



# ARBITRATION AWARD

Panelist/s: Advocate Ronnie Bracks  
Case No.: PSHS434-11/12  
Date of Award: 7 March 2012

In the ARBITRATION between:

NEHAWU obo G.S. Maseko

(Employee)

and

Department of Health and Social Development - Gauteng Province

(Respondent)

Employee Representative: NEHAWU obo G.S. Maseko

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Brakpan

1540

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Company/Employer representative: Department of Health- Gauteng Province

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## DETAILS OF HEARING AND REPRESENTATION

- A. The Arbitration was scheduled for hearing on the 2<sup>nd</sup> March 2012 at the offices of the Respondent in Johannesburg at Bank of Lisbon Building, corner Sauer and Market Streets.
- B. The Applicant was represented by Mr. Jeff Morifi, a NEHAWU official. Mr. Modisana Lelaka represented the Respondent. The proceedings were recorded both manually and electronically.

## ISSUE TO BE DECIDED

- ~~B.C.~~ Whether or not the Applicant was translated to the correct level in terms of the Council's Resolution 1 of 2010 commonly known as Occupational Specific Dispensation for medical officers, medical specialists, dentists, dental specialists, pharmacologists, pharmacists and emergency care practitioners (OSD); specifically if the resolution was correctly applied or interpreted.

## BACKGROUND TO THE ISSUE

- ~~C.D.~~ The matter relates to Resolution 1 of 2010 which is an agreement on the Addendum to PHSDSBC Resolution 3: Occupational Specific Dispensation (OSD) for medical officers, medical specialists, dentists, dental specialists, pharmacologists, pharmacists and emergency care practitioners. The Applicant alleges that the Respondent should have translated him into the post of Senior Clinical Manager (Chief Medical Officer). They failed to do so despite the fact that he had subordinates that he supervised. These subordinates were specialists, medical officers, etc. Instead of translating him into the post of Senior Clinical Manager he was translated into the post of Clinical Manager grade 1. This affected his salary. The Respondent denied that the Applicant was incorrectly translated. It was stated that he failed to meet the criteria set out in Resolution 1 of 2010 as it was a new post introduced by that Resolution.
- ~~D.E.~~ The matter was recorded both manually and electronically and below appears only the salient points of the evidence of the witnesses.
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## SURVEY OF EVIDENCE AND ARGUMENT

### EVIDENCE

#### Documentary

- F A bundle of documents was submitted.

#### Employees' Evidence:

##### **Goodhope Sifiso Maseko after being sworn in testified as follows:**

- G He was the Chief Medical Officer at the Pholosong Hospital and supervised all the doctors and also did their performance and leave management. He reported directly to the CEO Mr. Modise. In addition he supervised all allied services as well as specialists and was part of the executive. He was referred to paragraph 2.3.2.1 on p.7 which stipulated the following:

*“Translation to the OSD post of Senior Clinical Manager: Medical/Senior Clinical Manager: Dental is only applicable to employees-*

*(i) who occupied a permanent post of Chief Medical Officer or Chief Dentist on salary level 12 pre-OSD as at 30 June 2009 on the establishment of a health facility; and*

*(ii) Where it was required of the incumbent and contained in the job description to directly supervise more than one post of Chief Medical Officer or Chief Dentist, which post was converted/aligned to that of Clinical Manager on 1 July 2009 in accordance with the provisions of PHSDSBC Resolution 3 of 2009.*

H The witness then explained the organogram they had and the reporting hierarchy and said they were even able to attract specialists. The Chief Medical Officer would report to such officers. He then continued to explain the different levels of reporting and posts. In reading the Resolution he believed that he had also qualified because he had Medical Officers and Specialists reporting to him.

I As a result of this he communicated with the Department to inform them that he had not been correctly translated. He told them that when the above was considered he should have been translated to Senior Clinical Manager.

J According to his interpretation he met the requirements “to directly supervise more than one post of Chief Medical Office” with all the Medical Officers and Specialists reporting to him He believed this was the absolute minimum requirement.

K He conceded that there was only a vacant post for Chief Medical Officer and that he was not supervising any Chief Medical Officers. However, he was supervising Principal Specialists. He believed that for this reason he was not properly translated despite qualifying.

L Under cross-examination it was put to him that in terms of the Resolution 2.3.2.1 he did not qualify as he did not have any Chief Medical Officers reporting to him. The Applicant explained that he had various medical officers and specialists reporting to him and he believed that the Resolution set a minimum requirement and the fact that all the specialists and doctors were reporting to him qualified him to be translated to that position.

#### **Employer's Evidence:**

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

**Annamaria Cilliers, Deputy Director, testified as follows:**

M She referred to p.2 and said it was the table used to translate the Applicant. Page 3 was the individual form he filled in which was used to determine whether he met the criteria and what his qualifications were. The Applicant was translated to Clinical Manager because he was a Chief Medical Officer with supervisory functions. She referred to Resolution 1 of 2010 and said that to qualify for senior Clinical Manager there were two criteria which needed to be met. Firstly, he needed to be in a *permanent post of Chief Medical Officer on salary level 12*. Secondly he should directly supervise more than one post of Chief Medical Officer. In respect of the second criterion there should be documentary proof.

