



PHSDSBC

PUBLIC HEALTH AND SOCIAL DEVELOPMENT
SECTORAL BARGAINING COUNCIL

ARBITRATION AWARD

Commissioner: **M Mbuli**

Case No: **PSHS577-17/18**

Date of award: **30 October 2017**

In the matter between:

PSA OBO NDABA N. AND 23 OTHERS

(Applicant)

and

DEPARTMENT OF HEALTH- KWAZULU NATAL

(Respondent)

DETAILS OF HEARING AND REPRESENTATION

1. This matter was placed on the roll for arbitration before me at Emmaus Hospital on 30 October 2017. The Applicants were represented by Mr. Z. Nhlangulela from the union Public Servants Association (PSA) and the Respondent was represented by its manager Mr. Z. Qwabe. (Assistant Manager Labour Relations). The proceedings were mechanically recorded.

PRELIMINARY ISSUES, JURISDICTION and ISSUES TO BE DECIDED

2. No preliminary or jurisdictional issues were raised and The Public Health and Social Development Sectoral Bargaining Council (PHSDSBC) has the required jurisdiction to hear the matter. I have to decide whether or not the Respondent committed “any unfair labour practice for failing to select the applicants to attend, the training to train as Pharmacy assistants”, as contemplated in section 186 (2) (a) of the Labour Relations Act 66 of 1995, (“the Act”), as amended.

BACKGROUND TO THE DISPUTE

3. The Respondent handed in a bundle of documents which was marked A. I have been enjoined to accept the documents for what they purport to be, to the extent that the documents were dealt with by any of the parties during the course of the arbitration. The Applicants are employed as lay counsellors at Emmaus Hospital and surroundings clinics which is known as UThukela Health District). In February 2017 the department secured funding from The Health and Welfare Sector Education and Training Authority (HWSETA) to train lay counselors as Pharmacy Assistants in all the districts. All districts were requested to submit ten names to attend the training. The requirements to be selected for the training are as follows and I quote from the advert, which is page one of the bundle (A1) ***“It is important to indicate that the selection of these people should be only those people that are interested in being Pharmacy Assistants should be matric (Authentic Grade 12 Certificates) with fair to good pass in English and Mathematic Literacy. The candidates should have a least 2 years of working experience as an HIV and AIDS counsellor.”*** The applicants were not selected to attend the training and they contended that the department did not follow the selection criteria as per the requirements as on page one of the bundle (A1).
4. The Respondent, on the other hand contended that it followed a fair and correct procedure when selecting the ten lay counselors to attend the training as

Pharmacy Assistants and the Applicants did not meet the minimum requirements for training as Pharmacy Assistants.

THE APPLICANT'S CASE

5. The Applicant's first witness testified under oath that she has been employed as a HIV lay counselor for more than ten years. She believed that, she meet all the requirements as per requirements in bundle A1 but was not selected to attend the training. She had filled in the skill audit form and submitted it to the Human Resources Development office, and after some time, she was informed that the forms were lost. She filled them in again and submitted them to the same office. When filling the skills audit forms, she had selected pharmacist as one of the fields of her interest and she was surprised when she was not selected to attend the training. The selection criterion that was used in selecting the ten candidates was not the requirement for the training and was not supposed to be used.
6. Under cross examination she testified that she feels the skills audit form was not supposed to be use as a selection and also that, she and had selected pharmacy as one of her field of interest.
7. When she was asked if she was aware that there were only ten vacancies for training and the district has to select the best candidates. She responded by saying she was not aware but the district should have not used skills audit form as a selection criterion.
8. The Respondent's second witness Mr. Muziwethu Lucky Magwaza, he testified that he is employed as a Site Mentor at the hospital and he believed that the Human Resources Development office at District should work with Human Resources Development at the hospitals and also Human Resources Development office at the hospitals (Institutions) was supposed to be involved on the process. He further testified that they only became aware of the training when one of the selected candidate wanted transport to do assessments at Head office.

9. Under cross exam he testified that, he was not aware of who was tasked to conduct the shortlisting but he believes that the Human Resources Departments from the hospitals should have been involved as they know, the Lay Counsellors better at they work with them.

