



PHSDSBC

PUBLIC HEALTH AND SOCIAL DEVELOPMENT
SECTORAL BARGAINING COUNCIL

ARBITRATION AWARD

Commissioner: **KM Moodley**

Case No: **PSHS1142-16/17**

Date of Award: **05 June 2017**

In the matter between:

PSA obo F.A.Mngadi

Applicant

and

Department of Health- Kwazulu Natal

Respondent

DETAILS OF THE HEARING AND REPRESENTATION

1. The Arbitration was held on 23 May 2017 at the boardroom, Emmaus Hospital, Winterton.
2. The Applicant was represented by PSA official, Z.Mangulela. The Respondent, Department of Health- Kwazulu Natal was represented by its official, S.P.Dlamini.
3. The proceedings were mechanically recorded and the only witness testified under oath.
4. I am satisfied that the parties have been correctly cited and that the PHSDSBC has jurisdiction to hear this matter.
5. No Points In Limine were raised by either of the parties.
6. The Applicant tabled a bundle of documents, i.e. Bundle A. The Respondent tabled a bundle of documents, Bundle B which were introduced and accepted as evidence by both the parties and are deemed to be what they purported to be.
7. No objection was raised to Commissioner Moodley presiding over the Arbitration.

ISSUE TO BE DECIDED

8. The issue to be decided is whether or not the Applicant qualifies for back pay for the period 1 September 2015 to 30 April 2016 i.e. for a period of 8 months, as per Circular 29 of 2012.
9. Applicant sought to be paid back pay for the period 1 September 2015 to 30 April 2016. The Respondent did not dispute that the Applicant qualified for the payment of the back pay.

COMMON CAUSE ISSUES:

10. The following are issues of common cause:
 - Applicant obtained the Diploma in Medical and Nursing Science on 31 August 2015.
 - The Applicant has 9 years experience as a Professional Nurse.
 - The Applicant was translated by the Respondent to the post of Professional Nurse-Speciality with effect from 01 May 2016.

ISSUES IN DISPUTE:

11. The Applicant does or does not qualify for the payment of back pay for the period 1 September 2015 to 30 April 2016.

BACKGROUND TO THE DISPUTE:

12. In September 1996 the Applicant was appointed by the Respondent to the post of Professional Nurse. As at the date of arbitration she has approximately 21 years experience as a professional nurse.
13. On the 31 August 2015 she obtained the Diploma in Medical and Nursing Science.
14. In terms of Circular 29 of 2012 she now qualified to be translated to the post of Professional Nurse-Speciality with effect from 1 September 2015
15. The Respondent however decided to translate her with effect from 1 May 2016.
16. Applicant believed that she qualified for back pay for the period 1 September 2015 to 30 April 2016. Hence this dispute.
17. The Respondent did not deny that the Applicant did not qualify for the back pay.

SURVEY OF EVIDENCE AND ARGUMENTS

APPLICANT

WITNESS 1: F.A.Mngadi:

18. The Applicant testified that in September 1996 she was appointed by the Respondent to the post of Professional Nurse. As at the date of arbitration she has approximately 21 years experience as a professional nurse.
19. On the 31 August 2015 she obtained the Diploma in Medical and Nursing Science.

20. As per Circular 29 of 2012 she expected to be translated to the post of Professional Nurse- Speciality with effect from 1 September 2015 but for some reason the Respondent only translated her with effect from 1 May 2016 (i.e. only for 3 months).
21. She testified that she should have been translated from the date on which she obtained her Diploma and therefore was entitled to back pay for 8 months i.e. for the period 1 September 2015 to 30 April 2016.

RESPONDENT

22. The Respondent did not call any witnesses to testify on its behalf. The Respondent simply stated that he does not dispute that the Applicant qualifies for payment of the back pay, but that the Respondent does not have the funds to make the payment to the Applicant.

ANALYSIS OF EVIDENCE AND ARGUMENT

23. Circular 29 of 2012 provides that the Applicant should be translated to the post of Professional Nurse- Speciality with effect from 1 September 2015.
24. However the Applicant was translated, and paid, by the Respondent only with effect from 1 May 2016.
25. The Respondent did not dispute that the Applicant qualifies for back pay for the period 1 September 2015 to 30 April 2016.
26. Therefore I accept the version of the Applicant that she qualifies for the back pay.

CONCLUSION

27. I therefore conclude that the Applicant is entitled to be paid back pay for the period 1 September 2015 to 30 April 2016.

AWARD

28. I make the following award:

28.1) I find that the Applicant, F.A.Mngadi, qualifies to be translated to the post of Professional Nurse-Speciality with effect from 1 September 2015.

28.2) I find that the Applicant qualifies for back pay for the period 1 September 2015 to 30 April 2016 i.e. for a period of 8 months.

28.3) The Respondent is hereby directed to pay the total back pay due to the Applicant as per Clause 28.2 above, by no later than 30 June 2017.

28.4) I make no order as to costs.



COMMISSIONER: KM MOODLEY