



# S142A

# ARBITRATION

# AWARD

Case Number: **PSHS 223-11/12**

Commissioner: **Nozibusiso Faith Gumede**

Date of award: **7 March 2019**

In the matter between:

HOSPERSA obo ET MOTHA

Applicant

and

DEPARTMENT OF HEALTH- MPUMALANGA

Respondent

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1. The hearing took place at the Department of Social Development, Sonjoy Building, at 10h00 on 28 January 2019. The applicant, E. T Motha was represented by T Sokhela, a Trade Union Official from Health and Other Service Personnel Trade Union of South Africa (HOSPERSA) whilst the respondent, Department of Health – Mpumalanga was represented by J Mnisi, Deputy Director: Labour Relations. The service of the interpreter was not required.

## **THE ISSUE TO BE DECIDED**

2. I am required to determine whether the settlement agreement entered by the applicant and the respondent on 18 October 2011 should be made an arbitration

award or not, in terms of the provisions of section 142A (1) of the Labour Relations Act 66 of 1995 (LRA).

## **BACKGROUND TO THE MATTER**

3. The dispute related to alleged unfair labour practice as defined in section 186(2) (a) of the LRA. It was scheduled for conciliation on 18 October 2011 before Panellist, Chris Mbileni.

## **SUMMARY OF THE EVIDENCE**

4. The parties conceded that they entered into a settlement agreement, as per a letter of recommendation from the Chief Executive Officer on 18 April 2011. The applicant indicated that she bought this application because the respondent did not comply with the provisions set out in this settlement agreement. The respondent did not oppose the application.

## **ANALYSIS OF THE APPLICATION**

5. Section 142A of the LRA provides that “*the Commission may by agreement between the parties or on application by a party, make a settlement agreement in respect of any dispute that has been referred to the Commission, an arbitration award*”.
6. The clause 2 of the settlement agreement stipulate that “*The copy of the settlement agreement is attached hereto*”. However, there was no such attachment produced as evidence except a letter of recommendation. It was subjected to senior managerial approval and it did not resolve this matter. The author of this letter further acknowledged that an amount of R344 551.04 was the applicant’s outstanding underpayment. However, the respondent did not commit on the date for the payment on this letter or settlement agreement itself.

7. It is my view that this matter remained unresolved, as crucial details were not agreed upon by the parties. Therefore, the settlement agreement cannot be made an arbitration award under these circumstances.

## **AWARD**

8. The application is dismissed.

9. There is no order as to cost.



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NOZIBUSISO FAITH GUMEDE