



PHSDSBC

PUBLIC HEALTH AND SOCIAL DEVELOPMENT
SECTORAL BARGAINING COUNCIL

ARBITRATION AWARD

Panellist: **Ncumisa Bantwini**

Case No: **PSHS1033-16/17**

Date of Award: **10 August 2017**

In the matter between:

DENOSA obo Nondawo Ruth Phetha

(Union / Applicant)

and

Department of Health- Eastern Cape

(Respondent)

DETAILS OF HEARING AND REPRESENTATION

1. This arbitration was part heard on 10 April 2017, 06 June 2017 and was finalized on 21 July 2017. It came before the PHSDSBC in terms of Section 24 (2) 24 (5) of the Labour Relations Act, 66 of 1995, as amended the (LRA) for interpretation or application of collective agreement (OSD Resolution 3 of 2007 for nurses) dispute. It was heard at the offices of the respondent at PE Provincial Hospital in Port Elizabeth. Ms. Zanele Mdliva of DENOSA appeared for the applicant, Mrs. Nondawo Ruth Phetha while Mr. Pumzile Qwayiza appeared for the respondent, the Department of Health-EC
2. The referring party started to lead evidence and called the applicant and one other witness. The respondent called three witnesses. Parties were allowed to submit written closing arguments on 28 July 2017. The last set of arguments from the applicant was

received on 31 July 2017 after an application for an extension was received. The proceedings were electronically recorded.

ISSUE TO BE DECIDED

3. I am required to interpret **OSD** Resolution 3 of 2007 and make a determination in terms of the said resolution.

BACKGROUND TO THE DISPUTE

4. The applicant, Mrs. Nondawo Ruth Phetha was employed by the respondent as a Professional Nurse and was based at the Provincial Hospital in Port Elizabeth. She was working at outpatient department (OPD) performing supervisory duties in the absence of the sister in charge who was Ms Wilgemoed as at 30 June 2007. She was translated into specialty stream as a Professional Nurse instead of being translated as Operational Manager-specialty.
5. She referred a dispute to the PHSDSBC through her union regarding refusal of the respondent to translate her to specialty stream as Operational Manager as at 01 July 2007.
6. The dispute was conciliated and it remained unresolved. The applicant, through her union requested arbitration.

Survey of evidence

7. According to Ms. Mdliva's opening statement, the applicant was placed in OPD and was the second in command to Ms. Wilgemoed who was the sister in charge of OPD. Ms. Wilgemoed was translated as Operational Manager General when OSD was implemented as at 01 July 2007 in terms of Resolution 3 of 2007. The applicant seeks translation to a specialty stream as Operational Manager as she was performing supervisory duties as at 30 June 2007 and possesses specialty qualifications.
8. The applicant, Mrs. Nondawo Ruth Phetha testified as follows:

9. In 2007, she was working in OPD as a second in command to Sister Wilgemoed who was in charge. They were both overseers for OPD Cardiac, eye clinics, ENT and X-Ray units.
10. Her supervisor in OPD was Ms. Human from 01 April 2007 who even wrote a letter confirming that she was the second in command in OPD (page 24 bundle A). Also see off duty rooster reflecting Pukwana who was translated as a Specialty Operational Manager although she was reporting under the employee and Welgemoed (page 133 bundle A). All the clinics under the OPD unit were reporting to her and Wilgemoed for their daily activities, The change list of OPD reflecting Ms. Human as Aerial Manager, Wilgemoed as Unit Manager and her (the applicant) as the second in command for Wilgemoed (page 61-74 bundle A)
11. Reference was made to an organogram of OPD (page 18 bundle A). The organogram provides for 2 Operational Managers (specialty and general) and Sister Wilgemoed was translated as Operational Manager in General stream as she did not possess specialty qualifications. The applicant testified further that she met all the requirements to be translated to Operations Manager in specialty stream (page 106 2.3). In 2007 she had 26 years' experience as a Professional Nurse and possesses a degree and diploma in post basic qualification (page 17 SANC document listing other qualifications).
12. The applicant testified further that she queried her non translation to Misses Moss, Mini as well as to Doctor Maqagi who was the Superintendent (Pages 23,28 32, 35, 36 and 57 of bundle A). When her pay slip reflected that she was translated to Operational Manager Specialty in 2010, Mr Madonsela told her that it was an incorrect ranking and she was downgraded (Page 56 bundle A).
13. The respondent ignored the fact that she meets all the requirements of being translated as Operational Manager as she was performing supervisory duties as at 30 June 2007. Her notch is R 479 928 per annum instead of R524 415 per annum. (Page 152 of bundle A).
14. Under cross-examination, the applicant testified as follows:

