



ARBITRATION AWARD

IN THE PUBLIC HEALTH AND SOCIAL DEVELOPMENT SECTORAL
BARGAINING COUNCIL HELD AT HOOPSTAD

COMMISSIONER: C L DICKENS
CASE NO. : PSHS 255-11/12
DATE OF AWARD: 22 February 2012

In the Arbitration between:

DENOSA obo METSING ABRAHAM MOKOENA

APPLICANT

and

DEPARTMENT OF HEALTH: FREE STATE

RESPONDENT

ARBITRATION AWARD

1. DETAILS OF HEARING AND REPRESENTATION:

- 1.1 An Arbitration hearing was scheduled for the 12th of January 2012 at the Mohau Hospital, Hoopstad. Due to protracted settlement discussions and time constraints the matter was postponed to the 4th of February 2012.
- 1.2 The Applicant, Mr. Mokoena, was represented by Mr. Mohoje, an Official of Denosa. The Respondent, Department of Health: Free State, was represented by Mr. Mncube, Senior Employment Relations Officer.
- 1.3 The parties have agreed to file Written Closing Arguments before or on the 10th of February 2012.
- 1.4 The Arbitration proceedings were digitally recorded.

2. ISSUE TO BE DECIDED:

2.1 The Applicant has referred an unfair labour practice dispute to the Bargaining Council, relating to training. The Commissioner must determine whether the Respondent's conduct was unfair when they denied granting the Applicant leave for the period 2011 to attend a course in advanced midwifery.

3. BACKGROUND TO THE ISSUE:

3.1 The Applicant was appointed in the position of Clinical Program Coordinator for Infection Control in 2008.

3.2 The Applicant applied for full time study leave and a bursary for 2011, for advanced midwifery.

3.3 The Application was denied and the Applicant was advised thereof on the 27th of July 2010.

3.4 The Applicant lodged a grievance and he was not satisfied with the outcome of the grievance.

3.5 The matter was then referred to the Bargaining Council as an unfair labour practice dispute. The matter remained unresolved at Conciliation and a Certificate of non-resolution was issued.

4. SURVEY OF EVIDENCE AND ARGUMENT:

4.1 SUBMISSIONS BY THE APPLICANT PARTY:

4.1.1 Only the Applicant testified on his own behalf.

4.1.2 *The Applicant* testified that he started at the Institution in 2006 and his first Application for study leave was denied on the basis that he was still on probation. He was satisfied with this reason as he knew that he was on probation for 12

(TWELVE) months. He applied for study leave for MBCHB and he was told that this was way above his scope.

4.1.3 His second Application for study leave was for 2009, for advanced midwifery. This Application was declined.

4.1.4 He stated that his 3rd Application for study leave was in 2010 for the same course and this was also declined on the basis that this was not his career path. He was advised that he is appointed as the Program Coordinator Infection Control in the Institution and therefore midwifery as it is, is not his career path.

4.1.5 The Applicant testified that last year when he checked, there is no formal education that he can study to achieve a certificate or formal education in infection control. He stated that he was told by a Professor that they are still busy formulating a program so that there can be formal education on infection control. He stated that he tried to make the Employer aware but nobody would listen.

4.1.6 He testified that he feels unfairly treated on the basis that there is no formal training on infection control. He stated that 2 (TWO) colleagues were granted study leave with no questions being asked.

4.1.7 The Applicant held that if he had known that his appointment to Infection Control would mean that he could not study the course of his choice, then he would not have accepted the position.

4.1.8 The Applicant held that Mr. Kuitse was granted study leave and Mrs. Ralepeli was granted study leave, but his study leave was denied.

4.1.9 He testified that Ralepeli and Kuitse applied for study leave which was granted. He stated that Kuitse was also a Program Coordinator and that he was also rotating between wards.

4.1.10 The Applicant testified that their Institution is a district level hospital, being one of the small hospitals. He held that everyone who is employed is not stationary in one Department. They rotate between the wards and change on a daily basis. He

confirmed that even though he is a Program Coordinator he is still rotating between the wards.

4.1.11 The Applicant confirmed that he lodged a grievance regarding the fact that he had applied for study leave in 2008, 2009, 2010 and that it was not granted. The solution he proposed was that he be permitted to attend the training course in 2011.

4.1.12 He held that when he was appointed as Project Coordinator Infection Control, he was not told that he would not be permitted to study any other courses.

