



ARBITRATION AWARD

Panellist: Bella Goldman
Case No.: PSH277-11/12
Date of Award: 06 July 2012

In the ARBITRATION between:

NEHAWU obo Noyisile Sekwati and 12 others
(Union / Applicant)

And

Department of Health - Western Cape
(Respondent)

Union/Applicant's representative: Mr Noyisile Sekwati, Applicant and Shop Steward
Union/Applicant's address:

Telephone:

Telefax:

Respondent's representative: Mr Njongo Duma, Labour Relations Officer
Respondent's address:

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Telefax: 021 483 3952

DETAILS OF HEARING AND REPRESENTATION

1. The matter was held under the auspices of the Public Health and Social Development Bargaining Council and was scheduled for an arbitration hearing at the Western Cape College of Nursing, Klipfontein Road, in Cape Town on 22 June 2012. Mr Noyisile Sekwati, Applicant and Shop Steward represented the applicants. Mr Njongo Duma, Labour Relations Officer represented the respondent. The proceedings were digitally recorded.

ISSUE TO BE DECIDED

2. The matter was referred as an interpretation and application of a collective agreement in terms of the Labour Relations Act 1995 as amended (LRA). The collective agreement in question is Resolution 3 of 2007, Agreement on Implementation of an Occupational Specific Dispensation (OSD) for Nurses. The clause in question is clause 3.2.5.3(i) (b):

3.2.5.3 Translation of Professional Nurse (Registered Nurse) to speciality posts

(i) A Professional Nurse (Registered Nurse) who occupies a post in nursing and who –

(a) is in possession of a post basic clinical nursing qualification listed in Government Gazette Notice R212, as amended shall translate to the appropriate speciality post, and

(b) is not in possession of a post basic clinical nursing qualification listed in Government Gazette Notice R212, as amended, but who has been permanently appointed to a post in a speciality unit and has been performing these duties of a the specialty post satisfactorily on 30 June 2007 shall be translated as a once off provision to the first salary scale attached to the production level.

BACKGROUND TO THE ISSUE

3. It is common cause that the applicants are and were employed at Alexandra and Lentegeur Hospitals in speciality units and that they are not in possession of post basic clinical nursing qualifications listed in Government Gazette Notice R212, as amended. Prior to the OSD they were graded at salary level scale 6 or 7 and after the OSD they were translated to the first salary scale attached to the production level which is salary scale 7/8 provided they performed those duties satisfactorily which they all did. Thus three of the thirteen of the applicants' salary levels did go up.

4. The applicants claimed that they did the same functions and duties as the Professional Nurses who were in possession of a post basic clinical nursing qualification listed in Government Gazette Notice R212, as amended and who were translated to salary level 9 in terms of 3.2.5.3(i) (a).

SURVEY OF THE EVIDENCE AND ARGUMENT

5. I have considered all the evidence and argument, but because the LRA (section 138(7)) requires an award to be issued with brief reasons for the findings, I have only referred to the evidence and argument that I regard as necessary to substantiate my findings and the determination of the dispute.

Documentary Evidence

6. The parties submitted bundles of documents in evidence which were agreed as being what they purported to be. The bundles were marked 'A', 'B', 'C' and 'D'.

Employee's Evidence

The applicant called one witness, Dr Evalina Van Wijk, Senior Lecturer in Psychiatry at UWC who gave evidence under oath. The following is a summary of her testimony:

Dr Evalina Van Wijk

7. The witness stated that Professional Nurses working in specialty psychiatric units, such as Lentegour and Alexandra Hospitals with post basic clinical nursing qualifications perform the identical functions to those without post basic clinical nursing qualification such as the applicants and she believes they should be paid the same salary. She stated that they are often not given the opportunity to obtain those post basic clinical nursing qualification as a result of a number of factors example:

- Staff constraints
- Budget constraints
- Favouritism
- At some hospitals there is greater chance than others of being granted a bursary to obtain the qualifications

Employer's Evidence

The respondent called no witnesses

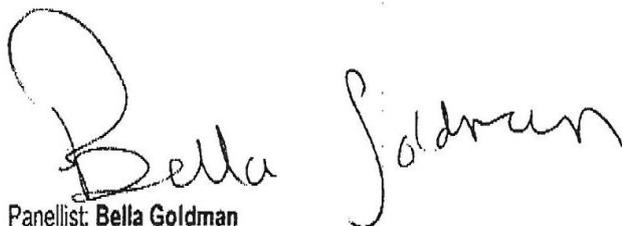
8. The parties submitted argument in support of their respective cases which I will refer to where necessary in my analysis.

ANALYSIS OF THE EVIDENCE AND ARGUMENT

9. It was common cause that the applicants did not possess post basic clinical nursing qualifications. The collective agreement in question is very clear as to the level Professional Nurses with and without post basic clinical nursing qualification should be translated to. It was not disputed that the applicants were translated to the level as provided for in terms of clause 3.2.5.3(i) (b) of that agreement which is the clause of the agreement which they referred, which is grade 7. It should be noted that NEHAWU was party to the collective agreement in question.
10. The applicants' issue appears to be that they feel that all Professional Nurses who occupy Speciality Posts in Specialty Units irrespective of whether they are in possession of post basic clinical nursing qualifications should be translated to post level 9. Hence their remedy appear to be to renegotiate the collective agreement in that respect or alternatively to ensure that all Professional Nurses who occupy Specialty Posts who work in Specialty Units have the opportunity to obtain post basic clinical nursing qualifications, should they wish to do so.

AWARD

11. I find that the Collective Agreement in question, Resolution 3 of 2007, Agreement on Implementation of an Occupational Specific Dispensation (OSD) for Nurses and specifically clause 3.2.5.3(i) (b) has been correctly interpreted and applied and the referral is dismissed.



Panelist: **Bella Goldman**

Sector: **Public Health & Social Development Sectoral Bargaining Council**