



**PHSDSBC**

PUBLIC HEALTH AND SOCIAL DEVELOPMENT  
SECTORAL BARGAINING COUNCIL

# ARBITRATION AWARD

<sup>1</sup>Case No: PSHS504-15/16

Panelist: Suria van Wyk

Date of award: 9 December 2015

In the matter between:

***NEHAWU obo PJ Mpiti***

(Union/Applicant)

and

***Department of Social Development – Free State***

(Respondent)

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## **DETAILS OF HEARING AND REPRESENTATION**

1. The arbitration hearing convened on 16 November 2015 at Boiketsong Old Age Home Boardroom in Thaba Nchu.
2. Mr TP Mofokeng from NEHAWU represented the Applicant and the Respondent was neither present nor represented despite being properly notified to attend via fax sent to 051 409 0602 on 20 October 2015.
3. A recording was made of the hearing.

## **ISSUE TO BE DECIDED**

4. The issue to be decided is whether the Applicant is entitled to receive FTSS Allowance as per Resolution 3 of 2011.
5. The Applicant sought payment of the FTSS Allowance as per Resolution 3 of 2011.

## **BACKGROUND TO THE ISSUE**

6. The Applicant was employed on 1 December 2007 as a Security Officer. He was earning R81312.00 per annum on a post level 3. He was appointed as a Full Time Shop Steward (FTSS) and released by the Respondent for a period of twelve months. Since his appointment as FTSS the twelve months have lapsed.
7. Resolution 3 of 2011 is a collective agreement which deals with the Agreement on the Appointment of Full Time Shop Stewards. Paragraph 5.2.2. states that where the employee held a position lower than a salary level 6 before being seconded as an FTSS, such FTSS will be remunerated at salary level 6 by way of the payment allowance.
8. Department of Social Development – Free State and NEHAWU are both parties to Resolution 3 of 2011.
9. The entry level salary for a post level 6 was R138 345.00.

## **SURVEY OF EVIDENCE AND ARGUMENT**

10. At the outset, I must indicate that only relevant evidence (pertaining to the issue in dispute) will be recorded in the award and not all the evidence presented at the proceedings.

### **Applicant's case:**

11. Mr PJ Mpiti testified under oath to the following:

- 11.1. He was employed as a Security Guard on a post level 3.

- 11.2. He was elected as a FTSS and released by the Respondent for a period of twelve months to perform this task.<sup>2</sup>
- 11.3. He never received the FTSS Allowance in terms of Resolution 3 of 2011.
- 11.4. He lodged a grievance but the Respondent failed to attend to the grievance.

**Respondent's case:**

12. None presented.

**ANALYSIS OF EVIDENCE AND ARGUMENT**

13. A collective agreement is a written agreement concerning terms and conditions of employment, or any other matter of mutual interest, concluded by one or more registered trade unions on the one hand and, on the other hand –
  - a. One or more employers;
  - b. One or more registered employers' organisations; or
  - c. One or more employers and one or more registered employers' organisations.
14. Section 23 of the Labour Relations Act, 1995 determines the binding nature of collective agreements concluded in bargaining councils. It states that subject to the provisions of section 32 and the constitution of the bargaining council, a collective agreement concluded in a bargaining council binds—
  - (a) the parties to the bargaining council who are also parties to the collective agreement;
  - (b) each party to the collective agreement and the members of every other party to the collective agreement in so far as the provisions thereof apply to the relationship between such a party and the members of such other party; and
  - (c) the members of a registered trade union that is a party to the collective agreement and the employers who are members of a registered employers' organisation that is such a party, if the collective agreement regulates—
    - (i) terms and conditions of employment; or
    - (ii) the conduct of the employers in relation to their employees or the conduct of the employees in relation to their employers.

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<sup>2</sup> Bundle A, page 17.

15. As a party to Resolution 3 of 2011, the Respondent is obliged to pay the allowance due to the Applicant. He was employed on a post level 3 and he should have been remunerated as a level 6 whilst serving his term as a FTSS. The Respondent was furthermore aware of the Applicant's appointment as they released him for this purpose for a period of twelve months.

## **AWARD**

16. The Applicant, Mr PJ Mpiti, is entitled to receive the FTSS Allowance as stipulated in paragraph 5.2.2. of Resolution 3 of 2011.

17. The Respondent, Department of Social Development- Free State, is ordered to pay the Applicant, Mr PJ Mpiti, the amount of R57 033.00 (Fifty seven thousand and thirty three rand) being the FTSS Allowance due to him. This money must be paid into his bank account (which is known to the Respondent) by no later than 31 December 2015. This amount will earn interest in terms of section 143 (2) of the Labour Relations Act, 1995.

18. Calculation:

Post level 6 = R138 345.00 per annum

Post level 3 = R81 312.00 per annum

FTSS Allowance:

R138 345.00 – R81 312.00 = R57 033.00 per annum

19. There is no order as to costs.

Signature:



Commissioner: **Suria van Wyk**