



PHSDSBC

PUBLIC HEALTH AND SOCIAL DEVELOPMENT
SECTORAL BARGAINING COUNCIL

ARBITRATION AWARD

Arbitrator: **Mr. T. Ndzombane**

Case No: **PSHS292-15/16**

Date of Award: **14 December 2016**

In the matter between:

PSA OBO LEANDRA VAN SCHALKWYK

(Applicant)

and

DEPARTMENT OF HEALTH- WESTERN CAPE

(Respondent)

DETAILS OF HEARING AND REPRESENTATION

1. The arbitration hearing was scheduled for and heard on 1 October 2015 and 6 December 2016, under the auspices of the Public Health & Social Development Sectoral Bargaining Council at Brewelskloof Hospital in Worcester. The applicant, Ms Van Schalkwyk, was represented by a Union Official, Mr Jacob from PSA.
2. The respondent, Department of Health –Western Cape, was represented by its Labour Relations Officer, Mr Solomon. The parties submitted bundles of documents which were not placed in dispute and were admitted as they purport to be. The parties agreed to submit their written heads of arguments by no later than 12 December 2016.

BACKGROUND

3. **Mr Jacobs** stated that the applicant has the experience of twelve years as a social worker. In terms of Resolution 1 of 2009 (Occupational Specific Dispensation) the applicant ought to have been grade progressed from Grade 1 to Grade 2 as from December 2012. The period 2002 to 2004 she worked for Child Welfare in Bloemfontein a non –governmental organisation.

4. She also worked for ACVV a non- governmental organisation from 2004 to 2007. The period 2007 to 2009 she worked for Department of Social Services. From 2009 to 2012 she worked for the Department of Correctional Services. In 2012 she was transferred to the Department of Health.
5. On 31 March 2003 she was registered with the South African Council for Social Service Professions. In accordance with the OSD she should have been grade progressed in December 2012. Currently, she is on Grade 1 at salary level R227610.00 per annum and she wants to be grade progressed to Grade 2 at salary level R241467.00 per annum.
6. **Mr Solomon** stated that the respondent does not deny that the applicant is appointed as social worker. The Collective Agreement 1 of 2009 states that for an employee to be grade progressed from Grade 1 to Grade 2 such an employee needs to have ten years' experience and ten annual assessments. As the matter stands the applicant has eight annual assessments. She does not meet all the minimum requirements to be grade progressed to Grade 2.

SUMMARY OF EVIDENCE AND ARGUMENT

7. 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

8. I am required to determine as to whether the applicant meets the minimum requirements to be grade progressed from Grade 1 to Grade 2 in term of Resolution 1 of 2009.

APPLICANT'S CASE

9. **Ms Leondra Van Schalkwyk** stated that she is the applicant in this matter and she presented the following evidence under oath. She worked for the Department of Social Development from 2007 to 2009 as a Social Worker. From 2009 to 2012 she was employed for the Department of Correctional Services whereby she received a lateral transfer to Department of Health from 2012 until to date. Prior to her working for the state she worked for a non-governmental organization called Child Welfare in Bloemfontein from December 2002 to May 2004.

10. From 1 June 2004 to 10 January 2007 she worked for another non-governmental organization called ACVV. On 31 March 2003 she was registered with the South African Council for Social Service Professions. As from December 2012 she had acquired ten years and six months as a social worker.
11. During her period of employment in the private sector and the state she had performed above average. In terms of Resolution 1 of 2009 Clause 3.1.9 states that a basis for salary recognition from relevant experience on appointment from outside the Public Service in production posts and identified grades in supervisory posts is set, to enhance the recruitment of employees read together with Annexure B which states that:
- a. *“at the earliest after 10 years actual service on Grade 1 , with at least a combination of 10 annual assessments of Satisfactory and /or Above Average Performance ; Or*
 - b. *a combined total of 10 years actual service and appropriate post registration experience, with at least a combination of 10 annual assessments of Satisfactory and/or Above Average Performance”.*
12. According to her she complies with the resolution and therefore she ought to be grade progressed from Grade 1 to Grade 2 as from December 2012.

RESPONDENT'S CASE

13. **Steven Van Dyk** stated that he is employed by the respondent as Assistant Performance Management at Peoples Practice Administration Directorate and he presented the following evidence under oath. There are three clear paths for grade progression for social workers from Grade 1 to 2 and 3. A social worker should have 10 years' experience and ten annual assessments above average performance to qualify for grade progression. The criteria is performance based and very specific period is required. There is also accelerated grade progression which considers 5 years' experience with exceptional annual assessments performance.
14. Annexure B of Resolution 1 of 2009 states that:
- a. *“at the earliest after 10 years actual service on Grade 1 , with at least a combination of 10 annual assessments of Satisfactory and /or Above Average Performance ; Or*
 - b. *a combined total of 10 years actual service and appropriate post registration experience, with at least a combination of 10 annual assessments of Satisfactory and/or Above Average Performance”.*
15. If, one meets the stipulated requirements in July and then the person will be translated the following year in April. The applicant was registered with the Council on 31 March 2003. According to her experience she is

eligible to be grade progressed in April 2013. But she does not have the annual assessments for a period of four years. This makes her not eligible for grade progression because she does not have ten annual assessments. According to him there is no physical assessments conducted in the private sector. The guidelines for annual assessments in the state are regulated in the Collective Agreement P1 of 2002.

