



ARBITRATION AWARD

Case No: **PSHS285-17/18**

Commissioner: **Catherine Willows**

Date of award: **3 August 2017**

In the matter between:

DENOSA obo L H LWANA

(Union/ Applicant)

And

DEPARTMENT OF HEALTH – EASTERN CAPE

(Respondent)

DETAILS OF HEARING AND REPRESENTATION

1. The matter was set down for arbitration at Mnquma Sub-District Offices, Butterworth, Eastern Cape on 26th July 2017.
2. The Applicant, Mrs LH Lwana, was represented by Mr SB Sikwe of DENOSA and the Respondent, Department of Health- Eastern Cape, was represented by Mr M Mapisa, from the Labour Relations Department of the Respondent.
3. No interpretation services were required.
4. The proceedings were digitally recorded.

5. The Applicant's representative submitted two (2) bundle of documents, labelled Bundle A and B respectively
6. It was agreed upon on record that closing arguments would be submitted by close of business on 31 July 2017. Such were duly received and have been utilised in consideration of this Award.

ISSUE TO BE DECIDED

7. I am required to interpret and apply a PHSDSBC Collective Agreement, specifically Resolution 3 of 2007 dealing with the implementation of an Occupational Specific Dispensation (OSD) for Nurses.
8. In particular, it is alleged by the Applicant that she was translated as a professional nurse PNA-3 Grade 2 General Nursing Stream in 2007, such translation was incorrect, as the duties she was performing as at 1 July 2007 was that of co-ordinating a program of Infection Control for Butterworth therefore she should have been translated as Clinical Program Co-ordinator Grade 1 PNA-5.
9. The Applicant requests that such translation be rectified and she be remunerated retrospectively as at date of operation of OSD.

SURVEY OF ARGUMENTS

10. Parties presented their submissions orally with closing arguments in writing. The below is a summary of what is contained in their submissions.

ARGUMENT FOR THE APPLICANT

11. The Applicant's representative submitted that the OSD Resolution sought to translate nurses as per the duties they were performing as at 1 July 2007. The Applicant was a Chief Professional Nurse Level 8 and was responsible for coordinating a program of infection control at Butterworth Hospital as at 1 July 2007.

12. In support of her claim, she has provided evidentiary documentation of confirmation of her duties as at 30 June 2007; minutes of the OSD task team for the Respondent; the charge list for the hospital in which she was performing her duties as well as copies of her payslip indicating her remuneration prior to and subsequent to implementation of OSD.
13. The Applicant testified under oath that she was employed by the Respondent in June 1990 as a professional nurse. In 1992, she was promoted to Chief Professional Nurse and thereafter in 2005 she was requested to co-ordinate the infection control program. On the 30th June 2007, she was based at Butterworth Hospital, performing the same duties she had in 2003.
14. On the 1st July 2007 when OSD for Nurses was implemented, she was co-ordinating the infection control program. Furthermore, when the OSD was implemented, all nurses were requested to complete an individual form within which they did so and submitted to Human Resources. At that time, all co-ordinators in the Eastern Cape were "*left out*".
15. However, when Arbitration Award of 7 August 2009 was issued, all nurses were requested to complete another referral form. This form dealt with clinical co-ordinators. The Applicant further stated that as clinical coordinator, it is required that she maintain her registration with SANC.
16. Currently she works at Mnquma Sub-District co-ordinating the communicable disease programme as well as the occupational health and safety and wellness programs.
17. Under cross-examination, the Applicant was questioned as to whom her supervisor was in 2006 and 2007 to which she responded that it was the Nursing Services Manager, Mrs Finca.
18. She agreed that every year all employees completed a performance agreement setting out their KPI's but she did not complete one or did not have a copy as they were often

taken to the Matron's office for safekeeping. She stated that there was no performance agreement done in 2007 but a job description was completed as it was a relatively new program.

