



In the ARBITRATION between:

PUBLIC HEALTH AND SOCIAL DEVELOPMENT SECTORAL BARGAINING COUNCIL		ARBITRATION AWARD
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Panelist/s: Joseph Mphaphuli

Case No.: PSHS603-11/12

Date of Award: 25 June 2012

NEHAWU obo Motlhamme, J.K

Union/Applicant)

And

Department of Social Development – North West

(Respondent)

Applicant's Representative:

Mr. Makwe

Applicant's Address:

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Respondent's Representative:

Mr. Phaedi

Respondent's Address:

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DETAILS OF HEARING AND REPRESENTATIONS

The hearing was conducted under the auspices of the Council in Sonop on 31 May 2012. The hearing was conducted in terms of Section 191 of the Labour Relations Act 66/1995.

Both parties were in attendance and represented. Mrs Phaedi represented the Respondent. The Applicant was represented by Mr Makwa.

The proceedings were digitally recorded.

BACKGROUND TO THE DISPUTE

The Applicant was recruited in 1992. She occupied the position of professional nurse at a yearly rate of R 149 000.00. The dispute arose on 04 November 2011 .

The desired resolution of the dispute was that the Applicant should be upgraded to level 9 with effect from 01 July 2011.

SURVEY OF EVIDENCE AND ARGUMENT

The Applicant took oath and gave evidence. She was registered as a professional nurse on 30 June 2011. She completed her community service in June 2010. She was on salary level 5 at the time. Professional Nurses were placed at salary level 7. She had submitted her certificate to the Respondent in or about March 2012.

The Respondent failed to upgrade her to level 9 in terms of the Occupational Specific Dispensation of 2007. Her colleagues with similar experience and qualifications and charged with the same responsibilities were placed at salary level 9. She was of the view that like her colleagues she should be placed at salary level 9 notwithstanding the fact that they were not like herself specialised.

The Respondent did not lead evidence in the matter in view of the fact that all material facts were common cause.

ANALYSIS OF EVIDENCE AND ARGUMENT

The dispute turned on the provisions of the Occupation Specific Dispensation. In terms hereof professional nurses possessing specialised qualification and employed in such capacity were entitled to an upgrade. The upgrade was intended to take effect from 01 July 2007.

The parties were in agreement that the institution provided primary health care services and that three of the Applicant's colleagues were remunerated at salary level 9. There was no difference between the Applicant and her colleagues in terms of qualification and occupation.

Like the Applicant, the Applicant's colleagues were not in possession of a primary health care qualification or classified as specialists in the nursing profession. The Applicant's colleagues were however unlike the Applicant remunerated at level 9.

It was for this reason and no other reason that the Applicant wished to be equally compensated at level 9.

It became quite evident that the Applicant did not subscribe to the Occupation Specific Dispensation in terms of qualifications. The Applicant lacked specialised training for primary health care and did not therefore meet the requirements of the primary health care and the Occupation Specific Dispensation directive for an upgrade.

The fact that the Applicant's colleagues were paid at a higher rate provides no sound legal basis for the Applicant to lay claim to an upgrade.

As matters stood her colleagues were unfairly benefiting from an administrative error on the part of the Respondent. The oversight though created no right for equal treatment unless the Respondent refuses or fails to adjust the affected beneficiaries' remuneration at the earliest available opportunity.

Accordingly it is my conclusion that the Applicant's argument is irrational and unjustified.

AWARD

1. There was no unfair labour practice.



Joseph Mphaphuli

Signed

PHSDSBC Panelist

25 June 2012