



ARBITRATION AWARD

Panellist/s: Ronnie Bracks
Case No.: PSHS427-10/11
Date of Award: 6-Jul-2011

In the ARBITRATION between:

NEHAWU obo Chiloane, M.J. and 7 others
(Union / Applicant)

and

Department of Health - Gauteng
(Respondent)

NEHAWU obo Chiloane MJ and 7 others
(Employee)

and

Department of Health- Gauteng Province
(Respondent)

Employee Representative: NEHAWU obo Chiloane MJ and 7 others
Employee's address: _____
Telephone: 011 833 2902
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DETAILS OF HEARING AND REPRESENTATION

- A. The Arbitration was scheduled for hearing on the 10th June 2011 at the offices of the Respondent in Johannesburg at Bank of Lisbon Building, corner Sauer and Market Streets.
- B. The Applicants were represented by Mr. Isaac Zulu, a NEHAWU official. Mr. Modisana Lelaka represented the Respondent. The parties agreed to submit their closing arguments in writing by the 17th June 2011. The proceedings were recorded both manually and electronically.

ISSUE TO BE DECIDED

- B-C. Whether or not the Applicants were translated to the correct level in terms of the Council's Resolution 3 of 2007 commonly known as Occupational Specific Dispensation of Nurses (OSD). Specifically if the resolution was correctly applied and interpreted.

BACKGROUND TO THE ISSUE

- C-D. The Applicants were in the Respondent's employ at the Charlotte Maxeke Johannesburg Academic Hospital and were aggrieved that some of their colleagues whom they supervised and who reported to them were translated to the same levels as them through Resolution 3 of 2007. It was the Applicants' contention that as Assistant Managers they should have been translated to Deputy Managers in terms of the Resolution. The issues related specifically to all the Academic Hospitals.

The matters were recorded both manually and electronically and hereunder appear only the salient points of the evidence of the witnesses.

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SURVEY OF EVIDENCE AND ARGUMENT

EVIDENCE

Documentary

- E Bundles of documents numbered A1, A2 and R were submitted by the parties.

Employees' Evidence:

Dinaane Agnes Ramoshu after being sworn in testified as follows:

- F She was employed at the Charlotte Maxeke Johannesburg Academic Hospital. She explained her responsibility as assistant manager and her reporting structure. She was unhappy with the manner in which she was translated. She conceded that initially they were correctly translated; she was a member of the task team. However circular 8 (A1 – 13) was released. This circular created greater confusion. Zone matrons were to be translated as assistant managers. The zone matrons were chief professional nurses some of whom were not interviewed for the posts that they were in. The circular was addressing only a certain level.
- G. When the circular was scrutinized it was realized that it was not signed by the head of the department. She explained in detail what was done and whom they involved in order to get clarity on the situation. They had also asked the person who was signatory to the document to come and clarify the situation.

- H. She explained that because the Respondent had failed to address the issues they decided to refer the matter to Council. The witness confirmed that circular 8 of 2008 was not a National circular and was more for information purposes. She queried how a national circular could change a provincial circular.
- I. She stated that the 8 Applicants were incorrectly translated since the very people whom they were supervising were placed at the same level as they were. The notch that they were translated to was incorrect and reference was made to R80 part D. She explained her own translation and said it was not in terms of the agreement as she ended being Assistant Manager Nursing instead of Deputy Manager Nursing.
- J. Nothing alarming was revealed during cross-examination save to state that the witness conceded there was no provision in terms of the resolution to translate them to the level of deputy manager. The witness also stated that they wanted the commissioner to overturn the resolution by translating them to the position of deputy manager despite it not being in terms of the resolution.
- K. The witness conceded that they had meetings with Mr. Tshabalala the author of the circular. She conceded that there was a gap in the resolution. It was put to the witness that Council does not have jurisdiction to deal with the matter as it meant a change in resolution.

Carol Brenda Furlonger after being sworn in testified as follows

- L. She was employed at the Charlotte Maxeke Johannesburg Academic Hospital as the Operations Manager (Pulmonary Unit) in medical department. She explained the role of the junior matrons (corridor matrons) and the roles played by the various role players stating the ultimate power was with the assistant director. Charge sisters were doing much more work and she said that the job descriptions were different.
- M. There was no cross-examination.

