



PHSDSBC

PUBLIC HEALTH AND SOCIAL DEVELOPMENT
SECTORAL BARGAINING COUNCIL

ARBITRATION AWARD

Panellist: OSEPH MPHAPHULI

Case No: PSHS811-16/17

Date of Award: 22 May 2017

In the matter between:

Molema K

(Union / Applicant)

and

Department of Health – North West

(Respondent)

1. DETAILS OF HEARING AND REPRESENTATION

1.1 The hearing took place at the Provident House in Mafikeng on 03 May 2017. The hearing was conducted in terms of Section 191 of the Labour Relations Act 66/1995.

1.2 Advocate Mosa Mocami appeared for the Applicant. The Respondent was represented by Mrs. Thabile Mpshe, also advocate. Closing arguments were filed on 15 May 2017

1.3 The proceedings were digitally recorded.

2. ISSUE IN DISPUTE

2.1 I had to determine whether there was an unfair labour practice or not, if so, what relief would be appropriate.

3. BACKGROUND TO THE DISPUTE

3.1 The Applicant served in the capacity of driver/ messenger. The Applicant sought to be compensated for the period 16 March 2015 to 26 February 2016 being the time period he acted in a higher position.

4. SURVEY OF EVIDENCE AND ARGUMENT

4.1 Mr. Molema, the Applicant gave evidence. He was employed as driver/ messenger. The assistant director, Mr. Ofense Senosi, took him along to Boekagong Child and Youth Care Centre. The date was 13 March 2015.

4.2 They met with the Centre Manager and the Assistant Directors from the Centre and the District office. In the meeting it was agreed that the Applicant would assume duties as a transport officer from 16 March 2015.

4.3 The Applicant was ordinarily stationed at the head office working as a messenger/ driver at the time. To the best of his knowledge a vacancy for a transport officer existed at the Centre at the time.

4.4 The duties of a driver/ messenger and transport officers were different. As a transport officer he was in charge of the Centre and transport activities and supervised drivers as well as taking charge of the transport routes.

4.5 A document issued by the Acting Manager of the Centre referred to him as a temporary secondment to the Centre.

4.6 He performed duties as a transport officer from March 2015 to February 2016.

4.7 It was his knowledge that he was entitled to extra remuneration after serving three months in the position. The Department did not however, pay him anything extra for functioning at a higher level.

4.8 The Department relieved the Applicant of his duties as transport officer following his grievance for extra remuneration.

4.9 The Applicant wished to be paid the difference between what he would have earned as transport officer and what he was paid which was a driver/ messenger rate.

4.10 The Respondent led no evidence in the matter save to cross examine the Applicant and to make argument in support of its case.

5. ANALYSIS OF EVIDENCE AND ARGUMENT

5.1 The Applicant filed a case of irregular conduct on the part of the Respondent, which irregular conduct prejudiced the Applicant financially accordingly to the Applicant.

5.2 The essence of the Applicant's case was that he was placed in position superior to his ordinary position of a driver/ messenger. The position in question was that of transport officer. The position came with added responsibilities and functions. The Applicant was of the view that his salary should have been raised for the duration of his employment in this position and at the prescribed salary level.

5.3 The relief sought by the Applicant further clarifies the dispute as a dispute pertaining to remuneration. The Applicant's desired outcome was that he be paid the difference between the salary of a transport officer and that of a driver/ messenger, which he would otherwise have earned had it not been for the Respondent's unfair conduct.

5.4 The Respondent put up a stern argument that the Applicant had no case to make for any form of unfair conduct on the part of the Respondent.

5.5 Instead the Respondent argued that the Applicant's role in performing the duties of a transport officer was acknowledged and rewarded. As matters stood the Applicant's performance was assessed on the role profile of a transport officer and was accordingly remunerated for such. This the Applicant did not at all contest.

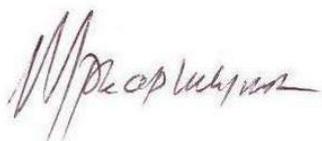
5.6 The Applicant could not substantiate why the dispute should subscribe to the realm of unfair labour practice or breach of a collective agreement as there was no evidence to support such.

5.7 As emerged from the Applicant's testimony, the thrust of the Applicant's case was that he was underpaid which argument was conclusively flattened by the Respondent's counter argument.

6. AWARD

6.1 The Applicant did not prove a case for unfair conduct or breach of a collective agreement in respect of acting allowance.

6.2 I dismiss the referred dispute



Joseph Mphaphuli

Signed

PHSDSBC Panelist