



# ARBITRATION AWARD

Arbitrator: **M.Mohlala**

Case Number: **PSHS90-14/15**

Date of award: **02 September 2014**

**In the Arbitration between:**

Hospersa obo Mathabatha P.D

**Applicant**

**And**

Department of Social Development- Gauteng

**Respondent**

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**Details of hearing and representation**

1. The arbitration proceedings were scheduled for 04 July 2014 at the Social Development Offices in Johannesburg. The individual applicant was in attendance and represented by Mr. Khanyeza, an official of Hospersa, while the respondent party was represented by its employee, Mr. C Makapela. The matter was scheduled as arbitration and the applicant had agreed to give the respondent an opportunity to settle the dispute. This was subsequent to the respondent having indicated that it had no intentions of defending the matter and that it was in the process of consolidating figures for the signature of the CFO. It stated that it wanted to do that because there were other employees whose acting allowances it wanted to resolve.
2. In order to give the parties an opportunity to explore settlement of the parties as both of them had agreed, it was agreed that in the event that the parties were not able to reach settlement that parties would submit written submissions. The applicant was to submit on 01 August 2014 and the respondent submitting on 04 August 2014. The applicant was afforded an opportunity to reply on 08 August 2014.

3. I have received the written submissions of the applicant and the respondent had not made any submissions. I now proceed to determine the matter based on the applicant's submissions.

### **Background to the dispute**

4. The parties are Hospersa obo Mathabatha (the applicant) and Department of Health- Gauteng (DoH) (the respondent). The respondent is a governmental department of social development concern. The applicant sought the payment of acting allowance in line with Resolution 1 of 2002.

### **Issue to be decided**

5. The issue to be decided was whether the respondent had failed to apply the provisions of Resolution 1 of 2002 of the previous PHWSBC (now PHSDSBC) in denying the applicant payment of acting allowance.

### **Survey of parties' submissions and arguments**

#### The Applicant's submissions

6. The applicant submitted that the respondent had not complied with a process agreement to have his payment of acting allowance by no later than 31 July 2014. The respondent did not follow the above stated resolution to act in the post of Deputy Director: Human Resources and Records Management at the Johannesburg Metro region. He acted in that post from 01 June 2010 to 31 October 2012.
7. He further submitted that he was not paid his acting allowance for the entire duration of his acting. He is employed in the position of Assistant Director: Human Resources with an annual salary of R364 116. The post of Deputy Director: Human Resources and Records Management is paid at R532 278 per annum.
8. He accordingly submitted that since the respondent had indicated that it will not oppose his application that I should award in line with Clause 3 of resolution 1 of 2002.

#### The Respondent's submissions

9. The respondent made no submissions in this regard despite the process agreement agreed upon.

### **Analysis of submissions and arguments**

10. The issue I am to decide is whether the respondent had failed to apply the provisions of Resolution 1 of 2002 of the previous PHWSBC (now PHSDSBC) in denying the applicant payment of acting allowance. The respondent had not opposed the applicant's submissions. The applicant relied on Clause 3.1.1 of the resolution which provides that an employee appointed in writing to act in a higher post, by a person who is duly authorised, shall be paid an acting allowance provided that (a) the post is vacant and funded; and the period of appointment is uninterrupted and longer than six weeks.
11. The applicant submitted that he was appointed to act in the position of Deputy Director: Human Resources and Records Management. This submission remains undisputed in the absence of the

respondent's submissions. He stated further that he was entitled to be paid an acting allowance and this as well has not been disputed by the respondent.

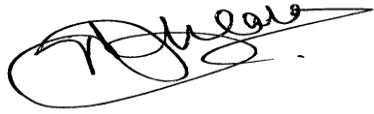
12. In the premises. I find that the applicant had acted in the post of Deputy Director: Human Resources and Records Management for the period in question (i.e. 01 June 2010 to 31 October 2012). This is equal to 27 months of acting. I further find that the respondent was unfair in refusing or omitting to pay the applicant's acting allowance for the period in question.

### **Remedy**

13. Clause 3.1.6 of Resolution 1 of 2002 that the applicant relied upon in his claim provides that the employer will pay the acting allowance on a monthly basis provided that the first payment takes place in the month following the completion of the six weeks referred to in clause 3.1.1 backdated to the date that the employee officially began acting.
14. Clause 3.1.3 of resolution 1 of 2002 provides that the acting allowance will be calculated on the basis of the difference between the current salary notch of the employee and the commencing notch of the higher post. The applicant has not made any submission regarding what, in the entire period of acting, would have been the commencing notch of the higher post he acted in. As a result, I am in no position to calculate the amount due to the applicant in a manner that I will not disadvantage him or the respondent.

### **Award**

15. The respondent failed to pay the applicant acting allowance which was due and payable to the applicant for the period 01 June 2010 to 31 October 2012.
16. The respondent is ordered to furnish the PHSDSBC with the full amount of acting allowance that was payable to the applicant for the period of his acting from 01 June 2010 to 31 October 2012 to enable the Commissioner to award a definite amount.
17. The amount in clause 15 of this award shall be furnished to the PHSDSBC by no later than 10 September 2014.
18. A further ruling shall be made upon receipt of the definite amount of acting allowance due and payable to the applicant.
19. In the event that the respondent fails to furnish the calculated amount in Clause 16 of this award, the Commissioner shall calculate same based on the difference in the current Assistant Director: Human Resources and Deputy Director: Human Resources and Records Management posts.



**M. MOHLALA**  
**PHSDSBC PANELIST**  
**02 September 2014**