



# ARBITRATION AWARD

COMMISSIONER: JANINE CARELSE

CASE NO: PSHS186-17/18

DATE OF AWARD: 20 OCTOBER 2017

IN THE ARBITRATION BETWEEN:

**EMMA SNYMAN**

**APPLICANT**

AND

**NATIONAL DEPARTMENT OF HEALTH**

**RESPONDENT**

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## DETAILS OF HEARING AND REPRESENTATION

1. The matter was scheduled for an arbitration hearing into the interpretation or application of a collective agreement dispute, referred in terms of section 24 of the Labour Relations Act 66 of 1995, as amended (the LRA). The arbitration was part heard and on 18 August 2017 the arbitration hearing commenced and was held at the Western Cape Nursing College in Athlone and on 13 October 2017 the arbitration resumed and was held at Groote Schuur Hospital under the auspices of the Public Health and Social Development Sectoral Bargaining Council (PHSDSBC).
2. The applicant, Ms Emma Snyman, a member of the Public Servants Association of South Africa (the PSA), was represented by Mr Angelo Fisher, a union official; whilst

the respondent, The National Department of Health was represented by its Director of Employee Relations, Mr Thathi Tau,

3. The proceedings were conducted in English and manually and digitally recorded.
4. Both parties handed in bundles of documents, the applicant's bundle was marked bundle "A" and the respondent's bundle was marked bundle "B". The contents of all documents were accepted to be what they purported to be.
5. The parties requested to file their written closing arguments by no later than 20 October 2017 and both parties closing arguments were submitted timeously.

### **ISSUE TO BE DECIDED**

6. The interpretation and application of PHSDSBC Collective Agreement No. 2 of 2010 herein referred to as "Resolution 2 of 2010." It relates to the Occupational Specific Dispensation (OSD) translations of the respondent's employees. The question is therefore whether or not the respondent has interpreted and implemented Resolution 2 of 2010 correctly when it translated the applicant from the position of deputy director radiation control to deputy director radiation control grade 1.

### **BACKGROUND AND COMMON CAUSE FACTS**

7. The applicant is currently employed by the respondent as a deputy director radiation control grade 1. On 4 February 2009 the applicant commenced working as a deputy director radiation control and was translated as a deputy director radiation control grade 1 on 1 July 2010. The applicant contended that she was incorrectly translated into the position of deputy director radiation control grade 1 and that the respondent should have translated her into the position of deputy director radiation scientist, as her other colleagues who are doing the same work as her, were translated into deputy director radiation scientists and not deputy director radiation control.
8. The applicant averred that she has been prejudiced by the translation in that she has been placed at the top notch of deputy director radiation control grade 1 which has

resulted in her not receiving a pay progression, whereas her colleagues who have been translated to deputy director radiation scientists have been eligible to the annual pay progression. The applicant wishes to be translated as a deputy director radiation scientist and to be paid the pay progression retrospectively from 1 July 2010.

9. The applicant claims that the respondent is in breach of Resolution 2 of 2010 in that the respondent has failed to translate her correctly into the position of deputy director radiation sciences.

## **SURVEY OF SUBMISSIONS AND ARGUMENT**

10. The applicant testified under oath and stated that on 4 February 2009 she was translated as a Deputy Director Radiation Control and her grievance started when she became aware that the OSD was not applied correctly at this time. She received the annual cost of living increase but she was not eligible to the pay progression. It further came to her attention that she was paid as a Deputy Director Radiation Control, instead of being paid as a Deputy Director Radiation Scientist. She was referred to page 15 of Bundle "A" and stated that after the OSD she was translated as a Deputy Director Radiation Control Grade 1 but that this post specifies Biochemistry Pharmacol, Zoology and Life Sciences Technician as the job classification which is not her specialisation. Page 18 of bundle "A" further lists the pre-OSD occupations of deputy director. She referred to page 11 of bundle "A" and read out paragraph 3 which provides that she was translated from Senior Radiation Control to Radiation Scientist Gr II. It is further stated in this correspondence that this translation was implemented on the basis of fairness and to ensure that she did not receive a package less than her actual package prior to the implementation of OSD. She stated that the content of this letter is correct. This correspondence was furthermore confirmed in another letter that was sent to her by Mr Tau on 6 April 2016 and was contained on page 13 of bundle "A". She indicated that the contents of this correspondence were never implemented. She referred to page 31 of bundle "A" and averred that when she looks at the salary levels then she should have received the pay progression every year.

