

PHSDSBC

ARBITRATION AWARD

Case Number: PSHS525-11/12

Panelists: Malusi Mbuli

Date of Award: 10-10-2012

In the **ARBITRATION** between

NEHAWU obo Njingana & 3 others

(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. It was set down for arbitration hearing at the Department of Health, Fort England Hospital in Grahamstown.
2. The applicants I. Ngingana & 3 others attended the hearing and were represented by Miss. N. Twalingca an official of the applicant's trade union NEHAWU. The respondent Department of Health was also present at the hearing and was represented by Mr. D. May, an official of the respondent.
3. The matter was finalized on the same day the 27th of September 2012 and the parties agreed to file their closing arguments on or before the 05th of October 2012.

ISSUE TO BE DECIDED

4. I am required to Interpret and Apply the Collective Agreement paragraph 3.2.5.3 (iii) including Part J of PHSDSBC Resolution 3 of 2007, and determine whether the applicants were correctly translated in terms of the said resolution read with the arbitration award case no PSHS492-08/09 and whether they are applicable to the applicants. Whether the applicants qualify for translation to OSD position of Operational Managers with effect from the 01st of July 2007 in terms of PHSDSBC resolution 3 of 2007.

SURVEY OF EVIDENCE

5. The parties did not lead any evidence on the matter but submitted their heads of arguments with supporting documentation because the facts in this dispute were common cause. It follows that the matter was not recorded and the party's arguments will form the record of the proceedings.
6. Issues that are common:
 - That the applicants were and are still employed by the respondent as at the 01st of July 2007 and at the date of translation they were performing duties of a Sister in Charge in their respective wards and therefore were managing the wards.

- . The applicants were performing those duties and were sometimes working night or day shift during this period. The resolution does not distinguish between employee's working day or night shift for the purposes of determining whether they were performing duties as at the 30th of June 2007.
- All the applicants in this dispute were performing duties of the Sister in Charge as at the 30th of June 2007 and were not affected by the strike that took place then.

7. Issues that are in dispute:

- Whether the applicants were correctly translated by the employer with effect from the 01st of July 2007. Whether the applicants should have been translated to the position of Operational Managers with effect from the 01st July 2007.

ANALYSIS OF EVIDENCE AND ARGUMENT

8. The applicants filed their arguments and the respondent's representative instead of filing arguments wrote a letter on the 03rd of October 2012 asking for extension of the filing of the closing arguments after he had agreed that he will file them on the 05th of October 2012. In fact in this matter the facts are common and what was expected of the parties was to file brief arguments based on the agreed facts. The question that this award has to answer is whether the applicants should have been translated to the position of Operational Manager with effect from the 01st of July 2007 because it is common cause that they were performing duties of Sister in Charge as at the 30th of June 2007.
9. In trying to answer this question the issue that needs to be discussed is whether resolution 3 of 2007 is applicable to the applicants with effect from the 01st of July 2007. This should be so because the implementation of OSD was effective from the 01st of July 2007 and any relevant position that qualified should be remunerated in accordance with the new OSD remuneration structure.
10. Clause 3.2.5.3 of the Public Health and Social Development Sectoral Bargaining Council Resolution 3 of 2007 provides that a professional nurse (registered nurse) who is managing a nursing specialty unit, and who is not in possession of a post basic clinical nursing qualification listed in Government Notice R212, as amended, but who has been performing these duties of managing the specialty unit satisfactory on the 30th of June 2007, shall be translated as a once off provision to the appropriate salary scale attached to the corresponding management level.

11. The PHSDSBC issued an arbitration award on the 07th of August 2009 in relation to the dispute declared by labour regarding the interpretation and application of PHSDSBC Resolution 3 of 2007 and this award is applicable to the Department of Health as it is applicable to Department of Public Service and Administration. Paragraph 3.4 of the arbitration agreement deals with the translation of Unit Managers not formally appointed to posts of sister in charge and subsequent advertisement of their posts in the OSD. All Nurses who were performing duties of the Unit Managers duly appointed or not must translate automatically as Operational Managers and be placed according to the streams applicable e.g. Specialty or General.
12. The above clauses clearly indicate that the implementation of OSD translations cannot have a retrospective effect and is therefore not applicable before the 01st July 2007 but is applicable to all posts that were advertised and filled after 01st July 2007. This means that if an employee is employed in a position that had not been upgraded in terms of the resolution anytime after 01st July 2007, that employee should have been employed in that post in terms of the OSD new remuneration structure.
13. With regard to this dispute the applicants I. Njingana, T. Coetzee, G. Zondani and N. Ntsunguzi were performing duties of a Sister in Charge as at the 30th of June 2007 and therefore qualify to be translated to the position of Operational Manager with effect from the 01st of July 2007.
14. I therefore make the following award.

AWARD

15. The applicants listed above were incorrectly translated or placed when OSD was implemented. All the four applicants were performing duties of a Sister in Charge as at the 30th of June 2007 and therefore qualify to be translated to the position of Operational Manager with effect from the 01st of July 2007.
16. The respondent is ordered to adjust the salary scales of the applicants to those of the Operational Manager with effect from the 01st of July 2007. The respondent is also ordered to pay back pay to the applicants which is an amount equivalent to the difference in salary scales of the applicants and the salary scales of the operational managers.
17. The respondent will adjust the salary scales of the applicants to the position of Operational Manager not later than the 01st of November 2012.

Signature:



Commissioner: **Malusi Mbali**