Julia Morare after being sworn in testified as follows

- N. She is at the Steve Biko Academic Hospital and is one of the former Assistant Directors called Assistant Nursing Managers. She said they had deputy directors nursing on levels 11 and 12. They had 10 assistant directors and 20 corridor matrons as well as unit managers.
- O. She was responsible for nursing personnel management and development and she was reporting to the deputy director. Two corridor nurses reported to her. The corridor nurses and the assistant director's positions were on different levels.
- P. She said that the corridor nurses and matrons had different functions. For example she was responsible for Human Resources. She explained her area of responsibility in detail and said they should have been translated to deputy managers instead of Assistant Managers Areas.
- Q. There were no major revelations during cross-examination. She reiterated that the functions even though on paper looked the same were in fact different. She stated that there was also the issue of dealing with personnel management. The witness was then referred to the job description for both

sections and pointed out to her that there was very little difference. The witness was in total disagreement.

- R. The witness stated that the translation was not aligned with what the document was stating as the OSD had a structure which it had to abide by. She conceded that the OSD had a rank omitted when the agreement was concluded in that they had failed to make provision for deputy managers. When asked what they were expecting to be interpreted if the position was omitted she did not respond.

Aaron Masemola after being sworn in testified as follows:

- S. He is the National Negotiator for the Union and a professional nurse. He was referred to A1-26 and stated that Assistant Managers were called corridor matrons. Then there were Assistant Directors and with OSD they were supposed to have been translated to Deputy Managers. He went on to explain the different levels in the different hospitals and the levels of seniority at these hospitals.
- T. He explained that R80 should have been used. The Applicants were translated to assistant managers. He then made reference to various Annexures explaining that the translation was not in line with the agreement because the CPN was at level 08 and they reported to the assistant managers. The assistant managers should have been translated to deputy managers. The translation was incorrectly done as a level was omitted. The aim of OSD was to retain nurses. He said in other agreements there were addendums but not in this case. There were implementation guidelines.
- U. Nothing significant emerged during cross-examination except that the witness agreed that in terms of the agreement the corridor managers were correctly translated, he further conceded that there was an omission in the translation of the assistant managers.
- V. The witness further conceded that the agreement was a provincial document and that there was the need for consistency. When the witness was asked how the commissioner could assist in this matter. The witness stated that there was a discrepancy and a dispute had been declared and it was for Council to resolve it. He stated that what they wanted was for the commissioner to translate assistant managers to deputy managers. The witness however could not refer to the section which would inform such translation.

The Respondent called one witness who testified after being duly sworn in:

Annamaria Cillier, Deputy Director, testified as follows:

- W. She holds this position in the directorate, Health, Professional Management and Support. They were consulted as a province by National Health. They were therefore obligated to implement the resolution as is as the job levels were centrally graded, determined and developed. They had to therefore follow and implement it. She was referred to R78.
- X. She said in the implementation of OSD consideration was given to the person's job title and core functions. She explained how salary level 8 was created in the hospitals and said chief professional nurses were used as corridor nurses. These corridor nurses managed 2 to 3 wards. The nurses were also responsible for the management of the wards after hours, on night duty and weekends.

- Y. Also, the hospital had a couple of director's posts which were not sufficient for the purposes of the hospital and the posts were created for the corridor nurses. With the implementation of the resolution she said staff was realigned in accordance with the levels proposed in the resolution.
- Z. There was a dilemma though that not all the levels were contained in the structure and they were forced to look at the functions and translated the members in accordance with this. The translation made provision for this (R78). Area managers were translated for levels 8, 9, 10 (R80). She gave a detailed explanation of how the different levels were interpreted. The witness said guidelines were provided in the implementation directive.
- AA. If they had been at Regional Hospitals and in charge they could have been translated from assistant managers to deputy managers. She referred to R21 and said this was the record of a meeting held at Charlotte Maxeke Hospital with the Department Management team and the Union's Office Bearers. Mr. Zulu who was the chief negotiator for organized labour signed the agreement. The meeting concluded that the resolution was silent on translation at central hospitals and must be re-referred to higher levels namely the National Department of Health.

CLOSING ARGUMENT

Due to the length of the closing arguments it will not be repeated in detail. The full version can be found in the file.