11. She contended that she applied for Deputy Director Radiation Control and there are four deputy directors in the directorate, however, her counterparts were translated as radiation scientists. She further averred that her subordinates are appointed as radiation scientists and not as radiation control officers. She referred to page 25 of bundle "A" and showed that Mr Uys who works in her department was appointed as a radiation scientist and she supervises him. She averred that Mr Uys and Ms Meyer who works in her department have the same qualification as she, which is a medical physicist and she has 20 years' experience as a medical physicist prior to her appointment, whereas they have one year experience but they possess the same technical experience. She stated that all of them are working in technical positions as medical physicists with a masters in physics. She does the same work as the others, but they are appointed as radiation scientists and she is their supervisor. She referred to page 16 of bundle "A" and stated that physics is her area of specialisation and that the dispute arose when she was translated, as she is not contesting the post that she initially applied for. She contended that she should have been translated from deputy director radiation control to deputy director radiation scientist. She indicated that she was put on the maximum notch, notch 8 and she disputes that this is correct because she does not receive a pay progression as a result.

12. Under cross examination she was referred to page 6 of bundle "B" and acknowledged that she was appointed as a deputy director radiation control and she admits that she applied for that post. She further averred that the difference between her post and senior radiation scientist was not recognised. She contended that Ms Meyer and Mr Essau are her subordinates and they are appointed as radiation scientists and she does not know why she is appointed differently because their work is the same. There is nobody that is appointed under Mr Essau, Ms Uys and Ms Meyer. She averred that she was appointed as radiation control to manage scientists and she was always under the impression that she is a technical manager. She does not agree that she should be managing technical people because she is doing the same job which is technical and for three years she has been doing the job without them. She was referred to page 18 of bundle "A" and agreed that she falls under radiation control officer pre-OSD. She was referred to page 31 and agreed that provision is made for radiation scientists' grade 1 and grade 2. She was further referred to page 24 of bundle "A" and agreed

that she was supposed to be translated to a salary of R568 881,00. She was referred to page 11 of bundle “B” and stated that she was translated to deputy director radiation control grade 1 and that she is still on the same notch. She agreed that she was translated on 1 July 2010 and stated that she was not upgraded post OSD and that she wants information about her colleagues, Mr Smit and Mr Du Toit’s posts because they do the same work and she is being discriminated against.

13. She agreed that she was translated correctly according to the OSD but she wants to be translated as a radiation scientists.

14. Under re-examination she stated that she was translated incorrectly and that the respondent did not take into account the responsibilities of her job because she is managing radiation sciences. She averred that her day to day tasks involves technical work. She stated that she serves on various committees and that it is an unfair reasoning of the resolution as to who should be appointed as deputy directors radiation scientists. She averred that she is doing the work of a radiation scientist and that she issues licences which falls within the ambit of radiation science. There were no meetings and the translation was badly done. When she commenced her employment she had to create her own job description, as no job description was given to her.

15. On 13 October 2017 the arbitration hearing resumed and the respondent provided certain information that the applicant requested that pertained to Mr Du Toit’s appointment and translation. Mr Du Toit is the applicant’s counterpart. The applicant testified under oath and was referred to page 16 of bundle “A” and explained that she was appointed as a deputy director radiation control and she confirmed that her job title was deputy director radiation control. Page 17 of bundle “A” is the document that she received when the OSD was applied in 1 July 2010 and her job title remained the same. She averred that the occupational classification differed for some reason. Page 11 of bundle “A” is the reply that she received to the grievance that she lodged because of OSD translation and this document was signed by the director of human resources. Page 12 of bundle “A” is Mr Tau’s response to her grievance about OSD translation and document signed by Mr Tau which confirms the response that she received from the director of human resources indicating that she was correctly translated to a deputy

director radiation scientist. Page 14 of bundle "A" is a document that was received by the chief director of human resources wherein he advises that she can apply for a grade progression if certain conditions are met. She averred that there is a dispute between the correspondences and that this has come a long way. On page 43 of bundle "A" is the post that one of her colleagues had applied for when he commenced his employment, that is, a deputy director radiation sciences. She stated that there are three deputy directors in the radiation control unit and they do same work and the work is grouped for different sections but the work is the same. She further averred that Mr Tau pointed out that she was appointed as DD Radiation control and her colleague is appointed as radiation scientists.

