



PHSDSBC
PUBLIC HEALTH AND SOCIAL DEVELOPMENT
SECTORAL BARGAINING COUNCIL

ARBITRATION AWARD

Panellist: Silas Ramushwana
Case No.: PSHS 139 11/12
Date of Ruling: 20 February 2012

In the matter between:

PSA obo MACHABA SJ

(Applicant)

and

DEPARTMENT OF HEALTH & SOCIAL DEVELOPMENT-MPUMALANGA

(Respondent)

Union/Applicant's representative: MS. P ZULU-UNION OFFICIAL
Union/Applicant's address: P/BAG X11203
NELSPRUIT
1200

Telephone: _____
Telefax: _____
E-mail: _____

Respondent's representative: MR. E NKOSI-LABOUR RELATIONS OFFICER
Respondent's address: P O BOX
NELSPRUIT
1200

Telephone: 013-7511117
Telefax: 013-7312266
E-mail: _____

DETAILS OF HEARING AND REPRESENTATION:

1. This matter was scheduled for arbitration heard on the 6th of February 2012 at the offices of the Department of Health, Nelspruit. Ms. P Zulu, a trade union official appeared on behalf of the employee (hereinafter referred to as the Applicant) and Mr. E Nkosi represented the Department of Health (hereinafter referred to as the Respondent). The proceedings were electronically recorded.

ISSUE TO BE DECIDED:

2. I am to determine whether or not the respondent committed an unfair labour practice by failing to interpret or implement a regrading process as per the National instruction, thereby fail to compensate the applicant.

BACKGROUND TO THE ISSUE

3. The applicant was employed by the employer from 2001 she is presently holding a managerial position at a different department within the public service. She was appointed Deputy Manager, Community Development at the time when the dispute arose. The applicant alleges that the respondent failed to implement the Guidelines for regarding of Community Development Practitioners (CDP). In that she regarded wrongly and paid incorrectly. The relief sought by the applicant is to be compensated an amount which is the difference between April 2007 and August 2007.

SURVEY OF EVIDENCE AND ARGUMENT

OPENING REMARKS:

APPLICANT indicated that she will demonstrated that before the regarding she was working for Limpopo province and Mpumalanga paid her less as she was supposed to be paid as a Manager not as a Deputy Manager.

RESPONDENT indicated that it will demonstrate that regarding was a national process. It was fairly implemented and transparent with the consultation of

the union. It will be the respondent's case that the applicant was properly and correctly paid.

APPLICANT'S ARGUMENT

4. **Ms. S J Machaba** testified under oath that she has been appointed as a Deputy Manager, Level 9 in 2007 which she inherited whilst she was working for Limpopo government. She reported to a District manager. When she was transferred to Mpumalanga in 2006, she performed the duties of the manager at level 9. When she enquired she was informed that she would report to Maureen. It is her submission that there were no clear reporting lines and she was supposed to be translated from level 9 to level 11. Her argument is based on the functions she performed. She concluded her evidence by stating that even if she was paid it was not according to the level she expected.

RESPONDENTS' EVIDENCE

5. **Mr. D Nkambule**, Assistant Manager: Community Development, testified that he was part of the task team which developed and implement the regarding process as a delegate from NEHAWU. It is his evidence that after the regarding process; there was an allowance for exceptional cases to be presented as all officials were translated to level 10 not level 11. It is his evidence that the applicant did not lodge any grievance to the task team.
6. **Ms. D DT Mathebula**, Sub district Manager, Bushbuckridge, testified that around 2007, Bushbuckridge was previously referred to as Botshabelo District whilst it was still under Limpopo province. Now the district has been converted to a sub district and they report under Ehlanzeni District. The changes were communicated to all employees. She informed the applicant that she would

report to Maureen. She stated that she was aware of the documentation which was developed for regarding. It is her evidence that the applicant was graded to the correct level, Level 10.

CLOSING REMARKS:

6. APPLICANT maintained the fact that the respondent acted unfairly and she was incorrectly translated.

7. RESPONDENT maintained its position in that there was no unfair labour practice committed as they complied with necessary procedures in regarding all the officials.

ANALYSIS OF EVIDENCE AND ARGUMENT

8. It was the applicant's case that she was supposed to be graded to level 11 during the process as contemplated by the guidelines not level 10 as her responsibilities were of senior officials. On the other hand the respondent submitted that the process was implemented correctly, there was an allowance for parties to lodge grievances and that the applicant was regarded and paid accordingly.

9. A document referred to as "Implementation guidelines for regarding of Community Development Practitioners (CPD)", is the central focus in this matter. It was very clear that the panel recommended Salary grade 10 for Assistant Manager; Community Development from salary grade 9. Item 4 (f) provides that "it is further advised, if possible that the translations that have the potential to be challenged at a later stage, be moderated by an internal committee comprising of members of both line and support function". It was demonstrated that the applicant was regarded and paid accordingly. It has

been the applicant's challenge that she performed the duties of the manager and therefore she qualified to be regraded to level 11. The guideline provided that an official at the applicant's level should be translated to level 10 and it was complied with. The applicant was supposed to lodge a grievance during the time she was given duties beyond her level. Further that she was supposed to follow a prescribed process after the regarding as stated above.

10. Accordingly, I am persuaded that the applicant did not establish any unfair labour practice committed by the respondent
11. In therefore make the following award;

AWARD:

12. I am persuaded that the respondent regarded the applicant correctly as per the guidelines.
13. Accordingly, this application is dismissed.
14. No order as to costs is made.

THUS DONE AND SIGNED AT NELSPRUIT ON THIS 20TH DAY OF FEBRUARY 2012.

Silas Ramushwana



Signature