



**PHSDSBC**

PUBLIC HEALTH AND SOCIAL DEVELOPMENT  
SECTORAL BARGAINING COUNCIL

# ARBITRATION AWARD

Case No: **PSHS34-20/21**

Commissioner: **Lillian Goredema**

Date of award: **10 July 2020**

In the matter between:

**NEHAWU OBO ABIGAIL NOSIPHO MAGADLA**

(Applicant)

and

**DEPARTMENT OF HEALTH –WESTERN CAPE**

(Respondent)

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## **DETAILS OF HEARING AND REPRESENTATION**

1. This is an award in the matter between the Applicant, Nosipho Magadla and the Respondent, Department of Health – Western Cape. The Applicant was present and represented by Anwa Meniers, a NEHAWU union official, and the Respondent was represented by Mvuzo Ngqame.
2. The matter was heard on 2 July 2020 at the Western Cape College of nursing, Athlone.
3. The proceedings were digitally recorded.

## **ISSUE TO BE DECIDED**

4. I have to decide whether the Applicant's remuneration as a basic pharmacy assistant and not a post-basic pharmacy assistant is an unfair labour practice.

## **BACKGROUND TO THE DISPUTE**

5. The Applicant is employed by the Respondent as a basic pharmacy assistant. She alleges that although she does not have a post basic pharmacy qualification, she is entitled to be recognized as such as she has been performing the duties in line with the position. She said that this is an unfair labour practice and she would like to be recognized as a post basic assistant and receive back dated difference of the salary that she is currently receiving and the salary for a post basic assistant.
6. Mr. Nggame disputes that this is an unfair labour practice as the applicant is not qualified and registered as a post- basic pharmacist assistant.

## **SURVEY OF THE EVIDENCE**

### **APPLICANT'S EVIDENCE**

7. The Applicant testified under oath and stated that she was employed as a pharmacy assistant by the Respondent.
8. She stated that she has been doing the duties of a post basic pharmacy assistant at Mitchell's Plain Hospital where she was transferred in 2015. Sometime in 2018 she saw a list of assistants who were to be paid as post basic assistants and her name had been cancelled. When she inquired why her name was not included. She was told that she did not the requisite qualification. She had attempted to get a post-basic qualification but did not complete it because of personal issues.
9. She does not understand how she is not paid the post basic pharmacy assistant salary as she is currently undertaking such duties.
10. She had written an assessment which she did not pass and she was given an opportunity to do another assessment which she could not do because she had been hospitalized.
11. She said she is registered with the pharmacy council and pays the same amount of annual fees as post basic assistants.

12. In answer to questions during cross-examination she said she does similar duties as post basic assistants as there is no job description for an assistant. She is the only basic assistant at Mitchell's Plain Hospital. She said she dispenses the medicines captured on the computer as the post-basic assistants do. She said she was being mis-utilized.
13. She lodged a grievance and received the outcome in March 2020. She was aggrieved by the outcome which found that she was doing functions that she should not and she was advised to first register for the course and then perform those functions whilst awaiting her results.
14. She referred an unfair labour practice to the Council on 12 May 2020 after receiving the grievance outcome although the issue arose in 2018.

### **RESPONDENT'S EVIDENCE**

15. Lesley-Anne Valentine testified under oath that she is a senior personnel practitioner in the Human Resource's department of the Respondent.
16. The Occupational Specific Dispensation Regulations stipulates the qualifications relevant to a post and an employee should be registered as such with a professional body.
17. She said if the applicant is to be recognized as a post basic assistant, she would have to have the qualifications as well as experience. She does not have the qualifications but the Respondent acknowledges her performance by giving her a staff performance bonus as well as an increase of her salary by 1.5% annually.
18. In answer to questions during cross-examination she said it is common cause that the Applicant was performing post basic assistant duties but her supervisor had been told to allocate her only basic assistant duties after she lodged a grievance.
19. She testified that It is not possible to remunerate the applicant the salary of a post basic assistant as she does not have the requisite qualification. Further, the fact that she performed duties above her post was recognized through the annual increases

and payment of the bonus for performance. She would only be paid the salary of a post basic assistant as soon as she gets the qualification.

20. Mahomed Sondag testified under oath and stated that he is the pharmacy manager and is in charge of clinical health services at Mitchell's Plain Hospital and he supervises the pharmacist's assistants.

21. He said the difference in the duties of pharmacy assistants and those with post basic qualifications is that the assistants are not allowed to capture prescriptions on the JAC dispensing system. The applicant's duties should be to stick medicine labels to the medicines on the shelves. He testified that at Mitchell's Plain hospital there are no other basic assistants.

22. The applicant has been offered studies in order for her to get the post basic qualification and she failed the assessment. He said going into the future she will be assisted with mentorship to achieve the qualification.

23. In answer to questions during cross examination he said when the applicant moved to Mitchell's Plain hospital, she was doing the post-basic duties without certification. In 2019 this changed when he became aware of the need for certification.

### **ANALYSIS OF THE EVIDENCE AND ARGUMENT**

24. It is common cause that the applicant was performing the duties of a post-basic pharmacy assistant but being paid the salary of a basic assistant.

25. She asked me to find that this is an unfair labour practice and to order backdated payment of the differences between the salaries.

26. In terms of section 186 (2) (a) of the Labour Relations Act 66 of 1995 I can only arbitrate in cases involving, amongst others, unfair conduct by the respondent relating to the promotion or demotion of the applicant or relating to the provision of benefits to her.

27. I have considered the evidence presented before me by both parties and it is clear that the issue referred to the Council by the applicant is about the unfairness of her remuneration/ salary and not any promotion, demotion or benefit as stipulated above.

28. In the premises, I find that the Council lacks jurisdiction to deal with the issue relating to applicant's remuneration/ salary.

### **AWARD**

29. The Council does not have jurisdiction to arbitrate this matter. The Applicant's application is therefore dismissed.



**Lillian Goredema**