



PHSDSBC

PUBLIC HEALTH AND SOCIAL DEVELOPMENT
SECTORAL BARGAINING COUNCIL

ARBITRATION AWARD

Commissioner: **KM Moodley**

Case No: **PSHS786-16/17**

Date of Award: **20 July 2017**

In the matter between:

PSA obo Mazubuko S.S. and 8 Others

Applicant

and

Department of Health- Kwazulu Natal

Respondent

DETAILS OF THE HEARING AND REPRESENTATION

1. The Arbitration took place on 3 July 2017 at the boardroom, Charles Johnson Memorial Hospital, in Nquthu.
2. The Applicants were represented by PSA official, Z Nhlangulela.
3. The Respondent, Department of Health- Kwazulu Natal was represented by its official, NR Masuku.
4. The proceedings were mechanically recorded and all witnesses testified under oath.
5. I am satisfied that the parties have been correctly cited and that the PHSDSBC has jurisdiction to hear this matter.
6. No Points In Limine were raised by either of the parties.
7. The Respondent tabled a bundle of documents, i.e. Bundle A, the Applicant did not tender any bundles of documents.
8. No objection was raised to Commissioner Moodley presiding over the Arbitration.

ISSUE TO BE DECIDED

9. The issue to be decided is

- Whether the half yearly review documents (the September review) were, or were not submitted to the HR Department of the Respondent on or before 31 October 2013,
- and if it was submitted on or before the deadline date, whether or not the Applicants qualified for payment of a pay progression.

10. Applicants believed that they had submitted their half yearly review documents on or before the deadline date and therefore they qualify for a pay progression.

11. The Respondent disputed that the Applicants had submitted their half yearly review documents on or before the deadline date and therefore the Applicants do not qualify for a bonus.

COMMON CAUSE ISSUES:

12. It is common cause that the Performance Agreements, Job Descriptions, the Half Yearly and the Annual Performance review documents are to be submitted by Employees on or before the deadline dates.

13. It was also common cause that the failure by employees to submit any one of the Performance Agreements, Job Descriptions and the Half yearly and Annual assessments to the HR Department on or before the deadline date, automatically disqualifies such employees from payment of the 3% pay progression.

ISSUES IN DISPUTE:

14. The issue in dispute is whether or not the half yearly review documents (the September review), were or were not submitted to the HR Department on or before 31 October 2013.

BACKGROUND TO THE DISPUTE:

15. Applicants were appointed by Respondent at various times, as professional nurses, at the Gateway Clinic.

16. The Applicants qualify for a pay progression in terms of the Respondents EPMDS Policy, provided that they meet all the criteria set out in HRM Circular No.78 of 2013.

17. The Applicants argued that they had submitted their performance agreements, job descriptions, half yearly reviews and their annual reviews to their supervisor on time (i.e. on or before the deadline date).
18. The Applicants' performance agreements, job descriptions and annual review documents were received by the HR Department of the Respondent on or before the deadline date. This was not in dispute.
19. The Respondent however claims that the Half Yearly review documents of the Applicants were not received by the HR Department on or before 31 October 2013.
20. Therefore, the Respondent believes that the Applicants do not qualify for the 3% pay progression.
21. The Applicants contended that they had submitted their half yearly review documents to their Supervisor and therefore, they had complied fully with HRM Circular No. 78 of 2013.
22. Applicants then referred a dispute to the Bargaining Council for arbitration.

SURVEY OF EVIDENCE AND ARGUMENTS

APPLICANT

WITNESS 1: N Mazibuko – Professional Nurse (Gateway Clinic):

23. Mazibuko testified on behalf of all the other Applicants to this dispute. She testified that for the financial year 2013/2014, she was duly assessed by her Supervisor in September 2013.
24. The other Applicants were also assessed by their Supervisor, and their annual review documents and their half yearly review documents were submitted on or before the deadline date.
25. It was only in July 2014 that Mazibuko discovered that she had not received her bonus.
26. She argued that if she had not submitted the documents on or before the closing date as stated by the Respondent, she should have been disciplined by the Respondent for the non-submission of the documents. This is clearly spelled out in HRM Circular No. 78 of 2013.
27. She was never disciplined for this incident, and neither were the other Applicants disciplined. The Circular also calls for the Supervisor to be disciplined as well, but in this instance, the Supervisor also was not disciplined.
28. In further support of her evidence that she had submitted her documents on or before the stipulated times, she referred to a letter dated 3 May 2017 from the PHC

Supervisor, one N R Nkhwanazi, wherein he states that the Applicants were assessed by him for the 2013 September review and that the documents were sent to the PHC Office via the PHC driver from Gateway Clinic.

