

PHSDSBC

ARBITRATION AWARD

Case Number: PSHS465-11/12

Panelists: Malusi Mbuli

Date of Award: 30-10-2012

In the **ARBITRATION** between

NEHAWU obo L.C. Ndzimela

(Applicant)

And

Department of Health – Eastern Cape Province

(Respondent)

DETAILS OF THE HEARING AND REPRESENTATION

1. The matter came before the PHSDSBC for arbitration under section 24{2} 24 {5} as an Interpretation and Application of a Collective Agreement. It was set down for arbitration hearing at the Department of Health, Maluti Community Centre in Maluti.
2. The applicant L. C. Ndzimela attended the hearing and was represented by Miss. N. Mafanya an official of the applicant's trade union NEHAWU.
3. The respondent Department of Health was also present at the hearing and was represented by Mr. Q. van der Merve, an official of the respondent.
4. The matter was finalized on the same day the 22nd of October 2012 and the parties agreed to file their arguments on or before the 26th of October 2012.

ISSUE TO BE DECIDED

5. I am required to Interpret and Apply the Collective Agreement of PHSDSBC Resolution 3 of 2007, and determine whether the applicant was correctly translated in terms of the said resolution read with the arbitration award case no PSHS492-08/09.
6. Whether the applicant qualify for translation to OSD with effect from the 01st of July 2007 in terms of PHSDSBC resolution 3 of 2007 and whether she was placed at the correct Grade and notch.

SURVEY OF EVIDENCE

7. The parties did not lead any evidence on the matter but submitted their heads of arguments with supporting documentation because the facts in this dispute were common cause. It follows that the matter was not recorded and the party's arguments will form the record of the proceedings.
8. Issues that are common:
 - That the applicant was employed by the respondent as a Professional Nurse at in 1993.
 - The applicant was already a Chief Professional Nurse before the implementation of the Collective Agreement on the implementation of the OSD.

- Mrs. Ndzimela L.C. was translated to Professional Nurse Grade 1 instead of Professional Nurse Grade 2 when the said collective agreement was implemented.
- Respondent failed to consider her experience in terms of annexure C of the PHSDSBC Resolution 3 of 2007.
- . The applicant was translated to R160 470, 00 whereas she had 14 years experience as a SANC registered Professional Nurse.

9. Issues that are in dispute:

- Whether the applicant was correctly translated by the employer with effect from the 01st of July 2007. Whether the applicant should have been translated to the notch of R197 358, 00 with effect from the 01st July 2007 in terms of annexure C of the PHSDSBC Resolution 3 of 2007.

ANALYSIS OF EVIDENCE AND ARGUMENT

10. The applicant filed her arguments and the respondent's representative also filed their arguments in this matter. The facts are common and what was expected of the parties was to file brief arguments based on the agreed facts. The question that this award has to answer is whether the applicant should have been translated to grade 2 at the notch of R197 358, 00 with effect from the 01st of July 2007.
11. In trying to answer this question the issue that needs to be discussed is whether resolution 3 of 2007 is applicable to the applicant with effect from the 01st of July 2007.
12. This should be so because the implementation of OSD was effective from the 01st of July 2007 and any relevant position that qualified should be remunerated in accordance with the new OSD remuneration structure.
13. Both parties agree that the Public Health and Social Development Sectoral Bargaining Council Resolution 3 of 2007 and the Arbitration Award case no PSHS492-08/09 is applicable to the applicant's case.
14. This means that the applicant should have been translated to grade 2 and notch R197 358, 00 in terms of the said resolution and the arbitration award with effect from the 01st of July 2007.
15. I therefore make the following award.

AWARD

16. The applicant Mrs. L. C. Ndzimela was incorrectly translated or placed when OSD was implemented on the 01st of July 2007 and therefore should be translated to Grade 2 at notch R197 470, 00 as from this date.
17. The respondent is ordered to adjust the salary scale and grade of the applicant to R197 470, 00 in line with the PHSDSBC Resolution 3 of 2007 as from the 01st of July 2007.
18. The respondent is also ordered to pay back pay to the applicant which is an amount equivalent to the difference in salary scale of the applicant and the salary scale in the said notch.
19. The respondent will adjust the salary scale of the applicant as reflected above not later than the 15th of November 2012.

Signature:



Commissioner: Malusi Mbali