



ARBITRATION AWARD

Panellist/s: Paul Kirstein
Case No.: PSHS110-10/11
Date of Award: 13-Oct-2011

In the ARBITRATION between:

**IN THE PUBLIC HEALTH AND SOCIAL DEVELOPMENT SECTORIAL
BARGAINING COUNCIL (HELD AT GEORGE)**

CASE NO: PSHS110-10/11

In the matter between

DENOSA obo JANSE VAN RENSBURG, I J

Applicant

and

**DEPARTMENT OF CORRECTIONAL SERVICES:
WESTERN CAPE**

Respondent

ARBITRATION AWARD

DETAILS OF HEARING AND REPRESENTATION

1.

The arbitration was set down on 22 September 2011 in George. The applicant was represented by T Tyilekile, an official of DENOSA. The respondent was represented by J L van Wyk, an official employed at the respondent's legal services division. The respondent submitted a bundle of documents marked Bundle "A". The arbitration was mechanically recorded. The parties admitted written heads of argument.

ISSUE IN DISPUTE

2.

The applicant contends that the respondent incorrectly interpreted and applied the provisions of Resolution 3 of 2007 in that the applicant should have been translated on 1 July 2007 to a post of Operational Manager: Nursing (Primary Health Care) instead of being translated to a Clinical Nurse Practitioner (Primary Health Care).

SUMMARY OF EVIDENCE

3.

The applicant testified and indicated that she is employed as a Chief Professional Nurse at the Ladismith Correctional Unit. The applicant was appointed as Professional Nurse in 1978. The applicant referred to the 3 year general training and a post-basic course of midwifery. The applicant indicated that she was transferred to Ladismith as a Chief Professional Nurse in middle management. After the OSD the applicant was not regarded as middle management and is translated to a Primary Health Care Nurse on Grade 1. The applicant referred to colleagues in a similar situations but was translated to a Chief Operational Manager. In response to a grievance of the applicant it was indicated to the applicant that she has no primary health care qualifications. The applicant indicated that she is a Chief Professional Nurse responsible for the whole unit including management of funds, administration and medical decisions. The applicant is the only registered nurse at Ladismith. The applicant indicated that she is in terms of the OSD in a lower position. During cross examination it was put to the applicant that she does not have a post-basic qualification. It was indicated that the applicant conducts duties as a clinical nurse and not as an Operational Manager. It was put to the applicant that Ladismith resorts under the Oudtshoorn Correctional Centre. A Unit Manager post only exists at correctional centres and not at satellites such as Ladismith. With regard to the inconsistencies referred to by the applicant it was indicated that the

respondent will investigate the inconsistencies and correct same. It was put to the applicant that only Chief Professional Nurses who were in designated posts of Unit Managers were translated to Operational Managers. The applicant confirmed that her benefits remained the same after the implementation of the OSD.

D T Chiloane, a Deputy Director: Remuneration Control at the National Head Office of the respondent testified on behalf of the respondent. Chiloane referred to his employment history and qualifications. Chiloane confirmed that the applicant was translated on 1 July 2007 to a Clinical Nurse Practitioner Grade 1 (Primary Health Care) in terms of the OSD for nurses. Chiloane referred to the applicant's remuneration in the translated post. The implementation of the OSD was a strategy to retain nurses in the respondent. The implementation of the OSD was in accordance with the provisions of the DPSA implementation directive. Chiloane indicated that the applicant was correctly translated in terms of the OSD and the directive and referred specifically to Phases A, B, C and D of the translation process. Chiloane referred to the post structure at the Ladismith centre and indicated that a section head or management post does not exist at Ladismith. Chiloane indicated that the applicant does not possess a post-basic qualification. Although the applicant has more than 12 years full service and experience the applicant could not have been translated to Clinical Nursing Practitioner Grade 2 because of the lack of post-basic qualifications. Chiloane referred to the four different streams in the

OSD. A decision was made that Professional Nurses would be translated to Primary Health Care stream as a retention strategy.

ANALYSIS

4.

At the commencement of the arbitration the parties agreed that the following facts are common cause:

- The applicant is currently employed by the respondent in a nursing section in Ladismith Unit, Southern Cape Region.
- The applicant was a Chief Professional Nurse prior to the implementation of the OSD for nurses.
- The applicant possesses a general nursing and midwifery diploma.
- The OSD for Nurses was implemented on 1 July 2007.

5.

The parties agreed that the following issues are in dispute:

- Whether the applicant should have been appointed as Operational Manager: Nursing.

- Whether the applicant was appointed as Divisional Head or Section Head and if she executed all duties of such position.
- The existence of a Unit Manager post or Section Head post at Ladismith.
- Whether an award under case number PSHS492 was implemented or considered by the respondent.
- Whether a midwifery diploma can be regarded as a post-basic qualification.

6.