15. She assumes that she lost translation to Operational Manager specialty position because when Ms. Moss requested her to be in charge of OPD in April 2007, she refused because she had never worked in PE Provincial Hospital at the time. She wanted to be the deputy of Ms. Wilgemoed. She was categorized as OPD Specialty Nurse. She had 26 years nursing experience as at 31 March 2007 (page 94). All employees who were performing supervisory functions were translated as Operational Managers. The requirements of Operational Manager as per the OSD document are contained on page 106 of bundle A.
16. The applicant stated further that Ms Pukwana who was translated to Operational manager was reporting to her and Ms Wilgemoed in OPD. She was allocated in eye clinic. A list of delegated duties under OPD appears from page 154 to page 155 of bundle A. The eye clinic was still reporting to OPD and all other departments give feedback on patients seen in OPD. The duty list and off duties of all employees is reflected on pages 133, 154 and 155 bundle A. Page 61 of bundle A reflects staff reporting to sisters in charge.
17. Under re-examination, the applicant stated that she was never translated to Operational Manager position. Each department has its Area Manager. Ms Human was the Area Manager, Ms. Wilgemoed as Unit Manager and she was the deputy to Ms. Wilgemoed (page 66 bundle A). All deputies were in charge of the units in the absence of the sister in charge.
18. The First witness, **Ms Zoleka Virginia Mpulu** testified as follows:
19. She knows the applicant from OPD. She was the deputy of Ms. Wilgemoed and used to be in charge of the unit in the absence of Sister Wilgemoed. The OPD had clinics reporting under Sister Wilgemoed who was deputized by the applicant. Ms. Pukwana who was translated was also reporting to the applicant in the absence of Sister Wilgemoed (page 74 bundle A). The applicant possesses Community Nursing Science which is a specialty.
20. Under cross-examination the witness testified as follows:

21. When the OSD Resolution 3 of 2007 was implemented, only 1 Operational Manager was recommended in the main OPD. Sister Pukwana was translated as Operational Manager specialty when eye OPD was on its own not reporting in main OPD.
22. Ms. Mini is the Area Manager who took over from Ms. Human. Before the separation of eye clinic from the OPD, Ms. Pukwana was reporting to Ms. Wilgemoed who was assisted by the applicant as she was the Deputy Nurse. Being a deputy is to be in charge of the department when the Operations Manager is not in and deals with administrative issues. There is no remuneration attached to being a deputy.
23. In closing, Ms. Mdliva argued as follows:
24. The applicant was supposed to be translated to Operational Manager – Specialty in terms of pages 91,106 and 18 of bundle A. The organogram provides for 2 Operational Managers in OPD and only Ms. Welgemoed was translated to Operational Manager-General stream. Ms. Phetha possesses Community Nursing Services qualification which is a specialty qualification in terms of OSD document (Page 18 BA). _ The applicant was successfully translated to Operational Manager- specialty stream as shown in her pay slip until she was downgraded by the CEO, Mr Madonsela to Professional Nurse – specialty Grade 2.
25. Ms. Mdliva finally stated that the applicant was unfairly treated by the respondent and she seeks translation to Operational manager-specialty stream with effect from 01 July 2007 as a remedy.

The respondent's case

26. According to Mr Qwayiza's opening statement, the applicant was correctly translated in terms of Resolution 3 of 2007 (OSD Resolution for nurses).
27. The respondent's first witness **Ms. Loraine Esme Fortuin** testified as follows:
28. She works for the respondent as an Area Manager. Ms. Welgemoed was the sister in charge and is the Operational Manager for OPD. Ms. Pukwana is Eye Assistant trained Nurse and was translated to Operational Manager specialty stream.

29. The Deputy Unit Manager supports the Sister in charge and there is no remuneration value. Pukwana was reporting to Welgemoed not to the applicant and was from Livingstone Hospital responsible for eye clinic. Before the implementation of OSD, all staff members in OPD were reporting to Ms. Welgemoed. The eye clinic was on its own after the OSD implementation and Ms. Pukwana was in charge of the area reporting to the Area Manager.
30. Under cross-examination, the witness testified as follows:
31. The Area Manager for surgical department involves doing rounds and sorting out all challenges in all areas and report to top management. Ms. Wilgemoed was the Operational Manager reporting to Ms. Human and the applicant was her deputy doing all her duties in her absence.
32. The witness testified further that she is not aware that the applicant possesses specialty qualifications. Ms. Pukwana has a specialty qualification but she was not translated as Operational Manager in 2007 but was translated around 2008/2009. Ms. Moss was driving OSD process and Area Managers were not involved.
33. Under re-examination the witness stated that when the eye clinic ran separately, Ms. Pukwana was reporting to Ms. Moss. Ms. Pukwana had specialized eye training.
34. The second respondent's witness, Ms **Lulama Suzan May** testified as follows:
35. She works for the respondent as Assistant Nursing Manager since March 2007. Her main key performance area is to manage nursing services and improve quality of care and see to it that training is going on. Ms. Moss was the Deputy Manager of nursing services and she resigned.
36. The witness was referred to change lists (pages 64 to 74 of bundle A). The Deputy Sister in charge is the most senior nurse than other nurses. Anybody can be a deputy nurse in charge, it is developmental and empowerment and there is no remunerative benefit attached. The Deputy Sister assists in the units and performs duties of the Sister in charge when she is not available.

