



# ARBITRATION AWARD

Case No: **PSHS414-18/19**

Commissioner: **THABE PHALANE**

Date of award: **12 FEBRUARY 2019**

In the matter between:

**PSA obo Molema MA**

(Union/ Applicant)

and

**Department of Health- Northern Cape**

(Respondent)

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## **DETAILS OF THE HEARING AND REPRESENTATION**

1. An arbitration hearing was held on 29 January 2019 at Kuruman Hospital, Kuruman.
2. The Applicant is currently an employee of the Respondent, appeared in person and was represented by Mr. Deon Jacobs, the Union Official, whilst the Respondent was represented by Mr. V Mahlobo, the Respondent's Official.
3. The Applicant submitted a bundle of documents marked bundle 'A', and the Respondent also submitted a bundle of documents marked bundle "B".
4. The Applicant testified and was cross examined, and the Respondent called a witness who also testified and was cross examined.

## **ISSUE TO BE DECIDED**

5. I am determined to decide whether the Respondent had committed an unfair labour practice by not paying the Applicant her 1% pay progression for the year 2016/2017, and consequent thereon, to determine the appropriate remedy.

## **JURISDICTIONAL ISSUE**

6. There was no jurisdictional point raised by the parties.

## **SUMMARY OF EVIDENCE AND ARGUMENT FOR THE APPLICANT**

### **Ms Maseadimo Addina Molema-Applicant**

7. The Applicant is a Clinical Nurse Practitioner at Kuruman Clinic.
8. The procedure to submit a performance review for assessment is that an employee submits a performance agreement and work-plan, the PMDS form. All quarters of the year are reviewed and signed.
9. The Area Manager also signed to confirm that she submitted.
10. Her service record shows that she was paid for 2015/2016.
11. She enquired to lodge a grievance and was told that she did not submit for 2017/2018. The HR Manager showed her and said that their black book showed she did not submit for 2017, quarter 3 and quarter 4.
12. She called the Area Manager to bring proof of her submission. When she brought the proof, she was told in fact she did not submit for 2015/2016. The Applicant finds this odd because she was paid as reflected in her service record.
13. The reply to her grievance is that HR did not have records of her EPMDS submission for 2015/2016 financial year. They said they have the PMDS forms for the year 2016/2017 which showed a 114% score rating of performance.

14. Since nursing personnel are required to submit for two financial years she was disqualified from entitlement to pay progression.
15. The Applicant has been in service for 15 years and has submitted every year.
16. She was not sensitised that she did not submit for 2015/2016 or 2016/2018, and the black book only showed that she did not submit for quarter 3 and quarter 4 of 2017/2018.
17. The Applicant submitted that it was unfair to remove her from the list of employees who submitted and she wants her 1% pay progression for 2016/1017, because she was paid for 2015/2016 only.

### **Under cross examination**

18. The Applicant agreed that she wants to be paid for 2016/2017 as she submitted her forms.
19. HR did not tell her that they wanted proof of submission for 2015/2016 but only told her that she did not submit for quarter 3 and quarter 4 of 2017/2018, hence she only looked for proof of submission for 2016/2017.
20. The Respondent did not at any stage when she was pursuing a grievance state that she did not submit for 2015/2016 and 2016/2017, and she could have looked for that proof from the Area Manager, and she believes that was not the issue as she was paid for 2015/2016 as shown in her employment records.

### **SUMMARY OF EVIDENCE AND ARGUMENT FOR THE RESPONDENT**

#### **1<sup>st</sup> witness, Ms. Keamogetse Mercia Boutlwane**

21. The witness is the HR Registry Clerk for the Respondent and one of her duties was she received the PMDS from the facilities. She dealt with the documents for 2015/2016 and 2016/2017.

22. She then records on her register which she compiles. The name of the Applicant does not appear and there are no records.
23. This means that the Applicant was never assessed for 2015/2016.
24. The Applicant and all professionals who qualify must submit for two years. She cannot be paid for 2015/2016 and 2016/2017 because the Respondent's records show she only submitted for 2016/2017, and not 2015/2016.

### **Under cross examination**

25. The witness is the HR Registry Clerk for the Respondent for four years. Her duties include personnel documents, registers and PMDS. She receives the PMDS booklets from the facilities and after compiling them she sends the documents to another level.
26. She does not know the process to follow when an official does not submit their booklets because that is the duty of the facility Managers. They collect and should alert the officials that they have not submitted.
27. When she noticed that the Applicant did not submit, she notified the Facility Manager.
28. When the Applicant came to enquire about her non-payment, she told her that she did not submit for 2015/2016.
29. It has happened on previous occasions that the booklet did not reach her office. It is possible that they can go missing before reaching her.
30. The witness conceded that she does not have any proof that the Applicant did not submit. She can only say that it did not reach her.

31. She denied that she acted unfairly towards the Applicant by failing to report that the Applicant that she did not submit, as there is no marker or indicator that an official did not submit, because she made the facility Manager aware.

32. It was the first time that the Applicant did not submit and she agreed that if the Applicant did submit and the booklet went missing, that would amount to an unfair labour practice. Here the documents were not submitted.

### **ANALYSIS OF EVIDENCE AND ARGUMENT.**

33. The Respondent agrees that should the Applicant prove that she submitted her performance reviews for 2015/2016 and 2016/2017, she would receive the performance incentive. The problem is that they have no proof that the Applicant submitted her appraisal submissions for the two years.

34. The Respondent does not conclusively deny that the Applicant did not submit her reviews, only that they have no records of her submitting the PMDS forms.

35. The next step should be to look at the records of the submissions made by all employees, including the Applicant. The Respondent's witness conceded that she does not have this register for the year 2015/2016 and 2016/2017. This creates a challenge because the records they have is not the record that the facilities sign when they bring employee forms, but a summary as compiled by the witness for submission to the recommendation committee.

36. The other challenge that the Respondent faces is that the Applicant's service records show that she was paid for the year 2015/2016 as an adjustment to her salary was effected.

37. It follows therefore that the submission that the Applicant did not submit her performance assessment forms is not supported by the evidence at the Respondent's disposal.

38. The witness agreed that the Applicant should be paid if she submitted the forms, but conceded that she was aware that the Applicant did not submit forms but she could not prove that she made the clinic aware that the Applicant failed to submit her forms.
39. I am therefore convinced that the Applicant has established that she did submit her PMDS forms for both 2015/2016 and 2016/2017 and was therefore entitled to be paid the pay progression.
40. The Respondent has therefore committed an unfair labour practice by disqualifying the Applicant for payment of the pay progression.
41. There is no justifiable reason not to pay the Applicant for the remaining year, 2016/2017 as the Respondent is unable to show conclusively that she has not submitted her forms.
42. In the premise, the following award is in order:

## **AWARD**

43. The Applicant is entitled to the pay progression due to her and the Respondent's failure constitute an unfair labour practice.
44. The Respondent is ordered to pay the Applicant the 1% pay progression for the year 2016/2017 due to her.
45. The amount due must be calculated by the Respondent's finance department and paid to the Applicant on or before 15 March 2019.
46. There is no order as to costs.



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Thabe Phalane (Panelist)