



PHSDSBC

PUBLIC HEALTH AND SOCIAL DEVELOPMENT
SECTORAL BARGAINING COUNCIL

ARBITRATION AWARD

Panellist: **Lungile Matshaka**

Case No: **PSHS1170-17/18**

Date of award: **10 June 2018**

In the matter between:

PTC Mahlangu

(Union/ Applicant)

and

Department of Health- Gauteng

(Respondent)

DETAILS OF HEARING AND REPRESENTATION

1. The matter was set down for arbitration for hearing as part-heard in terms of section 198A(4) of the Labour Relations Act 66 of 1995, as amended, on 17 May 2018 at the SJ Lourens Nursing College in Pretoria. The Applicants, Ms PTC Mahlangu and Ms L P Jiyane represented themselves while Ms T Makhubela, Labour Relations Official, represented the Respondent.
2. The initial hearing was held on 1 March 2018 and due to the fact that the Respondent's witnesses were not available the proceedings had to be adjourned. The parties asked and were enabled to submit closing arguments in writing within seven (7) days. Only the Respondent complied. The Applicants failed to make their closing arguments.
3. It must be placed on record that initially only the above-mentioned two Applicants attended the proceedings.
4. In today's proceedings two additional Applicants, namely: Ms Lebogang Patricia Shuping and Patrick Ngobe who should have attended the last hearing presented

themselves. I noted that the Respondent's document included in its bundle reflected all their names as well as the individual letters of termination in respect of each Applicant. It was therefore clear to me there must have been an oversight that the set down notice only reflects one Applicant i.e. PTC Mahlangu. On this basis it made sense to join them as well so that the set down notice should be amended to read "P T C Mahlangu & 3 Others vs Department of Health – Gauteng"

5. It must be further placed on record that the dispute has a bearing on section 198B (4) (c) of the LRA and not on section 198A (4). The latter relates to a 'temporary service' that means work for a client by an employee. The analysis below will demonstrate why the latter is not the applicable in the present case. According to Section 198B (4) (c) *'the conclusion of a fixed-term contract will be justified if the employee is a student or recent graduate who is employed for purpose of being trained or gaining work experience in order to enter a job or profession.'*
6. The Applicants' referral reflects that they were not told at the beginning of the year that they will not be taken as Professional Nurses. On the 8th of December 2017 they were informed that the 31st December 2017 will be their last day. This is the crux of the matter.
7. On the other hand the Respondent maintains that it merely informed the Applicants individually that their services as a Community Serve Nursing will be terminated at the end of December 2017. It further stated that the institution where they were attached does not have Professional Nurse Posts available to absorb them for next year commencing 1st January 2018. They were further advised individually that they were free to apply for any vacant Professional Nurse Post.

ISSUE TO BE DECIDED

8. The Applicants were all engaged between January 2013 and January 2012 as Student Professional Nurses respectively and this was followed with a year's programme of Community Serve Nursing that ended on 31 December 2017. They were then advised to apply for any available vacant Professional Nurse posts at termination of the community services.
9. It is in the light of the above that the Applicants declared a dismissal dispute and referred it to the Council. I am therefore required to decide whether or not the Applicants were dismissed, and if so, whether or not the dismissal was substantively and procedurally fair, and if not, to determine an appropriate remedy.

SURVEY OF EVIDENCE AND ARGUMENTS

Applicants' evidence

10. Ms Mahlangu under oath confirmed that they all received letters simultaneously terminating their services at the end of one year of community service programme. She further mentioned that at the institution where they based, they were not told that they would not be absorbed in 2017 as Professional Nurses after completing their community services.
11. She further made reference to clause 1.4 relating to obligations of the student nurse that reflects the following:
- “The student is obliged within one calendar month after he/she has complied with all the requirements for registration as a nurse, to register as such with the South African Nursing Council, and to enter the Public Service, in any capacity for which the Department may consider the student nurse suitable, for a continuous period of one (1) year for each individual year of study or part ... in the post/rank to which the student may be appointed or to which he/she may be transferred/promoted.”*
12. According to Memorandum of Agreement Ms Mahlangu also made reference to clause 6 relating to **Termination** with the following provisions:
- (i) *‘Notwithstanding anything to the contrary stated herein, the Department may, at its discretion terminate the training and temporary employment of the student nurse in terms of clause 2.4;*
 - (ii) *Upon the termination as stated in 6.1 above, or if the student nurse leaves or is discharged from the Public Service, or if he/she terminates the course, he/she is liable to repay immediately to the Department...’*
13. Contrary to a document (Persal No. 26713403) included in the Respondent’s bundle, she neither resigned nor did the contract expire. As relief they are seeking three (3) months compensation.
14. In cross-examination Ms. Mahlangu responded as follows:
- (i) She confirmed that they were engaged and admitted on a four (4) year nursing programme course which they signed for in terms of the Memorandum of Agreement. They all completed the course in 2016.
 - (ii) They then proceeded to do a twelve (12) months community service as Professional Nurses respectively.

