



**PHSDSBC**  
**PUBLIC HEALTH AND**  
**SOCIAL DEVELOPMENT**  
**SECTORAL BARGAINING**  
**COUNCIL**

# **ARBITRATION**

# **AWARD**

Panellist: Bella Goldman  
Case No.: PSHS391-11/12  
Date of Award: 12 May 2012

**In the ARBITRATION between:**

**SAMA obo Dr John Anthony and Dr William Mitchell**

(Union / Applicant)

And

**Department of Health - Western Cape**

(Respondent)

**Union/Applicant's representative: Letitia Wolfswinkel, Union Official**

Union/Applicant's address:

Telephone: 082 412 8498

Telefax: 021 481 2107

**Respondent's representative: Jongo Dumas, Labour Relations Officer**

Respondent's address:

Telephone: 021 483 3980

Telefax: 021 483 3952

## **DETAILS OF HEARING AND REPRESENTATION**

1. The matter was scheduled for an arbitration hearing at the respondent's offices at the Nursing College in Athlone on 27 February 2012. Ms Letitia Wolfswinkel, Union Official represented the applicants. Mr Jongo Dumas, Labour relations Officer represented the respondent. It was agreed that the matter would be decided on the papers in terms of legal argument. It was agreed that the applicant party would submit its argument by 14 March 2012, the respondent would respond by 28 March and the applicant would have an opportunity to reply by 15 April 2012. I requested an extension by which to submit my award.

## **ISSUE TO BE DECIDED**

2. The dispute was referred in terms of section 24 of the Labour Relations Act 1995 as amended (LRA) that is, interpretation and application of a collective agreement. The collective agreement being Resolution 3 of 2009: Occupational Specific Dispensation (OSD) for Medical Officers, Medical Specialists, Pharmacologists, Pharmacists and Emergency Care Practitioners.

## **BACKGROUND TO THE ISSUE**

3. The objective of the OSD is to introduce a new remuneration system for professionals. Prior to being translated in terms of the OSD the applicants were Principal Specialists in different specialisations at Groote Schoor, after the translation they were called Grade 2 Clinical Heads of Units. This was effective as from 1 July 2009. Their salaries were raised in terms of the translation.
4. The ODS also provided for pay progressions based on performance in terms of clause 4.1.6 of the OSD Agreement. The applicants became eligible for pay progression on 1 April 2010 (for period 1 April 2009 to 31 April 2010) which became effective as from 1 July 2010. The respondent subsequently issued letters to the applicants on 21 December 2010 informing them as follows:
5. *that due to the fact have you have received a grade progression to the rank of Head of Clinical Unit (Medical) Grade 2 with effect from 1 July 2009 you do not qualify to be considered for pay progressions and/or cash incentives for the 2009 / 2010 performance cycle. Unfortunately this only came to light once the moderating meeting was concluded and pay progression was allocated to you with effect from 1 April 2010.*

6. *Your salary position will be rectified with effect from 1 December 2010. Regretfully this has resulted in an overpayment to you for the period 1 April to 31 November 2010.*
7. The applicant's raised their concerns to the respondent's position in a grievance dated 21 April 2010 and inter alia argued that their translation to the Head of Clinical Unit was not a grade progression but a translation and that in terms of the OSD Agreement they were entitled to the pay progression for the year ending 31 March 2010.
8. The respondent's reserved their position that grade progression which is what the applicant's underwent in terms of the OSD constituted a promotion and argued that in terms of the Performance Management, Chapter 10 of Agreement P1 of 2002 as amended *An incumbent employee absorbed in the higher grade graded post after 1 April of a specific year in terms of Public Service Regulation V C 6 will not be eligible for pay (notch) progression on 1 July of the following year and shall only qualify for possible pay (notch) progression after completion of a full performance cycle on the higher salary level.*

### **SURVEY OF THE EVIDENCE AND ARGUMENT**

9. I have considered all the evidence and argument, but because the LRA (section 138(7)) requires an award to be issued with brief reasons for the findings, I have only referred to the evidence and argument that I regard as necessary to substantiate my findings and the determination of the dispute.

### **Documentary Evidence**

10. The parties submitted bundles of documents in evidence which were agreed as being what they purported to be. The applicant's bundle was marked 'A' and was numbered 1 to 29. The respondent's bundle was marked 'B' and was numbered 1 to 37.
11. The parties submitted argument in support of their respective cases which I will refer to where necessary in my analysis

### **Employee's submissions**

12. Resolution 3 of 2009 the ODS Agreement clause 4.1.6 provides for Heads of Clinical Units to receive the required annual pay progressions of 1.5% of basic salary per year provided they met the required performance standard and would run from 1 April 2009 until 31 March 2010. Further the actual pay

progression would be awarded with effect from 1 July in the year in which the professional had met the prescribed requirements for the pay progression.

