



ARBITRATION AWARD

Commissioner: **MN Masetla**

Case No: **PSH588-18/19**

Date of award: **05 February 2019**

In the matter between:

PSA OBO THANYANI LILLIAN MAKHADO

APPLICANT

and

DEPARTMENT OF HEALTH- LIMPOPO

RESPONDENT

DETAILS OF HEARING AND REPRESENTATION

1. This is an award in the arbitration between PSA obo Makhado T.L, the applicant and the Department of Health - Limpopo, the respondent.
2. The arbitration was held under the auspices of the Public Health and Sectoral Bargaining Council (PHSDBC).
3. The applicant was present and represented by Ms. P Mathladisa, PSA official. The respondent was represented by Mr. Ramodike N.E, Deputy Director Labour Relations.

ISSUES TO BE DECIDED

4. I must determine whether or not the respondent interpreted or applied correctly the provisions of the Public Health and Social Development Sector Bargaining Council Resolution No 1 of 2002 in relation to the payment of acting allowance.

BACKGROUND TO THE ISSUE IN DISPUTE

5. The applicant referred an interpretation or application of collective agreement dispute to the PHSDSBC in relation to payment of acting allowance. The matter remained unresolved after conciliation.
6. The applicant requested that the matter be resolved through arbitration.
7. Both parties submitted bundles of documents. The applicant's bundle was marked bundle "B" and the respondent's bundle was marked bundle "A".

SURVEY OF EVIDENCE AND ARGUMENTS

Applicant's case

8. **Thanyani Lillian Makhado** testified under oath that she is currently acting as Corporate Services Manager from 2014 to date. She reports to the Chief Executive Officer (CEO). Each year she gets appointed to act in the position. On 22 March 2017, she was appointed by the CEO to act as Deputy Director, Corporate Services for a period not exceeding twelve (12) months or until the acting appointment is terminated in writing, whichever ever happened first. She accepted the appointment on 23 March 2017.
9. On 25 May 2017, there was a written submission made by the CEO to the respondent's District Chief Director in which he requested approval for the acting appointments into various positions in the hospital. The applicant's name appears

amongst the list of those who were to be approved for the purpose of acting. At paragraph 6 of the submissions, the CEO submitted that there will be financial implications.

10. She was paid for acting during the period commencing in April 2014 until March 2017. She was however not paid for the twelve months from 1 April 2017 until 31 March 2018 while she was given an appointment letter and she performed the tasks associated with the position of Deputy Director Corporate Services.
11. She wants the respondent to pay the acting allowance since the position for which she acted was vacant and funded, the period that she acted was longer than six weeks and appointed by the CEO who is level higher than her and she accepted the appointment. The respondent has also paid the other employees.

Respondent's case

12. **Ms Rose Phuti Mokgonyana**, Deputy Director Human Resource Administration testified under oath that she deals with matters relating to acting allowances in the Provincial Office. She testified further that the appointment of employees to act in higher positions is done in terms of the Public Service Act and Public Service regulation. The payment of Acting Allowance is done in terms of Acting Allowances is done in terms of Resolution 1 of 2002.
13. She testified that the submission on page 1 of the applicant's bundle is a request by the CEO to the District Director for appointment of various employees to act in various positions. There is however no approval granted by the Head of Department (HOD) to the submission. There is also no evidence of approval by the HOD. The CEO does not also have the power to appoint as he requested through the submission that the applicant and others to be appointed.
14. The information contained in pages 4 and 5 of the applicant's bundle is information that must be attached with a request to the Department of Treasury for approval to advertise the positions and does not confirm that the positions are funded.

ANALYSIS OF EVIDENCE AND ARGUMENTS

15. The dispute relates to the interpretation or application of collective agreement, namely Resolution 1 of 2002.

16. Clause 3.1 provides as follows:

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 of his/her delegate at Provincial or National level (here-after the “appointing authority”) shall be paid an acting allowance to act in vacant positions provided that:

- 3.1.1. the post is vacant and is a 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 appointment
- 3.1.4. the employee will accept the acting appointment

17. The crux of the dispute by the applicant is that she has met the requirements of the collective agreement while the respondent’s contention was that there was no approval by the HOD for her to act.

18. The appointment letter dated 14 March 2017 signed by the CEO on 22 March 2017 and accepted by the applicant on 23 March 2017 stipulate in paragraph 4 as follows:

“Please note that should your acting appointment have any financial gains, the effective date of remuneration shall be the date on which approval is granted by the HOD and not necessarily the date on which you accepted and assured your acting as a Deputy Director Corporate Services.”

19. It follows from the reading of the paragraph that the appointment itself did not have any financial gain. In the event that there should be any financial gain, the effective

date of such remuneration shall be the date on which the HOD would have granted an approval. The reading of the paragraph reflects that the applicant was made aware that the HOD did not grant approval to act with remuneration. This version is in line with the respondent's witness that acting in a higher position is in line with the Public Services Act and its regulation. I therefore find, on the evidence presented, that the applicant did not show that the approval was granted to act with financial gains.

20. On 25 May 2017, the CEO wrote a submission to the District Chief Director requesting approval for various employees to act in positions. This was two months after she started to act. This corroborates a view that I hold that the applicant was acting without any financial gains until approval by the HOD is granted.

21. Ms. Mokgonyane further testified that there was no evidence to the effect that the position was funded. Pages 4 and 5 of the applicant's bundle is an attachment to the Treasury Department in which approval is sought. This evidence was not contested during cross examination. I therefore find that the position was not funded.

AWARD

22. The respondent has correctly interpreted clause 3.1 of the collective agreement.

23. The applicant's claim is hereby dismissed and she is not entitled to any relief.

24. There is no order of costs.



MN Masetla