis that the department had taken a stand not to renew fixed term contracts.

To her amazement the fixed term employment contracts of her colleagues were renewed for another year.

The new advertisement excluded her in that a University Degree qualification was now a requirement. She did not have one and it was previously not a requirement.

Her manager was equally not impressed with this development and had consequently took issue with the H.R. as a result the advert was withdrawn. Her contract was extended form 01 March 2011 to 31 August 2011.

Her manager, Dr Mhlongo took maternity leave and was on leave when Mrs. Khathi and Mrs. Nancy Jenkins took up issue with the H.R Department.

The H.R Department advised that the Applicant could be absorbed in the position if management so motivated or extend her contract until Dr Mhlongo was back from maternity leave to attend to the matter.

Her management did both. She did not however receive any feed back from the responsible management in the HR Department.

Dr Mhlongo testified in the Respondent's case. She was employed as a deputy director general. She was previously employed as a director hospital services until 31 May 2012. Nancy Jenkins reported to her directly. The Applicant reported to Mrs. Nancy Jenkins at the time the dispute arose.

She was placed in the office with the sole purpose of cleaning up as the unit was in shambles, that was in 2011.

Her first encounter with the Applicant was in February 2011. The Applicant raised issues of concern to her namely the advertisement of a post which she occupied.

She investigated the matter and established the fact that the post was advertised whereupon she instructed the H.R Department that the advertisement be withdrawn. She in the interim extended the contract by six months 01 March to 31 August 2011.

She had further after studying the post established that the post could be adequately occupied by a person with a clinical knowledge, namely a nurse or a doctor.

She did not believe that the Applicant was a suitable person for the post and could therefore not be appointed to the post. She had in her discussions with the Applicant informed the Applicant that she could not be accommodated in her unit in view of the fact that she did not possess the requisite skills for the replacement position.

As matters stood the admin officer position did not exist any more.

## **ANALYSIS OF EVIDENCE AND ARGUMENT**

At best the Applicant's case was that the Respondent should have favourably taken into account the fact that her fixed term employment contract was renewed several times and accordingly absorbed her in its service instead of terminating her employment contract.

The Applicant had earlier raised other issues namely, that other employees' fixed term contracts employed in similar circumstances had their contracts renewed, that she was given an undertaking that she would be employed indefinitely and that her application for a permanent position was unfairly turned down.

It became evident following Dr Mhlongo's testimony that the Applicant's version was unsustainable. Further the Applicant was the only witness in her case resulting in her evidence's failure due to not being corroborated.

The Applicant had subsequently concurred with Dr Mhlongo that she in fact pleaded to be absorbed in the establishment in whatever capacity the department would have deemed fit. This was not to be.

As a consequence the Applicant's fixed term employment contract was terminated.

Dr Mhlongo gave a sound and clinically rational explanation as to why the Applicant's profile did not fit the new position.

In the event the logical conclusion was to terminate the Applicant's fixed term employment contract.

## **AWARD**

1. There was no dismissal. Termination of employment was by agreement as contemplated by the employment contract



---

Joseph Mphaphuli

Signed

PHSDSBC Panelist

29 August 2012