



ARBITRATION AWARD

Case No: **PSHS640-19/20**

Commissioner: **Jules McGillavray-Teale**

Date of award: **26 January 2021**

In the matter between:

PSA OBO DESMOND WAYNE FORTUIN

(Union/ Applicant)

and

DEPARTMENT OF HEALTH- NORTHERN CAPE

(Respondent)

DETAILS OF HEARING AND REPRESENTATION

1. The applicant referred a dispute to the PHSDSBC in terms of section 24(2) [24(5)] of the Labour Relations Act 66 of 1995 (LRA) and concerns the interpretation and application of a collective agreement, being PHSDSBC Resolution 3 of 2009. The arbitration took place on 11 January 2021 at the Springbok Hospital in the forensic boardroom.
2. The applicant was present and represented by Mr. Christopher Oliphant of the PSA, while the respondent was represented by Mr. Paul Koopman, its Labour Relations Officer.
3. The respondent presented a bundle of documents as did the applicant.

4. The proceedings were electronically recorded and filed with the PHSDSBC administration.
5. The following constitutes a summarised version of the evidence of the parties but has not been captured *verbatim*. The fact that I have not captured it all should not be misconstrued to suggest that I have not taken evidence into account. My findings are accordingly within the context of all the relevant evidence tendered.

THE APPLICANT'S CASE

6. The applicant stated that he had started his career in Emergency Medical Care in 1992 as a Reservist in Kimberley. He was employed by the respondent in Upington 1 July 1993 as an Ambulance Assistant. In 1994 he attended IMS training in Cape Town and was appointed to the position of AEA. In 1996 he was promoted to Shift Leader of EMS Upington and continued to do so until 2008 when he attended the Cape Peninsula University of Technology to obtain an Emergency Care Technician (ECT) qualification.
7. He completed his qualification and training in 2010 and graduated in 2011. He was registered as an ECT with the Health Professionals Council of South Africa (HPSCA) in February 2011 and continued to work in Upington.
8. In 2013 the applicant was promoted to the position of EMS District Manager, Namakwa, in the town of Springbok. He still holds this position.
9. He became aware in 2018 that while he had completed the qualification, he had not been Grade Progressed for the years 2011 and 2012.
10. It was the applicant's assertion that the Resolutions in question had been misinterpreted and as a result he had been prejudiced by not having access to the grade progression since he met all the requirements to qualify.
11. He the lodged a grievance with the respondent in September 2018 (page 23 of the applicant's bundle) to which he received a response from the respondent in July

2019 (page 24 of the applicant's bundle) which suggested that he had been promoted to EMS District Manager, Grade 2 in 2013 and was at the threshold of his earnings there. This however was irrelevant as his grievance related to the years 2011 and 2012 before he was promoted.

12. Under cross examination, the respondent asked the applicant to verify that he had qualified in 2011 and that he had been promoted in 2013 to which he agreed.

13. The respondent then asked the applicant to confirm that the period in question was between 2011 when he received his qualification and 2013 when he was promoted. The applicant verified that this was correct.

THE RESPONDENT'S CASE

14. Mr. Koopman testified that the applicant had been grade progressed on 1 March 2011 as per PERSEL (page 8 of the respondent's bundle).

15. Mr. Koopman went on to note that it was common cause that grade progressions normally come through a few years after the fact in the DoH as there is an administration process to follow.

16. He then added there was a grade progression in March 2011 per PERSAL (page 29 of the respondent's bundle) but conceded that the 2012 grade progression was missing from PERSAL (page 8 of the respondent's bundle).

17. Under cross examination the applicant put it to the respondent he met all the requirements for ECT and should therefore have been paid his grade progression for 2011 and 2012.

18. It was put to respondent that the 2011 movement on PERSAL was due to his being a Shift Leader and not for his ECT qualification. The respondent disputed this and insisted that the grade progressions were included in his 2013 salary increase.

19. It was put to the respondent that he had testified earlier that grade progressions could take years, but he was now contradicting his earlier version by saying that the department had processed a grade progression in 5 days since the applicant qualified on 22 February 2011 and the system reflected a grade progression was processed on 1 March 2011. Mr. Koopman had no answer to this.
20. It was put to the respondent that his versions were contradictory and that PERSAL clearly stated that his grade progression processed on 1 March 2011 was for his Shift Leader position. The respondent stated again that the 2011 grade progression was for his ECT qualification.
21. It was then put to the respondent that the grade progression due in 2012 had not been paid either. The respondent conceded that this was the case.

ANALYSIS OF THE EVIDENCE AND ARGUMENTS

22. It is the applicant's case that his dispute pertains to the interpretation of the PHSDSBC's Resolution 3 of 2009, specifically that the respondent failed to grade progress him in terms of paragraph 1.6 of Annexure A3 of said collective agreement in respect of the years 2011 and 2012. In this regard, it is important to note that the collective agreement referred to by the applicant was amended by the PHSDSBC's Resolution 1 of 2020, with effect from 01 April 2020.
23. In terms of the collective agreement, grade progression is defined as "the salary movement from one salary scale (grade) to the first salary notch of the next higher salary grade (scale) attached to a post", while the definition of pay progression is "the salary movement from one salary notch attached to a salary grade (scale) to the next higher salary notch attached to the same salary grade (scale)".
24. The grade/pay progression requirements for the post of Emergency Care Technician Grade I, included in Paragraph 1.6 of Annexure A3 to the amended collective agreement provide that, where an incumbent of such a post, is performance reviewed as average, he/she is entitled to be grade progressed when he/she meets the requirements which are set out as "A combination of 7 years

actual service and/or recognisable experience after registration with the HPCSA as ECT”. It goes on to state that “Grade progression shall become effective from the 1st day of the month following the date on which the official met all the requirements”.

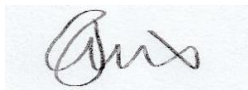
25. It is common cause that the applicant was, at the time of attaining his ECT qualification on 22 February 2011, already an EMS Shift Leader Grade 3 and, on 01 March 2011 was progressed to EMS Shift Leader Grade 4, according to the PERSAL Enquiry Service Record which was presented into evidence. This grade progression is also supported by the respondent’s correspondence from Mr S Jonkers, the Head of Department, to the applicant confirming his translation to the new salary level.
26. The applicant’s argument that his attainment of the ECT qualification created an entitlement to be grade progressed, as he met the requirements, is misplaced.
27. If I were to assume that his performance was average, despite no evidence to this effect being presented by the applicant, and accept his undisputed version that he met the requirements for grade progression set out in paragraph 24 of my award above, the overriding factor that must be borne in mind is that he was not employed as an ECT Grade I (paragraph 1.6 of the collective agreement), but rather as an EMS Shift Leader, the salary scales of which are set out in paragraphs 1.12 to 1.17 of the collective agreement and which have their own, different requirements for grade progression.
28. In the matter at hand, he was grade progressed with effect from 01 March 2011 from EMS Shift Leader grade 3 to EMS Shift Leader Grade 4 and he therefore cannot claim a further grade progression based on a post that he does not occupy, simply because of the qualification he attained a week prior.
29. More concerningly, the applicant’s closing arguments appear to shift from his claim regarding grade progression to a combination of grade and pay progression, despite the latter not being adduced in evidence and which I cannot consider.

30. Through his misinterpretation of selective excerpts of the collective agreement, the applicant has, therefore, failed to discharge the onus required of him, and his claim must fail.

AWARD

31. The matter is dismissed.

32. There is no order as to costs.



Jules McGillavray-Teale