16. She contended that if one refers to page 43 of bundle "B" then you will see that she possess all of those qualifications. She then read out the duties in post A and post B of deputy director radiation sciences and stated that she fulfils the duties of a deputy director radiation scientist in post B. She did apply for deputy director radiation control but her colleague is in radiation sciences and doing the same work. She averred that there is a disparity between the two positions because she is fulfilling a role of a deputy director radiation scientist. She referred to page 46 of bundle "B" and averred that Mr Du Toit was appointed as a Radiation scientist in 1990. Furthermore, on page 48 of bundle "B" Mr Du Toit was appointed as a deputy director radiation scientist. Page 56 of bundle "A" is an appointment letter that says that Mr Du Toit was now appointed as a deputy director radiation control. On page 53 is a document from the chief director of human resources that is addressed to Mr Du Toit indicating that he was translated to the position of deputy director radiation sciences. According to page 58 of bundle "B" confirms that Mr Du Toit was translated to deputy director radiation sciences grade 1. It is clear that Mr Du Toit had been translated from being a deputy director radiation control to deputy director radiation scientist, as he was in radiation control in 2005 and translated into radiation scientist in 2010. She was appointed as radiation control and translated to radiation control and not scientist. The OSD changed Mr Du Toit to a radiation scientist. She averred that this is unfair because their job description is the same because they perform the same work. Mr Du Toit licenses electronic productions of non-ionising radiation, Mr Smit licenses ionising radiation and she licences radio

nuclides which produces ionising radiation and all items need to be regulated. All three of them do the same job.

17. She stated that she wants to be translated to deputy director radiation scientist and this to be back dated to 2010 when OSD was applied and to be treated in the same way as her colleagues. She contended that the respondent should treat all of them the same and that it was an oversight on respondent's part.
18. Under cross examination she confirmed that she was a physicist. She was referred to page 14 of bundle "B" and stated that she understands how grade progression works. She agreed that the grade progression is in accordance with the resolution and agrees that the respondent cannot deviate from the resolution. She further confirmed that the respondent cannot deviate from the resolution that is signed unless the parties agrees to change the terms and sign the agreement. She further agreed that she applied for radiation control officer and not radiation scientist. She further agreed that that Mr Du Toit appointed as a radiation scientist, but stated that in 2005 Mr Du Toit was appointed as a radiation control deputy director and in 2010 he was translated to scientist and she was kept as radiation control. Before OSD they were the same and after OSD there was a change in his appointment. She averred that the confusion started when the post was advertised initially already. She was not aware whether Mr Du Toit applied for an upgrade. She stated that there has always been a disparity between deputy director radiation control and scientist. The respondent does not know what the difference is and are using the positions interchangeably. She applied for radiation control. She averred that the duties and requirements of the post are the same and she oversees the authorisations which are the same as issuing of licenses.
19. In terms of the day to day work that a deputy director radiation control and scientist does, it is the same thing and authorisation and licencing is the same thing and the organisational structure does not discriminate. She and her colleagues deal with different products but the work is the same. She does not agree that she is classified differently from the radiation scientists. If people do the same job just different products then why does respondent discriminate? In 2010 they started off with radiation officers and now only radiation scientists. She wanted to be translated to radiation scientist.

The respondent used the words interchangeably and inconsistently throughout their documents. She wants to be treated the same way as Mr Du Toit because her job is the same. The job description is not two different streams. Whatever is written on the advert is that they are doing the same job in practise and their duties and requirements are the same.

20. Under re-examination the applicant stated that all three deputy directors are doing the same job just different products. The job title deputy director radiation control and scientists are used interchangeably for the same thing. When she complained that she gets the costs of living increase but not the pay progression, she was told that she was deputy director radiation control and not deputy director radiation scientist. An employee's pay progression is linked to a performance review and if you get above 60% then eligible for a pay progression. She is on Grade 1 level 3 and it will take her 8 years for average performance to get to grade 2. If she was a radiation scientist then she would have progressed as normally and would have received the pay progression every year since 2010. She has now lost the pay progression over the last eight years. She is now only entitled to be put on Grade 2. The relief that she is seeking is to be translated to deputy director radiation scientist and to receive the pay progression from 1 July 2010 when the OSD was implemented.

