



# ARBITRATION AWARD

Panellist/s: Colin Rani  
Case No.: PSHS202-10/11  
Date of Award: 22-Aug-2011

In the ARBITRATION between:

**PSA obo Van Riet T**

(Union / Applicant)

and

**Department of Correctional Services: Western Cape**

(Respondent)

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**Details of hearing and representation:**

1. The arbitration hearing was held in the offices of the Malmesbury Prison (Western Cape) on 28 April and 20 July, 2011.
2. Ms T Van Riet, the applicant, was represented by Ms. A Mosectic from PSA. Ms. Annelize Malan represented the respondent party, the Department of Correctional Service in the Western Cape.

**Issues to be decided:**

3. Whether the respondent interpreted and applied the collective agreement correctly.

**Background to the issue**

4. The applicant is questioning the respondent's interpretation and application of the Collective Agreement regarding the implementation of an occupational specific dispensation (OSD) for nurses.
5. It is the applicant's case that according to clause 3.1.4 of the Collective Agreement, the appointment and promotion for each job category would be determined by annexure A.

*Clause 3.1.4 refers: an appointment and promotion requirement for each category is determined by the employer, subject to any statutory requirements determined by South African Nursing Council (SANC)"*

*Annexure A refer to the PHSDSBC resolution No 3 of 2007; career streams, salary scales, appointment requirements, recognition of experience on appointment and grade progression/promotion requirements.*

6. The respondent's case is that clause 3.1.4 was not the clause used to translate the applicant to Operational Manager Nursing (General Unit). It is the respondent's submission that clause 3.1.4 read together with annexure A are used for appointment and promotion purposes only.

**Summary of evidence and arguments:**

7. Although I have considered all the evidence and arguments, because section 138(7) of the Labour Relations Act requires that the reasons for my decision be stated briefly, I will refer only to the evidence

and arguments that I regard as necessary to substantiate my finding and the determination of the dispute.

8. The parties agreed to the admission into evidence of a bundle of documents, including the PHSDSBC Collective Agreement/Resolution, Implementation of OSDs for the Occupational Professional Nurse, Staff Nurse and Nursing Assistant in the Public Service, letter of appointment, salary advice, job description and recognition basis. Neither party disputed the validity of these documents.

**Applicant's case:**

9. The applicant testified that she started working for the respondent in 1994 as the Supervisor- Nurse. She was promoted to Senior Correctional Officer in April, 2000. She submits that she acquired her Primary Healthcare qualification in 2001.
10. The applicant submits that she filed a grievance against the incorrect application of OSD salary scale on 25 February, 2011. According to the applicant, OSD for Nurses was implemented late in 2007 with effect from July 2007. She said that in December 2007, she was placed on a salary scale of R 186030 per annum. Her salary was adjusted by 10.5%. She is currently earning R205563 per annum. The applicant contends that her job description as reflected in her pay slip is that of an Operational Manager: General Nurse instead of an Operational Manager: Primary Healthcare as reflected in annexure A of the PHSDCBC Resolution 3 of 2007.
11. The applicant submits that she was appointed to a position of Section Head: Primary Healthcare in Riebeek West Correctional Services in August, 2003. She also received a confirmation letter from Mr. Manquele, who was an Area Commissioner in 2003. She said that the appointment was effected in terms of PSCBC Resolutions No. 7 and 8 of 2002.
12. The applicant disagrees with the Correctional Services' response to her grievance that she was not translated to the Primary Health Care stream because she would have been disadvantaged i.e.be put on the notch of R180612.00 instead of R186030.00. Secondly, the applicant disputes that there was no financed post of a section head at the Riebeek West Correctional Services in June 2007, which meant she could be translated to the position of an operational manager.
13. She submits that in her investigation, she found that none of the Section Head- Health Care posts in the management area were financed, yet two employees Abrahams and Mandeane were translated to the

higher salary levels. She claims that she also should have been translated to a position of Operational Manager: Primary Health Care.

