



# ARBITRATION AWARD

Commissioner: **KM Moodley**

Case No: **PSHS1071-19/20**

Date of award: **23 September 2020**

In the matter between:

**PSA obo Velisiwe Dube**

Applicant

and

**Department of Health- KwaZulu Natal**

Respondent

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## **Details of the hearing and representation**

1. The Arbitration was held at the boardroom, Ngwelezane hospital, in Empangeni on 8 September 2020. The Applicant was represented by JR Bukhosini of trade union PSA and the Respondent was represented by its official Mr. MN Shobede. The proceedings were mechanically recorded and all witnesses testified under oath. I am satisfied that the parties have been correctly cited and that the PHSDSBC has jurisdiction to hear this matter.
2. The parties tabled a common bundle of documents, i.e. Bundle A. The contents of the bundle were accepted by both parties as being what they purported to be. No Points In Limine were raised by either of the parties.
3. No objection was raised to me as the Commissioner presiding over the arbitration.

## **Issue to be decided**

4. The issue to be decided is whether or not the Applicant qualifies for payment of a pay progression for the 2016/2017 and 2017/2018 financial year period.

### **Common cause issues**

5. The following were issues of common cause
  - a) The deadline for the submission of the completed half-yearly review forms was 31 October 2016.
  - b) The Applicant completed and signed her half yearly review forms on 26 October 2016.
  - c) The HR Department of the Respondent received the completed and signed review forms of the Applicant on 1 November 2016.

### **Issues in dispute**

6. The issue in dispute is whether or not the Applicant submitted her completed review forms to the HR department of the Respondent on or before the closing date of 31 October 2016.

### **Background to the dispute**

7. The Applicant was employed as a Professional Nurse at Ngwelezane hospital. As an employee she was eligible to participate in the Respondents' EPMDS. If she complied with all the criteria of the EPMDS she would qualify to receive a pay progression.
8. If she met all the requirements of the programme for the 2016/2017 and 2017/2018 financial years then she would have been paid a pay progression in the month of July 2019. However she did not receive a pay progression in her July 2019 payslip. She later found out from the HR department that the reason that she did not qualify for a pay progression was that she submitted her mid-year review documents for the 2016/2017 financial year, late, i.e. she submitted the documents on 1 November 2016 instead of on or before the deadline of 30 October 2016.
9. She lodged a grievance with the Respondent but was unsuccessful.
10. She then lodged a dispute with the Council for adjudication.

### **Survey of evidence and arguments**

11. As the proceedings were mechanically recorded, reference will only be made to that evidence which bears relevance to my findings.

**Applicant: Witness: 1: Velisiwe Dube (Applicant)**

12. The Applicant is employed as a Professional Nurse by the Department of Health – KwaZulu Natal, and is based at Ngwelezane hospital.
13. She testified that she qualifies for payment of a pay progression bi-annually as part of the Respondents EPMDs. As she met all the requirements for the 2016/2017 and 2017/2018 financial years, she qualified for payment of a pay progression in July 2019.
14. When she saw that the pay progression was not reflected in her pay slip for July 2019, she queried this with the HR department. She was told that she had submitted her mid-year performance review for 2016/2017, late.
15. She testified that this was not correct as she had signed the mid-year performance review documents on 26 October 2016 and handed it to her supervisor on the same day. Her supervisor also signed the documents on 26 October 2016. Therefore, as she had submitted the documents before the due date, she believed that she qualified for the pay progression.
16. She argued that if the documents were only received on 1 November 2016 then her supervisor should be blamed for this. She pointed out that she should not be prejudiced because of her supervisor's mistake.

**Respondent: Witness 1: Silindile Mtshali :HR Practitioner.**

17. Mtshali is employed as a HR Practitioner by the Department of Health – KwaZulu Natal, and is based at Ngwelezane hospital.
18. She testified that the Applicants' mid-year performance review documents were signed by the Applicant and her supervisor on 26 October 2016 but were only received by the HR department on 1 November 2016.
19. She pointed out that according to the Respondents Employee Performance Management and Development System the deadline for submitting the required documents for the mid-year review was 31 October 2016. As the Applicants' documents were only submitted on 1 November 2016 the Applicant did not qualify for payment of a pay progression.

## **Analysis of evidence and argument**

20. It was not in dispute that according to the Respondents EPMDS the deadline for the submission of the completed documents for the mid-year review is 31 October. It was also not in dispute that both the Applicant, and her supervisor, signed her mid-year performance review on 26 October 2016.
21. However, the HR Department of the Respondent only received the completed and signed performance review forms of the Applicant, on 1 November 2016.
22. Clause 9.6 of the Respondents' Employee Performance Management and Development Systems prescribes the deadline on which the completed documents are to be submitted. In the case of the mid-year review the deadline is determined as 31 October. Therefore, as the documents of the Applicant were submitted late, she did not qualify for a pay progression.
23. The Applicant argued that she had signed the completed documents and then handed the signed documents to her supervisor. Thereafter it was the responsibility of her supervisor to hand the documents over to the HR department. If the documents were only received on 1 November 2016, the supervisor should be held responsible for this shortcoming and not the Applicant.
24. Unfortunately for the Applicant the policy places the responsibility of handing over the completed documents to the HR department on or before 31 October, squarely upon the shoulders of both the Applicant and her supervisor. If either the Applicant or her supervisor failed to submit the documents on or before 31 October then the Applicant would not qualify for the pay progression.
25. I therefore find that as the mid-year review documents of the Applicant for the 2016/2017 financial year were only received by the HR department on 1 November 2016, she does not qualify for a pay progression.
26. The Applicant also argued that she was not aware of the policy on EPMDS and therefore she should not be prejudiced for her lack of knowledge in this regard. I cannot accept this argument as the Applicant is a long-standing employee and she has participated in the EPMDS over several years and ought to be familiar with the details of this system.
27. The Applicant further argued that she should not be penalized for the shortcomings of her supervisor who was responsible for submitting the documents late. However, no evidence was led to show that her supervisor was in fact responsible for submitting the documents late.

## **Conclusion**

28. It was not in dispute that the deadline for submission of the mid-year review documents is 31 October. As the Applicant submitted her completed documents on 1 November 2016, her application is late and so she does not qualify for a pay progression.

29. Under the circumstances, I dismiss the applicant's claim.

## **Award**

30. I find that the Applicant, Velisiwe Dube did not comply with the EPMDS policy deadline of 31 October 2016 for the submission of her completed mid-year review documents, and therefore she does not qualify for payment of a pay progression for the 2016/2017 financial year.

31. Therefore, the Respondent's conduct did not constitute an unfair labour practice.

32. The Applicant's claim is hereby dismissed.

33. I make no order as to costs.



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COMMISSIONER: KM MOODLEY