37. Ms. Moss was driving the OSD process and 2 Operational Managers were identified in OPD. Ms. Wilgemoed was translated as Operational Manager- General and Ms Pukwana later on translated as Operational Manager specialty under eye clinic. She was supervised by Ms Welgemoed (page 18). List of Chief Professional Nurses (page 25 bundle A). The applicant was placed in OPD most of the time.

38. Under cross-examination, the witness testified as follows:

39. Before OSD implementation, in 2007, the eye clinic was reporting under OPD just like other departments (page 74). The applicant was a Deputy Professional Nurse to Wilgemmoed who was in charge of OPD. The letter that appears on page 15 bundle A reflects the applicant's dissatisfaction of not being correctly translated. Community Nursing science is a specialty qualification but during translation (01 July 2007), it was not recognized yet it was only recognized later and she does not know the reason (page 106, 2.3 read).

40. The witness stated further that she does not agree that the applicant had Community Nursing Science as a specialty course.

41. Under re-examination, the witness stated that she was an Assistant Director of nursing services and was part of management.

42. In closing, Mr. Qwayiza argued as follows:

43. The applicant was translated to specialty stream as at 01 July 2007 page 56 of bundle A, the letter written by the CEO Mr Madonsela dated 08 March 2011 confirms this. The applicant's 26 years of experience was taken into account and was put at notch 235 659 per annum, grade 2-page 20A. The respondent's representative argued that the applicant was correctly translated in terms of the said resolution correctly.

44. It is the applicant's allegation that Ms. Pukwana was wrongly translated to Operations Manager specialty as she was not a supervisor. The organogram for OPD makes provision for 2 Operational Managers and Ms. Welgemoed was translated as OM general as she did not have specialty qualifications.

45. Both respondents' witnesses disputed that Ms. Pukwana was incorrectly translated as she was in charge of eye clinic and reporting directly to Ms. Welgemoed, the overall manager for OPD.
46. The applicant's reliance on the change list (page 74) is misplaced as it was a practice in the whole hospital for operational reasons to have a deputy in the absence of a manager. The main purpose as per Ms. Mini's evidence was for empowerment and exposure. Ms. Phetha did not dispute this evidence (pages 64 to 73 of bundle B). Ms Mini also indicated that the term deputy is not provided for in the organogram and there was no remuneration benefit for being a deputy and anybody can be a deputy in the absence of a sister in charge.
47. Ms. Mini also testified that the term "deputy" was not unique and that there are officials who were deputies but were never translated as Operations Managers. The applicant's claim of being in charge of the hospital between 16h00 and 19h00 (page 25 bundle A) was disputed by Ms Mini citing Chief Professional Nurses like Keli-Nzuzo, Greyling, Kika, and Senti who were working in OPD with the applicant but were never translated to Operational Managers positions. Mr Qwayiza finally argued that the applicant has failed to prove her case and failed to indicate which clause was flouted by the respondent, therefore her case must be dismissed.

ANALYSIS OF EVIDENCE AND ARGUMENTS

48. I am required to interpret OSD Resolution 3 of 2009 regarding non-translation of the applicant to Operational Manager –specialty stream and make a determination thereof.
49. It is common cause that the applicant was the second in command to Ms Wilgemoed who was in charge of OPD.
50. It is the evidence of both applicant as well as respondent's witnesses that a deputy nurse assists the sister in charge in administrative functions and act as sister in charge in the absence of the official/sister in charge of the unit. This means that the official is performing supervisory/managerial functions.

51. Although it is the respondent's contention that any employee can be the second in charge/deputy, both respondent's witnesses under cross-examination testified that a second in charge/deputy is always the most senior Nurse.
52. It is common cause that the applicant had 26 years nursing experience and was translated as a Professional Nurse –speciality stream because she possesses Community Nursing Science which is a speciality qualification in terms of the said resolution.
53. It is also common cause that OPD organogram (page 18) allows/accommodates 2 operational Managers although only 1 official was translated as Operational Manager, Ms. Welgemoed who was translated to General stream.
54. Reference was made to change lists and off duties reflecting the applicant as the second in command as at 30 June 2007.
55. It is also common cause that the applicant possesses Community Nursing Science which is listed under specialty qualifications in the Resolution 3 of 2007.
56. It is also undisputed fact that even Ms Pukwana who was later translated around 2008/2009, was reporting to Ms Welgemoed and in her absence to the applicant. This was before the eye clinic operated in isolation of OPD.
57. This in my view indicates that the applicant was supposed to have been translated to Operational Manager-Specialty (PNB3) as at 01 July 2007 in terms of Resolution 3 of 2007.
58. The applicant has discharged the onus to prove the claim of incorrect translation by the respondent; with specific reference to clause 2.3 under appointment requirements of Resolution 3 of 2007 (page 106, OPD organogram page 18 of bundle A).
59. I therefore make the following award:

AWARD

60. The respondent, the Department of Health – Eastern Cape is ordered to translate the applicant Ms Nondawo Ruth Phetha to Operational Manager- specialty stream (PN B3) with effect from 01 July 2007.

61. The respondent is ordered to pay the difference between her current exit notch and the current notch of Operational Manager-Specialty stream by no later than 15 October 2017.



Signature

Ncumisa Bantwini
PHSDSBC Arbitrator