



ARBITRATION AWARD

Panelist: Mulima Denga

Case No: PSHS154-14/15

Date of Award: 07 August 2014

In the matter between:

HOSPERSA obo Neale SM

Applicant

and

Department of Health- Mpumalanga

Respondent

Applicant's Representative: c/o Mr. L. Liebenberg

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Respondent's Representative: c/o Messrs MA Mahlangu and MA Khoza

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PARTICULARS OF THE HEARING AND REPRESENTATION

[1] The Applicant forwarded a dispute in terms of section 191(1) (a) (i) of the Labour Relations Act, Act 66 of 1995 (as amended). The arbitration hearing was set down and indeed took place on the 15th of July 2014 in the boardroom of HA Grove Hospital in Belfast – Mpumalanga Province of South Africa. In the hearing the Applicant was represented by Messrs Liebenberg and De Beer (HOSPERSA officials) whilst the Respondent was represented by Messrs Mahlangu MA and Khoza MA (Labour Relations Managers).

ABBREVIATIONS

[2] Detailed descriptions and explanations of terms and abbreviations relevant to this award are listed below. These descriptions serve to clarify this award, not to be authoritative and please note that they are not in any specific order.

Resolution	: PHSDSBC Resolution 3 of 2007
Post	: Assistant Nursing Manager – HA Grove / Belfast Hospital
OSD	: Occupational Specific Dispensation
p.a.	: Per Annum

ISSUE NOT IN DISPUTE

[3] Parties agreed that there is no dispute to the following:

That as on the 30th of June 2007, the employment status of the Applicant was as follows:

- She was occupying a position of a Chief Professional Nurse but assigned the head of Nursing (Nursing manager)
- She was being paid at a notch of R153 312.00 pa
- This salary status was changed by an OSD Resolution 3/2007 which came in the effect from 01 July 2007

ISSUETO BE DECIDED

[4] The Applicant declared a dispute citing allegations of unfair Labour Practices. The grounds for her dispute are the following, that:

- ✓ The employer failed to interpret or apply the Resolution 3 of 2007 correctly
- ✓ Consequently the employer has failed to upgrade her as well as her salary
- ✓ As compared to others in the similar position (in other similar institutions), the employer has upgraded those

[5] I must decide on whether or not the above mentioned allegations stand, and further issue the necessary relief, depending on my findings.

SURVEY OF EVIDENCE AND ARGUMENTS

[6] Parties presented their positions their cases both verbally and in writing, the last submitted on Friday the 25th of July 2014. The below is a summary of what is contained in their submissions.

Submission by the Applicant

[7] The respondent failed to interpret and apply the Resolution, to the detriment and prejudice onto the status of the Applicant. The respondent is wrongly treating and paying her at PNA-7 level 10 instead of correctly placing her at PNA-8 level 11

[8] Her concerns are cemented on the following alleged unfair practices by the employer:

- The Nursing Manager of the clinic within her vicinity (stone throw away from her hospital) is treated and equated on the same status (of PNA-7 level 10) as hers whilst she is having more responsibilities than such a clinic
- Other institutions that were in the similar status as hers before the implementation of the Resolution, have had their status uplifted to that of PNA-8 level 11
- The Government gazette of 2011 has placed her institution at a level PNA-8 (larger institution). The National Department of Health issued national norms and standards for District Hospitals in 2002; they classified the

District Hospitals at level 1 institutions delivering level 1 services. The Applicant is working at level 1 institution

- When reviewing her institution, the Director Mr. Mohlame would always refer to it as a larger institution
- When called to attend meetings, she would be invited to be amongst the managers at larger institutions

[9] The Resolution has two phases which the respondent should have followed, i.e.

Phase 1 : minimum translation to the appropriate salary scale attached to the post as contained in Annexure B to this agreement". The important part is that of the post the employee occupied on the said date. The employer should have translated her to the new job title of the Deputy Manager Nursing (level 1 and 2 Hospitals) – PNA-8 at a scale of R358 218.00

Phase 2 : in line with clause 3.2.5.3, the employer should have put her in the higher position of a deputy Manager Nursing that they should have created and then translate her into it accordingly. When professional nurses were placed into the speciality positions, they were made to jump levels from 8 & 9 to levels 10 and 11

Respondent's submission

[10] The respondent committed no such alleged unfair labour practice, they acted to the letter in conforming to the enabling Resolution.

[11] Before the implementation of the OSD, the Applicant was a Chief Professional Nurse assigned a portfolio of a Nursing Manager. Her salary level as on the 30th of June 2007 was at R153 312.00 p.a.

