



# ARBITRATION AWARD

Panelist/s:  
Case No:  
Date of Award

Adv PM Venter  
PSHS 152-11/12  
20 May 2012

In the ARBITRATION between:

**PSA obo LHF JACOBS**  
(Applicant)

and

**DEPARTMENT OF HEALTH: FREE STATE**  
(Respondent)

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## ARBITRATION AWARD

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### **DETAILS OF HEARING**

1. The matter was set down for arbitration on **10 May 2012** at the offices of the Respondent in Bloemfontein.
2. The Applicant was represented by an union official, Mr Greeff, whilst the Respondent was represented by their Labour Relations Officer, Mr Mapena. Both representatives are thanked for their able assistance.

3. The matter was not mechanically recorded as no evidence was led. No interpreter was required.

### **ISSUE TO BE DETERMINED**

4. I was called upon to determine whether or not the Respondent was in breach of a collective agreement in terms of section 24 of the Labour Relations Act, 66 of 1995 (hereafter referred to as the "LRA).

### **BACKGROUND TO DISPUTE**

5. The Applicant's member, Mr Jacobs, acted as the Technical Manager at Universitas Hospital with effect from 8 October 2007. The period was terminated on 31 March 2010.
6. The period mentioned was on a higher level than his own post. He was not compensated for the performance of higher duties and the Applicant registered a grievance concerning the failure of the Respondent to compensate Mr Jacobs.
7. The dispute relates to the interpretation and/or application of resolution 1 of 2002 that specifically deals with the payment of acting allowances.
8. Parties agreed not to call witnesses and to present their respective matters by means of written arguments only.

### **SURVEY OF ARGUMENTS PRESENTED**

#### **ARGUMENTS OF APPLICANT**

Mr Greeff's arguments were, in essence, that:

9. Mr Jacobs was appointed in an acting position on 8 October 2007. The appointment was done by Rev Musapelo who was the acting General Manager at that stage. Mr Jacobs accepted the appointment and performed the duties of the Technical Manager for the period 8 October 2007 to 31 March 2010.
10. The position was vacant and funded and Mr Jacobs was appointed in writing.

11 Clause 3.1.1 of resolution 1 of 2002 is directive and states that an employee must be paid an acting allowance if he/she performs higher duties for a period in excess of 6 weeks.

12 Mr Jacobs should be paid an acting allowance for the entire period.

### **ARGUMENTS PRESENTED BY THE RESPONDENT**

Mr Mapena's arguments were, in essence, that:

13 It was not disputed that Mr Jacobs was appointed in writing and that he accepted the position. It was also not disputed that the position was vacant and funded.

14 The Respondent's argument was simply that all acting appointments had to be made by the MEC and that Rev Musapelo was therefore not vested with powers to appoint Mr Jacobs in an acting position. Rev Musapelo therefore acted ultra vires and the appointment was invalid ab initio invalid and with no legal effect..

15 Mr Jacobs was simply tasked in terms of the Public Service Regulations to perform additional duties without compensation.

### **ANALYSIS OF ARGUMENTS PRESENTED**

16 Resolution 1 of 2002 has the following requirements for the payment of acting allowance:

- a) The post must be vacant and funded.
- b) The acting period must be for a period in excess of 6 weeks.
- c) The appointment must be made by an appointing authority that is a higher level than the acting appointee.
- d) The employee must accept the appointment.

17 Prerequisite a, b & c was not disputed. The Respondent's argument was simply that Rev Musapelo was not vested with any powers to appoint Mr Jacobs.

18 The Respondent's argument makes very little sense. The resolution simply states that the appointment must be made by an appointing authority that is a level higher than the acting appointee. It makes no mention that the appointment must be done by an executing authority or accounting officer.

- 19 The appointment as done by Rev Musapelo, who acted as General Manager, a position that is clearly on a higher level than Technical Manager. In my view the requirements of the resolution was met.
- 20 It seems that the Respondent has reaped the benefits of Mr Jacob's services on a higher level in any event. I am however not prepared to award payment of acting allowance for a period in excess of 12 months as clause 3.6 clearly states that any acting appointment may only be for a period of 12 months only.
- 21 The Respondent is in breach of Resolution 1 of 2002 and should pay Mr Jacobs the difference in salary of his notch and the commencing notch of the position he performed acting duties.

### **AWARD**

- 22.1 The Respondent is in breach of Resolution 1 of 2002.
- 22.2 The Respondent, the Department of Health Free State, is ordered to pay an allowance to Mr LHF Jacobs, which allowance should be equal to the difference between his salary notch as on 8 October 2007, and the commencing notch for the position he has acted in (Technical Manager).
- 22.3 The allowance is to be paid for the period 8 October 2007 to 7 October 2008.
- 22.4 The allowance is to be paid within thirty days of receipt of this award.
- 22.5 I make no order as to costs.



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**Adv PM Venter**  
**PHSDSBC Arbitrator**