



ARBITRATION AWARD

Panelist/s: Faith Ncumisa Bantwini
Case No.: PSHS362-10/11
Date of Award: 29-Sep-2011

ARBITRATION AWARD

Panelist : F.N.Bantwini

Case Number: PSHS 362-10/11

Date of Award: 17 August 2011

IN THE ARBITRATION BETWEEN

PSA obo Pelser G.J.J. : APPLICANT/EMPLOYEE

AND

Dept of Social Development- EC : RESPONDENT/EMPLOYER

Union/Applicant's Representative : Ms. E. Harris
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Respondent's Representative : Mr. V. Majija

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DETAILS OF HEARING AND REPRESENTATIONS

1. This arbitration was part heard on 12 April 2011 and was finalized on 13 July 2011. It was heard in the offices of the respondent at Ibhayi Office Building in Port Elizabeth. It came before the PHSDSBC in terms of Section 191 (1) 5(a) read with section 186 (2) (a) of the Labour Relations Act 66 of 1995 (the LRA). The applicant Ms. G.J.J. Pelsler was present and was represented by Ms. E. Harris, an official from PSA. The respondent, the Department of Social Development was represented by Mr. V. Majija. Parties agreed to submit written closing arguments on 21 July 2011. The last set of arguments was received on 29 July 2011 after a request for extension was made.

ISSUE TO BE DECIDED

2. The issue to be decided is whether the applicant was demoted or not.

BACKGROUND TO THE DISPUTE

3. The applicant, Ms. G.J.J. Pelsler referred a dispute to the PHSDSBC through her union, PSA regarding her removal from a supervisory position as a Principal Social Worker. This was regarded as a demotion by the applicant. When the dispute could not be resolved at conciliation level, on 26 November 2010, the union filed a request for arbitration.

SURVEY OF EVIDENCE AND ARGUMENT

Applicant's case

4. According to Ms. Harris's opening statement the dispute arose when the respondent unilaterally removed the applicant from a position of a Principal Social Worker as a supervisor. The unilateral removal lowered her status and future developments. The remedy sought by the applicant is to be reinstated to her supervisory position.

5. The applicant, **Ms. Gina, Jacamina, Johanna Pelsler** testified that with effect from 01 October 2010, her rank was changed to the Principal social Worker; Support Services to Families. She was never consulted before she was removed from her supervisory position. She had good relations with her subordinates. In February 2008, she was advised that Social Workers lodged complaints against her but she could not respond to all the allegations as no sufficient information was given to her.
6. On 29 January 2009, she was instructed by the District Manager to implement the new model. She was never allowed to go back to her former position because of the Social Worker's complaints.
7. Under cross-examination, she testified that she has been in the employ of the respondent since 01 April 1993. The position of a Principal Social Worker was advertised externally and internally. The position of a Supervisor was only advertised internally and there was no change to the salary level as it was an internal arrangement. The applicant further testified that she was moved to poverty alleviation programme and no explanation was given to her
8. In closing, **Ms Harris** argued that the applicant was removed unilaterally without consulting with her (applicant). The applicant was not afforded an opportunity to be heard. No information was given to the applicant on numerous occasions. The respondent did not follow a fair procedure before the applicant was moved from a position of a supervisor. The respondent opted to shift the applicant instead of dealing with the Social worker's' complaints. The applicant's status, importance and dignity were reduced.

Respondent's case

9. According to the respondent's opening statement, the applicant was not appointed by the HOD as a supervisor; instead it was an internal arrangement to assist in supervising the office. The position was never advertised and the recruitment and selection policy was not followed. Management revised the supervisory position when there was a petition by Social Workers pertaining to their complaints against the applicant. There was no change to the applicant's salary level and benefits and as such she was never demoted but placed in Poverty Alleviation Programme.
10. **Mr. Toto Geza**, the first respondent's witness testified under oath as follows:
11. He is holding a position of Human Resources Practitioner and is based in the District office. The applicant lodged a grievance when she was placed at poverty alleviation programme. The position is on salary level 9 and her previous position of Chief Social Worker: Supervisor is also at the same level. The applicant was

removed from a supervisory position at Ibhayi Service Office when there were complaints by Social Workers who were the applicant's subordinates. The matter was referred to the District Management. The document regarding the complaints appears from page 5 to page 8 of the bundle.

