



PHSDSBC

PUBLIC HEALTH AND SOCIAL DEVELOPMENT
SECTORAL BARGAINING COUNCIL

ARBITRATION AWARD

Case No: PSHS1248-17/18

Commissioner: Nozibusiso Faith Gumede

Date of award: 14 May 2018

In the matter between:

PSA obo EVERT TUMELO MAUBANE

(Applicant/ Employee)

and

DEPARTMENT OF HEALTH- MPUMALANGA

(Respondent/ Employer)

DETAILS OF HEARING AND REPRESENTATION

1. The arbitration was held under the auspices of the Public Health and Social Development Sectorial Bargaining Council (hereunder referred as “PHSDSBC”) terms of section 191(5) (a) of the Labour Relations Act, 1995 as amended (“hereunder referred as the LRA”) and the award is issued in terms of section 138(7) of the LRA. The hearing took place at Mmametlhake Hospital, Ba-Mokgoko on 3 May 2018 at 10h00.
2. The applicant, Evert Tumelo Maubane was represented by Kobus Heyneke, a Union Official from Public Servants Association (PSA) whilst the respondent, Department of Health – Mpumalanga was absent despite being notified by fax on 16 April 2018. The

service of the interpreter was not required. The hearing was digitally and manually recorded.

ISSUE TO BE DECIDED.

3. I am required to determine whether or not, the respondent has properly interpreted or apply the ***PHSDSBC Resolution 3 of 2009***, Occupational Specific Dispensation for Medical Officers, Medical Specialists, Dentists, Dental Specialists, Pharmacologists, Pharmacists and *Emergency Care Practitioners*. Further to determine whether to award a remedy or not, and if so, to determine the appropriate remedy?

BACKGROUND OF THE DISPUTE

4. On 2 August 2010, the applicant was employed as an Emergency Care Technician (hereunder referred as ECT) Grade I by the Department of Health – Gauteng however he resigned on 31 July 2015 and joined Department of Health – Mpumalanga on 1 August 2015. He is currently earning at the notch of R188 916.00 per annum. He is seeking retrospective grade progression from 1 September 2017 as a relief in this matter.

SURVEY OF EVIDENCE AND ARGUMENT

THE APPLICANT'S CASE

1ST WITNESS

5. Evert Tumelo Maubane, the applicant led his own evidence under oath as follows:
6. On 30 October 2017, he lodged a grievance against the respondent for failing to comply with the PHSDSBC Resolution 3 of 2009. He qualified for the grade progression to ECT Grade II because he is an average work performer and has been in the employment of the public service Health Department for over the period of 7

years within his area of work. He averred that his grievance application did not receive any attention and decided to refer his matter at the PHSDSBC on 29 November 2017 for appropriate resolution.

ANALYSIS OF EVIDENCE AND ARGUMENT

7. In terms of section 138(7) of the LRA, I am required to issue an award with brief reasons, and what follows is the summary of the evidence that I regard as necessary to substantiate my findings and determination of the dispute.
8. In terms of PHSDSBC Resolution 3 of 2009, Annexure A3 clause 1.6, average performance for grade progression purposes “is a combination of 7 years actual service and/or recognizable experience after registration with the Health Professions Council of SA (HPCSA) as ECT”. It is evident that the applicant worked for both Department of Health Gauteng and Mpumalanga for combination of 7 years. The records show that he registered with the HPCSA as an ECT on 30 June 2010. He also indicated that he is an average work performer with appropriate years of experience for grade progression. Therefore, I have no reason not to believe his version, as the respondent had waived their right by not attending the proceedings in order to defend themselves.
9. In the absence of contrary evidence, I am incline to agree with the applicant that the respondent did not comply with the aforementioned resolution. I further align myself with the statement made in *Abrahams v GPSSBC* (JR1790/08) [2011] ZALCJHB 24 by Molahlehi J that ‘it is trite in our law that as a general rule a trier of the facts need not in a default hearing interfere with the uncontested evidence put before him or her.’
10. Thus, it is my findings that the respondent did not properly interpreted or apply the PHSDSBC Resolution 3 of 2009, as applicant did not progress to ECT grade 11 after completing 7 years of service, as an average performer. It will be just and equitable

for the applicant's grade progression to have a retrospective effect, as it was due on 1 September 2017 at the notch of R223 863.00 per annum.

AWARD

11. I make the following award:

12. The respondent, Department of Health- Mpumalanga is ordered to effect the applicant, Evert Tumelo Maubane, grade progression from Emergency Care Technician Grade I to Grade II and for his salary grade (scale) to be moved to the next highest from 1 September 2017.

13. Due to the retrospective effect, the respondent must pay the applicant an amount of R25 460.28 (twenty-five thousand, four hundred and sixty rands, twenty-eight cents) calculated as follows:

$R223\ 863.00$ (Grade II notch) / 12 = $R18\ 655.25$ (monthly salary) and $R188\ 916.00$ (Grade I notch) / 12 = $R15\ 826.33$ (currently monthly salary). $R18\ 655.25 - R15\ 826.33 = R2\ 828.92 \times 9$ (months - September 2017 to May 2018) = $R25\ 460.28$ outstanding.

14. The amount (in paragraph 13. above) must be paid to the applicant on/or before the 31 May 2018.

15. I make no order as to costs.



NOZIBUSISO FAITH GUMEDE