



PHSDSBC

PUBLIC HEALTH AND SOCIAL DEVELOPMENT
SECTORAL BARGAINING COUNCIL

ARBITRATION AWARD

Panellist: Elsabè Skinner

Case No: PSHS534-16/17

Date of award: 8 July 2017

In the matter between:

HOSPERSA obo Pieter Josua Boshoff

(Union/ Applicant)

and

Department of Health – Free State

(Respondent)

DETAILS OF HEARING AND REPRESENTATION

1. The matter was set down for arbitration proceedings on the 29th of June 2017 at Bongani Hospital in Welkom.
2. The Applicant was represented by Mr Ramokoatsi, an official of HOSPERSA. Mr Tsholo from HOSPERSA observed the proceedings. The Respondent did not attend the proceedings after the 30 minutes' grace period. I contacted Mrs Chabalala, the Case Management Officer, at the Council. She confirmed that the Respondent was notified via facsimile to four different fax numbers on the 10th of May 2017. I decided to proceed in the Respondent's absence as I was satisfied that the Respondent was properly notified of the proceedings.
3. The proceedings were manually and electronically recorded. No interpreter was used.
4. The Applicant presented a bundle which was marked A pages 1 – 23.

BACKGROUND TO THE ISSUE

5. The Applicant referred an interpretation and application of a collective agreement dispute to the Council on the 5th of August 2016.

ISSUE TO BE DECIDED

6. I must determine whether the Applicant was entitled to his acting allowance as regulated by Resolution 1 of 2002 (hereafter called the Resolution) in terms of section 24 of the Labour Relations Act 66 of 1995 (hereafter called the Act).

SURVEY OF EVIDENCE AND ARGUMENTS BY THE PARTIES:

Evidence by the Applicant

Mr Pieter Josua Boshoff testified under oath as follows:

7. He was the Mechanical Foreman (level 8) at Bongani Hospital (page 9 bundle A). He started working for the Respondent in 1984 at the old Provincial Hospital. In 1994 he was transferred to Bongani Hospital.
8. Mr van der Mescht, the Chief Artisan, went on pension in May 2014. He was at level 9 (page 8 bundle A).
9. He, the witness, was asked to act in the position of Mr van der Mescht. He accepted the acting capacity and received an appointment letter to act in the position from the CEO of the Hospital (page 10 bundle A). He acted from 26 May 2014 until 30 April 2017. He had never received his acting allowance.
10. He complied with the requirements of the Resolution. He was seeking an order that he should be paid his acting allowance.

11. He engaged with the Respondent on various occasions and also wrote letters regarding his acting allowance (page 12 bundle A). He never received a response to his letters.
12. The post was funded and vacant. He made enquiries about this and was informed that it was only a funded and vacant post from the 1st of April 2014 until the 31st of March 2015. He was disputing this and added that he received an internal memo from the CEO of the Hospital which informed him that he was appointed to be a member of the Expenditure Control Committee on the 20th of May 2016 (page 11 bundle A). He was a member of this Committee because he acted in the position of the Chief Artisan. The Respondent was well aware of the fact that he was acting in the position.

Evidence by the Respondent:

13. As stated previously, the Respondent did not attend the proceedings and no evidence was led on its behalf.
14. The Applicant's representative argued in closing that the Respondent was bound by the collective agreement. The Applicant complied with the requirements of the Resolution as he was requested to act in a position and he accepted it. He testified that it was a vacant and funded post and he was acting for a period longer than 6 weeks uninterrupted. The post was on a higher salary. He was seeking an order that the Applicant had complied with the requirements of the agreement and that he should be paid his acting allowance.

ANALYSIS OF THE EVIDENCE AND ARGUMENTS

15. The Applicant referred an interpretation and application of a collective agreement dispute in terms of section 24 of the Act to the Council. His version was that he had complied with the requirements of the Resolution which regulates the payment of acting allowances.
16. The requirements are set out in section 3.1 of the Resolution. It reads as follows:

"Paragraph 3:

- 3.1 An EMPLOYEE appointed in writing to act in a post of a higher grade than the grade of the employee by the Head of Department or his/her delegate at provincial or national level (hereafter the "appointing authority") shall be paid an acting allowance to act in vacant posts provided that:
- 3.1.1 the post is a vacant and funded post,
 - 3.1.2 the acting period is longer than 6 weeks,
 - 3.1.3 the appointing authority is a level higher than the acting appointee
 - 3.1.4 the EMPLOYEE must accept the acting appointment.
- 3.2 An EMPLOYEE may only be appointed to act in a higher post that is one post level higher than her/his current position.
- 3.3 The provisions of paragraph 3.2 above may be deviated from on good cause shown by the appointing authority".
17. The Applicant presented documentary proof that he worked in a level 8 position and that he acted in a level 9 position. He presented a copy of the appointment letter by the CEO of the hospital. He testified that he had accepted the position and that he acted in the position from the 1st of May 2014 to the 30th of April 2017. He further testified that the post was funded and vacant.
18. As stated previously, the Respondent did not attend the proceedings. The Applicant's testimony was undisputed and was corroborated by documentary evidence. I have no reason to reject his testimony as incredible or improbable. He made a good impression on me. He did not hesitate to mention that he was informed that the post was only funded and vacant until the 31st of March 2015 which may be to his detriment. He testified that he disputed this and that it was a funded and vacant position. There is no evidence to the contrary before me. I therefore accept his version under oath.
19. Section 3.1 reads that the Employee **shall be paid** his/her acting allowance provided that the other requirements were met (my emphasis).

20. In light of the above, I am satisfied, on the evidence before me, that the Applicant met the requirements of the Resolution and is entitled to be paid his acting allowance during the acting period.

AWARD

21. In light of the above, I make the following award:

21.1 The Applicant is entitled to his acting allowance as regulated by Resolution 1 of 2002. The Respondent is ordered to pay the Applicant his acting allowance for the period 1 May 2014 to 30 April 2017 on or before the 31st of August 2017.

21.2 I make no order as to costs.

Signature: _____ 

Panellist: **Elsabè Skinner**