



# ARBITRATION AWARD

Case Number: PSHS510-11/12

Panelists: Malusi Mbuli

Date of Award: 03-05-2012

In the **ARBITRATION** between

HOSPERSA obo S. Roodt

(Applicant)

And

Department of Health – Eastern Cape Province

(Respondent)

## **DETAILS OF THE HEARING AND REPRESENTATION**

1. The matter came before the PHSDSBC for arbitration under section 24{2} 24 {5} as an Interpretation and Application of a Collective Agreement.
2. It was set down for arbitration hearing at the Jamestown Hospital in Jamestown on the 03<sup>rd</sup> of May 2012.
3. The applicant Mrs. S. Roodt attended the hearing and was represented by Mr. Herbert Leshaba an official of the applicants trade union HOSPERSA.
4. The respondent Department of Health was also present at the hearing and was represented by Mr. L. Q. Busakwe, an official of the respondent.
5. The matter was finalized on the same day the 03<sup>rd</sup> of May 2012.

## **ISSUE TO BE DECIDED**

6. I am required to Interpret and Apply the Collective Agreement, and determine whether the applicants notch or salary level was supposed to be changed from notch 3 level 11 to notch 1 as a result of the transfer agreement of the Jamestown Hospital from its previous Board to the Eastern Cape Department of Health entered into between the parties on the 20<sup>th</sup> of May 2010.

## **SURVEY OF EVIDENCE**

7. The parties did not lead any evidence on the matter and there was also no argument against the applicants claim that her notch and salary level was not suppose to change when the Hospital was transferred from Jamestown Hospital Board to the Eastern Cape Department of Health.
8. The facts therefore are common and it follows that the matter was not recorded and transfer agreement between the parties will form the record of the proceedings.
9. Issues that are common:
  - That the applicant is employed by the respondent Department of Health and is stationed at the Jamestown Hospital.

- At the time of the transfer of the hospital from Jamestown Hospital Board to the Department Health Eastern Cape in May 2010 the applicant was already employed by the respondent and was amongst the staff members who were transferred as a result of the said agreement.
- That the applicant was remunerated at notch 3 salary level 11 immediately before the transfer and her salary scale was reduced after the transfer to notch 1.
- That it was against the the provisions of the said agreement to have his salary scale reduced.

10. Issues that are in dispute:

- Whether the applicant should be remunerated at notch 3 level 11 or at a reduced salary scale at notch 1.

## **ANALYSIS OF EVIDENCE AND ARGUMENT**

11. Both the applicant and the respondent are in agreement that in terms of clause 2 of the Transfer Agreement the hospital was transferred as a going concern in accordance with the provisions of Section 197 of the Labour Relations Act 66 of 1995 as amended.
12. Both parties also agree that clause 4 of the same agreement provides that on the effective date being the 1<sup>st</sup> of July 2010 the employees salary and salary scale (subject to the adjustment to reflect any increases after the 1<sup>st</sup> of July 2009 up to the effective date) and rank, notch, allowances, bonuses, hourly tariffs and rates will be transferred to the Provincial Hospital on the terms and conditions as agreed between the Province and the parties to the agreement.
13. The employer has failed to honor this agreement in respect of the applicants notch, salary scale or level and in doing so the respondent has breached the terms of the said agreement.
14. The applicant is therefore entitled to be remunerated at her salary scale that she enjoyed immediately before the transfer being notch 3 level 11 and be paid back pay with increment from the date when her salary was reduced to notch 1.
15. I therefore make the following award.

## AWARD

16. The reduction of the applicants salary scale from notch 3 level 11 to notch 1 was not in accordance with the Transfer Agreement that was entered into between the parties on the 20<sup>th</sup> of May 2010.
17. The respondent is ordered to adjust the salary scale of the applicant to the current salary scale of notch 3 level 11 as applicable at present with effect from the 15<sup>th</sup> of May 2012.
18. The respondent is also ordered to pay back pay to the applicant being the difference in the applicants current salary notch and scale and the correct salary notch 3 level 11 retrospectively from the date when the applicants salary scale was reduced to notch 1.
19. The amount referred to in paragraph 18 above will be quantified inclusive of the all the amounts which the applicant would have earned as increment for the said period and paid to the applicant by the respondent on or before the 15<sup>th</sup> of May 2012.

Signature:



Commissioner: Malusi Mbuli