



ARBITRATION AWARD

Panellist/s: Paul Kirstein
Case No.: PSHS135-10/11
Date of Award: 6-Apr-2011

In the ARBITRATION between:

**IN THE PUBLIC HEALTH AND SOCIAL DEVELOPMENT SECTORIAL
BARGAINING COUNCIL (HELD AT RUSTENBURG)**

CASE NO: PSHS135-10/11

In the matter between

NEHAWU obo MMN MATSHEGO

Applicant

and

DEPARTMENT OF HEALTH: NORTHWEST

Respondent

ARBITRATION AWARD

DETAILS OF HEARING AND REPRESENTATION

1.

The matter was set down for arbitration on 28 March 2011 in Rustenburg. The applicant was represented by M Megalane, an official of NEHAWU. The respondent was represented by M Adoons, an Assistant Manager in the employment of the respondent. The parties submitted bundles of documents marked bundle "A" and "B". The arbitration was mechanically recorded.

ISSUE IN DISPUTE

2.

The applicant referred an interpretation and application of a collective agreement dispute regarding an incorrect placement in terms of Resolution 3 of 2007 ("OSD").

SUMMARY OF EVIDENCE

3.

The applicant testified and indicated that she is currently employed at the JST Hospital as a professional nurse. The applicant started her employment on 1 June 2008 at the JST Hospital. The applicant has twenty-three years of service at the Department of Health. The applicant has a diploma in Child Nursing Science. The applicant indicated that she is a provisional nurse with a nursing speciality and should be dealt with accordingly. The applicant is placed in a speciality ward but is

not remunerated accordingly. The applicant is remunerated as a general professional nurse. The applicant should therefore be dealt with in terms of Resolution 3 of 2007 as a professional nurse who occupies a post in nursing speciality.

4.

During cross-examination the applicant admitted that she applied for the post of a general professional nurse and that she was accordingly appointed in such a position. The appointment was effected on 1 June 2008. The applicant confirmed that she resigned from her employment at the respondent and two years later reapplied for the general professional nurse position advertised by the respondent. The applicant indicated that a colleague, Marobe, was appointed as a general professional nurse but was recently appointed on the scale of a professional nurse with a speciality. The applicant's contention is that if she has been placed in a speciality ward she should be remunerated as a professional nurse with a speciality.

5.

MJ Mfolo, the HR Manager at the JST Hospital testified on behalf of the respondent. Mfolo confirmed that the applicant is employed in a speciality ward. The applicant applied for a general professional nurse post and was accordingly appointed in such a post. The applicant was not appointed in the post of a professional nurse with a speciality. Mfolo indicated that not all the nurses employed in a speciality ward are professional nurses with a speciality. According to Mfolo the OSD in terms of Resolution 3 of 2007 is not applicable to the applicant.

ANALYSIS

6.

It is common cause that the applicant is a professional nurse with a diploma in Child Nursing Science. The respondent recognises the qualification of the applicant. It is common cause that the applicant conducts her duties in a speciality ward. On the abovementioned basis the applicant claims that she should be remunerated on the level of a professional nurse with a speciality in terms of Resolution 3 of 2007.

7.

The respondent's representative raised a point *in limine* and indicated that the matter is *res judicata*. Reference was made to a labour court order under case number J2436/2009. Although the court order relates to Resolution 3 of 2007 it cannot be determined on what has been placed on record at the arbitration that the principle of *res judicata* is applicable. Therefore the arbitration proceeded on the merits of the dispute.

8.

Resolution 3 of 2007 became effective in accordance with clause 3 thereof on 1 July 2007. The applicant was employed as a general professional nurse on 1 June 2008. The applicant confirmed that she had applied for the post of a general professional nurse. Resolution 3 of 2007 makes provision for an occupational specific

remuneration and career progression system and allows for progression to higher levels without competing for vacancies or promotion to higher vacant posts. The applicant was appointed after the implementation of Resolution 3 of 2007. Resolution 3 of 2007 does not state that an employee appointed after the implementation date in a specific post such as a general professional nurse can be advanced to a post of a speciality professional nurse without competing for vacancies or promotion to a higher vacant post. Clause 3.2.5.3 (i) specifically states that a professional nurse who occupies a post in a nursing speciality shall be translated to the appropriate speciality post. The applicant does not occupy a post of a speciality professional nurse. The only manner in which the applicant can progress to a speciality professional nurse post is by competing for vacancies or promotion. The applicant referred to a colleague who has been appointed in a similar post and has progressed to a speciality professional nurse post. The applicant could not indicate the basis of such progression. The indication that a colleague has progressed to a speciality professional nurse post does not entitle the applicant to progress to a speciality professional nurse post in terms of Resolution 3 of 2007. The applicant failed to prove on a balance of probabilities that she is entitled to the relief she sought.

AWARD

1. The application is dismissed.

2. No order as to costs.

SIGNED AT PRETORIA ON THIS THE DAY OF APRIL 2011



PH KIRSTEIN

ARBITRATOR