



# ARBITRATION AWARD

Panellist/s: Terrence Serero  
Case No.: PSHS498-10/11  
Date of Award: 6-Oct-2013

In the **ARBITRATION** between

***HOSPERSA obo Ms. J. Van Wyk***

(Union/Applicant)

And

***Department of Health – Northern Cape***

(Respondent)

**Union/Applicant's representative:** *Mr D Segano*

Union/Applicant's address: *PO Box 3179*

*Kimberley*

*8300*

Telephone: *053-842-2001*

Telefax: *053-842-2003*

E-mail: *Northerncape@hospersa.co.za*

**Respondent's representative:** *Ms Brekelsman*

Respondent's address: *Private Bag 5042*

*Kimberley*

*8300*

Telephone: *053-830-2000*

Telefax: *086-542-3507*

E-mail: \_\_\_\_\_  
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**1. DETAILS OF HEARING AND REPRESENTATION**

- 1.1. This matter was set down for arbitration on 26 July 2013. A union official, Mr. D. Segano represented the applicant, whilst the respondent was represented by its Labour Relations Officer, Ms Brekelsman.
- 1.2. The parties indicated that they have agreed to make written submissions and therefore would not call any witnesses. They undertook to submit the written arguments within 7 days, but they have failed to do so.
- 1.3. Consequently, the Council was advised to close the file pending receipt of the parties' submissions. The respondent submitted its written submissions on 15 August 2013. At the time of writing this award only the respondent's submissions had been received.

**2. ISSUE TO BE DECIDED**

- 2.1. The Interpretation and application of a Collective Agreement.

**3. BACKGROUND TO THE ISSUE**

- 3.1. The applicant was employed as a Staff Nurse on 1 June 1992. She subsequently qualified as a Professional Nurse in November 2011 and earns a monthly salary of R15470 – 52.

**4. Respondent's Testimony**

- 4.1. The applicant is employed as a Professional Nurse by the Northern Cape Department of Health in a primary health care facility. She was initially employed at the Jan Kempdorp hospital and with the implementation of the Occupation Specific Dispensation (OSD) for Nurses she was translated as a General Nurse. This was due to the fact that as at 30 June 2007 she was working as a Professional Nurse.
- 4.2. On 1 February 2009 the applicant was relocated to the Jan Kempdorp Clinic in terms of section 14 of the Public Service Act 103 of 1994. Section (3) (c) provides that " an employee who has been transferred to or who is employed in a post of a higher grade than his or her own grade, shall not by reason only of that transfer or employment be entitled to the higher scale of salary applicable to the post (See Annexure A1).
- 4.3. Further, the Nurses OSD agreement (Resolution 3 of 2007) was signed in the Public Health and Social Development Sectorial Bargaining Council. According to the OSD there was a difference in salary between a General Nurse and a Specialized Nurse (I, e. Primary Health Care).
- 4.4. Organized labour declared a dispute based on the implementation of Resolution 3 of 2007. A settlement agreement was reached between the parties wherein it was clearly stipulated that "the basis of translation to the OSD for nurses shall be the duties that a nurse was performing as at 30 June 2007" (See page 17, Annexure B3).
- 4.5. On 30 June 2007 the applicant was performing the duties of a General Nurse at the Jan Kempdorp Hospital, and was translated accordingly i.e. General Nurse). She was in possession of a Primary Health Care qualification at

the time of the translation. However, this was recognized due to the facility she was working at, which is a CHC and not a Primary Health Care facility.

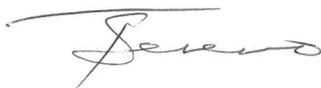
- 4.6. In order for the applicant to be appointed as a Primary Health Care practitioner she had to apply for a vacant post at a Primary Health Care facility. If her application was successful, her qualification will be recognized and the relevant salary will be paid. In fact this has since occurred as the applicant was promoted as a PNB 2 Clinical Nursing Practitioner G2 (See Annexure C1 -2). The applicant's qualification and experience was recognized following her application for a vacant post. The appointment was back-dated to 1 June 2013, with recognition of experience of 10 years and 1 month; as such the applicant's dispute no longer carries any merit.
- 4.7. According to respondent, the employer has correctly interpreted and implemented the collective agreement.

## **5. ANALYSIS OF EVIDENCE AND ARGUMENT**

- 5.1. The gist of the respondent's submission is that there was no improper interpretation and application of the Collective Agreement. It had interpreted and applied the Collective Agreement correctly.
- 5.2. As a matter of fact the applicant has since complied with the provisions of the Collective Agreement. Thus, she was ultimately promoted.
- 5.3. Consequently, there is no merit in the applicant's application and it must be dismissed.
- 5.4. As stated elsewhere in this award the applicant has failed to submit her written submissions within the agreed time frame. The applicant had failed to substantiate her claims that the respondent had failed to interpret and apply the provisions of the Collective Agreement correctly.
- 5.5. Therefore, the respondent's version is more probable and must be accepted.
- 5.6. In the circumstances, the applicant's application pertaining to the interpretation and application of a Collective Agreement is dismissed.

## **6. AWARD**

- 6.1. The applicant has failed to prove that the respondent has failed to interpret and apply the Collective Agreement correctly.
- 7.1. The application is dismissed.
- 7.2. There is no order as to costs.



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Adv. T. T. Serero.

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Public Health

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