14. The applicant submits that according to her Persal salary payslip, she is an Operational Manager: General Nursing. Therefore, the applicant submits that in terms of the PHSDSBC Resolution No 3 of 2007, she should have been at the notch of R186.030, which requires seven years of experience after registration with SANC. According to the applicant, this made her to qualify to be translated into Operational Manager: Primary Health Care. She said the Persal printout confirms her point of view.
15. During the cross-examination, the applicant confirmed that she did not accept the position of an acting Co-ordinator – Health Service, which was offered to her by Area Commissioner (Van Rensburg) in April 2000. She also accepted that the OSD translation could only be done by means of two phases as stipulated in clause 3.2.5.2 of the Collective Agreement. The applicant could not confirm that the post of an Operational Manager existed. She confirmed that Abrahams was her supervisor.
16. Mr. Arendse, who is the respondent's Coordinator: HR Administration for the West Coast Management Area testified that Mandeau's post appeared exactly the same as the applicant's post on the establishment. He submits that Mandeau was translated to the level of Section Head: Primary Health Care. He confirmed the validity of the Persal printout.
17. He said that the applicant was appointed to a position of Section Head: Primary Health in August, 2003. Mr. Arendse submits that the applicant should have been translated to salary scale of R235 659 because she met the requirements. He said that sister Mandeau's post was not financed, yet she was translated.
18. During the cross-examination, Mr. Arendse agreed that the comparisons he made between the applicant and Mandeau were only referring to the salary level (seven). He admitted that he is not sure whether the two employees (Applicant and Sister Mandeau) were in the same notch and/or have the same experience to justify the difference in the salary after the OSD. He confirmed that he was not involved in OSD. He said that he does not know why the first translation was to General Nurse not to Primary Health Care. He confirmed that there was no post in the post establishment of a Section Head at the Riebeek West Correctional Services in June 2007.

**Respondent's case:**

19. Mr. Chiloane, who is the respondent's Deputy Director of General Remuneration, testified that among other things he is tasked with the implementation of OSD Nursing. He submitted that OSD for professional nurses is implemented by way of an Implementation Directive as stipulated in paragraph 3.2 of the PHSDSBC collective agreement. *Paragraph 3.2 reads as follows: 'to give effect to this agreement, the implementation of the OSD will be a determination and implementation directive issued by the Minister for the Public Service and Administration in terms of 3(3)(c) of the Public Service Act, 1994 ....'*
20. He, therefore, submits that paragraph 13.2.2 of the Directive is applicable in this case. Paragraph 13.2.2 of the Directive reads as follows: *the existing posts of Professional Nurses, Senior Professional Nurses and Chief Professional Nurses who perform production work on 30 June 2007 in the following work streams in the occupation Professional Nurses must be created/ converted''*.
21. According to Mr. Chiloana the applicant held a post of Chief Professional Nurse prior to OSD. Therefore, the post was converted in terms of paragraph 13.2.2.3 of the Directive into a post of a Clinical Nurse Practitioner.
22. Mr. Chiloana stated that paragraph 13.2.3 of the Directive did not apply in the case of the applicant. Paragraph 13.2.3 reads as follows: *the existing posts of Chief Professional Nurses in designated posts of Unit Manager on 30 June 2007 in the following work streams in the occupation Professional Nurse must be created/converted''*. According to Mr. Chiloana, there was no designated post of Unit Manger at Riebeeck West Correctional Services on 30 June 2007.
23. Mr. Chiloana said that the applicant was translated in terms of the translation keys. He said that the applicant had thirteen years of experience. Therefore, she could not be put on a salary scale of R146 850 because she was already on the salary scale of R147 327. Mr. Chiloana said that when the nurses were translated to Primary Health Care the applicant was kept on General Nursing because her salary would have dropped if she was translated into Primary Health Care. In order for the applicant to qualify for a notch increase, she should have had fourteen years of service.
24. Mr. Chiloana submitted that the reason that the applicant was translated to General Nurse and not Primary Health Care was a directive from the accounting officer who wanted to retain nurses in the Department. He said that the applicant at this stage was on a salary scale of R186 030. If she was translated to Primary Health Care, her salary would have dropped to R180 612. Mr. Chiloana said this

would be contrary to paragraph 3.2.5.1, which stipulates that no person will receive a salary (notch or package) that is less than what he/she received on 1 July 2007 prior to the implementation of OSD.

