



ARBITRATION AWARD

IN THE PUBLIC HEALTH & SOCIAL DEVELOPMENT SECTORAL BARGAINING
COUNCIL

HELD IN EAST LONDON ON 3 AUGUST 2011

CASE NO: PSHS332-10/11

IN THE MATTER BETWEEN

DENOSA obo Kolisi V

APPLICANT

And

Department of Correctional Services – Eastern Cape

RESPONDENT

ARBITRATION AWARD

DETAILS OF HEARING AND REPRESENTATION

This matter was set down for arbitration on 3 August 2011 at the East London Correctional Services facility at West Bank in East London. The applicant, Ms. Vuyelwa Sylvia Kolisi, appeared in person and was represented by Mr. K Sodidi from DENOSA trade union. The respondent was represented by Mrs. L Tyani. The parties agreed to submit their closing arguments on 10 August 2011.

ISSUE TO BE DECIDED

I am required to determine whether the respondent committed an unfair conduct in not adjusting the applicant's salary in accordance with Resolution 3 of 2007 (OSD Resolution), and if so, to determine the appropriate relief.

BACKGROUND TO THE ISSUE

The applicant joined the respondent on 1 June 2008 as a professional nurse. She previously worked for the Buffalo City Municipality (as it then was). Her salary as at now is R172 035.00 per annum. She challenges that as she is employed as a Primary Health

Care nurse she is entitled to be paid in accordance with the OSD Resolution. She alleges that she was supposed to have been put on R160 000.00 when she was appointed.

SURVEY OF ARGUMENT AND EVIDENCE

Submissions by the Applicant

The applicant submitted a bundle of documents marked Applicant's Bundle.

The applicant testified that when she joined the respondent she was employed in the area of Speciality (Primary Health Care). She was employed at salary level of R130 000.00 per annum in June 2008.

She further testified that according to the OSD Resolution she was supposed to have been appointed at salary level of R160 000.00 per annum. She is working in the Primary Health Care unit of the respondent and as such entitled to be paid accordingly in terms of the OSD Resolution.

She stated that according to her salary advice she is classified as a general nurse whereas she is a Primary Health Care nurse. Her qualifications and her core functions are that of a primary health care nurse.

She further testified that her colleague, Sister Gwata, with the same qualifications as hers has her salary adjusted in accordance with the OSD Resolution after she lodged a grievance with the respondent. Despite her complaint to the respondent her salary has not been adjusted accordingly, hence this dispute.

Furthermore, she testified that the OSD Resolution seeks to attract and retain nurses within the country and also to stop the poaching of nurses by various government departments.

The applicant seeks the adjustment of her salary in accordance with the OSD Resolution.

Under cross examination the applicant testified that her qualifications were as follows: General nursing; Psychiatry; Midwifery and Community Health Care nursing (overall the 4 year Nursing Diploma).

She also conceded under cross examination that she had the primary Health Care qualification but this was not the one year course required as per the OSD Resolution.

It was put to her that she was paid as a general nurse because she did not have the one year qualification as is envisaged in the OSD Resolution.

Submissions by the Respondent

The respondent submitted a bundle of documents marked as respondent's Bundle "A" and called one witness to prove its case.

Mr. Johannes Edwin Job

Mr. Job is employed by the respondent as the Manager Human Resources: Administration. He is responsible for the implementation of policies relating to salaries and benefits in the respondent (Eastern Cape Region).

He testified that before joining the Eastern Cape Correctional Services Region, he worked for the respondent for fifteen years at national level as the Remuneration Policy and Training Manager. He was responsible for the development of remuneration policies, which included, *inter alia*, doing research and implementing the said policies. He was also responsible for the training of all 6 Regional Offices on these policies.

He testified that he was part of the national team responsible for the implementation of the OSD Resolution for professional nurses in the Department of Correctional; Services. He also became the key person in the interpretation of the said OSD Resolution.

He testified that paragraph 3.1.3.1 of the OSD Resolution differentiated between three work streams namely: General; Speciality and Nursing Education qualification. He further testified that paragraph 3.1.3.2 of the Resolution provides for different salary scales for different streams.

