

Council Name
**PUBLIC HEALTH SOCIAL
DEVELOPMENT SECTORAL
BARGAINING
COUNCIL**

ARBITRATION AWARD

Panellist/s: ADVOCATE CHARLTON REX
Case No.: PSHS 517-10/11
Date of Award: 14 MARCH 2011

In the ARBITRATION between:

HOSPERSA obo ANDREWS,S
(Union / Applicant)

and

DEPARTMENT OF HEALTH
(Respondent)

Union/Applicant's representative: MR .OLIVIER

Union/Applicant's address: HOSPERSA

KIMBERLEY

8300

Telephone: 053-8422001

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Respondent's representative: MR. WOLFE

Respondent's address: DEPT. OF HEALTH

KIMBERLEY,8300

Telephone: 053-8022208

Telefax: 053-8022432

ARBITRATION AWARD

DETAILS OF HEARING AND REPRESENTATION:

1. The present dispute between HOSPERSA obo Williams (hereinafter referred to as the applicant) and Department of Health (hereinafter referred to as the respondent) was referred to arbitration under the auspices of PHSDSBC. At the arbitration proceedings which were held on 2 February 2011 & 18 February 2011, the Applicant was represented by Mr. Olivier from HOSPERSA, while Mr. Wolf represented the Respondent.

ISSUE TO BE DECIDED

- 2.1 Whether or not the Respondent committed unfair labour practices.
- 2.2 Parties agreed to deal with the matter by means of Written Submissions.
- 2.3 If I do not refer to submissions made it should be noted that it was duly considered.

SURVEY OF EVIDENCE AND ARGUMENT:

CASE FOR APPLICANT –MR. OLIVIER

3. Applicant is an Administration Clerk at Kimberley Hospital and was stationed at Internal Medicine Ward.
4. During January 2007, Senior Managers (current Nursing Services Manager, Ms. M Mdokwana and the Head of Finances, Mr. K Mokwena) requested the applicant to assist in the fees office at Kimberley Hospital.
5. The functions performed here is the submission of accounts to Medical Aid Schemes.
6. This assistance was temporary and applicant was placed back at the Internal Medicine Ward.
7. During November 2007, applicant was requested again by Mdokwana to assist in the fees office. At this time, the member was of the opinion that due to the discussions with Mdokwana, that once posts were advertised and applicant's willingness to assist would allow him to apply and be successful in the application for a higher post.
8. Applicant submitted a request for job evaluation. The job evaluation was never done.
9. The Managers in the fees office (Mokwena & Kompeni) have on more than one occasion created an expectation that employees in the fees office are required to be remunerated on salary level 6.

10. By not advertising the posts at the required post level 6, the respondent has misappropriated the skills of Mr. Andrews.
11. The respondent in advertising the post at a lower level did not allow Mr. Andrews to apply for the posts.

CASE FOR RESPONDENT - MR. PUDIKABEKWA

12. Applicant was stationed at Internal Medicine as a ward clerk.
13. He subsequently requested for a transfer to the fees office. The transfer was a lateral transfer which implied that he retained the same conditions and benefit at salary level 5.
14. In 2009 , Amin Clerk posts were advertised at salary level 4. Applicant did not apply as this was at a lower salary level (4).
15. The creation , degrading and filling of a post is purely the prerogative of the Respondent.
16. Applicant is currently the only employee at fees office at salary level 5 whilst, the other employees are currently at level 4.
17. The applicant was not overlooked for promotion where he possess objective attributes, such as experience or qualifications and the respondent cannot explained why he was overlooked.
18. Respondent at no point, created a reasonable expectation that applicant will be promoted.

SURVEY OF EVIDENCE AND ARGUMENT

19. To succeed in an action based on an alleged unfair labour practice , employees must prove that the conduct or practice complained of falls within the terms of one of the forms expressly listed in the definition of unfair labour practices.
20. In this matter (in my view) the complaint does not relate to a situation where applicant applied for a post (for promotion) , where he was overlooked whilst possessing objective attributes which the other candidates does not have.
21. It is common cause that applicant was transferred to the fees office at Kimberley Hospital.
22. The concern for applicant is that it was the views of his managers (which also influenced him to believe) that posts at the fees office should be at salary level 6. It is trite law that Commissioners must make decisions of facts and not perceptions properly placed before them.
23. Except for this opinion held, nothing was done and or proof was given that such a process was in motion before applicant joined the fees office. It can hardly be said that by word of mouth alone (by senior officials) an reasonable and/or legitimate expectation was created.
24. In the matter to which reference is made (The Award of my learned colleague , Commissioner Mthethwa) the two applicants concerned occupied the posts for over six (6) years and steps were already taken to upgrade the posts.
25. This matter cannot be compared and is not similar like the abovementioned matter.
26. In this instance applicant was aware at the time of his transfer that posts in the fees office

are at a lower salary level, and yet he elected to accept the transfer.

27. The mere fact that positions are advertised at lower salary levels does not make it unfair.
28. What is required from me, in this case , is to do a job evaluation and to rule that the posts in the fees office must be upgraded to post level 6. With all due respect, such a finding is not possible as the creation , grading and filling of posts falls within the prerogative of employers.
29. On the evidence placed before me and based on my own sense of fairness I have concluded that applicant have not discharged the onus, in proving that respondent have committed unfair labour practice, successfully.

AWARD:

30. The matter is dismissed.

Name: Advocate C.M Rex
PHSDSBC Panelist/Commissioner
Date: 14 March 2011