25. Regarding the applicant's job description as reflected in her salary advice Mr. Chiloana submitted that the applicant's salary of R186 612 fell within the salary bracket of Operational Manager Nurse hence her salary advice shows that she is the Operational Manager.

**Analysis of evidence and arguments:**

26. It is a trite law that I must first establish whether the words of the Collective Agreement were unclear or ambiguous. The applicant contends that the respondent failed to correctly apply and interpret paragraph 3.1.4 of the PHSDSBC Collective Agreement regarding the implementation of an occupational specific dispensation (OSD) for nurses. The applicant further submits that the respondent failed to correctly interpret annexure A which deals with the appointment and promotion for each job category. According to the applicant, this omission resulted in her not being translated to a position of Operational Manager: Primary Health Care

26. The respondent's case is that the OSD translation for professional nurses is implemented by way of Implementation Directive as stipulated in paragraph 3.2 of the PHSDSBC collective agreement. The applicant did not refute this. Secondly, annexure A refers to appointment and promotions. Ms Annelize Malan argued that if a vacant post, i.e. that of Operational Manager: Primary health Care existed, it should have been advertised, and the applicant would had an opportunity to apply for the position.
27. Paragraph 3.1.4 of the PHSDSBC Collective Agreement refers to requirements for appointment and promotion for each category as determined by the employer, subject to any statutory requirements determined by the SANC as indicated in annexure A. The applicant's main contention is that the respondent failed to translate her to a salary scale of Operational Manager: Primary Health Care.
28. The matters relating to translation are dealt with in paragraph 3.2 and 3.2.5 of the Collective Agreement. I find no ambiguity regarding the wording of these two clauses. The applicant elected to use paragraph 3.1.4 and annexure A which are silent about translations. Even though I find that there was nothing unclear/ambiguous about the wording of the collective agreement, it would be imperative to hear evidence because the OSD collective agreement presented a milestone in the restructuring of the public service.

29. The applicant lodged a grievance in February, 2009 regarding the respondent's failure to translate her to a post of Operational Manager: Primary Health Care at a salary scale of R235 659 backdated to July, 2007. The respondent submitted that the applicant was translated to the General Nursing Stream not to Primary Health Care Stream because this would have put her on a lower notch, i.e. R180 612 instead of R186 030. This was communicated to the applicant in August, 2009.
30. The applicant submits that she was appointed into a position of a Section Head: Primary Healthcare in Riebeeck West Correctional Services in August, 2003. She also received a confirmation letter from Mr. Manquele who was the Area Commissioner: Malmesbury Management Area.
31. Mr. Chiloana's version is that the applicant held a post of Chief Professional Nurse prior OSD. The post was converted/translated in terms of paragraph 13.2.2.3 of the Directive into a Clinical Nurse Practitioner. The applicant did not refute this version. Regarding paragraph 13.2.3 of the Directive which refers to a designated post of a Unit Manager, Mr. Chiloana's version is that there was no designated post of Unit Manager at the Riebeeck West on 30 June, 2007. Both the applicant and Mr .Arendse conceded that there was no position of Unit/Operational Manager at that time.
32. Even though the applicant accepts that there was no position of an Operational Manager, she insists that she was an Operational Manager: Primary Health Care because she received an appointment letter from Mr. Manquele, who was an Area Commissioner in 2003. Secondly, her salary advice shows a job title of an Operational Manager. The respondent's explanation is that the applicant's salary of R186 612 fell with the salary bracket of Operational Manager Nurse hence her salary advice shows that she is the Operational Manager. Even though this explanation is not entirely convincing, it cannot be said that the respondent interpreted and applied the collective agreement incorrectly.
33. Here, I find no compelling grounds to conclude that the respondent interpreted and applied the collective agreement incorrectly.

**Award:**

34. The application is dismissed.
35. No order for costs is made.

DONE AND SIGNED IN CAPE TOWN ON THIS 23<sup>TH</sup> DAY OF AUGUST 2011.

A handwritten signature in black ink, consisting of a large, stylized initial 'R' followed by several cursive letters, possibly 'Rui'.