



PHSDSBC

PUBLIC HEALTH AND SOCIAL DEVELOPMENT
SECTORAL BARGAINING COUNCIL

ARBITRATION AWARD

Case No: **PSHS529-18/19**

Commissioner: **Queendy Gungubele**

Date of award: **14 May 2019**

In the matter between:

NUPSAW obo ELIZABETH MAAKE

(Applicant)

and

DEPARTMENT OF HEALTH- GAUTENG

(Respondent)

BACKGROUND TO THE DISPUTE

1. This matter was heard on 11 February 2011 and it was at S G Lourens Nursing College in Pretoria.
2. The applicant was represented by Mr. Maropeng Maphoto, the Shop Steward of NUPSAW, whilst the respondent was represented by Ms. Tebogo Baloyi, the Deputy Director, Labour Relations.

ISSUE TO BE DECIDED

3. Whether the respondent failed to interpret the Collective Agreement correctly, thereby depriving the applicant of her Accelerated Progression in accordance with the Occupational Specific Dispensation "OSD", under Resolution 3 of 2007.

DETAILS OF HEARING AND PRESENTATION

4. The applicant, Ms. Elizabeth Maake is employed by the respondent as the Assistant Manager Nursing/Area Manager and she is remunerated at R565 000.00 per annum. She referred her dispute to the Bargaining Council on 21 May 2018, alleging that she was incorrectly translated as per the OSD Collective Agreement, Resolution 3 of 2007.
5. The applicant said that she was a Professional Nurse and she was wrongly translated onto a Community Health Service Nurse instead of a Professional Nurse. She had to move from a higher post to a lower one, pending her qualification in her specialty to a Clinical Nurse Practitioner. She said that she was translated to Clinical Nurse Practitioner Grade 1 at salary level 8. She referred to her salary advice on page 2 of bundle X, which reflected 2008 whilst the report on page 17 of bundle X referred to a date in 2007 and submitted that the dates did not tally.
6. The applicant stated that the Translation Key /OSD Directive on page 3 of bundle X should have guided HR on how to reward her. Page 4 of bundle X provided that the employee's years of service had to be considered and graded in order for her to be translated to a specialty stream as follows:
 - i. From 4 -12 years of service an employee is to be placed on Grade 1
 - ii. From 4 years of service and above, an employee should be placed on Grade 2.
7. The applicant averred that she was in the nursing profession for 24 years but her translation was not in line with the OSD Directive, as she was translated based on her position of Community Service Grade 1. She argued that she was supposed to be translated to be at salary notch of R228 795.00 instead of R175 350.00 She referred to the Translation Key Tables on page 3 of bundle X. She denied that she was translated to 2 posts at the same time, i.e Professional Nurse Specialty and General Nurse.
8. She said that the wrong translation impacted negatively on her emotionally but she continued working and even got the CEO Awards.

9. The applicant also argued that an employee should be translated to phase 2 after she had been through phase 1 as per page 9 of bundle X. She said that her full service of 24 years in the Public Sector should have been recognized when she was translated on 30 June 2007, in order to determine her grading. She averred that the phase 1 notch would determine her salary if her grading were higher during phase 2. She stated that in her case, the respondent got stuck in phase 1 and failed to implement a once off translation.
10. Under cross-examination, the applicant agreed that Resolution 3 of 2007, clause 3.2.5.3 applied to her when she had a specialty stream of Primary Health Care in line Part C on page 4 of bundle X. She also conceded that her qualification of 11 years was considered. She added that she did not understand that she was supposed to be placed on Grade 1 before she could be moved from a non-OSD position. When it was put to her that she had benefitted from the figure of R235 659.00 on OSD as per page 9 of bundle X, she agreed.
11. The applicant also conceded that she received the amount of R175 350.00 in line with her 11 years of specialty experience in accordance with part C. She was later placed on Grade 2 as per page 16 of bundle Y, considering her 24 years of service, which paid her the amount of R235 659.00.

