



# ARBITRATION AWARD

**IN THE PUBLIC HEALTH AND SOCIAL DEVELOPMENT SECTORAL  
BARGAINING COUNCIL  
HELD AT BLOEMFONTEIN**

**COMMISSIONER: JB MTHEMBU  
CASE NO: PSHS396-10/11  
DATE OF AWARD: 24 JANUARY 2012**

In the matter between:

**PSA obo E.T. MOTLOUNG**

**APPLICANT**

and

**DEPARTMENT OF HEALTH**

**RESPONDENT**

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### DETAILS OF HEARING AND REPRESENTATION

1. The hearing was held on 13 June 2011. Mr. Greef, an Official of the PSA represented Mr. E.T. Motlounge, the Applicant and Mr. Molokoane, the Employment Relations Officer, represented the Respondent.
2. Initially, the parties were to file Heads of Argument on 27 June 2011, however, the Respondent's Representative requested several extensions in an endeavour to settle the dispute. However, his endeavours were ultimately to no avail as his Principals refused to settle the dispute.
3. The Respondent then filed its Heads of Argument on 23 January 2012.

## **THE ISSUE TO BE DECIDED**

4. An interpretation or Application of PHWSBC Resolution 1/2002 relating to whether or not the Applicant is entitled to be paid an acting allowance or not.

## **BACKGROUND TO THE ISSUE**

5. The Applicant was appointed to act in the higher post of Management Accountant: Financial Analysis and Compliance, from 19 February 2009 until further notice .
6. Paragraph 3 of his acting appointment letter that he signed on 18 February 2009 states that:

“Due to the current financial situation no financial remuneration will be attached to your acting capacity.”

## **ANALYSIS OF THE ARGUMENT**

7. *Brevitas cause*, I do not see the need to consider all of the submissions made by the parties except what I consider to be paramount and at the heart of the dispute.
8. What is at the heart of this dispute is that the Applicant knowingly accepted to act in the higher post with the special understanding that there would be no remuneration attached to his acting in that post.
9. Needless to mention that, as a financial person in the Department, he was well appraised of the dire strait of the Respondent's financial position when he so accepted to act in the higher post.
10. It cannot be argued that the Respondent sought to contract out of the collective agreement as it was open to the Applicant to exercise his election to accept or refuse to act in the higher post with its attendant condition of “no remuneration”. He elected the former and must now live by that election.

11. The Respondent's argument that the Applicant was appointed to act in the higher post by a Senior Manager as opposed to the General Manager, is an argument for another day, which does not find palace in the current dispute.

## **AWARD**

12. The Respondent has interpreted and applied PHSDSB Res 1/2002 correctly and accordingly the Applicant is not entitled to an acting allowance.
13. Accordingly the Applicant's Application is dismissed without an order for costs.



**JEROME MTHEMBU**  
**PHSDSBC PANELIST**

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