



ARBITRATION AWARD

Panellist/s: Ananthan Sanjivi Dorasamy
Case No.: PSHS567-11/12
Date of Award: 11-Aug-2012

In the ARBITRATION between:

NEHAWU O B O BUTHELEZI M I

(Union / Applicant)

and

DEPARTMENT OF HEALTH: KZN

(Respondent)

Union/Applicant's representative

: Ms J HADEBE

Union/Applicant's address

: P.O.BOX 1690

PIETERMARITZBURG

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: 033 342 7406

Respondent's representative

: Ms N A GUMEDE

Respondent's address

: PRIVATE BAG X 9371

VRYHEID

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:034 980 9757

DETAILS OF HEARING AND REPRESENTATION

1. The arbitration proceedings commenced at 10H00 on the 30 July 2012 at the Vryheid Hospital Board room, Vryheid. Ms J Hadebe of NEHAWU represented the applicant and Ms N A Gumede represented the respondent. After reverting to section 138 (3) of the Labour Relations Act the parties agreed on the following: The applicant (employer) representative raised certain points in limine and after discussing the matter the parties agreed to deal with the matter as follows:
 - 2.1 No oral evidence would be led.
 - 2.2 The respondent /employer will serve its Heads of Arguments in respect of the Point In Limine on the on commissioner and applicant on or before 1 August 2012
 - 2.3 The applicant/ employee will serve its Heads of Arguments on the commissioner and respondent on or before 3 August 2012
 - 2.4 The respondent will serve its answering Heads of Arguments on the commissioner and applicant on or before 6 August 2012.
 - 2.5 The award will be rendered thereafter. The original documents will be forwarded with the award.

RESPONDENT'S SUBMISSION

3.1.

The applicant lodged a dispute relating to interpretation or application of a collective agreement. The matter was set down for arbitration on 30 July 2012.

3.2.

It is my submission that the purpose and introduction of the Occupational Specific Dispensation (OSD) was to introduce differentiated salary scales for identified categories of professionals based on a new remuneration structure.

3.3.

It is therefore my argument that if one is talking of OSD he/she is talking about a salary.

3.4.

Furthermore it is my submission that the Council does not have jurisdiction to entertain this matter as it relates to a collective agreement.

3.5.

The Labour Appeals Court of South Africa on 29 January 2010 ruled in the matter between Minister of Safety and Security and Safety and Security Sectoral Bargaining Council that the Commissioner did not have a jurisdiction to arbitrate the dispute that was relating to interpretation and application of a collective agreement.

3.6.

It was ruled that the Bargaining Council does not have jurisdiction to deal with disputes relating to interpretation and application of a collective agreement.

3.7.

It is my argument that the matter before the Commissioner is about nothing else except that it is a salary issue and relates to a collective agreement therefore the Council lacks jurisdiction to entertain the matter.

3.8.

Wherefore it is respondent's prayer that the applicant's case be dismissed.

SPECIAL NOTE

I did not receive any submissions from the applicant/employee up to and including the 10 August 2012.

4.

The applicant/employee had ample opportunity to comply with the agreed time frames and the only conclusion one could arrive at is that in not making the required submissions the employee had abandoned her dispute. The employee did not file any papers that could be used in support of its position and the matter ought to be finalised.

5.

In any event should the above not be the case then the employee may apply for this award to be rescinded. I further direct that the employee should she decide to apply for the award to be rescinded must address the points in limine raised by the employer.

6.

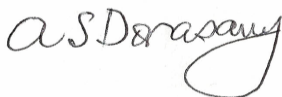
As a consequence of the above I determine that the application is dismissed.

AWARD

7.1. The application is dismissed.

7.2. No order for costs is made.

DONE AND SIGNED IN DURBAN ON THIS 13 DAY OF AUGUST 2012.



Arbitrator: Anand Dorasamy