



**PHSDSBC
PUBLIC HEALTH AND
SOCIAL DEVELOPMENT
SECTORAL BARGAINING
COUNCIL**

ARBITRATION AWARD

Panellist/s: David Bobbejaan
Case No.: PSHS253-10/11
Date of Award: 2012.04.22

In the ARBITRATION between:

PAWUSA obo DAVID PATRICK MOHAMID & 1 OTHER

(Union / Applicant)

and

NORTHERN CAPE HEALTH DEPARTMENT

(Respondent)

Union/Applicant's representative: Dagee John Manuel

Union/Applicant's address: P O Box 1256

KIMBERLEY

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Telephone: 053 831 1878

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Respondent's representative: Jack Pudikabekwa

Respondent's address: Private Bag x5021

KIMBERLEY

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Telephone: 053 802 2124

Telefax: 053 831 4587

DETAILS OF HEARING AND REPRESENTATION

- [1] The Arbitration was scheduled for 2012.04.03 at 10:00 in accordance with the Public Health and Social Development Sectoral Bargaining Council (the Council) policy that regulate the dispute procedures of the Council (the Rules). The Arbitration hearing was supposed to take place at the +James Exum Building, Kimberley.
- [2] The referring party is Messrs David Patrick Mohamid (Mr Mohamid) and Benedict Tshediso Mokwena (Mr Mokwena) (the Applicants) and were represented by Mr Dagee John Manuel a PAWUSA official. The Northern Cape Health Department (the Respondent) was represented by Mr Jack Pudikabekwa a Labour Relations Officer employed by the Respondent. The arbitration was considered on paper as per the agreement between the parties. The Applicants submitted their heads of argument on 2012.04.03, the Respondent was supposed to have responded on 2013.04.05 and the Applicants replying on 2012.04.10. both parties failed to submit their responding and replying arguments by the due dates and by the date this award was drafted. Therefore, I only considered the Applicants heads of arguments submitted on the day of set down.

ISSUE IN DISPUTE

- [3] The issue in dispute is whether the precautionary suspension of the Applicants was both procedurally and substantively fair or not. The Applicants seek compensation as a relief for the unfair suspension.

BACKGROUND TO THE DISPUTE

- [4] The Applicants were placed on precautionary suspension on 2010.04.19 which was lifted on 2010.10.27 after they were formally charged with misconduct on 2010.05.04. The Respondent is in the business of providing health services to the public. The Applicants felt aggrieved as a result of the developments surrounding their suspension thus the dispute referred to conciliation. The matter was not resolved at conciliation and a certificate of non-resolution was issued on 2010.08.13.

SURVEY OF EVIDENCE & ARGUMENT

- [5] The Applicants submitted documents as evidence and were admitted as bundle "A". The Respondent submitted documentary evidence. No oral evidence was led.
- [6] It appears that the Applicants referred the dispute before it arose. On perusal of the bundle of documents submitted by the Applicants I discovered that the referral forms were signed by their representative before the date the dispute arose. The referral form was signed on 2010.04.18 in page 7 paragraph 8 and the date the dispute arose, on page 4 paragraph 5, is indicated as 2010.04.19. Therefore, it implies that the dispute was referred before it even arose. Having considered the above I

don't think that I have jurisdiction to entertain this dispute because there can never be a dispute before it arose. It is my view that the Applicants should refer their dispute afresh and attach an application for condonation to the referral form because the referral will be out of time.

AWARD

[7] In the circumstances I, therefore, make the following order:

- a) That the referral of Messrs Mohamid and Mokwena, the Applicants, was referred prematurely.
- b) That the Applicants refer their dispute afresh.
- c) That no order as to costs is made.

Signed and dated at Bloemfontein on the 22nd of April 2012.



Panellist/s: **David Bobbejaan**
Sector: **Public Health & Welfare**