



# ARBITRATION AWARD

Case No: **PSHS280-20/21**

Commissioner: **Mr Anand Dorasamy**

Date of award: **2 October 2020**

In the matter between:

**HOSPERSA OBO BHOJA RAZIA**

(Union/ Applicant)

and

**DEPARTMENT OF HEALTH-KWA ZULU NATAL**

(Respondent)

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## DETAILS OF HEARING AND REPRESENTATION

1. The arbitration proceedings commenced at 10H00 on the 28 September 2020 at the Murchison Hospital Boardroom in Murchison. After the evidence was completed the parties were to submit written closing arguments on the 1 October 2020. The applicant was represented by Ms. Anita Johannes and the respondent/ employer by Ms. Thembi Tholakele Mjoli. The applicant lodged a dispute in respect of the respondent's interpretation or application of Resolution 3 of 2009.

## ISSUE TO BE DECIDED

2. I am required to determine whether the Respondent (employer) incorrectly interpreted or applied Resolution 3 of 2009 in respect of the applicant's grade progression from grade 1 to 2. Should I find in favour of the applicant, I am to determine what relief should be granted to her.

## **BACKGROUND TO THE DISPUTE**

3. The applicant is a dentist and appointed at Murchison hospital on 1 June 2010. According to Resolution 3 of 2009 she was employed as a grade 1 dentist and according to the Resolution should have moved to grade 2 as she qualified in terms of the Resolution.
4. She prays to be moved from grade 1 to 2 with effect from 1 July 2017.
5. The respondent contends that the applicant was appointed as a dentist but did not produce a certificate to grade progress her.

## **SUMMARY OF EVIDENCE**

### **APPLICANT'S CASE**

#### **Dr BHOJA RAZIA**

6. The salient aspects of the witness' testimony are recorded below:
7. Her position at the hospital is a dentist and she started on 1 June 2010. She is in charge of the dental facility.
8. She registered with the HPCSA (Health Professions Council of South Africa) in December 2007 and has the same registration number. Every year payment must be made and she has been doing it since 2010.
9. She requested grade progression in 2017 and handed her documents to HRD (Human Resources Department) and was told that her certificate was under dentist in the category Public Service.
10. On page 45 of bundle "A" number 2 she qualified to grade progress because she had a combination of 7 years actual service and/or recognizable experience after registration with HPCSA as a Dentist.
11. Under cross examination she stated as follows:

12. On appointment she submitted a certificate as a Dentist page 47 stating Dentist Public Service (Community Service). On page 48 she handed in a certificate of proof of registration with the HPCSA stating Dentist Independent Practice General Practitioner. The difference between the two is that the second one needed to show Independent Practice General Practitioner.

13. She engaged with HR (Human Resources and wrote to the HPCSA and was handed a certificate as an Independent Practitioner. She submitted that certificate and was practicing as a dentist for 7 years. She was told that her certificate was not correct.

## **RESPONDENT'S CASE**

### **THOBEKA CELE**

14. The salient aspects of her testimony are recorded below.

15. She is the HR officer working in HRD since 2012.

16. The community service is not counted. The applicant did her community service in another province. She was appointed as a dentist.

17. The applicant wanted grade progression. She came to them and handed the community service certificate but it was not the relevant certificate and she was asked for the certificate for Independent Practice General Practitioner and could not produce it. She went to the HPCSA for the certificate. They issued her with a certificate dated 23 March 2016. According to this date 23 March 2016 the 7 years was not completed.

18. The first certificate is for Community Service and ends when community service is completed and a certificate for Independent Practitioner General Practitioner is used for her application for employment.

19. Under cross examination she stated as follows:

20. She (the applicant) was accepted as a dentist.

## **CLOSING ARGUMENTS**

21. The parties submitted written closing arguments and the arguments were considered when I made my determination.

## **ANALYSIS OF EVIDENCE AND ARGUMENT**

22. This matter was cited as an interpretation or application of a collective agreement namely PHSDSBC Resolution 3 of 2009 in respect of grade progression.

23. The issues to be decided was whether the respondent (employer) interpreted or applied the Resolution correctly and if my finding be in the affirmative what would the appropriate relief be to her.

24. I have taken cognizance of the decision in *Sweeney/ Transcash* [2000] 6 BALR 712 (CCMA) where the commissioner held that arbitration hearings constitutes a rehearing de novo on the merits. The award must accordingly be based on evidence led at the arbitration.

25. The issues in dispute in this matter are fairly straightforward.

26. The applicable clause in the Resolution on page 45 to be considered is as follows:

From Dentist Grade 1 to Dentist Grade 2: PROGRESSION Grade Progression shall become effective from the 1st day of the month following the date on which the official met all the requirements

### **GRADE PROGRESSION/POST PROMOTION REQUIREMENTS/ MEASURES**

Compliance with the educational qualifications, statutory requirements, competencies for the job level as contained in the appointment requirements as well as the following experiential competencies

#### **Average Performance for grade progression purposes**

A combination of 7 years actual service and/ or recognizable experience after registration with the HPCSA as a Dentist

27. At the time of application for the position as a dentist in 2010 as a grade 1 required an appropriate qualification plus registration with HPCSA as a Dentist.
28. After completing her community service, the applicant had to apply to be registered with the HPCSA as an Independent Practice General Practitioner which she did not do. She visited the HPCSA personal on the 23 March 2016 and was told that according to their policy they are not allowed to back- date certificates of registration. She was then issued with a certificate of independent practice with effect from 23 March 2016.
29. Therefore, her registration as an independent practitioner commenced on the 23 March 2016.
30. When she applied for grade progression, she did not have the requisite 7 years registration with the HPCSA as a dentist. She was informed by the respondent about not meeting the 7 years requirement which triggered her to approach the HPCSA and she was advised accordingly.
31. As a consequence of the above I find the Respondent (employer) did not incorrectly interpret or apply the applicable clause in the Resolution.
32. The applicant's claim is dismissed and she is not entitled to any relief.

### **AWARD**

33. The respondent correctly interpreted and applied the applicable clause in the Resolution.
34. The applicant's claim is dismissed and she is not entitled to any relief.



Anand Dorasamy