### **Closing Arguments**

21. I acknowledge the parties' comprehensive written closing arguments. Essentially, each party wants me to rule in their favour. I do not wish to repeat their arguments and submissions. I have decided to deal with them in my analysis of the evidence and arguments.

### **ANALYSIS OF SUBMISSIONS AND ARGUMENT**

22. The golden rule in interpreting collective agreements is that words must be given their everyday ordinary meaning. If the language is clear it must be given effect to, even if the results may be harsh, unfair or inconvenient. The nature of the dispute before me is whether the respondent was in breach of Resolution 2 of 2010, when it failed to translate the applicant to deputy director radiation scientist.

23. It is common cause that the applicant initially applied for the position of deputy director radiation control and was translated to the position of deputy director radiation scientist subsequent to the introduction and implementation of Resolution 2 of 2010 that relates to OSD. It is further common cause that Mr Du Toit had initially held the position of deputy director radiation scientist, that he was upgraded to deputy director radiation control in 2005 and translated to deputy director radiation scientist in 2010. It is clear from the aforesaid that the respondent had translated the applicant and Mr Du Toit differently in terms of Resolution 2 of 2010, even though they had held the same position prior to Resolution 2 of 2010. Mr Tau contended that there was a difference between the two posts and that Mr Du Toit had initially applied for deputy director radiation scientist and the duties were not the same as that of a deputy director radiation control, whilst the applicant argued that the two positions were the same and that the respondent is not justified in drawing a distinction between the two. Notwithstanding the aforesaid, I must determine whether Resolution 2 of 2010 was applied correctly to the applicant and not Mr Du Toit. The applicant further argued that the reasoning behind Resolution 2 of 2010 was not fair and that she is being discriminated against, since she and Mr Du Toit do the same work in relation to different products. It is needless to say that this matter was referred in terms of section 24 of the LRA and as mentioned above, I am required to determine whether the respondent has applied Resolution 2 of 2010 correctly and if not, to make an order directing the respondent to apply it correctly. I am not required to determine whether or not Resolution 2 of 2010 was fair or unfair.

24. The applicant conceded under cross examination that she was translated correctly to the position of deputy director radiation control grade 1 in terms of Resolution 2 of 2010. Mr Tau stated that the correspondence that the applicant received subsequent to her grievance indicating that she was translated to deputy director radiation scientist was incorrect and that the respondent had made an error. I have taken cognisance of this correspondence and Mr Tau's version that it was an error from the respondent's side. In this regard, it should be borne in mind that this correspondence does not form part of or constitute Resolution 2 of 2010 which I am required to interpret. Mr Tau did not agree that the respondent had used the terms radiation control and radiation scientist interchangeably as alleged by the applicant. He also did not concede that

when the respondent referred to radiation control it also meant radiation scientist and *vice versa*. It is further clear that the respondent has drawn a distinction between the two posts because the incumbents of the posts are paid differently and are entitled to different benefits. Whether this distinction is fair or not is not the question that I am required to answer. It is clear from the provisions of Resolution 2 of 2010 that the applicant had to be translated from deputy director radiation control to deputy director radiation control grade 1 and this was done. Insofar as the interpretation and application of Resolution 2 of 2010 is concerned in relation to the applicant's translation, I am satisfied that the applicant's translation had been in accordance with Resolution 2 of 2010. The interpretation of Resolution 2 of 2010 in this instance may have yielded an unfair result, as alleged by the applicant, however, I am bound to give the Resolution its literal meaning as mentioned in paragraph 22 above.

25. If the applicant believes that she is being discriminated against because she is being paid less or entitled to less benefits compared to her colleagues who are doing the same work then she may be entitled to relief under a different course of action.
26. Having considered the parties' submissions and documentary evidence before me, I find that the respondent had applied Resolution 2 of 2010 correctly when it translated the applicant from deputy director radiation control to deputy director radiation control grade 1.

**AWARD**

27. The respondent correctly applied Resolution 2 of 2010 when it translated the applicant from deputy director radiation control to deputy director radiation control grade 1.

28. The applicant's claim is dismissed.

29. There is no order of costs.

**COMMISSIONER**

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**Janine Carelse**