



PHSDSBC

PUBLIC HEALTH AND SOCIAL DEVELOPMENT
SECTORAL BARGAINING COUNCIL

ARBITRATION AWARD

Commissioner: **Minette van der Merwe**

Case No: **PSHS313-18/19**

Date of award: **28 May 2019**

In the matter between:

PSA obo Magdalena Christina Susanna Kotze
/ Applicant)

(Union

and

Department **of** **Health-** **Free** **State**
(Respondent)

DETAILS OF HEARING AND REPRESENTATION

- [1] The arbitration was held on **24 May 2019** at the Respondent's provincial office, Bophelo House.
- [2] The Applicant was present and represented by Mr C Fandie, Official from PSA (Public Servants Association), whereas the Respondent was present and represented by Mr. Mahoko Harold Supi, Labour Relations Officer.

[3] Proceedings were mechanically recorded, and copious notes were taken. Interpretation was not required.

BACKGROUND TO THE DISPUTE

[4] The matter was scheduled for Arbitration in terms of section 24 of the Labour Relations Act 66 of 1995 (hereinafter referred to as the "LRA"), related to an allegation of non-compliance by the Respondent to PHSDSBC Resolution 3 of 2007, specifically clauses 3.1.1 and 3.1.5.3 (hereinafter referred to as "the Resolution").

[5] It was common cause that the Applicant was employed as a Professional Nurse PN-B2.

[6] She sought pay progression for the following financial periods:

- 2008/2009
- 2010/2011
- 2012/2013
- 2014/2015

ISSUE TO BE DECIDED

[7] I was called to determine whether the Respondent was in breach of the Resolution by failing to implement pay progression for the Applicant for the periods specified in paragraph 6 above.

SURVEY OF EVIDENCE AND ARGUMENTS

Documentary:

[8] Bundles "A" was submitted into evidence by the Applicant. Page A5 thereof was removed from the bundle prior to the commencement of the arbitration. The veracity of the documents was not disputed and as such accepted as it purported to be.

Evidence on behalf of the Applicant:

[9] The Applicant, **Magdalena Christina Susanna Kotze**, testified under oath, and her evidence can be summarised as follows:

[9.1] She worked as a Professional Nurse in ICU (Intensive Care Unit), currently on PN-B2. She had filed a grievance regarding the non-payment of her pay progression, and the feedback was unsatisfactory. She received no assistance from the Human Resources Department on how the calculations were made and what decisions were taken in order for her to be on the salary that she was currently earning. The failure of the Respondent to implement her pay progression, for which she qualified, affected her bonuses, increases, 3% bi-annual progression and ultimately her pension adversely. She had written confirmation from the then Chief Human Resources Officer, Ms. LM Viljoen, that she was entitled to the pay progression as claimed ("A3").

Evidence on behalf of the Respondent:

[10] Mr. Supi called Mr. **MG Miya** to testify, but Mr. Miya refused to testify under oath, or at all, in the matter at hand. He confirmed he was not issued with a subpoena to testify, but was merely asked to give evidence, which he was not prepared to do. He was excused from proceedings

[11] Mr. Supi, testified under oath, and stated that the Applicant's claim for pay progression was not challenged by the Respondent, and the failure to pay the Applicant's pay progression for the periods in question was an omission from the Respondent.

ANALYSIS OF EVIDENCE AND ARGUMENT:

[12] Closing arguments were advanced, and was duly considered.

[13] In terms of section 138(7) I must issue an arbitration award with brief reasons.

[14] Essentially, the Respondent did not dispute the Applicant's claim that she qualified for pay progression and that same was not paid to her in terms of the Resolution.

[14] Resolution 3 of 2007 is titled **Agreement on Implementation of an Occupational Specific Dispensation (OSD) for Nurses**. The Respondent and Applicant falls within the scope of said Resolution. Paragraph 3.1 specifically includes Professional Nurses as beneficiaries of said Resolution, which includes the Applicant.

[15] Paragraph 3.1.1 states: *“The introduction of unique remuneration structures per nursing category with 3% increments between notches on a particular salary level as indicated in Annexure A to this agreement”*.

[16] Paragraph 3.1.5.2 relates to Pay Progression, and states: *“That actual pay progression will be awarded with effect from 01 July of the year in which the nurse has complied with prescribed requirements for such pay progression”*.

[17] Annexure A of said Resolution states:

“Clinical nurse Practitioner Grade 2 (Primary Health Care)

Requirements:

- 1) Qualifications: Basic qualification accredited with SANC: diploma/degree in nursing or equivalent qualification that allows registration with SANC plus a post-basic nursing qualification with a duration of 1 year*
- 2) Experience: A minimum of 14 years appropriate/recognizable nursing experience after registration as a Professional Nurse with SANC in General Nursing. At least 10 years of the period referred to above must be appropriate/recognizable experience after obtaining the 1-year post-basic qualification in the relevant speciality.”*

[18] The undisputed evidence is that the Applicant complies with the qualifications and requirements as stated above. It was further undisputed that the Applicant is eligible for pay progression for the periods: 2008/2009, 2010/2011, 2012/2013 and 2014/2015, and that same was not paid to her.

[19] The Applicant has discharged the onus vested in her, and has proved that she qualifies for pay progression of the periods in question.

[20] Said grade progressions must be implemented by the Respondent for the Applicant in compliance with Resolution 3 of 2007.

AWARD:

[21] The Respondent, **Department of Health – Free State**, is in breach of Resolution 3 of 2007, specifically paragraph 3.1.1 and 3.1.5.3 thereof.

[22] The Applicant, **Magdalena Christina Susanna Kotze**, is entitled to pay progression for the financial periods: 2008/2009, 2010/2011, 2012/2013 and 2014/2015

[23] The Respondent is hereby ordered to implement this award by no later than 15 July 2019, with no loss of benefits to the Applicant as a result of the implementation.

Signature:

A handwritten signature in black ink, appearing to read 'M. van der Merwe', is written on a light green rectangular background.

Minette van der Merwe