



**PHSDSBC**

PUBLIC HEALTH AND SOCIAL DEVELOPMENT  
SECTORAL BARGAINING COUNCIL

# ARBITRATION AWARD

Case No: **PSHS1224-19/20**

Commissioner: **Jerald Vedan**

Date of award: **23 July 2020**

In the matter between:

**PSA obo Zanele Prudence Buthelezi and 3 others**

Applicant

and

**Department of Health- KwaZulu Natal**

Respondent

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## DETAILS OF HEARING, REPRESENTATION AND BACKGROUND

1. The hearing took place at The Boardroom, Charles James Hospital, Durban on 7 July 2020 at 10:00 am.
2. The first Applicant, Denver Narainsamy, the second Applicant, Zanele Prudence Buthelezi, the third Applicant, Shaun Nkosinathi Makhathini, and the fourth Applicant, Preshni Govindasamy, were represented by J. Hassan, a Union Official.
3. The Respondent was represented by Ms. Gumede.

4. The parties agreed to submit closing arguments in writing by 14 July 2020.

## **ISSUES TO BE DECIDED**

5. Whether the Respondent committed an unfair labour practice by denying the Applicants benefits.

## **OVERVIEW OF EVIDENCE AND ARGUMENT**

6. The Applicants were Denver Narainsamy, the Pharmacy Manager at Charles James Hospital, Zanele Prudence Buthelezi, a Finance Management Officer, Shaun Nkosinathi Makhathini, a Facility Information Officer, and Preshni Govindasamy.
7. The Respondent noted that the fourth Applicant, Preshni Govindasamy, has a case and is entitled to relief, as there are supporting documents. Preshni Govindasamy remained a part of the process. However, Preshni Govindasamy has to make submissions motivating for her pay to be adjusted.
8. The dispute arose over the Respondent's unfair conduct with regards to the provision of benefits to the Applicants. The benefit in dispute is the pay progression for various performance assessment periods.
9. After an audit, the Respondent discovered that the Applicants had not submitted the documents required for pay progression benefits. The findings suggested that there had been an overpayment, due to non-compliance on the part of the Applicants with regards to submission dates. The Applicants were informed of the findings of the audit.

10. The Applicants disputed the overpayment to themselves, as alleged by the Respondent, and contended that there were unique circumstances that led to the apparent non-compliance.
11. The Applicants further claimed that the conduct of the Respondent was unfair as their unique circumstances were not considered.
12. The Applicants received letters informing them of the alleged overpayments and lodged grievances thereafter. These grievances were unresolved.

### **APPLICANTS' EVIDENCE**

13. The first Applicant, Denver Narainsamy, testified that he is employed at Charles James Hospital as the Pharmacy Manager. He supervises nine subordinate employees, and is required to complete performance assessments, and comply with performance management.
14. According to his understanding of the performance management system for the Department of Health (EPMDS), the employer and the Manager have to develop a job description, and performance agreement, for every employee working under the Manager. That performance agreement is linked to their daily operations to reach certain targets and objectives defined by the institution.
15. Denver Narainsamy stated that the indicator or key performance areas are assessed twice a year, in September and March. These documents are submitted to the Human Resources Department.
16. The employees are assessed on whether they reach their goals based on the performance marked on a scale from one to five. Scores of one and two reflect poor performance, three indicates that the employee met all the requirements, and four

and five indicates that the employee has exceeded their performance criteria. A score of three point five is required in order for an employee to be eligible for pay progression.

17. According to the first Applicant, the relevant documents are submitted to the Human Resources Department at the end of the financial year, by the succeeding month.

18. He stated that in November 2019, he was informed that he did not qualify for pay progression, as his September review of the 2016/2017 financial year was not received by the Human Resources Department on time. He was informed that due to the delayed submission of the document, he did not qualify for pay progression, and was required to pay back the overpayment.

19. The overpayment amount originally communicated to him was R100 000-00. This was incorrectly calculated. However, after a review, the amount was adjusted to R3 400-00.

20. He stated that his Supervisor, who was the Acting CEO at the time, oversees his EPMDs. Due to the Supervisor being out of her office on many occasions, a different process was followed with regards to the submission of EPMDs. The documents were completed and submitted to her for signature by placing it in a tray. The Secretary would thereafter collect the documents, and submit them to the Human Resources Department.

21. Denver Narainsamy stated that after submitting his documents, he received a call from his Supervisor's Secretary informing him that his documents had been mislaid. He was asked to resubmit the documents. According to him, two other people experienced the same issue.

