



ARBITRATION AWARD

Case No: **PSHS533-17/18**

Commissioner: **THABE PHALANE**

Date of award: **08 DECEMBER 2017**

In the matter between:

PSA obo Seduku, L.L

(Union/ Applicant)

and

Department of Health- Free State

(Respondent)

1. DETAILS OF THE HEARING REPRESENTATION

- 1.1 An Arbitration hearing was held on 22 November 2017 at the Department of Health, Bophelo House, cnr Harvey and Charles Streets, Bloemfontein.
- 1.2 The Applicant did not attend but was represented by Mr A.J Greef, an Official of the Union, whilst the Respondent was represented by Mr L Mapena, the Respondent's Official.
- 1.3 The issue relates to the interpretation and application of a collective agreement Resolution 1 of 2002, Agreement on Acting Allowances.
- 1.4 The parties agreed to reconvene and draft a pre-arb minute on/before 24 November 2017 and submit written arguments on or before 01 December 2017.
- 1.5 It now appears during their discussions the parties could not meet as agreed but they both submitted written arguments on 01 December 2017.

- 1.6 The Applicant also attached the appointment letter and the request for funding application.

2. ISSUE TO BE DECIDED

- 2.1 I am required to consider whether the Respondent applied the provisions of the Resolution 1 of 2002, Agreement on Acting Allowances, correctly or not and consequent thereof, to issue the appropriate remedy.

3. BACKGROUND TO THE ISSUE

- 3.1 The Applicant referred a dispute about the interpretation and application of a collective agreement to Council.
- 3.2 The Applicant is employed as an Admin Clerk salary level 5 at the Mangaung Metro District Office. He was appointed as per letter signed by the District Manager on 01 September 2015 to act in the position of Admin Officer, Mangaung Metropolitan Health Services, at salary level 7, at page 4 of the attached PSA bundle. The period was from 01 September 2015 to 30 June 2017.
- 3.3 The Applicant submitted that he met all the requirements and must be paid his acting allowance.
- 3.4 The Respondent did not dispute that the Applicant acted as alleged but raised a point in limine that the dispute is about unfair labour practise and was referred outside the 90 days required by the rules. This point is dismissed as the Respondent did not submit facts in support of this submission, and further because the dispute is about the interpretation of a collective agreement.
- 3.5 The Respondent further submitted that the Applicant did not meet the requirements contained in the resolution. The Applicant acted in a post that was not vacant and funded.

4. ANALYSIS OF SUBMISSIONS

- 4.1 A dispute about the interpretation refers to the meaning of the provisions of the agreement and the dispute about the application refers to the effect of the

implementation or lack thereof of the Collective agreement. This is a dispute about the application of a collective agreement.

4.2 Collective Agreement 01 of 2002 section 3.1 reads as follows, “ *An employee appointed in writing to act in a post of a higher grade than the grade of the employee by the Head of Department of his/her delegate at provincial or National Level shall be paid an acting allowance to act in vacant posts provided that:*

3.1.1. *the post is vacant and funded post,*

3.1.2. *the acting period is longer than 6 weeks,*

3.1.3. *the appointing authority is a level higher than the acting appointee,*

3.1.4. *the employee must accept the acting appointment”*

4.3 The Applicant submitted a copy of the collective agreement, the acting appointment letter and the application for funding made by the CEO/District Manager.

4.4 The application for funding clearly states that funding was not approved by the Deputy Director Financial Management on 22 September 2016, a year after the Applicant was appointed.

4.5 The funding was approved by the CEO/District Manager on 29 September 2016 but this request was not approved by the Chief Operations Officer on 05 October 2016.

4.6 There is no application submitted before the Applicant acted that shows that funding was approved. From what was submitted it demonstrates that there was no funding approved for the Applicant's acting post.

4.7 It is my finding therefore that the Applicant has failed to show that the Respondent applied the provisions of Collective Agreement 1 of 2002 incorrectly.

4.8 In light of the above I deem the following ruling competent.

5. AWARD

- 5.1 The Applicant has failed to show that the Respondent applied the provisions of Collective agreement 01 of 2002 incorrectly.
- 5.2 The referral made by the Applicant is accordingly dismissed.
- 5.3 There is no order as to costs.

Panellist : THABE PHALANE



Signature : _____
Thabe Phalane (Panelist)