12. The witness further testified that a committee was appointed by the District Manager to investigate the allegations. It transpired from the recommendations of the committee (from page 40 to page 45) that the relationship between the applicant and the Social Workers who were her subordinates was not good hence she was placed in poverty alleviation programme. The position of Social Work Supervisor is not in the organogram hence it is an internal arrangement.
13. Under re-examination the witness confirmed that the applicant was present in a meeting that was held on 27 May 2010 wherein she was advised about her removal to poverty alleviation section. The supervisory position was an internal arrangement.
14. The second witness, **Mr. Tembile Ngqabayi** testified as follows:
15. He is the District Manager/Senior Manager since 2007. He is the overall overseer or the accounting officer of the district. He knows the applicant as a colleague. He intervened when the Social Workers petitioned against the applicant. Among their dissatisfactions was that they used to disagree with the applicant on assessments. His intervention was in the best interest of the respondent. She held several meetings with the applicant before moving her from Ibhayi Service Office to poverty alleviation as the head of the programme. She produced a brilliant report regarding poverty alleviation. The applicant was never demoted as she was moved with her salary level and benefits.
16. Under cross-examination, the witness testified that the applicant's supervision is complex in the current programme as she is supervising the supervisors. The applicant was consulted and was given a transfer letter before she was moved from her former position/section. The applicant's move to the current programme was based on operational requirements. Each service office develops its own structure and the position of poverty alleviation is in the organogram of the respondent.
17. Under re-examination the witness confirmed that the issue of transferring an employee from one section to another is in his scope of work. He has no jurisdiction to employ, demote and promote employees.
18. In closing, **Mr. Majija** argued as follows;
19. Both respondent's witnesses testified that the applicant was consulted before she was moved or transferred to the poverty alleviation programme. The applicant was invited to a meeting wherein she was advised that she is the suitable employee to initiate the project. The applicant was identified to initiate the

programme based on her experience, skills and knowledge in poverty alleviation. This evidence was not disputed by the applicant. The contents of the discussion were that her transfer was based on the respondent's operational requirements. There is nothing which suggests that the applicant's transfer was based on demotion and/ or disciplinary action short of dismissal. Although there were complaints by the applicant former subordinates, her transfer was not actuated by them.

20. Mr.Majija finally submitted that the trust invested in the panel of interview was indeed to ensure that the most suitable candidate is selected for the position for effective service delivery, following the recruitment and selection policy.

ANALYSIS OF EVIDENCE AND ARGUMENTS

21. It is common cause that the applicant was removed /transferred from a position of Principal Social Worker; Supervisor, salary level 9 and was placed to a position of Principal Social Worker: Poverty Alleviation Programme, salary level 9.
22. Demotion according to **D dutoit et al in Labour Relations Law fourth Edition 2003** can mean a reduction or diminution of dignity, importance, responsibility, power or status even if salary attendant benefits and rank are retained.
23. It is the applicants' case that the applicant was demoted from a supervisory position and she was never consulted before she was transferred or moved to poverty alleviation programme.
24. According to the respondent's evidence, the applicant was never demoted as her salary level, benefits and status was never reduced. The supervisory position as per the respondent was an internal arrangement hence the position was never advertised before the applicant was appointed. This evidence was also corroborated by the applicant.
25. Both respondents' witnesses testified that the applicant was consulted in a form of meetings before she was transferred/moved from Ibhayi Service Office to the District Office. The applicant as per the District Manager's testimony was selected as the best candidate to initiate the poverty alleviation programme based on operational requirements, her skills, experience and abilities. This evidence was not disputed by the applicant.

26. According to the District Manager's undisputed evidence it is the prerogative of the respondent to move staff from one section to another. He further testified that when there were complaints by the applicant's former subordinates, his intervention was in the best interest of the respondent.

27. As aptly put by the Labour Court in various decisions, the setting of standards, the maintaining of such standards is in the province of the employer, Commissioners should not easily interfere with sanctions/decisions if they are not shocking. There is no compelling reason for me to interfere with the decision of the respondent.

28. Based on the adduced evidence before me, the applicant has failed to prove the claim of demotion by the respondent.

AWARD

28. I therefore make the following award:

28.1 The respondent, **Department of Social Development-EC** cannot be compelled to place Ms. **Gina Jacamina Johanna Pelsler** to her former position of a Principal Social Worker: Supervisor.

28.2 There is no order as to costs.

28.3 The application is dismissed.



Signature

Faith Ncumisa Bantwini

PHSDSBC PANELIST