



PHSDSBC

PUBLIC HEALTH AND SOCIAL DEVELOPMENT
SECTORAL BARGAINING COUNCIL

ARBITRATION AWARD

Case Number: PSHS40-14/15
Commissioner: Bongiwe Nkohla
Date of Award: 19 August 2014

In the **ARBITRATION** between

HOSPERSA obo Rafferty , G.G

Applicant

And

Department of Health –Eastern Cape

Respondent

(Respondent)

Applicant's rep: Thobelani Sokhela

Applicant's address: P.O.Box 231

Kloof

3640

Telephone: 031-765-4625

Telefax: 031-765-4629

E-mail: N/A

Respondent's address: Department of Health

Private Bag X 0038

Bisho

5608

Telephone: (040)608-1112

Telefax: (040)608-1334

E-mail: N/A

DETAILS OF HEARING AND REPRESENTATION

1. The dispute was set down for arbitration on the 6 August 2014. The applicant, Mr; Rafferty appeared in person and was also represented by Union representative Mr Thobelani Sokhela.
2. The respondent was not represented.
3. In the file it was indicated that both parties were informed of the date, time and venue of the hearing. The respondent was informed by fax and proof of fax was in the file.
4. I proceeded and phoned the Respondent's head office and spoke to Mr Charles who confirmed knowing about the case and that a certain Mr Nxumalo should have been there to represent the respondent. I phoned Mr Nxumalo number and it went on voice mail after ringing for several times
5. Having satisfied myself that both parties were properly informed of the hearing I proceeded with the arbitration hearing in the absence of the respondent.
6. The proceedings were digitally recorded.

ISSUE TO BE DECIDED

7. The issue to be determined is whether the collective agreement has been correctly applied or not by the Respondent.

SURVEY OF EVIDENCE AND ARGUMENT

SUBMISSIONS BY THE APPLICANT

8. The applicant has been employed by the Respondent as an EMS For the past 22 years.
9. The Applicant was duly nominated as Full Time Shop Steward (FTSS)-Provincial Office Bearer in terms of Clause 8 of the Resolution 3 of 2011.
10. The nomination was made on the 4 March 2012 to commence his duties in January 2013 and he was at level 6 during his nomination.
11. He then as required by Resolution 3 of 2011 notified the respondent of his nomination.
12. He also notified the Chief Negotiator for the respondent with a letter dated 28 September 2012.
13. According to the Resolution 3 of 2011 the respondent is expected to respond within 30 days.
14. Further to the response the respondent is also expected to release the office bearers to perform their union duties and be elevated to level 8.
15. The Applicant further submitted that according to the resolution if one has been nominated then the respondent also has to remunerate one at level 8.

16. The applicant also submitted that his Union HOSPERSA has had a court order against the respondent in 2013 to compel the respondent to release the shop stewards.
17. The Applicant also submitted that he has not been elevated to level 8 and also has not been paid the full benefits and remuneration as shop steward as it is being done to other union's officials.
18. The Applicant also confirmed that he is performing full time shop steward duties as there is nothing confirming him or denying him to do these from the respondent.
19. The applicant also confirmed that he has been nominated for the year 2014 as well.

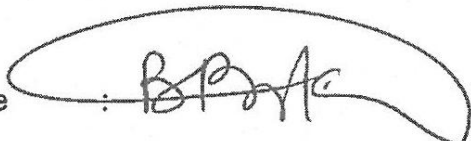
ANALYSIS OF EVIDENCE AND ARGUMENT

20. The testimony of the applicant which was not challenged shows that there is a resolution which the respondent is a signatory to.
21. It is also clear from the applicant's testimony that the respondent has been made aware about his nomination by HOSPERSA.
22. It is also clear that there has been no response from the respondent confirming or denying him to perform his duties as a FTSS which he is presently performing.
23. In the applicant's testimony there is no reason for me not to believe that he has rightfully nominated as FTSS as required by the Constitution of HOSPERSA which he read on record.
24. However his nomination as an FTSS in terms of Clause 8 of Resolution 3 of 2011 as alleged on his submission and on his details about the issue in dispute is not correct based on the fact that Clause 8 speaks to the nomination of office bearers not FTSS.
25. Furthermore his nomination as FTSS should have been done according to Clause 6 of the Resolution 3 of 2011 which deals with appointments of FTSS.
26. Based on the submissions made by the Applicant I am of the view that when the nomination/election of the Applicant was made the intention was for him to serve as FTSS.
27. This is also stated in the letter written to the chief negotiator dated 28 September on page 52 of bundle A submitted by the Applicant, where it is stated in paragraph 2 thereof.
28. Based on the unchallenged evidence of the applicant I am of the view that there has been no non-compliance on the part of the respondent as the nomination was that of a FTSS.
29. I accordingly make the following award:

AWARD

30. The respondent on its part has correctly interpreted the Resolution and has complied with the provisions of nomination/election of an FTSS.
31. The applicant cannot be elevated to Level 8 or be remunerated such.
32. The Applicant's claim is hereby dismissed and he is not entitled to any relief.
33. I make no order of costs.

Signature

A handwritten signature in black ink, appearing to be 'Bongiwe Nkohla', is written over a large, hand-drawn oval scribble.

Commissioner : Bongiwe Nkohla