19. In closing the Applicant's representative submitted that during the implementation of OSD the Applicant was translated to be Professional Nurse General PNA 3 Grade 2 (general nursing). However, she believes that she was supposed to be translated as a Clinical Programme Coordinator PNA 5 Grade 1 on the 1st July 2007.
20. The Applicant testified that during the time of implementation of OSD for Nurses she was a Chief Professional Nurse (CPN) L 8 and was working for the Respondent at Butterworth Hospital where she was delegated to coordinate infection control for the hospital and that it was inherent requirement for her to maintain registration with South African Nursing Council (SANC) for her to perform her duties.
21. In terms of relief, the Applicant requests that she be translated to the position of Clinical Programme Coordinator PNA 5 Grade 1 as from 1 July 2007 and be retrospectively back paid from the said date.

ARGUMENT FOR THE RESPONDENT

22. The Respondent submitted that the Applicant had failed to convince him that she had indeed performed the duties of being a program co-ordinator for infection control at Butterworth Hospital before 30 June 2007.
23. She had also confirmed on record that she did not complete a performance agreement for the financial year 2006/2007 and 2007/2008 with her supervisor. She only provided her duty roster for the year of 2008, one year after implementation of OSD.
24. Furthermore, no job description was provided, other than that of 2017 and her supervisor was not called to give evidence that she was the program co-ordinator.

25. On the basis of such, it was the respondent's submission that the Applicant was correctly translated during implementation of OSD.

ANALYSIS OF EVIDENCE AND ARGUMENT

26. I am required to interpret and apply a PHSDSBC Collective Agreement, specifically Resolution 3 of 2007 dealing with the implementation of an Occupational Specific Dispensation (OSD) for Nurses.

27. It is alleged by the Applicant that she was working for Butterworth Hospital as Professional Nurse and was then further delegated to coordinate infection control for the said institution in 2003.

28. During the implementation of OSD she was translated to be Professional Nurse General PNA 3 Grade 2 (general nursing) but is claiming that she was supposed to be translated as a Clinical Programme Coordinator PNA 5 Grade 1 on the 1st July 2007.

29. In the preamble of the agreement reached under case number PSHS 492-08/09 under item 3(a) it states; "The basis of translation to the OSD for nurses shall be the duties that a Nurse was performing as at 30 June 2007".

30. The rationale with the OSD was that once it came into effect, no person would receive a salary that is less than what that person received on 1 July 2007 prior to the implementation date of the OSD. The purpose hereof was that a person, whom is identified in Resolution 3 of 2007, would be translated to a higher package/salary for the position which that person occupied as at 30 June 2007 in line with certain requirements.

31. In support of her claim, the Applicant provided oral testimony and documentation as to the duties she was performing as at 30 June 2007. This was in converse to the Respondent who did not lead any evidence, but chose to provide closing submissions on the basis that the Applicant had failed to satisfactorily prove her functions as at the date in question.

32. I am satisfied that the Applicant placed a convincing case in front of me as to the position she occupied as at 30 June 2007, that of Clinical Co-Ordinator for Infection Control.

33. As such, it follows (in the absence of any contradictory evidence) that the Applicant should have been translated on the basis of the position she was occupying from 30 June 2007.

34. In light of my reasoning above, I hereby make the following award.

AWARD

35. The Applicant was incorrectly translated or placed when OSD was implemented.

36. The Applicant was performing the duties of Clinical Programme Coordinator PNA5 Grade 1 as at the 30th of June 2007 and therefore qualifies to be translated to such with effect from the 01st of July 2007.

37. The Respondent is ordered to adjust the salary scale of the Applicant from salary notch/ scale of professional nurse PNA-3 Grade 2 General Nursing Stream to that of Clinical Programme Coordinator PNA 5 Grade 1 from 1 July 2007 to date.

38. Furthermore, the Respondent is also ordered to pay back pay to the Applicant the difference between her salary notch / scale of professional nurse PNA-3 Grade 2 General Nursing Stream to that of Clinical Programme Coordinator PNA 5 Grade 1 from 1 July 2007 to date by no later than the 31st of October 2017.

39. The Respondent must adjust the salary scale of the Applicant to the position of Clinical Programme Coordinator PNA 5 Grade 1 no later than the 31st of October 2017.

Signed: 
Catherine Willows
Commissioner / Panelist