



ARBITRATION AWARD

Panellist/s: Joseph Mphaphuli
Case No.: PSHS256-11/12
Date of Award: 31-Oct-2011

In the MATTER between:

PSA obo Boojhawan, R
(Union / Applicant)

and

Department of Health – KwaZulu Natal
(Respondent)

Union/Applicant's representative: Mr Donachie
Union/Applicant's address: PO Box 862
Durban
4000
Telephone: 031 304 3621
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Respondent's representative: Mr Kunene
Respondent's address: Private Bag x 9051
Pietermaritzburg
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Telephone: 033 846 7242
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DETAILS OF HEARING AND REPRESENTATIONS

This is an award in terms of Section 138(7)(a) of the Labour Relations Act 66/1995 ("The Act") as amended. The arbitration hearing was conducted in terms of Section 191 of the Act.

The proceedings were conducted at the Respondent's premises in Durban on 27 October 2011.

Mr. Donachie an Attorney appeared on behalf of the Applicant. Mr. Kunene an official in the service of the Respondent appeared on behalf of the Respondent.

The proceedings were digitally recorded.

ISSUE IN DISPUTE

Whether there was an unfair labour practice as contemplated by Section 186 of the Act, and the appropriate remedy, if any.

BACKGROUND TO THE DISPUTE

The Applicant was appointed in 1990. The Applicant served in the capacity of ambulance assistant. The Applicant was remunerated at R 9 000.00 per month. The alleged unfair labour practice was occasioned in April 2011 and persisted till August 2011. The Respondent suspended his salary over the period. The Applicant applied for the upliftment of the salary suspension and the payment of all salaries due for the period in question.

SURVEY OF EVIDENCE AND ARGUMENT

The Applicant sustained an injury in 2003. The injury caused him to be unfit for duties that he was originally employed for. The attending medical practitioner issued a medical certificate stating that he was incapacitated. He kept the Respondent apprised of his circumstances for the duration of his temporary incapacity.

The Respondent did not enter any evidence but was content to cross examine the Applicant and to make submissions at the conclusion of the hearing.

ANALYSIS OF EVIDENCE AND ARGUMENT

The Applicant's case was that suspension or the freezing of salary constituted an act of suspension as contemplated by Section 186 of the Act.

There was no dispute about the salary suspension. In dispute was whether salary suspension fell within the ambit of Section 186 of the Act.

The provisions of Section 186 of the Act are most clear, direct and certain. Section 186 provides that an act of suspension or rather unfair suspension or disciplinary action relates to a disciplinary penalty. The act labeled as an unfair suspension or disciplinary action is attached to the affected person.

Suspension in the context of Section 186 of the Act relates to a temporary suspension of an employment relationship between the affected parties and arising from all act of misconduct on the part of an employee.

The suspension contemplated in Section 186 can only take the form of a disciplinary action.

The provisions of Section 186 have no relevance to terms and conditions agreed to by parties in an employment contract.

Remunerations issues are regulated in terms of the employment contract. An employee whose salary has been suspended by an employer as in the instant case does not have a remedy in terms of the Act.

Accordingly the Labour Relations Act dispute resolution mechanism and the Bargaining Council as a creature of the Labour Relations Act is not ordained to adjudicate remuneration disputes unless specifically referred to in an unfair dismissal dispute. Section 195 of the Labour Relations Act is instructive in this regard.

AWARD

1. There was no unfair labour practice in the context of Section 186 of the Act.
2. I dismiss the application for an unfair labour practice.



Joseph Mphaphuli
PHSDSBC Panelist