



**PHSDSBC**

PUBLIC HEALTH AND SOCIAL DEVELOPMENT  
SECTORAL BARGAINING COUNCIL

# ARBITRATION AWARD

Case No: PSHS1475-17/18

Commissioner: Thando Ndlebe

Date of award: 5 February 2019

In the matter between:

**ANASTACIA PITSO**

**APPLICANT**

and

**DEPARTMENT OF HEALTH- FREE STATE**

**RESPONDENT**

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## DETAILS OF HEARING AND REPRESENTATION

- [1] The matter was heard by me under the auspices of the Council as an arbitration process on 28 January 2019 in Ladybrand. The Applicant, Ms. Anastacia Pitso, was present and was represented by Mr. Froncois Crous from Christo Dipenaar Attorneys in the proceedings.
- [2] The Respondent was not represented in the proceedings. I am satisfied that the Council served the Respondent with copies of the Notice of Set Down for arbitration proceedings by facsimile on 10 December 2018.
- [3] The Applicant submitted a bundle of documents and same was admitted and marked as **Applicant's Bundle "A"**.

## **ISSUES TO BE DECIDED**

[4] The Applicant referred a dispute to the Council in terms of section 186 (2) (a) of the Labour Relations Act 66 of 1995, (as amended). I am required to determine whether or not the Respondent committed an unfair labour practice against the Applicant. In the event I find in favour of the Applicant, that I order appropriate relief(s).

## **BACKGROUND TO THE DISPUTE**

[5] The Applicant was employed by the Respondent in 1992 and currently earns an annual salary of R384 657.00

[6] The Applicant is currently appointed by the Respondent in the position of Occupational Health Nurse Practitioner.

[7] The case of the Applicant is that the Respondent is committing an unfair labour practice by not remunerating her accordingly even though it promoted her to the position of Occupational Health Nurse Practitioner from 1 September 2014. The Council should find in her favour and order that she be paid the compensation due from 1 September 2018 till date of issue of the Award.

## **SUMMARY OF EVIDENCE AND ARGUMENTS**

### **APPLICANT'S CASE**

#### **Ms. Anastacia Pitso testified under oath as follows:**

[8] The Respondent appointed her into the position of Occupational Health Nurse Practitioner with effect from 1 September 2014. The appointment letter for the position of Occupational Health Nurse Practitioner can be found at page 1 of Bundle "A". She holds a qualification in Occupational Nursing as found at page 2 of Bundle "A". She has been qualified in the field of Occupational Nursing for approximately nineteen (19) years.

- [9] The Respondent failed to pay her an Occupational Health Nurse Practitioner income after the aforementioned appointment. She approached the Respondent's Human Resources Department for assistance in this regard, but in vain. She then approached the Chief Executive Officer of her District to assist her. She also went to the Respondent's Provincial Offices at Bophelo House in Bloemfontein, but her issue was not resolved. She further discussed her unhappiness about the position in dispute with the Director of Nursing at Bophelo House, namely Ms. Tsiu, but she also did not provide any help. She even lodged a formal grievance within the Respondent in respect of the appointment query, but her employer turned a blind eye on her plight.
- [10] She has been performing Occupational Nursing services for the Mantsapo District as from 1 September 2014. She is responsible for the occupational well-being of all the personnel of Seniorita Ntlabati Hospital and surrounding Clinics. The daily activities that she is responsible for are as follows; staff consultations, issuing of vaccines to staff, issuing of chronic medication to staff, family planning and managing safety issues. The staff compliment of the Respondent is currently sitting at 154. The Respondent's other hospitals have appointed Occupational Nurse Practitioners and it is a requirement in the Province that each hospital must appoint an Occupational Health Nurse Practitioner.
- [11] She currently earns an annual salary of R384 657.00 whereas she is supposed to be earning an annual salary of R487 266.00 as found at page 9 of Bundle "A". The current Chief Executive Officer of the hospital, namely Mr. N J Setsego, is fully aware that she continues to perform the functions of an Occupational Health Nurse Practitioner. She submits reports to the current Chief Executive Officer on a regular basis. The compensation owed to her by the Respondent is R444 642.00 (Four Hundred and Forty-Four Thousand and Six Hundred and Forty Two Rand), which is the difference in the two above-mentioned salaries over a period of 152 months.

## **ANALYSIS OF EVIDENCE AND ARGUMENTS**

- [12] In my analysis I have considered only the evidence and oral closing arguments of the Applicant. The Respondent was not present in the proceedings and could therefore not challenge the version of the Applicant.
- [13] The evidence of the Applicant was that she was duly appointed by the Respondent in the position of Occupational Nurse in September 2014. The testimony of the Applicant was that the Respondent is fully aware of her activities as an Occupational Health Nurse Practitioner and that she should be remunerated as such. It would be a different situation if the Respondent was not aware that the Applicant was performing responsibilities of an Occupational Health Nurse Practitioner. I am therefore satisfied that the Applicant was appointed as an Occupational Health Nurse Practitioner in September 2014 and should be remunerated as such.
- [14] The Applicant's appointment letter as found at page 1 of Bundle "A" reads "you are hereby appointed to execute the duties of the Occupational Health Nurse for the Mantsopa Hospital, and also to ensure that the Safety Act and Regulations are adhered to in accordance with the Occupational Health and Safety Act and Regulations 85 of 1993 from 1 September 2014 till further notice". It is against this background that I found that the Applicant is entitled to compensation of R444 642.00 for the position of Occupational Health Practitioner in accordance with her appointment into this position with effect from 1 September 2014.

## **AWARD**

15. The Respondent is ordered to pay the Applicant compensation of Four Hundred and Forty-Four Thousand and Six Hundred Forty-Two Rand (R444 642.00).
16. The Respondent is ordered to make the payment referred to in paragraph 15 above by the 21<sup>st</sup> February 2019.
17. I make no order as to costs.

A handwritten signature in black ink, appearing to read 'Thando Ndlebe', enclosed in a thin black rectangular border.

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**THANDO NDLEBE**