



**PHSDSBC**

PUBLIC HEALTH AND SOCIAL DEVELOPMENT  
SECTORAL BARGAINING COUNCIL

# ARBITRATION AWARD

Case No: PSHS808-17/18

Panellist: Thando Ndlebe

Date of award: 16 April 2018

In the matter between:

**HOSPERSA obo NKUTHA, BUSISIWE**

**APPLICANT**

and

**DEPARTMENT OF HEALTH- FREE STATE**

**RESPONDENT**

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## DETAILS OF HEARING AND REPRESENTATION

- [1] The matter was set down before me by the Council as an arbitration process on 4 April 2018 in Reitz. The Applicant, Ms. Busisiwe Nkutha, was present and was represented by Mr. S. Ramokoatsi, an official from the Health and Other Services Personnel Trade Union of South Africa (Hospersa).
- [2] The Respondent was not represented in the proceedings. I am satisfied that the Council served the Respondent with copies of the Notice of Set Down for arbitration proceedings by facsimile on 20 March 2018.
- [3] The Applicant submitted a bundle of documents and same was admitted and marked as **Applicant's Bundle "A"**.

## **ISSUES TO BE DECIDED**

- [4] The Applicant referred a dispute to the Council in terms of sections 24(2) and 24(5) of the Labour Relations Act 66 of 1995, (as amended). I am required to determine whether or not the Respondent correctly interpreted and or applied Resolution 2 of 2010 in respect of the Applicant. In the event I find in favour of the Applicant, that I order appropriate relief(s).

## **BACKGROUND TO THE DISPUTE**

- [5] The Applicant was employed by the Respondent on 1 January 2006 and currently earns an annual salary of R439 484.00.
- [6] The Applicant is currently appointed by the Respondent in the position of Chief Radiographer – Grade 1 at Nketoana Hospital in Reitz.
- [7] The case of the Applicant is that her position was supposed to be graded by the Respondent in line with PHSDSBC Resolution 2 of 2010 (Resolution 2 of 2010). The Applicant seeks that the Council order that she be graded by the Respondent in accordance with paragraphs 42, 43, 43.1.1, 43.1.2, 43.1.3 and 43.2.2 of DPSA Circular 2 of 2011.

## **SUMMARY OF EVIDENCE AND ARGUMENTS**

### **APPLICANT'S CASE**

#### **Ms. Busisiwe Nkutha**

- [8] The Applicant was the only witness to testify in support of her case.
- [9] She received a performance score of one hundred and twenty percent (120%) for the performance of 1 April 2012 to 31 March 2013 as confirmed at page 31 of Bundle "A". Paragraph 43.2.1 as found at page 1 of Bundle "A" reads as follows, "the number of above average assessments an employee must obtain during the prescribed period for grade progression for employees based on above average is prescribed

in the respective dispensations”. She received a performance score of one hundred and twenty percent (120%) for the performance cycle of 1 April 2013 to 31 March 2014. She then had a performance score of one hundred and twenty percent (120%) for the performance cycle of 1 April 2014 to 31 March 2015. Finally, she received a performance score of one hundred and seventeen percent (117%) for the performance cycle of 1 April 2015 to 31 March 2016. She therefore received above average performance scores for consecutive years as confirmed at pages 29 to 54 of Bundle “A”.

- [10] The expectation she had was that the Respondent was supposed to have upgraded her to Grade 2 Chief Radiographer. The applicable paragraphs of the DPSA Circular 2 of 2011 in this matter are as follows; 42, 43, 43.1.1., 43.1.2, 43.1.3 and 43.2.2.1 as found at pages 22 and 23 of Bundle “A”. The Respondent must properly grade and place her in line with the provisions in Resolution 2 of 2010. The Council must order the Respondent to back-pay her any monies due with effect from 1 April 2016.

### **ANALYSIS OF EVIDENCE AND ARGUMENTS**

- [11] In my analysis I have considered only the evidence and oral closing arguments of the Applicant

- [12] The **Public Health and Social Development Sectoral Bargaining Council Resolution 3 of 2009, (Occupational Specific Dispensation for Therapeutic, Diagnostic and Related Allied Professionals)**, was concluded for implementation with effect from 1 July 2009. The dispute before me therefore related to whether **paragraphs 42,43, 43.1.1, 43.1.2, 43.1.3 and 43.2.2.1 of DPSA Circular 2 of 2011** are applicable to the Applicant and whether she is entitled the benefits mentioned therein.

- [13] The Applicant testified that she was appointed by the Respondent into the position of Chief Radiographer – Grade 1 on 1 January 2006. It is therefore suffice to state that she was in the employ of the Respondent when Resolution 2 of 2010 came into effect on 1 July 2009.

- [14] **Paragraph in DPSA Circular 2 of 2011** reads as follows, “Certain departments have not assessed affected employees consistently the last couple of years and therefore the provision for accelerated grade progression cannot be implemented at this stage. Therefore, the Resolution (determination) contains a provision that employees will at the earliest qualify with effect from 1 April 2012 for grade progression based on **above average performance**”.
- [15] The Applicant has proven as contained at **pages 29 to 54 of Bundle “A”** that her performance was rated by the Respondent as “performance significantly above expectations” from 1 April 2012 to 31 March 2017. **Paragraph 43.2.2.4 in DPSA Circular 2 of 2011** provides an illustration that for an employee to qualify for grade progression based on above average performance; he or she must at least accumulate four (4) **ABOVE AVERAGE**. I am satisfied that the Applicant obtained **ABOVE AVERAGE** performance assessments over five (5) annual assessments cycles, from 1 April 2012 to 31 March 2017.
- [16] **Resolution 2 of 2010 at paragraph 1.1** defines “Grade progression” as the salary movement from one salary grade (scale) to the first salary notch of the next higher salary (scale) attached to a post. Furthermore, **Resolution 2 of 2010 at paragraph 2.3.3** states that one of the objectives of the agreement is to provide with the OSD for grade progression, where applicable, based on performance. **Paragraph 4.1.10.3 in Resolution 2 of 2010** further provides that a system of differential periods of grade progression, as indicated in ANNEXURE B, **based on performance, to enable serving professionals** or professionals on appointment outside the public health sector, and or **who have distinguished themselves from their peers in terms of performance, to progress faster to higher grades attached to the post. (My emphasis)**.
- [17] I am satisfied that the Applicant has been performing above average in accordance with **paragraph 4.1.10.3 read with paragraph 1.1 of Resolution 2 of 2010** and that she qualifies for grade progression as envisaged in the collective agreement. I find

that the Applicant qualified for grade progression based on **ABOVE AVERAGE** performance with effect from 1 April 2016.

**AWARD**

[18] The Respondent is ordered to implement grade progression in favour the Applicant based on above average performance in accordance with Resolution 2 of 2010 with effect from 1 April 2016.

[19] The Respondent is ordered to quantify and back-pay the Applicant payments due as a result of the grade progression mentioned at paragraph 1. above in accordance with Resolution 2 of 2010.

[20] The Respondent is ordered to make the payments referred to in paragraph 2. above by the 31<sup>st</sup> May 2018.

A handwritten signature in black ink, appearing to read 'Thando Ndlebe', is written over a light grey rectangular background.

**PANNELIST: THANDO NDLEBE**