



ARBITRATION AWARD

Panellist/s: Martin Sambo
Case No.: PSHS513-11/12
Date of Award: 15-Apr-2012

In the ARBITRATION between:

PSA obo Nkoana, K.G
(Union / Applicant)

and

Department of Health - Gauteng
(Respondent)

Union/Applicant's representative: _____
Union/Applicant's address: _____

Telephone: _____
Telefax: _____

Respondent's representative: _____
Respondent's address: _____

Telephone: _____
Telefax: _____

DETAILS OF HEARING AND REPRESENTATION

This matter was scheduled for Arbitration on the 22nd March 2012 at 10h00am at the offices of the Department of Health and Social Development, Bank of Lisbon Building, Corner Sauer and Market Streets in Johannesburg.

The employee party, Ms KG Nkoana, (hereinafter referred to as the Applicant), was represented by her union representative Mr Henry Hall. The employer party, Department of Health-Gauteng (hereinafter referred to as the Respondent), was represented by its Labour Relations Officer Mr Mr M Lelaka.

The proceedings were electronically recorded.

ISSUE TO BE DECIDED

I have to decide whether, in the circumstances detailed hereunder, the Respondent failed to correctly interpret or apply the collective agreement by not translating the Applicant in terms of the OSD requirements.

BACKGROUND TO THE ISSUES

The Applicant, Ms Nkoana is employed by the Respondent since 01 September 1990 and joined the West Rand District Council on 01 October 1989 and has been working as a Training Coordinator. The Respondent is a provincial government department responsible for health matters in Gauteng Province.

This matter was referred to the PHSDSBC as a dispute relating to Interpretation or Application of a collective agreement. The matter was conciliated and a certificate of non-resolution was issued. The Applicant then referred the matter to arbitration. The Applicant seeks to be placed on correct salary level according to PHSDSBC resolution 3/2007 read with the Respondent's circular 8/2008.

There were no preliminary points raised by the parties. The parties insisted that there were no chances of settlement of this matter. The parties submitted bundles of documents and each called upon one witness to prove their cases respectively.

EVIDENCE AND ARGUMENT

The Applicant's evidence

Ms Khangalani Gusta Nkoana testified that:

She works for the West Rand District Council as a Training Co-ordinator. She trains nurses employed by the district. Bundle A3 is her job description which she agreed with the Respondent. Bundle A4 is her recent quarterly review of October 2011 which she signed with her supervisor Mr Tiro. Bundle A5 is her quarterly review for 13 July 2007. Since then to date her functions has not changed. Bundle A2 is her work-plan for 2010/2011 which she agreed with the Respondent and has her key performance areas. All this documents indicates that she is a training coordinator.

Page 6 bundle A1 is the Respondent's circular minute 8/2008 and page 7 is part of that circular. This are OSD guidelines and clarifies how a professional nurse is translated. She is in a staff development unit and training coordination falls in that unit. The first bullet, second point on page 7 reads thus "*A Professional Nurse who has a Post Basic Qualification in Nursing Education and whose functions includes facilitation and provision of training in the clinical situation must be translated to the Nursing Education stream*". She has not been translated. She has asked the Respondent to translate her, submitted her qualifications and made follow ups with her supervisor but still did not get a response. In terms of paragraph2 bullet 1 she is should be translated. She has the qualification and she is in the job.

Under cross-examination she testified that;

She was first translated into OSD in 2008 when she submitted her grievances. She was translated as a professional nurse in general stream. Page 8 of A1 shows that she met the requirements for registration. Paragraph (a) reads thus "has satisfied the requirements for registration of the additional qualification on 30 November 2006". It means she has attained the skills as a nursing educator and should be forwarded a diploma in nursing education. She has a post basic nursing qualification which she submitted to her supervisor and had a date of 15 December 2007 from the nursing council. That document is in page 20 of the bundle B. It

is a certificate produced for nurses with nursing education. (NBs Respondent acceded to the fact that the Applicant has a Post Basic qualification in Nursing Education).

She was supposed to be translated to the nursing educator' stream. The duties of the nursing educator is the facilitation, training and support at clinical level under Staff Development. Clinical situation as referred to on page 7 paragraph 2 bullet 1 means that she is carrying on two functions of coordinating and training. This is supported by her job description on bundle A3 bullet 3 that states "*Training clinicians on reproductive policies & family planning*". This is part of clinical situations. She would usually provide this training as aligned with the training plan and where there are gaps. This is further found in the performance work-plan (bundle A2) paragraph 4 that states "*Train staff on generic and professional courses*" and this document has been signed by his supervisor. Clinical situations need not be in the hospitals and college. In the district there are clinics where nurses assist clients and that is where she features. She does both training and facilitation and cannot be full time in the clinic.