THE RESPONDENTS' CASE

10. The Respondent's witness, Ms. Sindisiwe Mthembu testified under oath that she is employed at the District Office as a Senior Human Resources Practitioner, (Human Resources Development) and during the selection process her role was to present the skills audit form of each and every employee to the selection committee. She further testified that, the skills audit forms, seniority and grade 12 (Matric) qualification were used as the selection criterion to select the employees for Pharmacy Assistants training. The skills audit reflected the field of interest of employees, and all lay counsellors were requested to submit skills audit form and to select the field of their interest. There was also training which is in the pipeline for employees who were not selected.
11. Under cross examination Mthembu testified that towards the end of February 2017 they were called into the office of the District Director, where they were asked about the list of shortlisted candidates to attend the Pharmacy Assistant training. When they failed to produced it, they were instructed to do the shortlisting before leaving for home that day, and they did it by using skills audit forms, seniority and grade 12 (Matric) qualification as a selection criterion. That was also the first time that she heard, there was such kind of training.
12. She further testified that during the shortlisting the Human Resources Development Department from hospitals falling under UThukela Health District, were not involved but they have sometimes involved them in the past when doing selection.
13. When asked if all the skills audit forms from the hospitals were completed and submitted to the district office. She responded by saying she is not sure if all the

forms were submitted but an instruction was given to hospitals as Human Resources Circular No. 116 of 2013, where Human Resources Development offices at hospitals were requested to facilitate the process of completing the skills audit forms for lay counsellors and the forms to be submitted to the district office and it is those forms that they used during the selection process.

ANALYSIS OF THE EVIDENCE

14. In terms of Section 1862 (2) (a) of the Labour Relations Act 66 of 1995, as amended (LRA). “Unfair labour practice’ means any unfair act or omission that arises between an employer and an employee involving – unfair conduct by the employer relating to the promotion, demotion probation (excluding disputes about dismissals for a reason relating to probation) or training of an employee or relating to the provision of benefits to an employee.

15. It was common cause that the Respondent used the skills audit form as one its selection criteria, when selecting from the pool of lay counsellors, those who would have to undergo training as Pharmacy Assistants. It is also common cause that the district was required to submit only ten names for the training. As there is a quite a number of lay Counsellors employed in the district. The selection committee had to come out with the selection criteria to eliminate other lay counsellors and come out with the required number allocated to it. They then decided use the skills audit form filled by the Applicants indicating the field that they are interested in to be trained or to pursue their careers. The Applicants’ representative submitted that the skills audit form was not supposed to be used as it was not mentioned as a selection criterion in page one of the bundle (A1) which is the document indicating the requirements for the training. With the Respondent using this selection criteria, it resulted in the Applicants not being selected for training. The Applicant’s representative main point of argument was that the Respondent acted unfairly when it used the selection criteria which was not mentioned on page one of the bundle (A1).

16. I quote from page one (A1) ***“It is important to indicate that the selection of these people should be only those people that are interested in being Pharmacy Assistants should be matric (Authentic Grade 12 Certificates) with fair to good pass in English and Mathematic Literacy. The candidates should have a least 2 years of working experience as an HIV and AIDS counsellor.”***

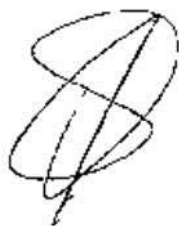
The words ***“It is important to indicate that the selection of these people should be only those people that are interested in being Pharmacy Assistants”***, clearly indicate that if someone would have been interested in the Pharmacy field, he/she would choose Pharmacy as a field of interest in his/her Skills Audit Form. There is also no policy which was submitted that precluded the Respondent from adding another selection criterion when selecting candidates for training in order to meet the number which was required from the district. There was also no evidence submitted by the Applicants’ representative which indicated that the 23 Applicants that he was representing were better than those selected for training. During re-examination the Respondent’s witness Ms. Sindisiwe Mthembu testified that even though they had invited Human Resources Development Officers from the hospital, it would have not made any difference.

17. Based on the above, I find that the Respondent did not commit any unfair labour as envisaged in terms of section 186(2)(a) of the LRA., and I make the following award:

AWARD

18. I find that the applicants failed to establish the existence of an unfair labour practice.

19. The matter is dismissed.



M Mbuli
COMMISSIONER