4.1.13 He testified that when he works on a rotation basis, he often works in the maternity ward.

4.1.14 The Applicant held that he did not receive a detailed explanation as to why his Application for Study Leave for 2011 was denied, therefore he submitted the grievance.

4.1.15 Under cross-examination the Applicant testified what his responsibilities as the Program Coordinator Infection Control entails. He held that he is also doing clinical work on a daily basis.

4.1.16 He held that he does not know the circumstances relating to the approval of the Study Leave of Ralepeli. He only knows that the leave was granted.

4.1.17 He also held that he does not know the personal circumstances that led to the Study Leave of Kuitse being granted.

4.1.18 The Applicant testified that he can not remember the name of the Professor whom he spoke to in relation to whether there is a course which is offered in Infection Control. He stated that the Professor told him that the SA Nursing Council does not recognize any formal training in Infection Control.

4.1.19 He agreed that in terms of the PDMS Policy, this entails a training plan or a personal development plan.

4.1.20 The Applicant held that in terms of the response he received from the Employer, it is clear that the Employer acknowledges his need to study on a full time basis.

4.1.21 He confirmed that he has not received any formal training as a Program Coordinator Infection Control.

4.1.22 He held that he feels unfairly treated and that the Employer was inconsistent.

4.1.23 **Mr. Mohoje** argued in closing that the continued negative responses to his Application were not based on any tangible career path plan. He argued that compensation should be awarded to the Applicant.

4.2 SUBMISSIONS ON BEHALF OF THE RESPONDENT:

4.2.1 The following witnesses were called to testify on behalf of the Respondent:

- Amelia Letlhoname Snyer
- Mina Ruiters

4.2.2.1 **Mrs. Snyer** testified that she is employed as the Nursing Services Manager at Mohau Hospital.

4.2.2.2 She referred to Bundle "D" of the documents and held that this was the Performance Improvement Plan for the Applicant. She held that on the document the Applicant's duties are infection control. She held that he was supposed to do only that work, but due to a shortage of staff he was utilized in the other Departments. She stated that this document is used for the PDMS to appraise the employees for the whole year.

4.2.2.3 Mrs. Snyer confirmed that the Applicant signed the document thereby signing that he does agree that he is doing the work. She held that the Applicant is supposed to be allocated to an office to do only infection control, but due to the shortage of staff he rotated to help in the other Departments.

- 4.2.2.4 Under cross-examination she testified that the Applicant is not only used in Infection Control, but that he rotates in the wards as there is a shortage of staff. She confirmed that she has never had a problem with the performance of the Applicant.
- 4.2.3.1 **Mrs. Ruiters** testified that she is employed as a registered Nurse at Nala Hospital and that Skills is an additional task allocated to her. She testified that she is the Chairperson of the Skills Development Committee and that they received an Application from the Applicant in 2009 to grant study leave for advanced midwifery.
- 4.2.3.2 Mrs. Ruiters testified that when an official applies for a course, they look whether the course is job related. In the 2010 Applications, the Applicant applied for the course in advanced midwifery whereas he was newly placed in the position of Infection Control. She held that the Applicant had to be empowered in the post of Infection Control as he was new in the post and he had no experience. Infection Control was a priority in the Department and they had to empower him in that position.
- 4.2.3.3 Mrs. Ruiters testified that a letter was written to the Applicant on the 27th of July 2010 advising him that his Application for full time study leave was not granted. The reasons for not granting the leave were that he was newly appointed in the post of Infection Control and that they regarded his career path as such. She confirmed that in 2011 the Applicant did not apply for full time study in 2012.
- 4.2.3.4 Under cross-examination she testified that the workplace skills plan identified a need for infection control at Mohau Hospital. She held that it was a priority for the Institution and the hospital and therefore they had to empower the Applicant and then only can they expect him to perform.
- 4.2.3.5 She testified that there is a course in Infection Control at Wits University and that the attendees receive a Certificate of competence. She held that it is an 18 (EIGHTEEN) month course and as far as she knows they receive a qualification.

