



# ARBITRATION AWARD

Panellist/s: Thuthuzela Ndzombane  
Case No.: PSHS27-11/12  
Date of Award: 3-Jul-2012

In the ARBITRATION between:

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**PSA Obo M. M April**

(Applicant)

and

**DEPARTMENT OF CORRECTIONAL SERVICES: WESTERN CAPE**

(Respondent)

**Union/Applicant's representative:** Ms Mosaic [Union Official]

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**Respondent's representative:** Ms Mpa [Labour Relations Officer]

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### **DETAILS OF HEARING AND REPRESENTATION:**

1. The arbitration hearing was scheduled for 11 June 2012, under the auspices of the Public Health & Social Development Sectoral Bargaining Council at Correctional Service's Regional Office in Cape Town. The applicant, Mr April, was represented by a Union Official, Ms Mosetic. The respondent, Department of Correctional Services – Western Cape, was represented by its Labour Relations Officer, Ms Mpa. Two witnesses' testified on behalf of the applicant whilst respondent elected not to call any witnesses instead it opted to argue the matter on the papers. The parties agreed to submit their written heads of arguments by no later than 21 June 2012; which they have complied with.

### **BACKGROUND**

2. The applicant was employed by the respondent on 01 August 2007; as a Professional Nurse. Prior to his appointment; he had worked at psychiatric section at Lenteguer Hospital for the Department of Health. According to him he was translated from professional nurse to a specialised nurse in terms the Occupational Specific Dispensation. At the time of his departure, he was earning R85000.00 but persal reflected he was translated to R160100 per annum.

3. Prior to the implementation of the OSD the applicant applied for a post at Correctional Services. He therefore became a successful candidate. He took the post on 01 August 2007 due to the fact that there was a delay in his registration with SANC. The Respondent translated him to R106086 and according to him the translation was incorrect.

4. The respondent argued that the applicant is working at Polsmor. The post was advertised externally which reflected a salary scale of R85362. The applicant accepted the terms

and conditions of his appointment. There is no violation of any Occupation Specific Dispensation clause. The implementation of Occupation Specific Dispensation was done on 01 July 2007.

### **SUMMARY OF EVIDENCE AND ARGUMENT**

5. I have considered all the evidence and argument, but because the Labour Relations Act, 66 of 1995, as amended (LRA), requires brief reasons (section 138(7)), I have only referred to the evidence and argument that I regard as necessary to substantiate my findings and the determination of the dispute.

### **ISSUE TO BE DECIDED**

6. I am required to determine as to whether the applicant is covered by the OSD, if yes, whether he was translated correctly.

### **APPLICANT'S CASE**

7. **Mark Manfred April** stated that he is employed by the respondent as a professional nurse and he presented the following evidence under oath. He confirmed that he started working for the department on 01 August 2007. He received his SAC registration in July 2007. Since 2007, he has been a qualified nurse.
  
8. **Prior to his appointment, he** had worked at Lenteguer Psychiatric Hospital for the Department of Health from 01 July 2007 up to 31 July 2007. According to personal system whilst still at the Department of Health he was translated from R85365.00 to R160470. This information was never been communicated to employees and payment was made at the end of 2007.
  
9. The department started him at the scale of R85362 per annum as per the advertisement and was translated to R106 086 on 01 August 2007. According to him in all the times he was working as a professional nurse and in a specialized environment. Currently, he works at the primary health care setting which is regarded as a

specialized environment. He believes that he should have been translated to R160470 as required by the OSD.

10. **Jabulani Shinga** stated that he is employed by the respondent as a Health Manager at Polsmor and he led the following evidence under oath. He confirmed that the applicant was employed as a professional nurse. Applicant works at primary health facilities which were declared by the department as specialized facilities. He believes that the applicant was wrongly translated in terms of the OSD. All other nurses who work at the department were translated to R160470. When he was asked to submit the names of employees who qualified for the OSD, he had submitted all the names including that of the applicant as well. The determining factor is where an employee was working at the time of the implementation of the OSD.