RESPONDENT'S CASE

12. Mr. Lucas Sekwele, the HR Clerk testified that his duties were to ensure that all the Regulations, Collective Agreements, Policies and Procedures were properly interpreted and implemented. He said that he was familiar with the applicant's case and that he presented the OSD Policy, Resolution 3 of 2007. He conceded that the applicant had a specialty stream when the OSD kicked in during 2007. He submitted that the applicant was translated under clause 3.2.5.3 (1) (a), as per page 16 of bundle Y, from the position of a Professional Nurse to that of a Clinical Nurse Practitioner in accordance with phase 1 and part C on page 4 of bundle X.
13. He submitted that the applicant qualified to be translated in 2007, as she had 11 years of specialty qualification as a Professional Nurse. He referred to the "persal" report to verify the correct dates. He said that the applicant got an annual adjustment of R147

327.00 on 01 July 2007 as per page 9 of bundle Y. She was further translated to the OSD to the amount of R151 257.00.

14. On 01 July 2007, the applicant was promoted to a Clinical Nurse position and got R175 350.00 in recognition of her specialty of 11 years. She was also graded as per the OSD from grade 1 to Grade 2 for the full 26 years of service and got paid R235 659.00. He submitted that the applicant's translation from a Community Service position was immediately rectified on the same date as per the Code in the HR system.
15. He also argued that the applicant got R235 65.00 because of her years of experience as a Nurse, apart from her specialty of 11 years. He argued, further, that had the applicant had 28 years of service and more, she would have been translated at the last notch of R242 750.00. He said that they did not have any other grade beyond Grades 1 and 2. He averred that the translation was properly implemented and that there was no deviation from the Collective Agreement.
16. He argued, further, that the contents of page 39 of bundle X, clause 3.1.10 were not relevant to this case, as it talked about the creation of new posts and, furthermore, Resolution 3.2.3 was also not applicable in this case because the applicant already had the qualification. He referred to Resolution 3 of 2007 on Page 39 of bundle X, Clause 3.1.12.2 and averred that it undoubtedly applied to the applicant case.
17. He said that they currently used the Policy to for Performance Management for Promotion to a higher notch and OSD requirements for Grading. He added that the introduction of the Performance Management System was not in operation then and that they followed the OSD for progression purposes *via* the Guidelines from the Provincial Office. He stated that both the Guidelines and Part C of Resolution 3 of 2007 were aligned.
18. He submitted that when the applicant was put on Grade 2 level, she was paid in line with the employees who had 26 years of service. She had, therefore, benefitted more than she was supposed to.

19. The respondent also called Ms. Mapula Laurentia Magidimala, the Assistant Director-HR Management, to testify and she said that she had been working with OSD matters since its implementation. She referred to page 9 of bundle Y and said that the applicant underwent a series of translations as follows:
- i. 01 May 2007: Transfer between main frames
 - ii. 01 July 2007: Adjustments to salary level 8 of R147 327.00
 - iii. 01 July 2007: Professional Nurse at R151 217.00
 - iv. 01 July 2007: Promotion at R175 35 and
 - v. 01 July 2007: Graded OSD to level 10 at R253 659.00.
20. She also referred to page 12 of bundle X, which reflected the applicant's Diploma qualification in Clinical Nursing Science and her registration as a Primary Health Care Nurse. She said that the applicant was recognized for her Diploma by SANC and was translated as per the OSD as reflected on page 13 of bundle X.
21. She said that page 7 of bundle X focused on providing the Guidelines as to where to place a person according to various levels. The applicant was on notch R137 064 at level 8. She was translated to R151 257 instead of being placed at R165 285.00.
22. Ms. Magidimala testified, further, that page 12 of bundle X showed that the applicant had 10 years and 3 months' experience in the "specialty" Primary Health Care and, she was therefore supposed to be placed on R175 350.00 and also promoted at R253 659.00. She submitted that page 9 of bundle X, which referred to Community Service, was an error, which was immediately corrected and adjusted, whereby the difference was paid to the applicant. She argued that the applicant was never prejudiced because the error of putting her at R151 257.00 was corrected and she got paid the adjustment.
23. She stated that the applicant was graded to Grade 2 level, notch 7 and got paid R235 659.00 as per part C on page 4 of bundle X, instead of being placed at notch 2 in accordance with Resolution 3 of 2007. She was supposed to have been paid for her 14 years of General Nursing at R197 352.00. She was overpaid by being erroneously put at the 7th notch of a person who worked for 26 years.

