



ARBITRATION AWARD

Panellist/s: Leslie Martin
Case No.: PSHS53-10/11
Date of Award: 20-Jul-2011

In the ARBITRATION between:

S.E. MC CALLUM

(Union / Applicant)

and

DEPARTMENT OF HEALTH – WESTERN CAPE

(Respondent)

PARTICULARS OF PROCEEDINGS AND REPRESENTATION

1. The arbitration took place at the offices of the Department of Health Western Cape, 4 Dorp Street, Cape Town on 3 May 2011 and 5 July 2011. The applicant, Ms. Shirley Esme Mc Callum (Mc Callum), was represented by Ms. T. Tyhilekile, an official with DENOSA. The respondent, the Department of Health, Western Cape, was represented by Mr. R. Collop, an assistant director.

THE ISSUE IN DISPUTE

2. The application and interpretation of collective agreement resolution 3 of 2007 which is a Public Health and Social Development Sectoral Bargaining Council agreement on the implementation of an occupational specific dispensation (OSD) for nurses.
3. Whether the position of chief professional nurse was a managerial position at 30 June 2007.

4. Whether Mc Callum was performing the duties of operational manager, as reflected in the OSD, as at 30 June 2007.

SUMMARY OF EVIDENCE AND ARGUMENT

5. Each party handed a bundle of documents into evidence to which neither party recorded any objections.
6. It was common cause between the parties that Mc Callum at 30 June 2007 was a chief professional nurse at Stikland Hospital (the hospital), a specialist psychiatric hospital.
7. Mc Callum testified under oath on her own behalf. Zinette du Preez (du Preez) an assistant manager at the hospital testified under oath for the respondent.

THE EVIDENCE FOR THE APPLICANT:

8. In terms of page 8 of the respondent's bundle of documents if Mc Callum was performing such duties she must translate to an operations manager when the OSD was implemented.
9. In 2007 Mc Callum regarded herself according to her duties as a manager and therefore ought to have been translated to an operations manager with the appropriate salary.
10. Before 1 June 2007 Mc Callum was performing duties such as being in charge of a ward. In this circumstance she would, for example, in the mornings hand out medication to patients; she would tell the staff their duties for the day; she would order food and do administration work and consult with doctors. The management visiting the ward would talk to Mc Callum and she in turn would consult with them and telephone them when she needed advice. She was accountable, for example, for the stock of the ward when she was in charge.
11. On several occasions Mc Callum was in charge of the hospital.
12. Mc Callum was the link between employees and the management of the hospital.
13. The above duties Mc Callum performed in ward 10 in June 2007 and July 2007 except that she was on vacation at the time but would return to those duties.
14. At the time Mc Callum had had four years experience after having obtained an honours degree in advance psychiatry in 2003.
15. Since Mc Callum started to work at the hospital in 1995 she would in rotation with others manage 3 wards at the same time which had approximately 26 beds. At night she was in charge of the hospital.
16. During the OSD, notwithstanding her experience and qualifications, the respondent regarded Mc Callum as an ordinary registered nurse.
17. The document at page 25 of the respondent's bundle of documents is Mc Callum's employment history, an extract from her curriculum vitae. It does not say that she was in charge in June 2007.

THE EVIDENCE FOR THE RESPONDENT:

