



PHSDSBC

PUBLIC HEALTH AND SOCIAL DEVELOPMENT
SECTORAL BARGAINING COUNCIL

ARBITRATION AWARD

Commissioner: **MN Masetla**

Case No: **PSHS1-18/19**

Date of ruling: **19 February 2019**

In the matter between:

PSA OBO MALESELA PETRUS NKOANA

EMPLOYEE

and

DEPARTMENT OF HEALTH- LIMPOPO

EMPLOYER

DETAILS OF THE HEARING AND REPRESENTATION

1. This is an arbitration award in the matter between Malesela Petrus Nkoana, the employee, and the Department of Health- Limpopo, the employer.
2. The arbitration was held under the auspices of the Public Health and Sectoral Bargaining Council (PHSDBC).
3. The arbitration process was set down on 11 February 2019 at Mankweng Hospital.
4. The employee was represented by Mr. D Mkhize, an official from Public Servants Association of South Africa (PSA).

5. The employer was represented by Mr. N Machaka, Senior Labour Relations Officer.
6. The proceedings were mechanically recorded.

ISSUE TO BE DECIDED

7. I must determine whether the employer's interpretation or application of Resolution 4 of 2009 or failure to translate the employee to OSD was correct or not.

BACKGROUND TO THE ISSUE IN DISPUTE

8. The PHSDSBC received a referral of the employee's dispute relating to an interpretation or application of a collective agreement. Following a conciliation process, the dispute remained unresolved.
9. The employee requested that the dispute be resolved through arbitration.
10. The employee submitted his bundle of documents and was marked Bundle "A". The employer's bundles were marked "B" and "B2".

SURVEY OF THE PARTIES' SUBMISSION

Employee's submission

11. The employee testified under oath that he was appointed on 01 September 2004 as an Artisan at a notch of R54 837.00 per annum. He expected the employer to translate him to an appropriate post and salary grade in terms of clause 13.2.2 (i) of the Collective Agreement on the implementation of an Occupation Specific Dispensation for Artisan Resolution 4 of 2009 (Resolution). He was not translated by the employer and he was told verbally that he did not qualify for translation.

12. Under cross examination, he maintained that he qualified for translation in terms of the criteria set out in the resolution. He stated that he was demoted after appointment in 2004 and felt unhappy about same. He however conceded that at the time of translation he earned R87 924.00 per annum.

Employer's submission

13. Mr. Khwithing Moshidi, Deputy Director Human Resource Management and Development stated under oath that the employer embarked on a process of identifying personnel that qualified for OSD in terms of the Resolution. This included all artisans who did painting as well as electricians. Prior to the implementation of OSD, as Human Resource, they only operated on a translation key for administration and support. From 1 July 2009, they had to use new translation key for OSD.

14. In terms of clause 13 of the resolution, translation to appropriate posts and salary grades was done in two places. Clause 13.2.1 provided that no person will receive a salary (notch or package) that is less than what he/she received on 30 June 2009 i.e. prior to the implementation of OSD.

15. The first phase of translation involved translating employees from their current positions as at 30 June 2009 to the appropriate post and salary grade, as contained in annexure "A". The second phase of translation involved calculation of experience obtained by the employee who occupied a post on production level after obtaining the relevant qualification and complying with the registration requirement.

16. The employee did not qualify for translation because he did not have the relevant qualification namely Trade Test Certificate in line with the requirements of clause 13.2.2. If the applicant was to be translated to the minimum notch, he would have been disadvantaged because he earned above the threshold of R75 000.00 per annum at the time as he was on R87 924.00 per annum. This would, as a consequence have led to placing the employee on a salary that was less than what

he received on 30 June 2009. The employee was however ring-fenced until he complied with the requirements, namely production of a trade test certificate.

17. Under cross examination, he maintained that the employee was ring-fenced and did not benefit financially because he was above the threshold and could not be translated into artisan grade A because he did not have a trade test certificate.

ANALYSIS OF THE PARTIES' SUBMISSIONS

18. The employee's dispute concerns the interpretation or application of Resolution 4 of 2009. The resolution is a collective agreement on the implementation of an Occupied Specified Dispensation for Artisans. It was not in dispute throughout the proceedings that the employee was appointed as an Artisan on 01 September 2004 and that he performed the duties of an Artisan. The employee was however aggrieved because the employer did not translate him from salary level or notch of R87 924.00 per annum to R90 156.00 per annum as per page 17 of his bundle, which is an Artisan phase and translation keys.

19. The employer contended that the employee could not be translated at the time because he was ring-fenced as his salary was above threshold of the entry level which was R75 400.00. The employee earned R87 924.00 per annum. The employer stated further that the employee could be translated to a post of an artisan production grade A because he did not have a trade test certificate. If the employee were to be translated in line with the resolution, he would have been disadvantaged.

20. I find that the employer was correct in the manner it interpreted and applied the provision of the resolution for the reasons I reflect hereunder. Firstly, clause 5 of the resolution dealing with appointment requirements provides that "Appointment will be subject to:

5.1.1. An employee meeting the appointed requirements inclusive but not limited to possessing the relevant qualification, prescribed

years of experience, regulation with an appropriate professional council.

5.1.2. Availability of posts, and

5.1.3. After the appointment the employee perform the functions of the new post

21. In relation to the employee's version that he should have been translated from salary notch R87 924.00 to R90 165.00, the evidence before me showed that the applicant did not meet the appointment requirements, namely trade test certificate as per page 16 of his bundle. Such an argument therefore fails.

22. Because the employee was an Artisan, the first appointment and translation requirement was a Grade 12. The maximum notch of this category was R74 000.00 which was below the salary level of the employee. Because of this reason, the employer ring-fenced him until he was able to meet the appointments requirements. The employee was only able to produce a trade test certificate in 2018 and accordingly translated. I therefore could not find any basis for disagreeing with the manner in which the employer interpreted and applied the resolution.

23. I accordingly find on the basis above, that the employee's referral should be dismissed.

AWARD

24. The employer correctly interpreted and applied Resolution 4 of 2009.

25. The employee's referral is hereby dismissed and he is not entitled to any relief.

26. The PHSDSBC is advised to close the file.

A handwritten signature in black ink, appearing to read "Masetla", written in a cursive style.

Signature: _____

Commissioner: M.N Masetla