22. He complied and resubmitted his documents to the Secretary, who then proceeded to submit them to the Human Resources Department. He is not aware of what may have occurred after he submitted his documents.
23. He was not informed that his documents were not received by the Human Resources Department, and neither was he aware that they were submitted late. Therefore, he was unaware of any issues. He received his pay progression as usual. However, the Human Resources Department years after this process, informed him that he does not qualify for pay progression, and was therefore required to pay it back.
24. As far as he is aware, he complied with the deadline when he submitted his documents to the Acting CEO. He further stated that it was his Supervisor's responsibility to ensure that the documents are submitted before the deadline. His salary notch was decreased without his consent.
25. Mr. Narainsamy lodged a grievance and approached the Supervisor to discuss the matter. She informed him that she could not recall, as this had taken place many years ago.
26. He stated that his documents were submitted late by his Supervisor, who was not subject to any corrective measures for this late submission. He further stated that the Supervisor should have sent a letter to request a deviation in order to ensure that the submission requirements were complied with. Deviation was allowed in the past.
27. The second Applicant, Zanele Prudence Buthelezi, testified that she is a Finance Management Officer at Charles James Hospital. She supervises two subordinates.
28. In November 2019, she received a letter informing her that she was over paid for the 2014/2015 and 2017/2018 financial years.

29. She stated that according to her understanding, for the 2014/2015 financial year, the submission of one document has been disputed. This document is the performance agreement. She does not know how the document could have gotten misplaced.
30. According to her, she signed the performance agreement in April and her supervisor, Mrs Nolwazi T. Mkhize, thereafter took the documents to the Human Resources Department. The Human Resources Department would have been the final place for the submission of the performance agreement.
31. She stated that she is in possession of a copy of the performance agreement, and claimed that her Supervisor can confirm that the performance agreement was submitted timeously.
32. She stated that when she was informed that she was overpaid, she explained that according to her knowledge, her Supervisor submitted all documents to the Human Resources Department, and she had met the requirements for pay progression.
33. She informed her supervisor that the document was missing. Her supervisor was satisfied that all documents were submitted accordingly after she had signed them.
34. Zanele Buthelezi claimed that her performance agreement was misplaced.
35. According to her, a grievance was lodged, but was not resolved. There was no explanation provided for the missing document. She stated that she had been prejudiced by the document going missing, and had suffered a cut to her basic salary, which has caused a measure of financial strain.
36. When she had the opportunity to peruse her file, the performance agreement was missing. An investigating officer present informed her that according to his knowledge, the document was in the file. She stated that she cannot be held liable for a missing document after it has been submitted accordingly.

37. With regard to the 2019 cycle, she stated that all documents had been submitted and all requirements had been met.
38. She further stated that according to the processes involved, her payment could not have been captured had the document not been available.
39. A witness for the second Applicant, Nolwazi Mkhize, testified that she is a Senior Finance Management Officer, and is the Supervisor of that department. Therefore she is the Supervisor of the second Applicant, Zanele Buthelezi.
40. She stated that according to her knowledge, all Zanele Buthelezi's documents were submitted accordingly, and they were never made aware of missing documents.
41. She further stated that she took the documents to the Human Resources Department personally. Due to a computer crash, she is not in possession of a copy of the documents. She stated that copies of signed documents were not retained, as they are kept in a file.
42. The third Applicant, Shaun Nkosinathi Makhathini, testified that he is a Facility Information Office for the Department of Health. He stated that he received a letter from the Human Resources Department stating that a document for his 2015/2016 review was submitted late, on 21 April 2016.
43. He lodged a grievance as he had timeously submitted the document to his supervisor, the now retired Mr. Nombela, who then submitted the document to the Human Resources Department.
44. He stated that his September review was submitted in the first week of October. The document shows that he signed it on the 30 September 2015. He further stated that he did not take the documents to the Human Resources Department, as his Supervisor did that.

45. His salary was deducted in December 2019. He stated that he did not give the employer authorisation to deduct, or adjust, his salary.

46. Shaun Makhathini stated that the Human Resources Department does not capture if documents are missing.

## **RESPONDENT'S EVIDENCE**

47. The witness for the Respondent, Nokuzola Makhanya, testified that she is a Human Resource Practitioner employed at the Charles James Hospital, Human Resources Department. Her duties include overlooking the development and performance of the staff.

48. She explained that EPMDS (Employee Performance Management and Development) is a tool used to monitor an employee's performance. She further explained that documents such as a job description and performance agreement are a part of this process.

49. She stated that the deadline date for the submission of the performance agreement is the 31 May of that financial year. For the September review, the deadline is 30 October. If these deadlines are not met by an employee, then that employee is disqualified for the pay progression at the end of that financial year.

50. In respect of the second Applicant, Zanele Buthelezi's, testimony, she stated that the performance agreement for the financial year of 2015 was not in the file. This means that it was not submitted. According to her, this was discovered after an audit. However, Zanele Buthelezi was entitled to her pay progression for 2017/2018 as she was on maternity leave, but she has to motivate for this.

51. She stated that Supervisors need to have a register that keeps track of when the document goes to another department.