[12] The OSD came into effect on 01.07.2007 and moved her horizontally from the old salary of R153 312.00 to the new OSD salary of R235 659.00. Her status did not change, but only her salary level moved horizontally to those salaries introduced by the OSD Resolution 3 of 2007 clause 3.2.5.2 on page 36.

[13] The OSD clause has no provision that would move either vertically or above the positions they were occupying before the implementation of the resolution. HA Grove hospital is not a level 1 institution

ANALYSIS OF EVIDENCE AND ARGUMENTS

[14] This dispute is being contested on the strength of what PHSDSBC OSD Resolution 3 of 2007 provides. Clause 1 of the Resolution provides for its three objectives, viz:

1. *“To introduce an occupational specific remuneration and career progression system for Professional Nurses (Registered Nurses), Staff Nurses (Enrolled Nurses) and Nursing Assistants (Enrolled Nursing Assistants) who fall within the registered scope of the PHSDSBC.*
2. *To introduce differentiated salary scales for identified categories of nursing professionals based on a new remuneration structure*
3. *To introduce the existing scarce skills allowance payable to identified categories of speciality nurses into salary”*

[15] Clause 3.2.5.1 provides that *“No person will receive a salary (notch or package) that is less than what he/she received on 01 July 2007 prior to the implementation of the OSD”*. It is not the case by the Applicant that she was given a notch which is less than what she received before the implementation of the OSD resolution on the 1st of July 2007. The Applicant’s case is on that the employer erred when interpreting and applying the resolution – mainly on that the employer translated her at an Assistant Nursing Manager instead of a higher level of a Deputy Nursing Manager.

[16] Both parties agree that translations and implementation thereof should be done in accordance with the criteria outlined onto clauses 3.2.5.2 and 3.2.5.3 of the resolution. As pointed above, this resolution was implemented on the 1st of July 2007.

[17] As per the criteria presented by clause 3.2.5.2, process should involve Phase 1 *“Minimum translation to the appropriate salary scale attached to posts, as contained in Annexure B to this agreement.”*; and Phase 2 ***“Recalculation of relevant experience obtained by a person who occupies a post on a production level after registration in the registration in the relevant nursing category, based on full years service / experience as on 31***

March 2007, in order to award a higher salary at a production level subject to and within the limits of the measures for such recognition contained in Annexure C”

[18] The Applicant’s case is based on Phase 1:

Annexure B – Part E : Translation of Professional Nurses on salary levels 8, 9, and 10 to Assistant Managers after 01 July 2007: Head of Nursing Services, Page 58, below:

Salary Level	8	PN-A7
Translation	153,312	235,659

[19] Parties do not dispute and is equally my finding that as on the date of implementing the resolution, the Applicant was occupying a position of a Nursing Service Manager, being paid PNA-7 level 10

[20] Provision of clause 3.2.5.2 requires that the implementation should take format of horizontal mobility. As is, it therefore would require that the Applicant is placed and paid at an equivalent level that is being presented by the enabling Resolution 3 of 2007. Annexure B, thereof (quoted above) horizontally changes the Applicant’s salary level from R153 312.00 (before the effect of the resolution), to that of R235 659.00 (after the effect of the resolution). This is exactly what the employer did in dealing with the case of the Applicant. I do not find anything wrong in so effecting the resolution the way they did in the case of the Applicant.

[21] The Applicant’s case is not on Phase 2 as she is not on **production levels / grades**, but she was a Nursing Manager. Her case was dealt with in terms of Phase 1 provision and my finding is that such was dealt with correctly and therefore fairly. Onto this Phase 2, the Applicant alleged that the employer should have created a position of Deputy Manager and thereafter place her accordingly into that position. As presented above, Phase 2 provides for the **Recalculation of relevant experience** obtained, it does not talk of creating a position. My finding is that the resolution does not provide (from its objectives up and including its content and the criteria provided) for an alleged duty / obligation to create positions, thus creating a position of a Deputy Nursing Manager. I further find that this alleged duty / obligation (on the part of the employer) is outside this dispute of alleged failure to interpret and apply resolution 3 of 2007.

[22] Clause 3.2.5.3 (i), (ii) and (iii) provides for a *“translation of Professional Nurse (Registered Nurse) **who occupies post in a nursing speciality or managing a speciality unit**”*. This clause also does not apply to her as she is not occupying a post in a nursing speciality and or that she is not managing a speciality unit, but that she is a Nursing Manager.

[23] I went through the provided criteria and could not find any provision that would cater for vertically moving a position of the Assistant Nursing Manager (position occupied by the Applicant as on the effective date of the resolution) to a higher level of a Deputy Nursing Manager. The provided Annexure B only provides for the horizontal mobility as is presented above (3.2.5.2). Going forward, the Applicant did not provide details of those nurses they alleged had their positions upgraded. It is my finding that they failed to prove this allegation.

