



**PHSDSBC**

PUBLIC HEALTH AND SOCIAL DEVELOPMENT  
SECTORAL BARGAINING COUNCIL

# ARBITRATION AWARD

Panelist: **JOSEPH MPHAPHULI**

Case No: **PSHS677-16/17**

Date of Award: **14 December 2016**

In the matter between:

**SAMA obo Adam S**

(Union/ Applicant)

and

**Department of Health- Western Cape**

(Respondent)

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## 1. DETAILS OF HEARING AND REPRESENTATION

1.1 The hearing was conducted on Monday 12 December 2016, in Western Cape. The hearing was conducted in terms of Section 191 of the Labour Relations Act 66/1995.

1.2 Mr Modisane Lelaka official of SAMA appeared on behalf of the Applicant. The Respondent was represented Mr Abraham Solomon in the service of the Respondent.

1.3 The proceedings were digitally recorded.

## 2. ISSUE IN DISPUTE

2.1 I had to determine which party's interpretation of Resolution 03 of 2009 of the PHSDSBC was correct.

### **3. BACKGROUND TO THE DISPUTE**

3.1 The Applicant's first appointment was on 01 January 2012. The Applicant was appointed as a grade 1 medical officer at R 729 315.00 per annum. The Applicant's services were terminated on 29 February 2016.

3.2 The Applicant Party sought that the Applicant should be placed on a salary scale of medical officer grade 2 as contemplated by Clause 4.1.12.2 of the PHSDSBC Resolution effective 01 June 2016.

### **4. SURVEY OF EVIDENCE**

#### **4.1 APPLICANT'S CASE**

4.1.1 Doctor Adams the Applicant, gave evidence. He resigned his position at Worcester Hospital on 29 February 2016. He obtained a position at Groote Schuur Hospital on 01 March 2016 to do unpaid work for purpose of training and exposure to ICU to qualify for a Registrar post. He signed a three months contract in this regard.

4.1.2 To the best of his ability he did not at any stage interrupt his service as a public servant. Groote Schuur was like Tygerberg Hospital where he was currently employed, a public hospital and so was Worcester Hospital.

4.1.3 The Applicant resumed duties at Tygerberg Hospital on 01 June 2016 where he was appointed as registrar at an annual rate of R686 322.00, instead of the regulated rate of R 729 315.00.

4.1.4 It was the Applicant's case that the accurate placing would be medical officer grade 2 at salary rate of R 729 315.00 per annum as contemplated by Resolution 3 of 2009 effective 01 June 2016.

4.1.5 The Applicant admitted under cross examination that the application of the Resolution was accurate. The Applicant's grief though was that the relevant clause was not fair in his view.

4.1.6 To this end the Applicant argued that the clause did not take into account that medical training may lead to supernumerary appointment to fulfil the requirements of the profession.

## 4.2 RESPONDENT'S CASE

4.2.1 The Respondent did not call any witness to testify in its case but simply conducted its case by way of argument.

## 5. ANALYSIS OF EVIDENCE AND ARGUMENT

5.1 The case was founded on Clause 4.12.2 of the Resolution.

5.2 The clause read as follows:

5.2.1 Where a Medical Practitioner, Clinical Manager (Medical), Dentist or Clinical Manager (Dental) is already on a package higher than the maximum of the scale attached to a Registrar, he/ she will retain the scale attached to his/ her existing post for duration of study.

5.3 The existing post of the Applicant was medical officer grade 1 and the going rate was R 686 322.00 per annum. The grading and salary rate fell squarely within the ambit of Clause 4.1.12.2.

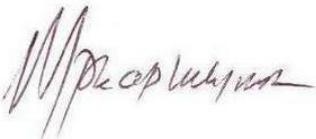
5.4 In the event the Respondent had discharged its duty in a manner that fulfilled the requirements of the Resolution and in particular Clause 4.1.12.2.

5.5 The Applicant ailed to discharge its onus of proof.

## 6. AWARD

6.1 The Respondent Party's interpretation and application of the Resolution was correct.

6.2 The application referring the dispute fails.



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Joseph Mphaphuli