18. Du Preez was acting as the head of nursing from June 2007 until June 2011
19. There are five area managers, one infection control manager and one nurse training manager who report to du Preez
20. At that stage she was responsible for the management of the nursing department and was part of the hospital's executive committee where decisions are made regarding any problems..
21. There were 34 CPNs (chief professional nurses) and their main responsibility was the quality of patient care. They were also given an opportunity to be in charge of a ward on a rotation basis. In the latter function they would report to the area manager. They were also part of a multi-discipline team-managed ward.
22. Du Preez did not know why Mc Callum says that she was in charge of the hospital as that was not the case.
23. The post of operations manager did not exist as at 1 July 2007 but was newly created when the OSD was implemented.
24. As all the CPNs were rotating all of them could not be translated into operations manager posts as there were only eleven such posts.
25. The summary at page 31 of the respondent's bundle of documents is of where Mc Callum worked from January 2001 until June 30 2007. It shows that she had participated in the rotation of CPNs in the wards and also that she was not in charge of a ward from January 2007 to June 2007.
26. When a CPN performed her duties as a CPN they were different from when she was the sister in charge of a ward.
27. The job description of the CPN did not change from 30 June 2007 to 1 July 2007. There was no difference in Mc Callum's duties before and after 1 July 2007.
28. When the CPN was the sister in charge she would delegate her CPN functions to other CPNs and would assume the duties of being responsible and accountable for the ward.
29. Mc Callum had not done night duty since 2001. Du Preez could not say that Mc Callum did night duty prior to that.
30. In order to be fair to all the CPNs the respondent issued a circular in terms of which all the posts were to advertised in order that all CPNs may apply therefor. The posts were advertised and Mc Callum was one of seventeen applicants. She was unsuccessful.

ANALYSIS OF THE EVIDENCE AND ARGUMENT

31. The many duties that Mc Callum testified she performed she clearly alleges are managerial functions and accordingly that she is therefore a manager. She contends that she should have therefore translated in terms of the OSD to a PN-B-3.
32. It is clear from the testimony of Mc Callum that for the purposes of the OSD she was regarded as an ordinary registered nurse.
33. I do however accept the respondent's argument and unchallenged testimony of du Preez that the operations manager posts had come about only at the implementation of the OSD in November 2007. I accept too that the persons holding the posts of manager such as for instance an area manager as at 30 June 2007 had consequently translated into the post of operations manager as they were holding these management positions and actually performing these management functions at that time.
34. It is clear too from the testimony of du Preez that when a CPN was in charge of the ward during her turn in the rotation system, she did manage the ward.
35. I cannot however agree with the argument of the applicant that this means that the CPN was a manager. I am of this view as those CPNs would have had to be appointed as managers in order to justify such a claim. One cannot simply become a manager by performing on occasion the functions of a manager. At most in such circumstances one may be able to dispute one's remuneration when working beyond one's station.
36. The evidence of the respondent through the testimony of du Preez shows that the rotation system was brought about as a consequence of their being more CPNs that wards for the purposes of managing the wards. This in turn suggests that but for the imbalance in the numbers all CPNs would be doing management functions all the time.
37. The OSD is clearly to the effect that the management of a ward for the purposes of translation in respect thereof is on a continuing basis and current to 30 June 2007.
38. It is clear that a CPN remains a CPN and does not become a manager by virtue of having performed managing functions in a specialty unit. The OSD suggests that it recognizes the work done by the CPN and that the CPN ought to be remunerated accordingly.
39. As I am of the view that the resolution must be interpreted to mean those currently (30 June 2007) performing those tasks as this would align with the number of positions available to be filled Mc Callum was accordingly advantaged by the fact that the respondent had decided to avail the posts to all those who had participated in the rotation system as she was clearly at the time of the implementation of the OSD not actually performing management functions. It cannot be interpreted to mean implementation of the OSD in accordance with the job description of the CPNs.

40. It is in fact appropriate to interpret the resolution in all positions to mean persons performing those functions in specific positions as at 30 June 2007. The resolution therefore does not in fact cater for persons involved in performing functions outside of their stations and then not as would be the case in the rotation system. The circular therefore issued by the respondent in dealing with such circumstance is appropriate and fair and in line with the correct interpretation of the resolution.

41. In fact, the evidence suggests that Mc Callum accepted this arrangement hence her application for one of the operations manager positions when these were internally advertised by the respondent.

AWARD

42. This application for relief in terms of the provisions of the Labour Relations Act 66 of 1995 as amended is dismissed.

COMMISSIONER: L. MARTIN

A handwritten signature in black ink, appearing to be 'L. Martin', written in a cursive style.

PANELIST: L. MARTIN