



# ARBITRATION AWARD

Panellist/s: Joseph Mphaphuli  
Case No.: PSHS428-11/12  
Date of Award: 26-Feb-2012

In the ARBITRATION between:

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

**ARBITRATION  
AWARD**

PSA obo Nomvungu, X

(Union/ Applicant)

And

Department of Correctional Services – Kwazulu Natal

(Respondent)

Applicant's Representative: Mr. Naidu

Applicant's Address: PO Box 19021

Domerto

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Respondent's Representative: Mr. Nonyongo

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Respondent's Address: Private x9126

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#### **DETAILS OF HEARING AND REPRESENTATIONS**

The hearing took place at the Respondent's premises in Westville, Durban on Monday 13 February 2012. The hearing was conducted in terms of Section 191 of the Labour Relations Act 66/1995.

Mr Nonyongo, Legal Administration Officer represented the Respondent. Mr Naidu, PSA official appeared on behalf of the Applicant.

#### **ISSUE IN DISPUTE**

Interpretation or application of a Collective Agreement namely, Resolution 3 of 2007.

#### **BACKGROUND TO THE DISPUTE**

The Applicant served in the capacity of Divisional Head, Health Care – Westville Prison. She commenced employment on 01 September 2003. She was currently remunerated at

R 236 690.00 per annum.

## **COMMON CAUSE ISSUES**

- The Applicant was appointed Divisional Head on 01 August 2008.
- The matter in dispute was regulated in terms of Resolution 3 of 2007.

## **SUBMISSIONS BY THE APPLICANT PARTY**

The Applicant was a unit manager at a Youth Centre. The dispute in respect of translation gave rise to a grievance by the affected health professionals in July 2008. Professional Nurses in Correctional Services complained that the Correctional Department – did not comply with Resolution 3 of 2007.

According to the professional nurses the Respondent did not comply with the provisions of the Annexure to the Settlement Agreement dated 07 August 2009.

In particular clause 3.4 of the Annexure to the settlement.

Further provision in terms of Annexure A of the Occupation Specific Dispensation confirms that the Applicant was a qualified and competent person to be translated in terms of Resolution 3 of 2007.

Accordingly it was the Applicant's case that the Applicant should have been translated to the position of Operational Manager, general stream Grade 1 effective 01 August 2008 at the applicable rate of pay.

## **SUBMISSIONS BY THE RESPONDENT**

The Collective Agreement in dispute was Resolution 3 of 2007. The Resolution so referred to was binding on the Department of Correctional Services. The Resolution stipulated that the requirements for appointed as an operational manager was that the applicant must have occupied a qualifying position for appointment as at 30 June 2007.

It is therefore a condition for appointment that the affected employee must have been in the service of the Respondent on or before 30 June 2007.

The Applicant did not meet with the requirements stated as she only commenced employment on 02 September 2003 and only occupied the qualifying position of chief professional nurse on 02 December 2007. Accordingly the Applicant fell outside the ambit of Resolution 3 of 2007.

In terms of the spirit of the Occupation Specific Dispensation the translation process ended on 30 June 2007. Positions advertised beyond this point would be rewarded in a manner that would attract the requisite training, skills, qualifications and experience.

## **ANALYSIS OF ARGUMENT**

There was no argument that the cut off date in terms of the Occupation Specific Dispensation and Resolution 3 of 2007 was 30 June 2007. For one to benefit from the provisions of the Resolution one had to be in the employ of the Department and occupying a qualifying position at the time.

Even if it was to be accepted that the Settlement Agreement entered into between the Department of Health and Social Development and the employee organisations was binding on the Respondent, the fact remains that the Applicant's qualification remains measurable in terms of the annexure to the Settlement Agreement. The annexure makes similar provision to those found in the Resolution.

The specific provision reads:

"Parties agree that all nurses that meet the requirements of the OSD must translate to the OSD based on the duties they performed as at 30 June 2007".

At any rate the Applicant Party was not even in a position to prove that the Respondent though not a signatory to the Settlement Agreement was bound by the Agreement. Whichever way the Applicant's case did not pass muster of the Resolution and the Settlement Agreement in respect of the 30 June 2007 cut off date.

The Applicant was disqualified from benefiting from the Occupation Specific Dispensation, the Resolution and the Settlement Agreement. This owing to the fact that the Applicant did not satisfy the laid down requirement of being in a qualifying position on 30 June 2007.

The Applicant Party has failed to discharge the burden of proof and the application does not succeed.

## **AWARD**

1. The Respondent's interpretation or application of Resolution 3 of 2007 was accurate.
2. I dismiss the Applicant's application.



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Joseph Mphaphuli  
Signed  
PHSDSBC Panelist