



ARBITRATION AWARD

In the ARBITRATION between:

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

CASE NO: PSHS157-10/11

In the matter between

R E LEBONE

First Applicant

M E OLIFANT

Second Applicant

J M APPELS

Third Applicant

and

DEPARTMENT OF HEALTH – NORTH WEST

Respondent

ARBITRATION AWARD

DETAILS OF HEARING AND REPRESENTATION

1.

The arbitration was set down on 28 June 2011 in Klerksdorp, North West Province. The applicants were represented by W Mjekula, an official of NEWAWU. The respondent was represented by M Adoons, an official employed by the respondent. The applicant submitted a bundle of documents marked "Bundle A". The respondent submitted a bundle of documents marked "Bundle B". The arbitration was mechanically recorded.

ISSUE AND DISPUTE

2.

The applicants contend that the respondent's failure to appoint them in the positions of operational manager constituted an unfair labour practice.

SUMMARY OF EVIDENCE

3.

R E Lebone, a facility manager, employed at the Tsholofelo Clinic testified and indicated that the applicants requested a transfer as former municipality nurses to become employees of the respondent. On 1 August 2008 a meeting was conducted with management of the respondent where the conditions of service were explained. The applicants were appointed as facility managers and operational managers to conduct similar duties. The applicants were required to act in the

capacity as facility managers. The respondent advertised the position of operational manager. The applicants assumed that they would have been appointed as the operational managers. The respondent should not have advertised the positions of operational managers. The applicants are currently still acting as facility managers. The remedy required by the applicants is to be appointed as operational managers. Lebone testified that the applicants do comply with all the necessary requirements to be appointed as operational managers. During cross examination Lebone was referred to minutes of a meeting conducted on 25 July 2008. Lebone could not dispute that there was indeed a meeting on 25 July 2008 and that the minutes reflect the discussions at the meeting. Lebone indicated that their union representatives did not attend the meeting and that the applicants did not understand what they were told. Lebone confirmed that they were appointed as employees of the respondent in the position of chief professional nurse. Lebone indicated that there was an inconsistency and that other employees were indeed appointed as operational managers.

4.

M E Olifant testified and indicated that she is an acting facility manager. Olifant applied for a transfer from the municipality to the respondent. In terms of the provincialization process the applicants were informed that it was a transfer from the municipality with similar benefits. Appels indicate that there was a meeting in July 2008 where the condition of the transfer were explained. Appels confirmed

that the applicants were appointed as professional nurses on Grade 1. The applicants were not conducting the work of professional nurses but acted as facility managers. Olifant indicated that when the professional manager posts were advertised they discovered that they were not transferred. According to Appels the failure of the respondent to appoint them in the position of operational manager would constitute a demotion. If the applicants are not appointed as operational managers they will have to do the functions of a professional nurse. The applicants seek to be appointed as operational managers. During cross examination Appels confirmed that she accepted the appointment as a professional nurse.

5.

The respondent closed its case without calling a witness.

ANALYSIS

6.

The applicants contend that the respondent by failing to appoint them as operational managers conducted an unfair labour practice. It is common cause that the respondent extended an offer of employment in a letter dated 29 July 2008 in which the applicants were offered employment as a clinical nursing practitioner Grade 1. The applicants accepted the offer of employment on 1 August 2008. According to the offer of employment the applicants were appointed on a

permanent basis with a 12 month probationary period. There is no indication in the offer of employment that the applicants were transferred from the local municipality to the respondent. The indication from the applicants that they were transferred is not accepted.

7.

It is common cause that the applicants acted as facility managers from the date of acceptance of the offer of employment. It is further undisputed that the functions of an operational manager is similar to a facility manager. Lebone and Appels confirmed that there was a meeting where the conditions of their employment were explained to them. Lebone and Appels could not deny that the meeting was conducted on 25 July 2008. Both Lebone and Appels confirmed during their evidence portions of the minutes. It is therefore accepted that the minutes do constitute what has been discussed during the meeting of 25 July 2008. In the minutes the following is *inter alia* stated:

"If the route of advertisement is followed, you will be entitled to apply for the post providing that you have at least 5 years experience after obtaining a qualification in PHC (speciality) as this is a requirement for the post. You will have to present yourself during interviews to the interviewing panel. Unfortunately if you are not selected as facility manager, you will have to fall back on the rank of professional nurse."

8.

It is common cause that the respondent advertised the posts of operational managers. There is no indication of an agreement between the applicants and the respondent that they will be appointed as operational managers. The applicants will have to apply and compete for the posts of operational managers. Once the operational managers are appointed there will be no need for the applicants to act as facility managers. If the applicants are not successful in their applications they will have to conduct their duties as clinical nursing practitioners Grade 1 in accordance to their initial appointments. The applicants have failed to show that the respondent conducted an unfair labour practice by advertising the post of operational manager and not absorbing the applicants into the advertised positions. The applicants refer to colleagues who, according to their knowledge, appointed as operational managers. The applicants could not dispute the appointment letter indicating that the colleagues that they refer to were indeed appointed as chief professional nurses. The information received by the applicants regarding the inconsistent appointment of colleagues seems to be not correct. There is no indication that the respondent acted inconsistent. The applicants fail to show that the respondent conducted an unfair labour practice regarding demotion or any other unfair labour practice by advertising the operational manager's posts.

AWARD

1. The application is dismissed.
2. No order as to costs.

SIGNED AT PRETORIA ON THIS THE DAY OF JULY 2011.



PH KIRSTEIN

ARBITRATOR