



ARBITRATION AWARD

Panellist/s: Jerome Mthembu
Case No.: PSHS446-11/12
Date of Award: 11-Jun-2012

In the ARBITRATION between:

HOSPERSA obo Isaacs, C.L
(Union / Applicant)

and

Department of Health - Northern Cape
(Respondent)

Union/Applicant's representative: _____

Union/Applicant's address: _____

Telephone: _____

Telefax: _____

Respondent's representative: _____

Respondent's address: _____

Telephone: _____

Telefax: _____

ARBITRATION AWARD

DETAILS OF HEARING AND REPRESENTATION

1. The hearing was held on 22 May 2012. Mr. Olivier, an Official of HOSPERSA represented the Applicant, C.L. Isaacs and Mr. Pape the Respondent.
2. The parties filed Heads of Argument on 6 June 2012.
3. The Applicant referred an unfair labour practice dispute relating to promotion based on the following:
 - 3.1 That the Respondent unilaterally relocated the Applicant from the Nursing Service Manager position at West End Hospital to that of Mental Health Programme Manager with effect from 1 April 2001;
 - 3.2 The Respondent did not remunerate the Applicant as a Programme Manager until the implementation of the Nurses OSD Agreement.

SURVEY OF THE ARGUMENTS

APPLICANT'S CASE

4. It was averred on behalf of the Applicant that prior to her relocation, she was on salary level 10.
5. The designation of Nursing and Clinical Support for Mental Health was then amended to that of Mental Health Programme Manager. All other Provincial Programme Managers were remunerated at Deputy Director on salary level 11 and 12.
6. Ms. N.P. Faas, the Acting Director: HRM, stated in her letter dated 10 February 2011 to HOSPERSA that Deputy Managers at the Directorate priority programmes were

all at level 11, no appointments were made at level 12. If there was any, it would have been a result of either a counter offer, aimed at retaining an employee.

7. However, the Applicant's salary was never upgraded to salary level 11 as per the other programme managers.
8. In addition to lodging a grievance, letters were submitted to the MEC for Health and the Acting HOD, but no response was received from them.
9. Once the Nurses OSD was completed, the Respondent translated the Applicant as a Programme Manager, thus confirming that the Respondent had agreed that the Applicant should be a Programme Manager.
10. The Applicant was translated as a Programme Manager from 1 July 2007 as per the OSD agreement.
11. Based on the above, the Applicant suffered a loss of income.
12. The Respondent is therefore required to pay the Applicant the following:
 - 12.1 Salary arrears: R258 356.50
 - 12.2 Arrear bonus: R22 440.00
 - 12.3 Arrear Pension (Employer's Contribution) R38 753.48
(15 % of salary)
TOTAL: R319 549.98
13. The Respondent should also be required to pay interest of 15,5 % per annum on these amounts from 1 April 2001 to date of payment.

RESPONDENT'S CASE

14. It was argued that the Applicant was never appointed on level 11 as a Deputy Manager, but was relocated with the same salary level.
15. Her benefit to level 11 was based on OSD, meaning that her post was translated to salary level 11 because of OSD and she had benefited from it.
16. There was therefore no unfair labour practice against the Applicant because she was relocated and not promoted.
17. The Applicant has never filed a grievance relating to job upgrading or evaluation of her post nor did she lodge a grievance relating to acting in a higher post since she claims that she should have been placed on salary level 11.
18. It was denied that the Respondent acknowledged that the salary level 11 is the correct level for her. The Respondent simply explained to her that it does not have any Deputy Manager at priority programme at salary level 12 and only has such on level 11.
19. All the Deputy Managers at priority programme except the Applicant applied for the post of salary level 11 and were promoted (she relocated).
20. The only time an Official is promoted, is when the Human Resources Recruitment processes are performed. In the Applicant's instance, these processes were not performed because she was relocated and not promoted.
21. The *onus* rested on the Applicant to prove her unfair labour practice dispute based on promotion and she has failed to do so.
22. The response to the Applicant was to inform her that she was translated in terms of OSD to a Deputy manager.
23. Due to her silence for eight years, she did not have any problems or objections to her relocation.

24. The Applicant cannot prove the unfair conduct based on promotion by the Respondent. She was relocated and not promoted.

ANALYSIS OF THE ARGUMENT

25. "Promotion" was defined in *Mashegoane v University of the North [1998] 1 BLLR 73(LC)*, as being elevated or appointed to a position that carries greater authority and status than the current position an employee is in.

26. This includes the non-appointment of employees to newly created posts, provided that appointments to such a new post would have elevated the employee's status.

27. Therefore, a dispute concerning a notch increase within the same post does not constitute a dispute about "promotion". See *Sukhdeo v Department of Social Welfare & Population Development, KZN [2006] 5 BALR 525 (PHWSBC)*.

28. Similarly, a claim to have a post upgraded is a dispute of interest and does not fall within the scope of promotion. See *Polokwane Local Municipality v SALGBC [2008] 8 BLLR 783 (LC); PSA and SARS (2010) 31 ILJ 2749 (CCMA)*.

29. *In casu*, the Applicant has not shown that she deserved to be promoted as the position carries greater authority and status than her current position.

30. Therefore, on an analysis of the Applicant's argument, it clearly shows that her case concerns a salary notch increase within the same post and as stated above, does not constitute a dispute about "promotion".

31. It is trite in the Public Service as the Respondent has correctly argued that for an employee to be promoted, the Human Resources Recruitment processes must be in place. That is not the case here. The Applicant has not applied for the post but has been relocated.

32. However, in fairness to her, the Respondent has paid her OSD benefits as if the post was a salary level 11, but that does not entitle her to promotion without the recruitment process being first adhered to by the Respondent.
33. It is indeed startling that, for years the Applicant did not complain about her relocation but now all of a sudden, wants to be promoted through the back door without an adherence to fair recruitment processes.
34. I concur with the Respondent that Faas's letter does not confirm or acknowledge that the Applicant should be on level 11. Deputy Managers at the Directorate Priority Programmes (those that were promoted) were at level 11 and no appointments were made at level 12.
35. As the Respondent has alluded in its argument, if the Applicant felt that the job contents became more, she should have applied for a job evaluation.
36. It is evident as stated above, that the Applicant's case concerns a salary notch increase within the same post and it does not therefore constitute a dispute about "promotion".

AWARD

37. The Respondent has not committed an unfair labour practice relating to the promotion of the Applicant.
38. The Applicant's application is dismissed without an order for costs.


JEROME MTHEMBU
PHSDSBC PANELIST