



# ARBITRATION AWARD

PANELIST: **JEROME MTHEMBU**

CASE NO: **PSHS115-14/15**

DATE: **11 SEPTEMBER 2014**

In the matter between:

**PSA obo M G SANI & OTHERS**

Applicant

and

**DEPARTMENT OF HEALTH- FREE STATE**

Respondent

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## DETAILS OF HEARING AND REPRESENTATION:

1. The hearing was held on **28 July 2014**. Mr **Greeff** of the PSA represented the Applicants and Mr **Molokoane** the Respondent.
2. The parties agreed to endeavour to settle the dispute within thirty (30) days from the date of the arbitration, failing which they would submit argument on **3 September 2014** as *viva voce* evidence would not be required.

3. However, none of the parties adhered to the date of **3 September 2014**. I only received the Applicant's Heads of Argument on **10 September 2014** and the Respondent's on **11 September 2014**.

**THE ISSUE TO BE DECIDED:**

4. The interpretation and application of PHWSBC Collective Agreement 1/2005.

**SURVEY OF ARGUMENT:**

**APPLICANT'S SUBMISSIONS:**

5. Mr **Greeff** argued that in terms of PHWSBC Collective Agreement 1/2005, clause 4.1, the Respondent must pay all professional nurses, staff nurses and nursing assistants a non-pensionable uniform allowance of **R1 200.00** per annum.
6. In terms of clause 4.6 the Employees are entitled to the uniform allowance from **1 April 2005**.
7. The allowance will be increased annually on the **1<sup>st</sup> April** of each year by CPIX as determined by the Department of Finance – clause 4.7.
8. This matter was discussed extensively in the Provincial Chamber but no agreement was reached.
9. The Respondent only paid the uniform allowance for the financial year 2012/2013.
10. Mr **Greeff** attached the names of fifty (50) PSA members who have not been paid their uniform allowance for the financial years 2007, 2008, 2009, 2010 and 2011. He stated that the same list of names was provided to the Respondent during the arbitration.
11. He argued that therefore the Respondent is in breach of the collective agreement and must pay the above employees their accrued uniform allowances.

**RESPONDENT'S SUBMISSIONS:**

12. Mr **Molokoane** argued that the issue herein is *res judicata* as it was dealt with by Commissioner Dickens in her award under case number **PSHS732-12/13** dated **1 May 2013**.
13. He argued that the matter should therefore be dismissed.

**ANALYSIS OF THE ARGUMENT:**

14. I have read the award under case number **PSHS732-12/13** and paragraph 5.5 thereof reads as follows:

*“The onus rests on the Applicants to prove that the Respondent has contravened the Collective Agreement in the absence of the provision of any names, or specific periods of contravention relating to those specific employees, the referral is vague and the Applicant union has not discharged the onus to prove that the Respondent has failed to comply with, or contravened the provisions of the Collective Agreement.”*

15. It is clear that in case number **PSHS732-12/13** the Commissioner dismissed the Applicant’s case for vagueness as it lacked specific particulars in the form of names of the affected employees and the periods of contravention by the Respondent.
16. *In casu*, the Applicants have provided such particulars and the above award therefore does not find applicability. The principle of *res judicata* is accordingly misplaced as *in casu* the affected employees have been identified as well as the periods of contravention.
17. The Respondent has not rebutted the Applicants submission that for the periods stated above, it has not paid them their uniform allowance. This then means that I have to accept this fact and find that indeed the Respondent has contravened the Collective Agreement.

**AWARD:**

18. The Respondent has contravened the provisions of PHWSBC RES 1/2005 by failing to pay the uniform allowance of the Applicants whose names are attached hereto, as annexure "A", for the periods 2007, 2008, 2009, 2010 and 2011.
19. The Respondent is to comply with the provisions of PHWSBC RES 1/2005 regarding these Applicants within on or before 30 October 2014.
20. There is no order for costs.



**JEROME MTHEMBU**  
**PHSDSBC PANELIST**

## **ANNEXURE "A"**

1. M J Tshabalala – Persal no. 15907538
2. M P Molale – Persal no. 19200188
3. M V Seshaba – Persal no. 12564478
4. M J Thatelo – Persal no. 12563706
5. M M Moletsane – Persal no. 15948595
6. M Du Preez – Persal no. 12540323
7. M T Mofubetsane – Persal no. 16169719
8. T S Masisi – Persal no. 12750298
9. M J Olivier – Persal no. 12675181
10. M M Leeuw – Persal no. 82271542
11. K V Tau – Persal no. 12697699
12. H Barnard – Persal no. 12571695
13. H J Odendaal – Persal no. 12668770
14. M Fortuin – Persal no. 80088015
15. N C Mohapi – Persal no. 12605727
16. J A Maqelepo – Persal no. 18744745
17. K M Meerva – Persal no. 83567828
18. M K Ralimo – Persal no. 80653049
19. L S Makwati – Persal no. 82157154
20. R F Maphosa – Persal no. 22110704
21. M L Lekhinta – Persal no. 12614335
22. N L Khomongoe – Persal no. 14815885
23. M M Esmeraldo – Persal no. 12651940
24. P A Ntsoe Bea – Persal no. 15947823
25. M J Rakhosi – Persal no. 82783055
26. F Braunschweig – Persal no. 12642070
27. L P Letsie – Persal no. 15836223
28. M A Mopeli – Persal no. 83478868
29. T C Mofokeng – Persal no. 1485456
30. G F Mofokeng – Persal no. 82198993
31. J E Barda – Persal no. 82698414
32. K E Khahlane – Persal no. 15359166

33. V M Montle – Persal no. 83368612
34. M M Naledi – Persal no. 12620963
35. T E Makau – Persal no. 82270414
36. M C Montle – Persal no. 12643190
37. S M Hannie – Persal no. 80145752
38. J Kgwale – Persal no. 12694541
39. M P Rantsieng – Persal no. 12591823
40. A Duba – Persal no. 83170499
41. T Ndou – Persal no. 82231711
42. M W Mosebi – Persal no. 12644994
43. S N Sebeho – Persal no. 12751618
44. M A Nthongoa – Persal no. 82353123
45. N P Tsotetsi – Persal no. 21271496
46. M M D Nete – Persal no. 12651567
47. A J W Booyens – Persal no. 12671703
48. V P C Setilo – Persal no. 83087117
49. H C Wasserman – Persal no. 12573914
50. S Van der Westhuizen – Persal no. 82612048