13. Further DPSA circular 4 of 2009 which deals with the implementation of the OSD as per Resolution 3 of 2009 states at clause 16 that :

*The change in employees' salaries on implementation of the OSD during the course of the new pay progression does not effect their eligibility for pay progression on 1 July 2010 ( or 1 July 2011 in respect of those employees eligible for the two yearly pay progression) in their OSD positions.*

14. The applicant's referred to the respondent's argument which is that Public Service Regulation at V. C.5 provides that an executing authority may increase the salary of a post to a higher salary range to accord with the job weight, if the job weight as measured by a job evaluation system indicates that the job was graded incorrectly. The applicants stated that this regulation does not relate to their situation as their posts did not go through a job evaluation process and did not amount to promotions as argued by the respondent.

15. The applicant's referred again to DPSA Directive 4 of 2009 clause 17.2 which states:

*Progression to the next higher grade (salary scale) is **not** dependent on a vacancy (on the higher grade) or subject to the principal of open competition*

16. The applicants are requesting in terms of remedy that they be awarded their pay progression for 2009 / 2010 and that subsequent pay progression follow accordingly.

17. Thus the applicants are to be moved from notch 2 to notch 3 and they be awarded R38, 583.83 which included the cost of living increase which has been award for 2010 / 2011. This amount was not disputed by the respondent.

### **Employer's Submissions**

18. The respondent argued that the applicant's translation in terms of the OSD amounted to promotions and that DPSA Circular number 4 only applied to translations and not to promotions and that the applicants were in fact promoted through the OSD process and they substantiated this agreement by quoting Collective agreement P1 of 2002. The respondents did not discover this documents or quote from it to substantiate their argument.

19. The respondent argued that to meet the requirement for pay progression the incumbents had to be in the pos in which he / she is being evaluated for at least a year and the applicants having been translated in July 2009 were only in the post for nine months when they were evaluated. 1 April 2009 to 31 March 2010. They were not occupying the Clinical Head of Unit Posts from 1 April 2009 to 30 June 2009 and hence do not qualify for the grade progression.

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

20. Having looked at the various pieces of legislation I am satisfied that being translated as a result of years of experience and skills was not a job evaluation exercise or a promotion even when the incumbent received an increased salary as a result thereof.

21. DPSA Circular 4 of 2004 specifically clarifies any doubt in this regard by and states at clause 16 that  
*The change in employees' salaries on implementation of the OSD during the course of the new pay progression cycle on 1 July 2010 in their OSD positions*

22. Thus my understanding from the above is that in the first year the period of evaluation for pay progression would run up to 31 June 2010. If that were not so the DPSA Circular number 4 would not even refer to pay progressions being affective in the first year of translation. Further it would specifically have excluded the allocation of pay progression for the first year of translational.

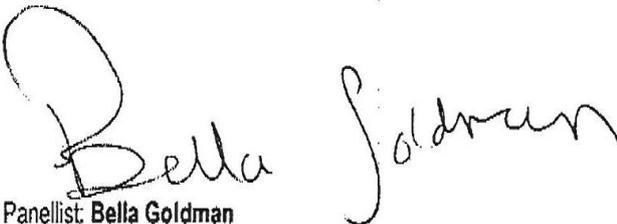
23. For the reasons stated above I find that the applicants are entitled for their pay progressions in July 2010 for the preceding year.

24. Given that it was not disputed that the applicants achieved the requisite marks to make them eligible for a 1.5% increase and the amount they should be awarded was not disputed should they be successful. I will grant the order as requested by the applicants

### **AWARD**

25. I hereby find that the OSD translation system was not a promotion or a job evaluation exercise and that the applicants have reached the necessary criteria in terms of standards for the pay progression system which they are entitled to and which amounts to 1.5% pay progression for the year ending 30 June 2010 and I order that the respondent Department of Health Western Cape pay each of the applicants, Dr John

Anthony and Dr William Michell the sum of R38, 583. 83 each subject to statutory deductions and that they be moved from notch 2 to notch 3 of their salary grades.

A handwritten signature in black ink that reads "Bella Goldman". The signature is written in a cursive style with a large initial 'B'.

Panelist: **Bella Goldman**  
Sector: **Public Health & Social Development Sectoral Bargaining Council**