29. She did not keep any copies of the documents that she had submitted to the Supervisor, nor did she follow up to see if the documents were received by the HR Department on or before the deadline date.

WITNESS 2: R M Nkhwanazi – PHC Supervisor

30. Nkhwanazi testified that between 2013 to 2015, he was stationed at Gateway Clinic as an Operational Supervisor. The Applicants were his subordinates at that time.

31. He stated that in September 2013, he had completed the September review for the Applicants and he had found all of Applicants 'average', and he then rated them a score of 3.

32. He then made an entry onto the movement book and handed over the documents to the driver to be delivered.

33. He later found out that the HR Department did not receive the documents.

34. He then wrote out a letter, dated 3 May 2017, confirming that he had physically conducted the review on the Applicants and that he had forwarded the documents on or before the deadline date.

35. He could not recall the name of the driver who had taken the documents for delivery to the HR Department.

36. He did not keep any copies of the documents and neither did he follow up to see if the HR Department had received the documents.

RESPONDENT

WITNESS 1: P Buthelezi – HR Practitioner (CJM Hospital):

37. Buthelezi was employed by the Respondent as an HR Practitioner at the CJM Hospital. She testified that she worked at the EPMDS office since 4 October 2015 and therefore she is very familiar with the EPMDS processes.

38. She outlined the following processes to be followed in EPMDS matters:

- The Performance Agreements and Job Descriptions are to be completed by Employees together with their Supervisors and are to be submitted to the HR Department on or before 31 May of each year.

- The Half Yearly reviews are to be completed by the employees and their Supervisors and are to be submitted to the HR Department on or before 31 October of each year.
- The Annual Reviews are to be completed by the employee together with the Supervisor and submitted by 31 May each year.

39. In this case the Applicants did not submit their September review documents on or before 31 October 2013. The documents were only received by the HR Department on 16 April 2014 i.e. some 5 months later. Therefore the Applicants were not paid their pay progression.

40. She pointed out that one of the Professional Nurses was erroneously paid a bonus because of an administrative error, but that this error was in the process of being corrected and the monies will soon be recovered.

41. Furthermore, she did not receive any motivation or application for condonation from the Applicants for the late submission of the documents.

42. Therefore, the Applicants did not receive a pay progression.

ANALYSIS OF EVIDENCE AND ARGUMENT

43. HRM Circular 78 of 2013 was not in dispute.

44. Clause 5 of HRM Circular No. 78 of 2013, dated 23 July 2013 provides as follows:

5. i) Employees who have completed and submitted their annual assessment to the respective HR Offices by the deadline date of 31 May 2013.

ii) Those employees who have completed and submitted their annual assessments after 31 May 2013 must not be granted the pay progression granted on 1 July 2013, due to them not meeting the deadline date.

45. It was also common cause between the parties that failure by an employee to submit the required documents on or before the deadline date will automatically result in non-payment of the pay progression.

46. I did not find Mazibuko to be a reliable witness. She could not recall critical details

47. She testified that she together with her Supervisor, had completed the documents for the September review and had submitted it to HR in September 2013.

48. However, she could not say on what date the documents were completed, and neither could she say on what date the documents were sent to HR. Neither did she make a follow up to see whether the documents had reached the HR Department on time.

49. She could not produce any documentary evidence to substantiate her evidence. Instead she relied on the letter of her Supervisor, dated 30 May 2017, to support her evidence.

50. I found Nkhwanazi to be neither a credible, nor a reliable witness. I also found that his involvement in this matter bordered on a gross dereliction of his duties.