The Respondent's evidence

Mr Andrew Mojalefa Tiro testified that:

He is the HR Manager in the West Rand District. Resolution 1/2007 was implemented on 01 July 2007 and the institution were given instruction in September 2007 to implement retrospectively. The requirements were that nurses must be working in a post and must have a speciality. One had to be on the post as on 03 July 2007. The Applicant was a training coordinator in the district if there are needs as and when they come. The Applicant was not translated into a nursing stream in terms of paragraph 2 bullet 1 as she did not have a post basic qualification as at 01 July 2007. She has such currently which she obtained later in December 2007. Further the Applicant does not provide training in clinical situations as she is only coordinating (ie organise people to train from a venue). Clinical situations means one takes the students from a facility to do clinical work accompanied by a doctor and professors.

One could not use the documents she provided in bundles A2, A3 and A5 to translate her. She must have a qualification and must do the training. At district level there is no clinical training. This documents are further dated 2010 which was after the translation was done. She was translated into a the post of coordinator general stream. The Applicant obtained her qualification in December 2007 and registered it with Council in 2010 around 08 November. It could not be recognised retrospectively and the recognised specialities was Primary Health Care and Advanced Midwifery.

Under cross-examination he testified that;

The Applicant did not obtain her certificate on 30 November 2006 as she would have submitted it. She did not submit her qualifications otherwise she would still have an original copy as one only has to submit a certified copy. The Applicant started to work under him since March 2006 until 30 October 2011. During that period her job description did not change. Bundles A4 and A5 are PMDS documents whose primary purpose is training and development and they both signed those documents. His interpretation of the words in those documents and the work-plan is that she has only coordinated and has not been physically in class doing the training.

ANALYSIS OF EVIDENCE AND ARGUMENTS

I am called upon to determine whether, in the circumstances detailed above, the Respondent failed to correctly interpret or apply the collective agreement by not translating the Applicant in terms of the OSD requirements. The Applicant based its case mainly on resolution 1/2007 read with resolution 8/2008 paragraph 2 bullet 1 which states that "*How do we translate a Professional Nurse who is allocated in a staff development unit as part of the nursing management: A Professional Nurse who has a Post Basic Qualification in Nursing Education and whose functions includes facilitation and provision of training in the clinical situation must be translated to the Nursing Education stream*"

The Applicant personally testified that she met the requirements of the collective agreement in that she had the Post Basic Qualification and was conducting training in a clinical situation and was also coordinating training. To prove her case she submitted her job, description and work-plan signed by her supervisor and quoted from both that she was conducting training in a clinical situation although not on a full time basis.

The Respondent on the other hand called upon the Applicant's supervisor who testified that the Applicant did not have the necessary qualification at the time. He further testified that she did not conduct training in a

clinical situation as there is no such situation in a district but only in college and hospitals. The Respondent has further raised a jurisdictional point in its closing arguments that council would not have jurisdiction as the Applicant only raised the interpretation or application of circular 8/2008 and did not raise any clause from the resolution itself for the Commissioner to give correct interpretation or application.

I would like to first deal with the latter point by the Respondent. Firstly it is improper to raise a jurisdictional point in closing arguments as they will lead to obvious unfairness as the other party has not been given a fair chance to respond to that point. Secondly the circular 8/2008 is a document giving effect to resolution 1/2007 and therefore one cannot separate one document from the other. I therefore find the Respondent's claim on this point to be without basis.

On whether the Applicant performed training in clinical situations the Respondent contends that clinical situations are only found at the college and in hospitals where the students are trained by doctors and professors. The Applicant on the other hand insist that clinical situations are also found in districts as there are clinics. The Respondent witness who was the supervisor of the Applicant insisted that the Applicant only coordinated training (ie organise venues and material for trainers and trainees) but did not personally train people. What I find difficult to understand is that the same supervisor signed in the Applicants performance assessment document (bundle A5 page 9) that the Applicant was effective in providing Generic and professional training. Due to this contradiction I find it on a balance of probabilities that the Applicant did provide the necessary training.

On whether the Applicant had the required post basic qualification the Respondent contended that the Applicant did not possess the necessary qualification at the time. Page 8 of bundle 1 clearly indicate a confirmation document from the University of Johannesburg that states that the Applicant has satisfied the requirements for registration of the additional qualification on 30 November 2006 (Diploma In Nursing Education). When one reads this document with page 20 in the Respondent's bundle B (a document indicating that this additional qualification was registered with the Nursing Council on the 15 December 2007), it becomes clear that the Applicant did possess the necessary qualification at the time. The Respondent did not dispute the validity or authenticity of page 20. In fact page 20 was its own document. The parties further informed me that nursing council receives qualifications of nurses from the Respondent and then takes time to register those qualifications. I therefore find on a balance of probabilities that the Applicant did possess the required post basic qualifications at the time.

From the evidence before me, it is clear that the Applicant was a professional nurse who was in a staff development unit, had the required post basic qualifications and her functions included facilitation and provision of training in clinical situations.

I therefore find that the Respondent did not correctly interpret or apply resolution 1/2007 read with circular 8/2008 when it translated the Applicant in the general stream. I find that the Applicant did qualify in terms of circular 8/2008 to be translated into the Nursing Educator's stream.

AWARD

1. The Applicant be correctly translated into the Nursing Educator's stream.
2. The translation be backdated to 01 July 2007
3. I make no order as to costs



Martin Sambo

PANELIST : MARTIN SAMBO

15 April 2012