[24] Clause 3.3.1 provides for *“a system of accelerated grade progression, based on shorter than normal, to higher grades based on above average performance ... only taking effect of 01 April 2012”*. This is not the basis of the case of the Applicant. Her case is based on the translation as was done on her placement as on 01.07.2007.

[25] The Applicant has presented a number of other grounds (accruing from the alleged actions by the respondent) that she argued has brought an unfairness on her case, firstly the unfairness brought about by the fact that the nursing manager of the clinic next to her hospital, is on the same salary status as hers, i.e. despite her commanding very high responsibility as compared to the lowest responsibilities of that clinic. In the matter, there is no evidence pointing to that the process that put the salary status of the nursing manager of the clinic was brought about by a different clause outside the implementation of Clause 3.2.5.2 of Resolution 3 of 2007, e.g. if the nursing manager of the clinic was an Assistant Nursing Manager (as the Applicant was) as on the 1st of July 2007, she surely would be moved as is presented above, the same way the Applicant progressed (horizontally).

[26] There was no evidence at all onto whether the resolution for example considered (as its criteria) the number of beds, huge responsibility, etc, comparing the clinics to the district hospitals. Conversely, there is no evidence pointing to that the position of Assistant Nursing Manager that the Applicant was occupying was changed by means of implementing the resolution and thereby implementing it lowering her status. What has been agreed

to by the parties, equally my finding is that the Applicant's status was effected horizontally onto the same level captured in the resolution, moving her from R 153 312.00 (old scale before the resolution) to R235 659.00 new scale introduced by the resolution. Without comparing the level of the Nursing Manager of the clinic next to the Hospital, for a fact is that the process followed in translating the Applicant, is correctly in accordance with Clause 3.2.5.2 of the enabling resolution.

[27] The Applicant's other concern was that similar institutions that were in the similar level with hers, has been upgraded to a larger institution, thereby equally upgrading levels of amongst other employees, that of Assistant Nursing Manager to that of Deputy Nursing Manager. In the matter, I was not presented with evidence presenting both the **time and the manner** such institutions were upgraded to a status of a larger institution (if at all such was done). Further, there is no evidence presenting both the time and the manner such employees (Assistant Nursing Managers) were upgraded to positions of Deputy Nursing Managers. Strictly dealing with this matter, there is no evidence pointing to that such alleged upgrades were done being dictated by the provisions of this resolution. I am therefore unable to equate or compare and thereby establish unfairness (if there is any) without evidence substantiating the allegation. Again, for a fact is that the Applicant's translation was done correctly in accordance with clause 3.2.5.2 of the resolution.

[28] The Applicant presented further that the Government Gazette of 2011 as well as the norms and standards issued by the National Department of Health of 2002 placed the district hospitals as larger institution. It is my opinion that the two instruments should have prescribed the manner in which the process (of recognizing such previously lower institutions as larger institutions) should unfold. For a fact is that the two instruments (Government Gazette and Norms and Standards) are not part of the resolution, their implementation cannot be directed or dependent on the provisions of the resolution. If the respondent failed to implement (if at all they did) the two tools, the discontents /dispute accruing from such failure should be directed strictly onto the inherent built in dispute process contained therein, not on OSD Resolution 3 of 2007. I find both the effect and the guidelines of the two instruments (Gazette and norms and standard issued) to be outside this dispute – alleged failure to interpret and implement OSD Resolution 3 of 2007.

[29] The Applicant presented further that when invited to attend meetings by her colleagues (from other institutions) and the treatment from Director Mohlame, her institution would be accorded the status of the larger institution. Unfortunately this is not one of the requirements or guidelines found in the resolution. It therefore

cannot be used as a barometer towards determining whether or not the respondent had interpreted or applied the resolution correctly.

AWARD

[30] Having made the above findings, I determine that the employer had in dealing with the Applicant, correctly and fairly translated her in terms of clause 3.2.5.2. (Phase 1) of OSD Resolution 3/2007.

[31] There was no mistake in the interpretation and application of OSD Resolution 3/2007, the employer acted correctly in translating the Applicant from R153 312.00 (old scale before the resolution) to R235 659.00 new scale introduced by the resolution as from 01 July 2007.

[32] The Applicant's claim is hereby dismissed and she is not entitled to any relief.

[33] I make no order of costs.

A handwritten signature in black ink, appearing to read 'D Mulima', with a large, stylized initial 'D'.

Denga Mulima

Commissioner-PHSDSBC