16. There were no annual assessments done to the applicant as stipulated in the Agreement. Even if, there were annual assessments done from the private sector the respondent would not have accepted them because they would not be in line with the Agreement. As the matter stands she will qualify for grade progression on 1 April 2017. Upon the applicant's appointment she was translated in accordance with Resolution 1 of 2009 whereby her work experience was taken into account.

ANALYSIS OF EVIDENCE AND ARGUMENTS

17. 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 primary intention and its plain meaning. The parties have different interpretation or application of Resolution 1 of 2009 which relates to the Social Workers. I am therefore required to determine whether or not the respondent applies or interprets this Agreement correctly.

18. Annexure B of Resolution 1 of 2009 states that:

- a. *“at the earliest after 10 years actual service on Grade 1 , with at least a combination of 10 annual assessments of Satisfactory and /or Above Average Performance ; Or*
- b. *a combined total of 10 years actual service and appropriate post registration experience, with at least a combination of 10 annual assessments of Satisfactory and/or Above Average Performance”.*

19. There is a clear distinction between clause (a) and (b) in that clause (a) actually refers to those employees who have actual service on Grade 1 as opposed to clause (b) which requires a combined total of 10 years actual service with appropriate post registration experience. It is clear to me that clause (b) accommodates employees who have worked for the private sector and the public sector. This makes sense as to why the applicant relies on this clause to make up her case.

20. It is common cause that the applicant has ten years post registration experience as a social worker. The only issue that is in dispute is whether or not applicant has ten years annual assessments. The performance appraisals can be referred to in many different names depending on the sector and can be called performance review, performance evaluation, employee appraisal and annual assessments. Generally,

these words mean the same thing but the usage will depend on a specific sector. The assessments will obviously include the ratings and scores which will start from 1 to 5.

21. Generally, the agreed score will mean the following examples:
 - i. The rating score of 1 means unacceptable performance and fails to meet standards.
 - ii. The rating score of 2 means needs improvement and shows that the person frequently fails to meet standards.
 - iii. The rating score of 3 means satisfactory and generally meets standards.
 - iv. The rating score of 4 means outstanding and frequently exceeds standards.
 - v. The score of 5 means excellent and consistently exceeds the standards.

22. The scenario above demonstrates as to what will be the final results of particular score during the performance appraisal. The annual assessment referred to in Resolution 1 of 2009 refers to the above categories of scores which are conducted and agreed upon by both an employee and the employer. This can be done periodically for a period of a year or a once off annually assessment depending on the employer.

23. Under –cross examination the applicant conceded that whilst employed in the private sector for a period of four years she was not appraised during her employment. Logic dictates that if no performance appraisal was conducted with her by her previous employers’ means that she cannot produce the annual assessments so required. Obviously, if she does not have the required ten annual assessments she cannot expect to be grade progressed from Grade 1 to Grade 2 until she achieves such.

24. The applicant’s contention in this regard is that the certificate of service she submitted in the proceedings should be regarded as her annual assessments as it proved that she had performed above average in her previous employment. The difficulty about this is the fact that there are no scores attached to these certificates of service. The certificate of service provides us with the general overview of her performance not specifics key performances in key areas.

25. I can liken this information to a letter of reference which broadly provides the information about an employee not necessarily the specifics of the key areas where an employee is expected to achieve. Moreover, there is no clause in the Agreement that permits a certificate of service to be considered as annual assessments. The applicant also did not refer to any clause in the Agreement.

26. It is not my duty to re-write the Agreement instead my role is limited to interpret it or to enforce its applicability. In conclusion the applicant does not have ten annual assessments as required by Resolution 1 of 2009. Consequently, she is not eligible for grade progression until she acquires ten annual assessments.

AWARD

27. I find that the applicant does not qualify to be grade progressed from Grade 1 to Grade 2 as she has not yet acquired ten annual assessments in terms of Resolution 1 of 2009 of the Public Health and Social Development Sectoral Bargaining Council. Consequently, the matter is hereby dismissed.

A handwritten signature in black ink, enclosed in a faint rectangular border. The signature is stylized and appears to read 'Thuthuzela Ndzombane'.

Arbitrator: Thuthuzela Ndzombane

Sector: Public Health and Social Development