51. Nkhwanazi occupied a management position at the time of the incident. As the Supervisor of the Applicants, it was his responsibility:

- To ensure full compliance with HRM Circular No.78 of 2013 and HRM Circular No.114 of 2013 and such other circulars and policies of the Respondent.
- To ensure that all his subordinates completed the EPMDS documents well before the deadline dates.
- To ensure that he had conducted all the reviews on or before the deadline dates.
- To ensure that all the completed and signed EPMDS documents were forwarded to the HR Department on or before the deadline date.
- To ensure that copies of all the EPMDS documents were kept on file for reference purposes.
- To ensure that all EPMDS documents were received by the HR Department on or before the deadline date,
- To apply for condonation for the late submission of the EPMDS documents once he became aware that the documents had not been received by the HR department, and
- To institute disciplinary action against those subordinates who fail to submit their EPMDS documents on or before the deadline dates.

52. Other than simply stating in a letter dated 3 May 2017, that he conducted the assessments on the Applicants in September 2013, for the September half yearly review and then forwarded them to the PHC Office, Mkhwanazi did not produce any documentary evidence to substantiate his actions.

53. He simply stated that:

- ***“I am not too sure whether the driver delivered the EPMDS to the PHC office”,***

54. It was highly irresponsible of Nkhwanazi to have sent the original documents with a driver that he could not identify, and with whom he did not do a follow up to ensure that the documents were in fact delivered to HR timeously.

55. It was also highly irresponsible of Nkhwanazi not to have made copies of the original documents for record purposes.

56. As the Supervisor, Nkhwanazi should have applied for condonation for the late submission of the EPMDS documents once he became aware that the EPMDS documents were not received by the HR department. No evidence was led by the Applicants to show that an application for condonation was made.

57. Under cross examination, when he was asked whether he had done any follow up of the delivery of the September review documents, he simply replied

“No, I was waiting for the book but it did not come back to me.”

58. Even now, that is 4 years later, and in preparation for this arbitration, he gave no indication that he did investigate this matter further. Neither did he produce the delivery books to prove that he had given the documents timeously, to the driver to be delivered to the HR department.

59. On the contrary, he ***“...was waiting for the book but it did not come back to me.”***

60. I therefore reject the version of Nkhwanazi.

61. In this matter, the onus rests upon the Applicants to prove on a balance of probabilities that they had completed and forwarded the September review documents to the HR Department, on or before the deadline date.

62. I find that the Applicants have failed to discharge this onus successfully.

63. The Respondent on the other hand, argued successfully, the process to be followed by employees in order to qualify for payment of a pay progression.

64. The criteria for qualifying for a pay progression is clearly spelt out in HRM Circular No.78 of 2013 and a failure to comply with any of the criteria in this Circular will automatically result in non-payment of pay progression.

65. This was not in dispute by the parties.

66. The Respondent had successfully communicated these requirements to employees on more than one occasion, for example, HRM Circulars No.8 and No 102 of 2010, HRM Circular No 41 of 2012, HRM Circulars No 78 and No.114 of 2013, and HRM Circular No. 4 of 2015, and by the conducting of workshops for

employees. The attendance register of 7 February 2013 confirms that the Applicants attended a workshop on EPMDs on 7 February 2013.

67. I therefore find that the Applicants failed to submit the required September 2013 review documentation on or before the deadline date.

CONCLUSION:

68. In the final analysis I find that the version put to me by the Respondent is more probable than the version put to me by the Applicant and therefore I accept the version of the Respondent.

69. Accordingly, I find that the Applicants did not submit the required documents for the September 2013 review to the HR Department on or before the deadline date, and therefore, they do not qualify for payment of a pay progression.

AWARD:

70. I make the following award:

70.1) I find that the Applicants, SS Mazibuko and 8 others did not submit the required September 2013 review documentation to the HR Department on or before the required deadline date of 31 October 2013.

70.2) I find that the Applicants do not qualify for payment of a pay progression for the 2013/ 2014 financial year.

70.3) This application is dismissed.

70.4) I make no order as to costs.



COMMISSIONER: KM MOODLEY