52. She stated that Zanele Buthelezi was not supposed to get her pay progression for that year. She further stated that it might have been a mistake when the committee, designated to do so, was working on pay progression.
53. Nokuzola Makhanya stated that there was a communication after that stating that Zanele Buthelezi did not qualify for the pay progression.
54. According to her, the directive from the Head Office of the Department of Health stated that Zanele Buthelezi was not meant to receive pay progression for that financial year. It also included an instruction stating that all employees who are on the audit should not receive the pay progression for the 2019/2020 financial year.
55. In giving evidence against the claims of the first Applicant, Denver Narainsamy, and the third Applicant, Shaun Makhathini, she stated that if a Supervisor submits documents, the Human Resources Department checks the documents, and thereafter it is stamped with a date stamp and forwarded. The date stamp serves as evidence of the date on which the document arrived at the office.
56. Nokuzola Makhanya re-iterated that the deadline for the September review is 30 October, and noted that Denver Narainsamy's documents showed that they were received on 22 November 2016. Shaun Makhathini's documents were received on the 21 April 2016 for the 2014/2015 financial year. She stated that both the first Applicant and the third Applicant did not comply with the submission dates.
57. She further stated that documents are stamped with the date on which she receives them. She claimed that everyone within the institution was aware of this.
58. Upon being cross examined, she stated that documents never went missing in the Human Resources Department. According to her submissions, she had interns working for her in 2014/2015. These interns were trained by herself.

59. She stated that the designated committee peruses the files, and that the committee made a mistake in not identifying that the documents were incomplete.
60. She stated that misplacing a document in the Human Resources Department is possible as they are understaffed, and she is the only person running the Human Resources Department. Due to this, it is possible for her to encounter the problem of misplaced documents.
61. However, she stated that Zanele Buthelezi's document was not submitted. A register is kept in order to keep track of the documents. She claimed that if a document is sent to another department, it must be copied and receipted. She stated that she was uncertain as to when the abovementioned practice began, but stated that Supervisors should implement this practice, as it is their duty to ensure the timeous submission of the documents.
62. She further stated that employees can communicate with Supervisors, as employees are aware of the deadline dates.
63. Nokuzola Makhanya stated that her supervisor instructed her to correct the notches of the employees concerned, and she has done these corrections. She stated that the Applicants have not been paid their pay progression as yet as they have not paid their debts. She further stated that she is waiting on permission from the head office to pay the pay progression for 2019/2020.
64. According to Nokuzola Makhanya, her supervisor instructed her to deduct the Applicants' salaries. She did not have permission from the employees. She stated that a clause included in the letter given to the Applicants addressed the issue of deductions of salaries. She also stated that she is not aware of where this clause originates from.

65. She further stated that the Applicants are eligible for pay progression for 2019/2020, and that they should have received this payment.

66. According to her, deviation occurs when a person is sick and on a long period of sick leave.

67. She stated that should it be the fault of the Supervisors, and should they admit to such fault, then the Human Resources Department can motivate for the payments to the Applicants. She further stated that she did not receive anything from the Applicants indicating that their Supervisors were at fault.

## **ANALYSIS OF EVIDENCE AND ARGUMENT**

68. The claim is in terms of Section 186(2)(a) of the LRA where the Applicants are alleging an unfair labour practice on the part of the Respondent relating to unfair conduct in the provision of benefits.

69. The Applicants allege that they were assessed in terms of the Employee Performance Management and Development System (EPMDS), and as a result they were given pay progressions. However, as a result of the Head Office audit that took place on or about January 2019, it was discovered that some of the requisite assessment documents were submitted out of time, which the Respondent claimed had resulted in overpayments to the Applicants, and these monies were claimed back from them.

70. These alleged errors were relayed to the Applicants by way of letters on or about November 2019. The Respondent's argument was that as a consequence of the documents being submitted after the closing date the Applicants did not qualify for the pay progression.

71. The Respondent contended that the fourth Applicant, Preshni Govindasamy, was away from work during the submission period. She was on maternity leave, and would not have been able to attend to the submission of the form timeously. Therefore, the Respondent stated that there will be a process whereby Preshni Govindasamy would have to make submissions with regards to the re-instatement of her notches.
72. With regards to the second Applicant, Zanele Prudence Buthelezi, the same pertained to the period concerning the 2017/2018 financial year. She was on maternity leave, and therefore the Respondent conceded that representations would have to be made by her to re-instate her notches for that particular period.
73. With regards to the first Applicant, Denver Narainsamy, and the third Applicant, Shaun Nkosinathi Makhathini, there was no proof that they submitted the documents on time.
74. Having carefully considered all the arguments herein, the real dispute between the parties does not concern unfair labour practice involving the provision of benefits to an employee. The dispute concerns monies deducted from the Applicants' salaries. This dispute does not fall within the purview of section 186(2)(a) of the Labour Relations Act in that it is not a claim for benefits, but for monies deducted from the Applicants' salaries.
75. Therefore, the correct forum would not be the Public Health and Social Development Sectoral Bargaining Council, but the Applicants, if they do have a claim, will have to pursue the matter via other channels, and utilise other remedies.

## **FINDINGS**

76. Therefore, I find that the Public Health and Social Development Sectoral Bargaining Council has no jurisdiction in this matter.

## **AWARD**

77. I make the following award:

78. The Public Health and Social Development Sectoral Bargaining Council does not have jurisdiction in the matter.

79. The dispute does not fall within section 186(2)(a) of the Labour Relations Act.

80. There is no order as to costs.



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JERALD VEDAN  
Commissioner