



ARBITRATION AWARD

Panellist/s: Joseph Mphaphuli
Case No.: PSHS555-11/12
Date of Award: 26-Feb-2012

In the ARBITRATION between:

**PUBLIC HEALTH AND SOCIAL
DEVELOPMENT SECTORAL
BARGAINING COUNCIL**

**ARBITRATION
AWARD**

NEHAWU obo Mhlongo N.E
(Union/ Applicant)

And

Department of Health – Kwazulu Natal
(Respondent)

Applicant's Representative: Mr. Ntengenyani

Applicant's Address: PO Box 239

Empangeni

3880

Telephone: 035 792 6614/5

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Respondent's Representative: Mr. Mazibuko

Respondent's Address: Private Bag x 9051
Pietermaritzburg
3200

Telephone: 033 395 2787

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DETAILS OF HEARING AND REPRESENTATIONS

The hearing took place at the Respondent's premises in Nseleni on Friday 17 February 2012. The proceedings were conducted in terms of Section 191 of the Labour Relations Act 66/1995.

Mr. Mazibuko H.R Manager in the service of the Respondent represented the Respondent. The Applicant was represented by Mr. Ntengenyani, NEHAWU official .

The proceedings were digitally recorded.

ISSUE IN DISPUTE

Whether the Applicant's application for promotion had sound legal basis or not, if so, what remedy was appropriate.

BACKGROUND TO THE DISPUTE

The Applicant served as a telecom operator at a yearly rate of R 72 000. 00. The Applicant's case was that he was unfairly by-passed for promotion.

SURVEY OF EVIDENCE AND ARGUMENT

The Applicant testified in his case. The Applicant was placed at salary level 3. He had knowledge of a circular emanating from the Respondent. In terms hereof telecom operators were to be upgraded from level 3 to level 4. Notwithstanding the circular the Respondent did not upgrade his salary level. He remained at salary level 3. The Respondent argued that he did not qualify in terms of the Respondent's policy on the

upgrading of persons who occupy posts that have upgraded. The Applicant did not believe that the circular should be read subject to the policy.

Mrs. Manqele, Chief H.R Officer gave evidence. She was responsible for the overall administration of human resources functions. She was mindful of the circular that entitled the Applicant to be promoted/ translated. She was further mindful of the fact that the circular was to be read in conjunction with the upgrading policy.

Work attendance was one of the criteria set in the policy for upgrading. The Applicant had absented himself from duty for a total of twenty two days in the preceding period and was as a result disqualified from upgrading.

ANALYSIS OF EVIDENCE AND ARGUMENT

The parties were in agreement that:

- The Applicant failed to attend at work for not less than twenty two days during the year 2010.
- The absence was unauthorised.

The dispute was whether the circular entitling the Applicant to an upgrade was subject to the provisions of the upgrade policy.

The Respondent argued in favour hereof. The Applicant Party argued to the contrary.

The reality of the matter is that the circular cannot be read in isolation. Circulars are issued as and when the need arises and unlike policies they are not permanent features. A policy on the other hand remains in place and has more weight than a circular.

A circular that is not consistent with the provision of policy cannot take effect. To be effective a circular must facilitate the implementation of the objectives of the policy.

Accordingly I find that the Applicant was disqualified for an upgrade on the basis that his conduct did not meet with the provisions of the policy. The policy rules against extensive absenteeism and requires an employee to have served the employer for a continuous twelve months minimum period in the preceding period.

In the event I find that the Applicant's case was not sustainable.

AWARD

1. There was no unfair labour practice, alternatively the Applicant Party failed to prove its existence.



Joseph Mphaphuli
Signed
PHSDSBC Panelist
20 February 2012