Although the applicant initially referred the dispute to the PHSDSBC regarding the failure to reinstate, it was agreed at the arbitration that the real dispute involved the interpretation and application of Resolution 3 of 2007, a collective agreement implemented on 1 July 2007. What needs to be determined is whether the applicant's translation was done in accordance with the provisions of Resolution 3 of 2007 and the implementation directive issued by the Minister of the DPSA as mandated by clause 3.2 of the mentioned Resolution. It is the applicant's version that on 1 July 2007 she should have been translated to the post of Operational Manager: Nursing. It is the respondent's version that the applicant was correctly translated to the post of Clinical Nurse Practitioner.

7.

It is common cause that the applicant received a letter dated 3 September 2008 from the area commissioner stating the following:

"It is my pleasure that you have been appointed as Section Head: Primary Health Care in Ladismith as from 2006/04/20."

You will be responsible for Ladismith Correctional Unit. You are expected to be and stay fully aware of all the Regulations pertaining to healthcare services."

The respondent's version regarding the letter received by the applicant is that an area commissioner does not have the delegated power to make such an appointment and therefore the letter is null and void. It is further the respondent's contention that a post of Section Head: Primary Healthcare does not exist at Ladismith. The last mentioned contention by the respondent is the crux of the respondent's version that a post for Section Head/Unit Manager must exist before that post can be converted into an Operation Manager post. The incumbent of such post can only be absorbed in the section head/unit manager post as an Operational Manager. The applicant could not indicate that a post of Section Head/Unit Manager indeed exist at Ladismith. It is undisputed that the applicant managed the Ladismith unit to an extent, but the management was done without the existence of the required post. The letter dated 3 September 2008 does not entitle the applicant in terms of Resolution 3 of 2007 to be translated to an Operational Manager. The respondent's version that the Health Services at Ladismith is managed by the Operational Manager at the Correctional Centre at Oudtshoorn has not been disputed.

8.

It is common cause that the applicant has a diploma in general nursing and a diploma in midwifery. During cross examination the applicant was referred to the requirements in terms of Government Notice R212 and a letter of the Ministry of Health wherein it is stipulated that the qualifications of the applicant is not regarded as post-basic qualification. The applicant to an extent conceded that her diploma in midwifery is not a post-basic qualification. The applicant's post was converted in terms of the OSD to a Clinical Nurse Practitioner (Primary Health Care) post. The translation key reflects that Primary Healthcare stream of Professional Nurses on salary level 8 translates to Clinical Nurse Practitioner Grade 1. The translation key does not allow a translation to Clinical Nurse Practitioner Grade 2. In terms of the directive a nursing employee must have a post basic qualification to be awarded a higher grade. The applicant could also not be awarded a grade 2 post because the applicant does not manage a nursing speciality unit and there is no managerial or speciality nursing post at Ladismith. Although the applicant has more than 12 years full service and experience the maximum grade the applicant could have been translated to a Clinical Nursing Grade 1 with corresponding remuneration of R180 612.00 per annum. In paragraph 8 of the directive the following is stated:

"As indicated, the salary structure in the OSD's for Professional Nurse, Staff Nurse and Nursing Assistant are based on the appropriate grading of post. The implementation of these OSD's does therefore not entail a general salary increase for employees in these occupations or

that all nursing employees will gain the same financial benefit with implementation of the respective OSD's."

The applicant's contention that she was demoted is not correct. The applicant in fact financially gained by the implementation of the OSD, although not to the expectation of the applicant.

9.

The applicant translated into the Primary Healthcare stream and not into the General Nurse stream. The applicant was not translated as a "newly qualified registered nurse" but translated during the first phase of the implementation of the OSD as a salary level 8. If the applicant was regarded as a newly qualified registered nurse she would have been on salary level 6. Although the Persal printout relevant to the applicant states "Operational Manager: Healthcare Services" such indication is the sub-component under which the applicant resorted and not reflecting the post upon which the applicant was carried. Having considered the requirements of Resolution 3 of 2007 as well as the implementation directive dated 28 September 2007, it is determined that the applicant was correctly translated. In the absence of the position of Unit Head on the organisational structure at the Ladismith Centre it must follow that the applicant could never have been appointed as Unit Head. It will therefore be incorrect to contend that the applicant should have been translated to the position of Operational Manager. The applicant referred to colleagues in similar circumstances that have been translated to Operational

Managers. If the colleagues were indeed in similar circumstances and were translated to Operational Managers such translation could not have been correct. The respondent in the heads of argument indicated that the issue was dealt with. An incorrect translation of colleagues does not entitled the applicant in these circumstances to be translated to Operational Manager. In the absence of post-basic qualifications the applicant could not have been translated to a higher grade than Grade 1.

AWARD

1. The translation of the applicant to Post Clinical Nurse Practitioner Grade 1 was correct in terms of Resolution 3 of 2007. The applicant's case is accordingly dismissed.
2. No order as to costs.

SIGNED AT PRETORIA ON THIS THE 13th DAY OF OCTOBER 2011



PH KIRSTEIN
ARBITRATOR