24. She submitted that one qualified for a notch following every 2 recognized completed years of service. The applicant was wrongly translated as if she had 26 years of service and not 24 years, and that error should be corrected.
25. Under cross-examination, Ms. Magidimala conceded that the applicant was not translated correctly initially, as she was put at R147 327.00 instead of R151 217.00. The said error was duly rectified and the applicant got paid the shortfall. She stated that when they applied the OSD, they considered one's experience at phase 2. She averred that one's salary level was of no consequence. She stated that service/experience referred to the experience one had since obtaining the relevant qualification and not one's registration with SANC. She said that the OSD Guidelines on page 4, Part C, clearly referred to the applicant's experience in Primary Health Care and not her experience in nursing as a whole.
26. Ms. Magidimala also denied that the applicant was a Nursing Manager at the time of translation but a Clinical Nurse as per her Service Record on page 9 of bundle Y. She said that the letter on page 28 of bundle X, dated 2011 was not recognized during the translation and that they relied on the data from their official "persal" system. She said that the page 28 letter, sought to be the motivation from the applicant's manager to the effect that she voluntarily performed the functions of an Assistant Nursing Manager during the shortage of nurses. She denied that it was an Appointment Letter.

ANALYSIS OF EVIDENCE AND ARGUMENTS

27. It is the duty of the applicant to prove, on the balance of probabilities that the respondent's conduct amounted to the misinterpretation of the OSD Resolution 3 of 2007.
28. It is evident that the applicant misdirected herself by believing that the Motivation Letter on page 28 of bundle X, whereby she appeared to have assisted in a higher position due to staff shortages was a valid promotion to the position of Assistant Manager. The respondent's evidence to the effect that according to the formal "persal" records, the applicant was correctly translated as a Community Health Care Nurse and a Specialty Clinical Nurse successfully refuted her belief. Furthermore, her OSD translation was in

accordance with Clause 3.1.12.2 of Resolution 3 of 2007 and the Table on Part C on page 4 of bundle X.

29. The fact that the applicant was initially wrongly translated should not cloud the issues because there is evidential proof that the said error was rectified. The applicant also conceded, albeit reluctantly, that she was duly paid the shortfall.
30. The respondent's witnesses demonstrated, further, that the applicant's 24 years of service as a Registered General Nurse was erroneously placed at a higher notch of someone with 26 years of service. She was supposed to be paid at the 2nd notch and not at the 7th notch in accordance with the OSD Table on page 4 of bundle X, Part C. therefore, the applicant was inaccurately rewarded at R235 659.00 (7th notch), instead of R228 795.00 (2nd notch).
31. The respondent's corroborated evidence provided scientific proof that the provisions of **Clause 3.1.12.2 of Resolution 3 of 2007 and** part C on Page 39 of bundle X, were interpreted correctly. The applicant's allegations of misinterpretation on the part of the respondent were, therefore, not based on fact. Accordingly, Clause 3.13.1 on page 39 of bundle X would not be applicable in the applicant's case.

AWARD

32. I am not satisfied that the applicant, Ms Elizabeth Maake, has proven that the respondent, Department of Health-Gauteng, incorrectly interpreted the “OSD” Resolution 3 of 2007.
33. The applicant’s allegations were proven to be baseless, as it emerged that she had, actually unduly benefitted from the respondent’s conduct as per paragraph 32 herein above.
34. This matter is dismissed.

QUEENDY GUNGUBELE

A handwritten signature in black ink, appearing to read 'Queendy Gungubele', written in a cursive style.