



# ARBITRATION AWARD

Commissioner: **Bhekinhlanhla Stanley Mthethwa**

Case No: **PSHS594-20/21**

Date of Award: **8 February 2021**

In the matter between:

**PSA obo Tshejuba Prizzer Dlodlo & 2 others**

(Union/ Applicant)

and

**Department of Health- KwaZulu Natal**

(Respondent)

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## **Details of hearing and representation**

1. The matter was scheduled for arbitration on 25 January 2021 at 10h00, at Bethesda Hospital in Ubombo Magisterial District. Ms. G Hassan, a trade union official from PSA represented Ms. Tshejuba Prizzer, Dlodlo Ms. Smangele Princess Myeni and Mr. Bongani Khawulani Ntombela (hereinafter referred to as the Applicants) and Mr. LT Nyawo who is an Assistant Director: Labour Relations represented Department of Health- KwaZulu Natal (hereinafter referred to as the Respondent). The proceedings were digitally recorded.
2. Having presented their respective cases, parties agreed to submit heads of argument by 1 February 2021 and only the Applicants did so.

**Preliminary points:**

3. There were no preliminary points raised.

**Application for postponement by the respondent:**

4. After the conclusion of the process of narrowing down issues the Respondent's representative applied for postponement on the grounds that it had compiled a motivation to the Head of the Department ("the HOD") to back date the translation of the Applicants. Accordingly, it would be important to adjourn the matter to a later date to give a chance to the process that the Respondent had already started. It was important also to note that the Respondent had already translated the Applicants; it was only the back pay that was outstanding. It was for this reason that the arbitration could only proceed if the HOD disapprove the recommendation to back date the translation of the Applicants.
5. The Applicants' representative opposed this application on the basis that the Respondent had an ample opportunity to seek approval and back date the Applicants' translation. Therefore, it could not be a valid reason to postpone the matter on the basis that the Respondent had sought approval from the HOD to back date the Applicants' translation. Accordingly, this application should be refused.
6. After hearing submissions from both parties, I issued *ex tempore* ruling and determined the application in the following terms:
  - (a) *The Respondent's representative had failed to advance valid reasons for granting postponement.*
  - (b) *It is common cause that the Respondent did not translate Applicants on the dates of obtaining their qualifications and dates of their registration.*

(c) *I am satisfied that by not granting this application the Respondent could not suffer any prejudice.*

(d) *Accordingly, this application is refused and the matter shall proceed as scheduled”.*

### **Analysis of the submissions:**

7. It was common cause that the Respondent had failed to comply with Rule 23 of the Council Rules in applying for the postponement.
8. In such instance, I need to consider the consequences and fairness of proceeding with a matter while the Respondent believes that it had taken all the necessary steps to resolve the dispute at hand; although it had failed to comply with Rule 23. In terms of Rule 23 there is nothing that prevents a party from applying for a postponement at the arbitration; save that non-compliance with this Rule will be a factor to be considered by the Council (“arbitrator”) when considering such application (*my own emphasis*). Importantly, such application must be supported by valid reasons. Therefore, the fact that the Respondent had submitted motivation to the HOD seeking to correct the Applicants’ translation could not be a valid ground to justify postponement.
9. There must be a reasonable and acceptable explanation for failure to comply with time frames provided for in Rule 23. Notably, the Respondent did not bring any proof as to when the Applicants would be translated and how much that translation could be. It was for these reasons that this application was refused.

### **Ruling:**

10. I hereby confirm the ruling issued by myself on 25 January 2021 as stated on paragraph 6 above.

**Issues to be decided:**

11. I have to decide whether or not the Respondent had correctly applied and/or interpreted Resolution 1 of 2010 concluded in the Council.

**Background to the issue:**

12. The Applicants were appointed on different positions on different dates. The Applicants were aggrieved that upon obtaining their basic and post qualifications the Respondent failed to recognize their respective qualifications as contemplated in Resolution 1 of 2010.
13. In the belief that the Respondent's conduct was inconsistent with the provisions of Resolution 1 of 2010; the Applicants referred a dispute to the Council for conciliation. The matter was set down for conciliation on 26 November 2020. The dispute was not resolved at conciliation and the conciliating panellist issued a certificate indicating that the dispute remained unresolved after the conciliation hearing on 26 November 2020. The Applicants thereafter submitted a request for the matter to be resolved through arbitration and the matter was scheduled for arbitrations as *state above*.

**Survey of evidence and arguments:**

14. All witnesses gave evidence under oath. The Applicants called Mr. Bongani Khawulani Ntombela and Ms. Smangele Princess Myeni in support of their case.
15. The Respondent did not call any witness.
16. Mr. Ntombela testified that he was employed as a Pharmacist Assistant Post Basic. It was his testimony that he obtained his basic and post qualifications on 18 June 2018. The Respondent should have recognized his qualifications as contemplated in Resolution 1 of 2010 on 18 June 2018. However, his qualifications were only recognized on 1 December 2018. As a result of the late

recognition of his qualifications the Respondent owed him a difference of what he would have earned with effect from 18 June 2018 and what was awarded to him on 1 December 2018. He was on Grade I of the Pharmacist Assistant Post Basic.

