



PHSDSBC

PUBLIC HEALTH AND SOCIAL DEVELOPMENT
SECTORAL BARGAINING COUNCIL

ARBITRATION AWARD

Case Number: PSHS915-16/17

Commissioner: THABE PHALANE

Date of Award: 16 JULY 2017

In the matter between:

NEHAWU obo Maduo, B.B

(Union/Applicant)

and

Department of Health- North West

(Respondent)

1. DETAILS OF THE HEARING REPRESENTATION

- 1.1 An Arbitration hearing was held on 27 June 2017 at the Provincial Department of Health Offices, New Office Park, Cnr Sekame & First Street, Mafikeng.
- 1.2 The Applicant attended and was represented by Mr T Makwetu, the Union Official, whilst the Respondent was represented by Mr J Dlamini, the Respondent's Official.
- 1.3 The Applicants submitted a bundle of documents marked bundle "A1" and "A2", and the Respondent submitted a bundle of documents marked bundle "B".
- 1.4 The matter proceeded to arbitration and only the Applicant testified and was cross examined, and the Respondent also called a witness who testified and was cross examined.
- 1.5 The Respondent also submitted oral arguments at the conclusion of the hearing and the Applicant was allowed to submit written arguments on 04 July 2017 and a reply,

if any, on 07 July 2017. There was no submission by the applicant at the writing of the award.

2. ISSUE TO BE DECIDED

2.1. I am determined to decide whether the Respondent interpreted and applied the provisions of a Collective agreement correctly and in the event that I find that the Respondent interpreted and applied the provisions of the Collective agreement incorrectly, I am further required to determine the appropriate remedy.

3. JURISDICTIONAL ISSUE

3.1 There Respondent raised a challenge to the Applicants submissions in that she did not specify which Collective agreement was incorrectly interpreted or applied, and further which clause thereof was incorrectly interpreted or applied.

3.2 I ruled that the Applicant must present her case and the decision whether there was sufficient evidence made for the discharge of the onus to prove a case will be made after the hearing of evidence.

4. BACKGROUND TO THE ISSUE

4.1 The Applicant qualified as a Professional Nurse and started working during January 2008 as a community service employee.

4.2 She now has 8 years as a nurse and 5 years as a specialist. The Applicant has not been translated because she is not being paid like her colleagues and her payslip does not state her qualifications.

4.3 The Applicant raised the dispute with her Manager and the Sub-District and the matter remains unresolved.

4.4 The Applicant wants to be remunerated like her colleagues.

- 4.5 The Respondent on the other hand submitted that the dispute by the Applicant is not clear whether it is a dispute about the differentiation in salary or anything else. If the dispute is about salary then the point *in limine* is therefore raised that the Council lacks jurisdiction.
- 4.6 The Respondent acknowledges that the Applicant has qualifications but there is however an instruction that the posts must be advertised.

5. SURVEY OF EVIDENCE AND ARGUMENTS

Applicant's evidence and argument, Ms Brenda Boingotlo Maduo.

- 5.1 The Applicant submitted the payslip to show that she was treated differently. Some of her colleagues were translated but she was not translated.
- 5.2 She made enquiries after qualifying as a Clinical Nurse Practitioner in February 2012. She submitted her qualifications and is now performing work that she is not being remunerated for.
- 5.3 At the workplace there are other employees doing the same work but she is the only one not getting paid accordingly.

Under cross examination

- 5.4 The Applicant did not state which Resolution or which clause was being challenged but submitted that she was treated unfairly. She has not been trained in Labour Relations.
- 5.5 She conceded that she was told that she must apply for the post.
- 5.6 It is only fair that she must be paid for the work she is performing and she is not simply trying her luck.
- 5.7 They were represented at the disciplinary hearing.

6. The Respondents submission and argument.

1st witness, Mr Andrew Bogatsu

6.1 The witness is the Assistant Director working at Ratlou District.

6.2 He wrote the reply against the Applicants complaint.

6.3 The response is basically that the Applicant must apply for the posts after they have been advertised and interviews conducted.

6.4 He does not know of anyone who was translated after the memo was issued.

6.5 There was no one translated in 2012 in their Sub-District.

6.6 There was also a directive and a moratorium freezing the filling of posts.

6.7 There is nothing anyone can do until the posts are advertised.

Under cross examination

6.8 The witness submitted that the moratorium was put by the Department of Health HOD as the accounting officer in the Department.

6.9 He is however not sure which year though.

6.10 They take instructions from the HOD and the MEC and if there are no advertisements they cannot appoint.

6.11 Since he drafted the letter in 2014 there has not been any change in the status quo.

6.12 He does not know of anyone who has been translated.

6.13 He conceded that it is however not fair for an employee to work without being compensated.

7. ANALYSIS OF EVIDENCE AND ARGUMENT

- 7.1 The Applicants have referred her matter in terms of section 24 (2) [24 (5)] of the Labour Relations Act 66 of 1995 (the Act). This refers to the dispute about the interpretation and or application of a collective agreement.
- 7.2 The onus was on the Applicant to first identify which collective agreement was incorrectly applied or interpreted. This is the onus that the Applicant has failed to discharge.
- 7.3 The Applicant only said it was collective agreement 1 of 2010. This is the OSD for Medical Officers, Dentists, Medical and Dental Specialists, Pharmacists and Emergency Services Practitioners, full time and part time scales for identified OSD posts.
- 7.4 This is a wide encompassing Resolution and the Applicant was required to identify which clauses were misinterpreted. I am unable to guess the relevant clauses because that will amount to assisting a party as well as making a decision based on evidence not presented before a Commissioner.
- 7.5 The Applicant's submissions related to a difference in the salary remuneration paid to her. This is a dispute about equal pay for equal work or work of equal value, and this is not the dispute that the Applicant referred.
- 7.6 The Applicant has therefore failed to discharge the onus to prove her case. It will be difficult to find a reason to make any finding other than to dismiss the matter.
- 7.7 In the premises the following award is in order

8 AWARD

8.1 The Applicant has failed to show the incorrect interpretation or application of Resolution 1 of 2010 committed by the Respondent.

8.2 The referral made in terms of section 24 (2) [24 (5)] is accordingly dismissed.

8.3 There is no order as to costs.

Commissioner: THABE PHALANE

Signature: _____