



PHSDSBC

PUBLIC HEALTH AND SOCIAL DEVELOPMENT
SECTORAL BARGAINING COUNCIL

ARBITRATION AWARD

Case No: **PSHS172-17/18**

Commissioner: **Gerald Jacobs**

Date of award: **3 October 2017**

In the matter between:

NEHAWU obo Abdoll C D and 3 others

(Union/ Applicant)

and

Department of Health- Northern Cape

(Respondent)

Introduction

1. This matter was set down for arbitration on 13 September 2017. The trade union the National Education, Health and Allied Workers Union (NEHAWU) on behalf of the four applicants referred the dispute to the Public Health and Social Development Sectoral Bargaining Council (PHSDSBC) concerning the application and interpretation of the Occupational Specific Dispensation (OSD) for emergency care practitioners, of the PHSDSBC. The applicants to this dispute are Mr Ceddric Abdoll, Mr Hendrik Olyn, Ms Miliswa Thiban and Mr George Nel. The respondent is Department of Health- Northern Cape
2. Mr R Cronje an official of the trade union NEHAWU appeared before me on behalf of the applicant. Mr Paul Koopman appeared for the respondent.
3. It was agreed to file written arguments by 22 September 2017.

4. The two applicants Ms Thiban and Mr Nel abandoned the dispute against the respondent. Mr Hendrik Olyn was no longer in the employ of the respondent and his claim was dismissed.

Background to the dispute

5. This is the second of a series of cases that the applicant initiated against his employer. The applicant, Mr Abdoll first instituted a case against his employer of an unfair labour practice that concerns a promotion dispute. It is not clear what relief he was seeking. The unfair labour practice dispute was dismissed and he referred this dispute under section 24 of the Labour Relations Act.
6. The issue that led the applicant, Mr Abdoll to approach the Bargaining Council arose from the dispute regarding the implementation of the Occupational Specific Dispensation (OSD) for Emergency Care Practitioners recorded in Resolution 3 of 2009, of the PHSDSBC.
7. It is common cause that the OSD was implemented on 1 July 2007, and soon thereafter, in 2009 the applicant was translated from an Emergency Practitioner to an Emergency Care Officer Grade III. A dispute arose between the parties regarding its implementation. The dispute arose due to an alleged error on the part of the respondent in the translation of the applicant, Mr Abdoll.
8. Mr Cronje contention was that Mr Adboll should have been translated to a Sub District Manager level grade 1 with all benefits associated to post, and not that of an Emergency Care Officer grade III level.
9. The matter could not be resolved and the applicants referred the dispute to the PHSDSBC concerning the application and interpretation of the OSD.

Submissions received

Applicant's evidence and arguments

10. Mr Cronje for the applicant argued that the applicant was appointed to the position of EMS District Coordinator in an acting capacity. In his acting appointment, he performed the duties and took up the responsibilities of a Sub District Manager. In support of this contention, Mr Cronje in his papers produced a document styled "*Re: Seniorskap EMS.*" The document bears the date 29 December 2004. It is signed by one Du Plessis and

address to Mrs Vermeulen and Eckardt, as well as, a document dated 14 November 2008 with the heading “*Re: Cost Containing and Coordination of Transport*” signed by one Mr I H Jogee and M Eckard. He also produced a document dated 5 April 2006 with the heading *Training on EMS Health Information System*”. These documents are attached to the applicant’s written submissions. Mr Cronje argued that these documents suggested that Mr Abdoll performed the duties of a Sub-District Manager. However, the respondent has not remunerated accordingly.

11. Furthermore, the respondent did not provide the applicant with a letter confirming his appointment in the acting capacity, however his aware of employees appointed in position without an assigned letter.

Respondent’s submissions

12. Mr Koopman for the respondent argued that Mr Abdoll is an Emergency Care Practitioner and was translated to an Emergency Care Officer grade III in terms of Resolution 3 of 2009. He further referred to clause 7.1 and 7.2 of the Resolution and stated that the OSD was based on the principle that no person’s salary position (notch or package) will be less favourable with the implementation of the revised salary and career progression dispensation. He stated that prior to the OSD implementation the applicant was in term of his contract of employment employed as an Emergency Care Officer and received a salary of R 77 337.00. With the implementation of the OSD 1 July 2009 the applicant received a salary of R 85686.00, based on his qualifications and experience. The applicant was thus correctly translated to the salary notch as per clause 7.2 of Resolution 3 of 2009.

13. He denied the claim that the Mr Abdoll was appointed in an acting capacity as a Sub District Manager. He contended that the document relied on cannot serve as an appointment letter in an acting capacity. Even most importantly the respondent is a public institution which is enjoined to act fairly and in accordance with the statutes that govern it. Failure to operate within the parameters of the statutes necessarily renders the action of the respondent illegal and as such of no legal effect.

Analysis

14. The applicant referred a dispute concerning the application and interpretation of the Occupational Specific Dispensation (OSD) for Emergency Care Practitioners, of the PHSDSBC challenging his translation. Grogan in *Workplace Law* (8th Edition) at page 375 defined “*interpretation or application*” dispute as follows:

“A dispute over the interpretation of a collective agreement exists when the parties disagree over the meaning of a particular provision; a dispute over the application of a collective agreement arises when the parties disagree over whether the agreement applies to a particular set of facts or circumstances.”

15. In this present matter, there was no dispute over the meaning of a particular clause within the collective agreement. The applicant also did not indicate which clauses of the collective agreement are applicable and or were not complied with at the time of translation. The main issue was that the respondent should have translated him from a position of Sub-District Manager. To put different, the applicant contends that at the time the OSD was implemented he was performing the duties of a Sub District Manager. Therefore, he should have been translated to a Sub District Manager grade 1 and not to an Emergency Care Officer grade III.

16. The applicant did not provide any evidence point to him being an acting Sub District Manager at the time of the translation was conducted. The applicant concedes in his head of argument that he had not been officially appointed in an acting capacity as a Sub-District Manager. However, despite this, so he argues, he should have been translated to a Sub District Manager.

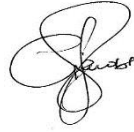
17. The documentary evidence provided by the applicant merely shows that he performed duties outside his job description. In my view, the fact that he performed these extra duties does not give him the right to claim a higher position. More importantly, the collective agreement does not contain a clause that extends this right to him. His contention constitutes a typical example of a demand by an employee to be promoted to a higher position but being disguised as a claim of right founded in the collective agreement. In the absence of direct evidence that leads to the conclusion that he was appointed to the position of a Sub District Manager, his claim is not justified.

18. In light of the above, I conclude that the matter stands to be dismissed.

Award

19. In the circumstances, I find the respondent applied Resolution 3 of 2009 correctly, specifically relating to the OSD translation of the applicant.
20. The applicant's case is dismissed.

Signature:



Gerald Jacobs

Commissioner:
