



**PHSDSBC**

PUBLIC HEALTH AND SOCIAL DEVELOPMENT  
SECTORAL BARGAINING COUNCIL

# ARBITRATION AWARD

Commissioner: **JOSEPH MPHAPHULI**

Case No: **PSHS19-18/19**

Date of Award: **26 March 2019**

In the matter between:

**L.P Ratombo**

(Union/ Applicant)

and

**Department of Health - Limpopo**

(Respondent)

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## **Details of hearing and representations**

1. The hearing was conducted at Bela Bela Hospital. The hearing was conducted on 11 March 2019 and in terms of Section 191 of the Labour Relations Act.
2. Mrs. Tinyiko Mahlahlane, Attorney appeared for the Applicant. The Respondent was represented by Mr. Mabitsela Molepo, employee in the Respondent's service appeared for the Respondent. Parties agreed to file closing arguments on 15 March 2019.
3. The proceedings were digitally recorded.

## **Issue in dispute**

4. I had to determine whether there was an unfair labour practice or not, and what remedy would be appropriate, if any.

## **Background to the dispute**

5. The Applicant was employed on 01 February 2017. She was employed as assistant nurse at an annual rate of R 172 860.00.
6. The Applicant wished to be paid the rural allowance for the period 01 February 2017 to 31 January 2018 at the rate of 10% and 12% respectively, and 37% allowance on basic salary in lieu of benefits.

## **Common cause factors**

7. The Applicant was employed in permanent capacity as a community service professional nurse.
8. The letter of appointment provided for an 8% rural allowance for the area in which the Applicant ordinarily tendered services.
9. Clause 11.4.2 of Resolution 1/2007 serves as authority for a 37% of the basic salary in lieu of benefits.

## **Survey of evidence**

### **Applicant's case**

10. The Applicant gave evidence. She served in the capacity of a contract worker for the period 01 February 2017 to 31 January 2018. She was entitled to a 37% of her basic salary allowance in lieu of benefits which the Respondent did not pay the total amount owed to the Applicant calculated at 37% of her basic salary in lieu of benefits amounts to R67 848. 75. Added to was the 10 and 12% rural allowance which amounts to R 10 876. 32. It was her case that a circular from Treasury makes provision to the effect that she should be paid a 37% of her basic salary in lieu of benefits.
11. In similar vein, the circular provided for a 10 and 12% rural allowance.
12. It was her knowledge that other employees in a position similar to hers were receiving 37% of their basic salary in lieu of benefits.

13. Mrs. Venicia Moloto, professional nurse gave evidence. She was employed as a professional nurse community service in 2012.

14. She was paid 37% of her basic salary in lieu of benefits for the year 2012. The government funded her studies.

15. She signed a twelve months contract.

### **Respondent's case**

16. Mrs. Motau, assistant director finance testified. Community service nurses were employed subject to rural allowance calculated at 8% of their basic pay.

17. She was aware that employees on contract duty of longer than six months up to a year were paid 37% of their basic pay in lieu of benefits.

### **Analysis of evidence and argument**

18. The Applicant's letter of appointment read as follows:

18.1 Paragraph 1

18.1.1 "..... The department has approved your appointment as a Professional Nurse Community Service .....for a period of twelve months

18.1.2 Salary notch of R 172 860.00 per annum plus 8% of basic salary rural allowance".

19. A memorandum from Human Resource Management provincial office to the provincial MEC referenced 54/2/3/1 on the subject, of the appointment of Professional Nurses Community Service for 2017 made reference to the 37% of the basic salary in lieu of benefits.

20. To this end the memo read:

20.1 "The total financials (of the appointments) is inclusive of 37% in lieu of benefits.

21. Finally, Resolution No1/2007 of the Public Service Co-ordinating Bargaining Council contains the following provision:

21.1 Clause 11.3

21.1.1 “A contract worker means a person employed for a fixed term.....”

21.2 Clause 11.4.2

21.2.1 “A contract worker employed for six months or longer shall receive his or her basic salary plus 37% in lieu of benefits.

22. The total sum of the appointment letter, Resolution 1/2007 and the memorandum entrenches the Applicant’s claim that she was entitled to a 37% of the basic salary in lieu of benefits.

23. The appointment was for twelve months fixed term contract wherefore the contractual qualification period in terms of the Resolution would apply.

24. The last sentence of Clause 5.2.8 of the appointment letter settles the dispute where it refers to the falling away of the 37% of the basic salary in lieu of benefits following permanent appointment.

25. One can conclude from the sentence that the first twelve months is served under a fixed term employment contract in which event the 37% in lieu of benefits should apply.

26. The memorandum was most clear and unambiguous and firmly confirmed that the Applicant was entitled to a 37% of her basic salary in lieu of benefits.

27. Mrs Moloto’s testimony is support of the Applicant’s case for a 37% of the basic salary in lieu of benefits was not at all contested.

28. Where it concerned rural allowance, there was no direct documentary evidence to support the case for an increased rate above 8%. Accordingly, the letter of appointment remained the only authoritative document on the subject.

## Relief


29. The Applicant was entitled to the sought remedy only in as far as the 37% of the basic salary in lieu of benefit applied for the period 01 February 2017 to 31 January 2018.

## Award

30. There was an unfair labour practice.

31. I order the Department of Health- Limpopo to compensate the Applicant, LP Ratombo at R67 848.75.

32. Compensation must be effected by 30 April 2019.



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Joseph Mphaphuli