He further testified that according to according to page 5 of the Implementation Directive of OSD (the Implementation Directive) for Nurses paragraph 11.3, Professional Nurses who are not in possession of the prescribed post-basic clinical nursing qualification recognised with SANC who are permanently employed in a post in such a Speciality unit or Primary Health Care clinic and has been performing these duties on 30 June 2007, translate as a once-off provision to the salary scale attached to the production post.

He stated that during this period the applicant was working for the Buffalo City Municipality and therefore was not entitled to the translation. He further testified that in terms of paragraph 11.6 of the Implementation Directive appointees who were from outside the Public Health Sector appointed to posts of Professional Nurses shall comply with the prescribed educational requirements (that is, in possession of the one year post basic clinical nursing qualification).

He testified that the applicant fell in this category and unfortunately did not possess this one year post basic clinical nursing qualification. She only has the General Nursing qualification.

In response to the case of Sister Gwata, Mr. Job testified that she was translated within the provisions of the OSD Resolution because Sister Gwata submitted proof to the respondent that she possessed the requisite qualification. The respondent submitted proof of her certificate from the Rand Afrikaans University. The certificate is dated 20 August 1998. Sister Gwata passed Diploma in Nursing Science: Community Nursing: Primary Health Care.

This evidence was not challenged by the applicant.

ANALYSIS OF EVIDENCE AND ARGUMENT

In these proceedings the applicant challenges that the respondent committed an unfair labour practice by not appointing her at salary level R160 000.00 per annum when she joined the respondent.

The basis of this claim, she testified, was the OSD Resolution which differentiated between the three work streams (that is; General, Speciality and Nursing Education). In terms of this Resolution different salaries were allocated to different streams.

With relevance to the present case the applicant's main issue is that she is qualified as Primary Health Care nurse and as such ought to have been translated, on appointment in June 2008, to salary level R160 00.00 and not R130 000.00 as was the case.

The evidence of the respondent is that the OSD Resolution provided the *grandfather clause* according to which Professional Nurses who were not in possession of the prescribed post-basic clinical nursing qualification recognised with SANC and who were permanently employed in a post in such a Speciality unit or Primary Health Care clinic and had been performing these duties on 30 June 2007, translated as a once-off provision to the salary scale attached to the production post.

It is common cause that the applicant only joined the respondent in June 2008 and as such this grandfather clause did not apply to her. As at July 2007 the applicant was employed by the Buffalo City Municipality.

The evidence of the respondent is that in terms of paragraph 11.6 of the Implementation Directive appointees who were from outside the Public Health Sector appointed to posts of Professional Nurses shall comply with the prescribed educational requirements (that is, in possession of the one year post basic clinical nursing qualification). This requirement is couched in a peremptory language. The appointee must possess the qualification.

The applicant conceded under cross examination that she did not possess the one post basic clinical nursing qualification. It is clear that she was not entitled to be translated and appointed at salary level R160 000.00 per annum when she was appointed in June 2008.

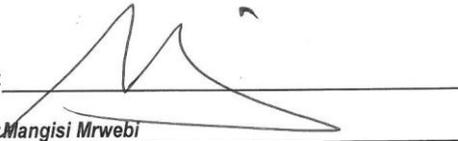
The applicant also challenged that the respondent acted inconsistently in that Sister Gwata, the applicant's colleague, who also had a similar problem as hers, had her grievance rectified. Sister Gwata lodged a similar complaint: that she was supposed to have been appointed as a Speciality professional nurse in Primary Health Care.

The respondent testified that the case of Sister Gwata was finalized after Sister Gwata provided the respondent with proof that she possessed the one year post basic clinical nursing qualification. She provided the respondent with her certificate in Diploma in Nursing Science: Community Nursing: Primary Health Care.

AWARD

1. I find that the respondent did not commit an unfair labour practice in not adjusting the applicant's salary in accordance with Resolution 3 of 2007 (OSD Resolution) when she was appointed in June 2008.
2. The applicant is not entitled to any relief.
3. There is no order as to costs.

Signature:

A handwritten signature in black ink, consisting of several sharp, angular strokes, written over a horizontal line.

Commissioner: **Mangisi Mrwebi**