- N She was then referred to p.13 which is part of annexure A and was the appointment requirements. She said the criteria which had to be met were set out in this document. The witness said if the Applicant wanted to be in the position he had to meet these requirements. That is, he should have 8 years of actual service as Clinical Manager. The witness also explained that when a Chief Medical Officer has supervisory functions this experience could be considered. If he wanted to move from grade 1 to grade 2 the only manner in which it could be done was that he should be promoted into a higher vacant post.
- O The witness was referred to p.15 which she identified as Circular Minute 72 of 2010 and said it was sent to the different institutions with the request that they should forward the names of candidates to the Department of Health. The motivation that was forwarded in respect of the Applicant was on pages 17 & 18. The hospital raised two options but both were rejected and the Applicant was informed that he did not meet the requirement as more than one Clinical Manager needed to be reporting to him and not just any specialist.
- P The witness was subjected to extensive and arduous cross-examination but nothing significant emerged.

## CLOSING ARGUMENT

***The parties submitted their closing arguments which are a matter of record and for the sake of brevity it will not be repeated.***

## ANALYSIS OF EVIDENCE AND ARGUMENT

1. Resolution 1 of 2010 is an Addendum to Resolution 3 of 2009 and is aimed at Occupational Specific Dispensation (OSD) for medical officers, medical specialists, dentists, dental specialists, pharmacologists, pharmacists and emergency care practitioners.
2. The objectives of the agreement are to:
  - Give effect to paragraph 1 of the Addendum to PHSDSBC Resolution 3 of 2009 for the categories mentioned therein;
  - Provide revised salary scales for the affected OSD post/job levels as reflected in Annexures A(a) and A(b) to this agreement;
  - Provide translation tables as reflected in Annexures B1, B2 and B3 to this agreement to facilitate translation to the revised salary scales/packages for the employees in the ring-fenced occupational/professional categories mentioned in paragraph 1.1;
  - Replace the OSD post/job levels of Assistant Manager: Medical/Dental Services and Manager: Medical/Dental Services in PHSDSBC Resolution 3 of 2009 with a new single (amalgamated) post/job level of Manager: Medical/Dental Services, as reflected in Annexures A1 and A(a) of this Agreement.;

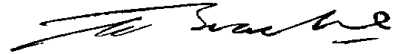
- Translate employees affected by the provisions of paragraph 2.1.4 to the new job level/post of Manager Medical/Dental Services, as per translation keys in Annexure B1;
- Introduce the following additional OSD job/post levels as reflected in Annexures A1 and A(a) of this Agreement:
  - (i) Senior Clinical Manager (Medical) and Senior Clinical Manager (Dental)
  - (ii) Head of Clinical Unit (Stomatology) and Head of Clinical Unit (Pharmacology)
  - (iii) Head of Clinical Department (Stomatology) and Head of Clinical Department (Pharmacology)
- Amend Annexure A1 to PHSDSBC Resolution 3 of 2009 to provide for appointment and grade progression requirements for the new post/job levels referred to in paragraph 2.1.6.

- 3 The issue which concerns the Applicant is to be found in clause 2.3.2.1 which stipulates: *Translation to the OSD post of Senior Clinical Manager: Medical/Senior Clinical Manager: Dental is only applicable to employees-*
- (i) *who occupied a permanent post of Chief Medical Officer or Chief Dentist on salary level 12 pre-OSD as at 30 June 2009 on the establishment of a health facility; and*
  - (ii) *Where it was required of the incumbent and contained in the job description to directly supervise more than one post of Chief Medical Officer or Chief Dentist, which post was converted/aligned to that of Clinical Manager on 1 July 2009 in accordance with the provisions of PHSDSBC Resolution 3 of 2009.*
- 4 The evidence presented in respect of the Applicant, which is undisputed, is that the Applicant is a Chief Medical Officer on salary level 12 which means that he qualifies in respect of this criterion. In respect of the second criterion which is that he should “*directly supervise more than one post of Chief Medical Officer*” it is clear that the Applicant was not supervising any Chief Medical Officers. In fact at best the Applicant was supervising a vacant Chief Medical Officer post. Even if I were to consider this the Applicant still would not meet the criterion as it needed to be more than one post.
- 5 The view was held by the Applicant’s representative that the criterion laid down was the absolute minimum and should be interpreted more broadly to include any other medical officers reporting to the Applicant and that under those circumstances he should qualify. I have considered this view and the only problem with that line of reasoning is that this is an agreement between the various parties and that as a general rule agreements are normally written very specifically. For this reason, if the parties wanted to include other specialists reporting that would have been included in the agreement.
- 6 For this reason it is my view that the Applicant was correctly translated since the criteria are that he should have *occupied a permanent post of Chief Medical Officer on salary level 12 and directly supervise more than one post of Chief Medical Officer*. The fact that the Applicant only qualified on one criterion did not qualify him to be translated to the post of Senior Clinical Manager.

7 In the light of the above it is clear that the Respondent has translated the Applicant correctly within the scope of the agreement.

AWARD

The case against the Respondent is accordingly dismissed



Adv. **RONNIE BRACKS**

PSHSBC Panelist