17. Ms. Myeni testified that she was employed as a Pharmacist Assistant Basic. She obtained her basic qualification on 23 January 2018. However, the Respondent only recognized her qualification on 1 June 2018; as a result, there was a shortfall in her salary structure. Had the Respondent recognized her qualification on 23 January 2018 there would have been no shortfall in her translation. The shortfall runs between 23 January 2018 and 1 June 2018.
18. In closing Ms. Hassan contended that the Applicants were entitled to be translated from the dates of obtaining their qualifications and registration. In case of Mr. Ntombela he was entitled to receive an amount of R22 902.25 in back pay for the period 18 June 2018 to 30 November 2018. Ms. Myeni was entitled to an amount of R17 141.25 in back pay for the period between 23 January 2018 and 31 May 2018. On the other hand; Ms. Dlodlo was owed an amount of R24 321.00 in back pay for the period between 14 September 2017 and 31 May 2018. She also obtained her Post-Basic Pharmacist Assistant qualification and registered with the South African Pharmacy Council (“the SAPC”) on 25 January 2019. As result she was also owed an additional amount of R36 534.74 in back pay for the period 25 January 2019 and 31 May 2019. In total Ms. Dlodlo is owed R60 856.24 in back pay.
19. Mr. Nyawo averred at the commencement of the arbitration that the Applicants should be patient and wait for the HOD to consider the motivation to back date their translation. The motivation had been submitted and it only awaits the HOD’s consideration. If this motivation gets approved it would provide accurate figures than the figures presented by the Applicant’s representative during the process of narrowing down issues.

## **Analysis of evidence and arguments:**

20. In this instance the Applicants were aggrieved that the Respondent had applied clause 1.1 of Annexure A2 to Resolution 1 of 2010 incorrectly. According to the Applicants they were supposed to be translated from Grade I to Grade II with effect from the 1<sup>st</sup> day of the month following the date they had completed Pharmacist Assistant Basic and Post qualifications.
21. It is important and worth noting that the Respondent's representative did not cross-examine Applicants' witness. Be that as it may, it was common cause that Mr. Ntombela had obtained his basic and post qualifications on 18 June 2018. However, the Respondent translated him on 1 December 2018. It was also common cause that Ms. Myeni obtained her basic qualification and registered with the SAPC on 23 January 2018 and the Respondent recognized her qualification on 18 June 2018. In case of Ms. Dlodlo she obtained her Basic Pharmacist Assistant qualification and registered with the SAPC on 14 September 2017. She was translated to Pharmacist Assistant (Basic) Grade II with effect from 1 June 2018. She further obtained her Post-Basic Pharmacist Assistant qualification and registered with SAPC on 25 January 2019. The Respondent translated her to Pharmacist Assistant (Post-Basic) Grade I with effect from 1 June 2019.
22. Amongst others; the objects of Resolution 1 of 2010 was to amend the appointments in Resolution 3 of 2009 for the identified OSD post/job levels as contained in Annexure A1, A2 and A3 in order to enhance recruitment in the respective posts. In particular, to introduce the new OSD post/job level of Senior Manager: Pharmaceutical Services as reflected in A2 and A(b) of this Agreement.
23. Clause 1.1 of Annexure A2 to the Agreement provides that translation to Pharmacist Assistant Grade II shall be with effect from the 1<sup>st</sup> day of the month following the date that the person completed the Basic Pharmacist Assistant

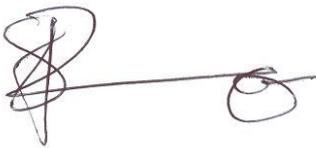
qualification and registered with the SAPC in the category Pharmacist Assistant (Basic).

24. In light of the unchallenged evidence produced by the Applicants in this arbitration it is my conclusion that the Applicants had complied with all the requirements of clause 1.1 of Annexure A2 of Resolution 1 of 2010.
25. I find that in terms of clause 1.1 of Annexure A2 to the Resolution 1 of 2010 the Applicants qualified to be translated from Grade I to Grade II on the dates of obtaining and registering their respective qualifications with the SAPC. In my view there was no justification not to translate the Applicants on the 1<sup>st</sup> day of the month following the date that they had completed their qualifications and registered with the SAPC as Pharmacist Assistants. Clearly, the Respondent had applied the provisions of Resolution 1 of 2010 incorrectly.
26. In the circumstances I make the following award:

**Award:**

26. It is my finding that all the Applicants were entitled to be translated on the first dates of the following month of receipt and registration of their relevant qualifications with the SAPC.
27. I therefore order the Respondent to pay Mr. Bongani Khawulani Ntombela R16 358.33 in back pay for the period between 18 June 2018 and 30 November 2018 (he was earning R156 958 pa instead of R196 218 pa and the difference was  $R39\,260 \div 12 \times 5 = R\,16\,358.33$ ).
28. In respect of Ms. Smangele Princess Myeni I order the Respondent to pay her R16 957.00 in back pay for the period between 23 January 2018 and 31 May 2018 (she was earning R115 818 pa instead of R166 689 pa and the difference was  $R50\,871 \div 12 \times 4 = R16\,957.00$ ).

29. In respect of Ms. Tshejuba Prizzer Dlodlo I order the Respondent to pay her R32 478.00 in back pay for the period between 14 September 2017 and 31 May 2018 (she was earning R108 240 pa instead of R156 957 pa and the difference was  $R48\,717 \div 12 \times 8 = R32\,478.00$ ).
30. I further order the Respondent to pay Ms. Tshejuba Prizzer Dlodlo R21 427.50 in back pay for the period between 25 January 2019 and 1 June 2019 in relation to Post-Basic Pharmacist Assistant qualification which she obtained and registered with the SAPC on 25 January 2019 (she was earning R156 957 pa instead of 208 383 pa and the difference was  $R51\,426 \div 12 \times 5 = R21\,427.50$ ).
31. The above payments must be paid into the Applicants' bank account as reflected in their personal records on or before the close of business on 31 March 2021.
32. There is no order as to costs.



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**Signature**