- (iii) She further confirmed that they only served the first year of the contractual period as a compulsory community service year's programme.
- (iv) She denied that they have been released of the obligation to serve out the remaining period.
- (v) She further confirmed that as per their referral they were not told that at the beginning of the year (2016) they will not be taken as professional nurses at the end of community service contract. It was only brought to their attention on 8 December 2017.

Respondent's evidence

15. The Respondent's first witness, Ms Diahne Evans, testified to the effect that:

15.1 She holds the position of Deputy Director since 2016. Her duties mainly entail overseeing nursing colleges and anything that has to do with profession in the Gauteng Province.

15.2 She made reference to the Memorandum of Agreement document entered into between the Respondent and the Applicants individually at the commencement of the training contract. She emphasized that the fact that in terms of Agreement as part of his/her obligations the student nurse has to work back each year for each individual year of study or part thereof into the Respondent.

15.3 She further confirmed that on 8 December 2017 the Applicants were formally informed that they would no longer be in the employment of the Respondent after 31 December 2017.

15.4 In cross-examination Ms Evans confirmed that the Agreement under the sub-heading 'The Student Nurse Understands and Accepts that the Department is under no obligation to employ him/her after he/she has complied with the requirements of clause 1.1, 1.2, 1.3, and 1.4 and if upon application for a post, the Department does not employ him/her and for this reason if she does not enter the Public Service, he/she will be exempt from repayment of all monies received, in terms of clause 6.2 (i) and (ii).

15.5 The second witness, Mr. Jackson Makhoba testified that he holds the post of a HR Manager at Cullinan Care and Rehabilitation Centre where the Applicants were based. He is aware that they were placed on Community Service Posts for a period of a year. Currently the institution does not have vacant Professional Nurse Posts.

15.6 He further confirmed that on 8 December 2017 all the Applicants were duly notified their services as Community Serve Nursing will be terminated at end of December 2017.

ANALYSIS OF EVIDENCE AND ARGUMENTS

16. As a point of departure, in terms of section 198B (1) of the LRA means that a contract of employment that terminates on –
- (a) the occurrence of a specified event;
 - (b) the completion of a specific task or project; or
 - (c) a fixed date, other than an employee's normal or agreed retirement age subject to subsection (3).
17. Subsection (4) (c) provides that '*without limiting the generality of subsection (3), the conclusion of a fixed-term contract will be justified if the employee is a student or recent graduate who is employed for the purpose of being trained or gaining work experience in order to enter a job or profession.*'
18. Turning to the present case, it is common cause that the Applicants were admitted to a full-time four-year Diploma Course leading to registration as a Professional Nurse. It is further common cause the Applicants were obliged within one month after they complied with all the requirements for registration as nurses, to register as such with the South African Nursing Council, and to enter the Public Service, in any capacity for which the Department may consider them suitable, for continuous period of one year for each individual year of study or part thereof in respect of which they were temporarily employed.
19. It is further common cause that in terms of the Memorandum of Agreement the Applicants understand and accept that the Respondent (Department) is under no obligation to employ them after they complied with the standing requirements of the course and for this reason if they do not enter the Public Service, they will be exempt from repayment student of all monies received in terms of clause 6.2 (i), (ii) and (iii).
20. Monies referred to above in terms of clause 6.2 are in respect of half the total amount of moneys paid to a student as salary and other service benefits; sum of money equal to the cost of tuition per year of study or part thereof; and interest on the amount in clause 6.1 at the ruling rate of interest applicable from time to time to debts due to the State.

21. The standing requirements briefly relate to (1) commencing the Course as directed in terms of the specific academic year; (2) undergoing such practical and theoretical training as may be prescribed by the concerned training institution as part of the Course; (3) working the hours of duty prescribed by the training institution and as specified by the nurse in charge of the unit; (4) within one calendar month after a student has complied with all the requirements for registration as a nurse, to register as such with the South African Nursing Council, and to enter the Public Service, in any capacity for which the Department may consider the student suitable.
22. In conclusion, there is no doubt in my mind the Respondent has not breached the Memorandum of Agreement entered into between itself and each Applicant by not employing the Applicants on the basis that in terms of clause 2 it is under no obligation to respectively employ them and further that on this ground they will also be exempt from payment of all monies received in terms of clause 6.2 (i), (ii) and (iii).
23. Therefore, I can only conclude that in terms of section 192(2) of the LRA the termination of the Applicants' engagement was fair.

AWARD

24. I find that the Respondent has proven that the dismissal of the Applicants in terms of section 192(2) of the LRA, as amended, was fair.
25. The matter is hereby dismissed.



Lungile Matshaka
PHSDSBC Panellist

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