### **ANALYSIS OF EVIDENCE AND ARGUMENTS**

11. It is trite law that when the language of the Act or a Collective Agreement is plain and simple it should therefore be given its intention and plain meaning. The parties have different interpretation of the OSD in relation to the nurses. It is always important as to understand the context and purpose of an agreement. The Occupation Specific Dispensation is governed by Resolution 1 of 2007 read with Resolution 3 of 2007.
12. It is clear that the agreement is intended to address the discrepancies for those nurses who work in a specialised environment and those who have specialised qualification and work in a specialised environment but not remunerated accordingly. Clearly, the parties tried to balance the need to acknowledge specialised qualifications and including those who are rendering specialised services but not having specialised qualifications. The agreement also encourages employees to further their studies in order to be remunerated accordingly.

13. The question that should be asked is who is covered by Resolution 1 of 2007. Clause 2 of the Agreement states that “ this agreement binds the employer and the employees who-
- a. are employed by the State; and
  - b. fall within the registered scope of the Council.
14. The above clause should be read with Clause 4.13 of the Agreement states that *“These dispensations will be implemented over the next period of three years commencing with effect from 1 July 2007. The priorities for implementation for new occupations will be determined by agreements within the sectoral bargaining council. The agreement states that all categories of nurses, with effect from 1 July 2007”*.
15. By implication all nurses who were employed by the State on 01 July 2007, should be translated as per their categories in their respective fields in terms of the OSD. Evidence shows that the applicant has been employed by the State at the time of the implementation of the OSD. There is always confusion as to who is the employer. In this case the Resolution refers to the employer as the State. At the time of the implementation of the OSD the applicant was employed by the State but worked for a different department. The fact that he worked for a different department does not have any bearings in terms of the Resolution. If, that was the intention of the parties, they would have clearly explicitly mentioned such.
16. Conversely, he is covered by Resolution 01 of 2007. Furthermore, the applicant also falls under the scope of the Council. Evidence also that the Department of Health had translated the applicant to R160470. Surprisingly, the respondent does not appear to have any problems with such decision by the Department of Health.
17. It appears as per its argument that had the applicant been transferred to the Department of Correctional services he would have been kept to R160470. I have perused the Resolution no where it talks about resignation, transfer or promotion. I find

it very strange that there can be an argument that stands to differentiate the employees against the intention of the Agreement.

18. The OSD appears to differentiate the categories of nurses and as such the salary scales differs. The applicant relied on a circular dated 28 September 2007 at paragraph 36 which states that *“a separate salary structure applies to nurses performing duties in designed speciality fields, in Primary Health Care and Nursing Education, as identified in the OSD for the occupation Professional Nurse. The inclusion of other specialities for this purpose is subject to the relevant one year post – basic qualification being registered with the SANC in the relevant speciality”*.
19. The applicant also relied on Resolution 3 of 2007 at clause 3.2.5.3 (1)(b) which states that *“if, a Professional nurse is not in possession of a post –basic clinical nursing qualification listed in Government Notice R212, as amended, but who has been permanently appointed to a post in a speciality unit and has been performing these duties of the speciality post satisfactorily on 30 June 2007, shall be translated as a once –off provision to the first salary scale attached the production level”*.
20. It is not disputed that the psychiatric unit the applicant worked for at the Department of Health is a specialist field. For a nurse to qualify one need to work at a specialised unit, be a professional nurse and have been appointed permanently to a specialised unit. Evidence shows that the applicant is a qualified nurse and was appointed permanently by the department of Health in a specialised unit.
21. Clearly, this answers as to why the applicant was translated to R160470 by the Department of Health as they were in compliance with the OSD requirements. The fact that he was initially translated one can infer that his performance was satisfactory.

22. Even though the advertisement indicated a salary scale of R85362 the respondent ought to comply with the requirements of the OSD in adjusting the salary.

23. I note that the respondent's facilities are declared as Primary Health Care facilities which mean that they are specialist units. Having considered the agreements governing the OSD, I find that the applicant should have been translated as a once-off to R160470 instead of R106 086.

### **Award**

1. I find that the respondent, Department of Health had wrongly interpreted the OSD provisions in translating the applicant, Mr April to R106086.
2. The respondent is ordered to translate the applicant to R160740 as per the Resolution 1 & 3 of 2007 which regulate the OSD for the Specialist environment.
3. The adjustment of the salary is with effect from 01 July 2007.

**DONE AND SIGNED IN CAPE TOWN ON THIS 03<sup>TH</sup> DAY OF JULY 2012.**

A handwritten signature in black ink, appearing to read 'Thuthuzela Ndzombane', enclosed within a faint, irregular rectangular border.

**Arbitrator: Thuthuzela Ndzombane**

**Sector: Health**