- 4.2.3.6 Mrs. Ruiters testified that the Applicant was appointed in the position of Infection Control with OSD which was in September 2008.
- 4.2.3.7 She stated that once the Applicant was empowered in the field of Infection Control, he could apply to study in any direction. She held that she knew that the Applicant was not training after he was placed in the post therefore they made the recommendation.
- 4.2.3.8 She testified that midwifery was a priority for the Department but that so was Infection Control, and because the Applicant was appointed in that position he had to be empowered.
- 4.2.3.9 She testified that the Applicant was not treated unfairly. Their decision was based solely on the fact that the Applicant was placed in a new post and that he had to be empowered into his new post. She stated that there was no agenda to his training being disapproved.
- 4.2.3.10 Mrs. Ruiters confirmed that there are bursaries available for candidates to study Infection Control.

5. ANALYSIS OF EVIDENCE AND ARGUMENT:

- 5.1 The dispute which has been referred to the Bargaining Council is an unfair labour practice dispute relating to training. For ease of reference I will quote the said Section hereunder:

“(2) ‘Unfair labour practice’ means any unfair act or omission that arises between an employer and an employee involving -

(a) unfair conduct by the employer relating to the promotion, demotion, probation (excluding disputes about dismissals for a reason relating to probation) or training of an employee or relating to the provision of benefits to an employee.”

- 5.2 The issue which I have to determine is whether the Employer's conduct was unfair when they declined to grant the Applicant a bursary together with leave for 2011 to attend a course in advanced midwifery.
- 5.3 It is common cause that the Applicant applied to attend the course in midwifery and that the Application was denied. The Applicant was advised of the outcome on the 27th of July 2010 in writing.
- 5.4 It is further common cause that the Applicant was appointed in the position of Clinical Program Coordinator for Infection Control from 2008. It is common cause that the Applicant was appointed in this position but that he continued rotating between wards due to a shortage of staff. It is undisputed that Infection Control was, and is, his primary position.
- 5.5 It is the Respondent's case that the Applicant's Application was considered and was not granted on the basis that he had to be empowered and trained in his primary position, being Infection Control. His career path was therefore in Infection Control and not in advanced midwifery.
- 5.6 Mrs. Ruiters testified that she was the Skills Development Facilitator and was part of the committee which considered the Applications for bursaries and leave. She confirmed that the Applicant had been appointed in the position of Infection Control and that he had not received training, nor had he been empowered to fulfill his tasks. She held that it was important to train him in this field first before he could be considered to attend training in the direction of midwifery.
- 5.7 The Applicant argued that he felt that it was unfair that he could not be considered for the course in midwifery as there was no course that he could have attended in Infection Control. He held that a Professor, whose name he could not remember, told him that there was no such course available.
- 5.8 Mrs. Ruiters testified that there was a course available at the University of the Witwatersrand and that it was an 18 (EIGHTEEN) month course. She testified that had the Applicant applied for a bursary and study leave in the field of Infection Control, it would more than likely have been granted.

- 5.9 I am satisfied that the Respondent has provided a logical and reasonable explanation for refusing to grant the Applicant study leave for 2011. I am satisfied that their decision was based on the fact that the Applicant has to be trained in a specific field to empower him to be able to do his work in the field of Infection Control. It would not have assisted the Applicant to obtain further qualifications in midwifery, which was not his primary position.
- 5.10 The second aspect which the Applicant has raised his concerns about was that the Respondent was not consistent in the approval of leave to employees Ralepeli and Kuitse.
- 5.10 The Applicant confirmed that he was advised that their leave was approved, but confirmed that he had no knowledge relating to the personal circumstances or the circumstances relating to the approval of their Applications. The onus rests on the Applicant to prove that they acted inconsistently. On the Applicant's version alone, he conceded that the circumstances were not known to him. The Applicant has therefore failed to prove that the Respondent's conduct was unfair in that these 2 (TWO) employees' leave was granted and his was denied.
- 5.11 Be that as it may, the main question is whether the Employer's conduct was unfair as far as it relates to the Applicant's circumstances. Having considered the evidence before me, I can not find that the Respondent's conduct was unfair as far as it relates to the fact that his leave for the midwifery course for 2011 was denied.

6. AWARD:

- 6.1 The Applicant, Metsing Abraham Mokoena, has failed to prove that the Respondent's conduct was unfair when they took the decision not to grant his study leave for 2011.
- 6.2 No order as to costs is made.

SIGNED AT BLOEMFONTEIN ON THIS 22nd DAY OF FEBRUARY 2012

C L DICKENS

PHSDSBC SENIOR COMMISSIONER