



# ARBITRATION AWARD

Commissioner: **PM Venter**

Case No: **PSHS714-18/19**

Date of award: **25 April 2019**

In the matter between:

**HOSPERSA obo MEMBERS**

Applicant

and

**DEPARTMENT OF HEALTH- FREE STATE**

Respondent

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## **DETAILS OF HEARING:**

1. The matter was arbitrated at the offices of the Respondent in Bloemfontein on 24 April 2019.
2. The Applicant was represented by Mr. Ramokoatsi, a union official, whilst the Respondent was represented by Mrs. Makoa, a Labour Relations Officer. No Interpreter was required.
3. The matter was not mechanically recorded although no viva voce evidence was led.

## **BACKGROUND TO THE MATTER**

4. The matter was referred to the Bargaining Council in terms of Section 24 of the Labour Relations Act, 66 of 1995 (hereinafter referred to as “the LRA”).
5. Resolution 1 of 2018 deals with the Standardisation of Remuneration of Community Health Workers (CHW). These employees are to be paid R3500.00 through the Persal systems of the respective departments.
6. The Respondent implemented the Resolution, but payments to CHW are not made via the Persal system yet. The Applicants therefore declared a dispute.
7. The parties chose not to lead evidence as there were no factual disputes. Parties subsequently signed a Stated Case.

## **ISSUE TO BE DETERMINED**

8. I am called upon to determine whether the Respondent correctly applied a collective agreement in terms of section 24 of the LRA by issuing aforementioned sanction to the Applicants.

## **SURVEY OF EVIDENCE AND ARGUMENTS**

9. Parties entered into a written Stated Case in terms of which the following aspects are crucial:

## **COMMON CAUSE FACTS**

- a) Resolution 1 of 2018 was entered into on 12 June 2018.
- b) The Resolution applies to the parties.
- c) In terms of clause 5.1 qualifying employees had to be paid R 3500-00 per month.
- d) Payment had to be made via the Persal system.
- e) The Applicant’s members were paid, but payment was not made via the Persal system.

## **ARGUMENT OF APPLICANT**

10. The Respondent is in breach of clause 5.1 as payments are not made via the Persal system.
11. The Respondent is bound in terms of section 24 of the LRA.

## **ARGUMENT OF RESPONDENT**

12. Payments were not made via the Persal system due to several practical arrangements that had to be made and information that need to be loaded.
13. The Respondent is likely to affect all payments via the Persal system at the end of April 2019.
14. There was in fact no dispute, but Mrs Makoa had no mandate to settle the dispute.

## **ANALYSIS OF EVIDENCE AND ARGUMENTS**

15. Section 23 of the LRA reads as follows:

(1) A collective agreement binds-

(a) the parties to the collective agreement;

(b) each party to the collective agreement and the members of every other party to the collective agreement, in so far as the provisions are applicable between them;

(c) the members of a registered trade union and the employers who are members of a registered employers' organisation that are party to the collective agreement if the collective agreement regulates-

(i) terms and conditions of employment; or

(ii) the conduct of the employers in relation to their employees or the conduct of the employees in relation to their employers;

(d) employees who are not members of the registered trade union or trade unions party to the agreement if-

- (i) the employees are identified in the agreement;
- (ii) the agreement expressly binds the employees; and
- (iii) that trade union or those trade unions have as their members the majority of employees employed by the employer in the workplace.

16. The relevant Resolution clearly spells out that payments need to be made via the Persal system. That much is not in dispute. The Respondent merely explained that they had certain technical difficulties, but payments should be made via the Persal system at the end of April 2019.
17. There exists no reason why the Respondent should not be bound by the terms of the collective agreement entered into.

### **AWARD**

18. The Respondent, the Department of Health- Free State, is in breach of Clause 5.1 of Resolution 1 of 2018 by not affecting payment described above via the Persal system.
19. The Respondent, the Department of Health- Free State, is to effect payment via the Persal system with effect from 1 May 2019.



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**Adv PM Venter**