ANALYSIS OF EVIDENCE AND ARGUMENT

1. Resolution 3 of 2007 commonly known as Occupational Specific Dispensation of Nurses stipulates that its objective was:
 - 1.1 To introduce an occupational specific remuneration and career progression system for Professional Nurses (Registered Nurses), Staff Nurses (Enrolled Nurses) and Nursing Assistants (Enrolled Nursing Assistants) who fall within the registered scope of PHSDSBC that provides for:
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 - 1.1.1 career pathing;
 - 1.1.2 pay progression;
 - 1.1.3 grade progression;
 - 1.1.4 recognition of appropriate experience;
 - 1.1.5 increased competencies; and
 - 1.1.6 performance; with a view to attracting and retaining nursing professionals in all the identified occupations to the public health sector.

- 1.2 To introduce differentiated salary scales for identified categories of nursing professionals based on a new remuneration structure.
- 1.3 To incorporate the existing scarce skills allowance payable to identified categories of specialty nurses into salary.

2 In terms of Section 2 the Resolution applies to:

2.1 the Employer;

2.2 the employees of the Employer who are members of the trade union parties to this agreement and who are registered with the South African Nursing Council (SANC) in terms of section 31 of the Nursing Act, 2005 (Act no 33 of 2005) (the Nursing Act); and

2.3 the employees of the Employer who are not members of any trade union parties to this agreement, but who fall within the registered scope of the PHSDSBC and who are registered with the South African Nursing Council (SANC) in terms of section 31 of the Nursing Act.

3. In respect of the implementation of the OSD section 3 stipulates an OSD for the three nursing categories (occupations), namely Professional Nurse (Registered Nurse), Staff Nurse (Enrolled Nurse) and Nursing Assistant (Enrolled Nursing Assistant) as defined in sections 30 and 31 of the Nursing Act which shall be introduced with effect from 1 July 2007. The OSD will provide for the following amongst other:

3.1.1 Introduction of unique remuneration structures per nursing category with 3% increments between notches on a particular salary level as indicated in Annexure A to this agreement ;

3.1.2 Introduction of different career streams within the occupational category: Professional Nurse, as indicated in Annexure A to this agreement;

3.1.3.1 Differentiation in salary scales between Professional Nurse (Registered Nurse) categories in General Nursing, Specialty Nursing/Primary Health Care, Specialist Nurse Practitioner and Nursing Educators;

3.1.3.2 Posts in Specialty Nursing refer to those positions where a post-basic qualification listed in Government Notice R212, as amended, is an inherent requirement to perform the duties attached to the post. This also includes similar post-basic qualifications with duration of at least one year in the relevant specialty recognized by the SANC prior to the publish of R212;

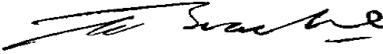
3.1.3.3 The employer will implement the dispensation for Clinical Nurse Specialists once the required regulation has been promulgated to give effect to the envisaged clinical nursing qualification.

4 Section 3.2 states that to give effect to the agreement, the implementation of the OSD will be a determination and implementation directive issued by the Minister for the Public Service and Administration in terms of section 3(3)(c) of the Public Service Act read with the regulations.

- 5 Section 3.2.5 deals with the Translation Measures and stipulated at 3.2.5.1 that Measures to facilitate translation from the existing dispensation to appropriate salary scales attached to the OSD based on the following principles that amongst other no person will receive a salary (notch or package) that is less than what he /she received on 1 July 2007 prior to the implementation of the OSD.
- 6 In the interpretation of the agreement section 5.2 provides that no amendment to this agreement shall be of force or effect unless it is reduced to writing and agreed upon by the parties to Council as a resolution of Council.
- 7 It is common cause that the resolution did not make adequate provision for the translation of the Applicants. This is borne out by the oral evidence of the Applicants and the meeting held with regard to those affected and their representatives on the 2nd February 2010 where in respect of the way forward the following was agreed *“With the above acknowledgement of the gap in the OSD framework document itself, both parties agreed that the matter needs elevation to a level where the document was actually produced for a broader and much more encompassing interrogative process.”*
- 8 I am called to interpret the agreement and/or determine whether or not it was properly applied. It is clear that there was a gap in the document which means that I in the interpretation cannot go outside the scope of the agreement. In fact the agreement say if there is any conflict with the agreement the agreement is taking precedence (see clause 5.1 of resolution).
- 9 In the light of the above it is clear that the Respondent has translated the document correctly within the scope of the agreement. The fact that the parties failed to address the issue of the translation of assistant managers to deputy managers cannot be rectified by means of interpretation and requires the amendment of the resolution.

AWARD

The case against the Respondent is accordingly dismissed.



Adv. RONNIE BRACKS

P^SH^SB^C Panelist