



**PHSDSBC**

Public Health and Social Development  
Sectoral Bargaining Council

# ARBITRATION AWARD

Case No: **PSHS714-20/21**

Commissioner: **Musiwalo Seth Mavhungu**

Date of award: **16 February 2021**

In the matter between:

**HOSPERSA obo JANI VAN WYK**

(APPLICANT/ UNION)

and

**DEPARTMENT OF HEALTH – NORTH WEST**

(RESPONDENT)

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## DETAILS OF HEARING AND REPRESENTATION

1. This is the award in the arbitration between HOSPERSA obo Jani Van Wyk, the applicant and Department of Health-North West, the respondent.
2. The arbitration hearing was held on 08 February 2021 at the offices of Department of Health –Potchefstroom hospital. The applicant submitted a bundle of documents marked Annexure A.
3. The dispute was referred to arbitration in terms of section 24(2), 24(5) of the LRA of 1995. The hearing was manually and mechanically recorded. Both parties agreed to submit the closing arguments and same was received from the applicant.
4. The applicant appeared in person whereas the respondent was represented by Mr. Mzamo Adoons, its the employee.

## ISSUE TO BE DECIDED

5. I am required to interpret resolution 1 of 2002 on whether or not the applicant was eligible to be paid the acting allowance.

## **BACKGROUND TO THE MATTER**

6. The applicant is an employee of the Department of Health –Potchefstroom hospital. The applicant is appointed in the position of senior personnel officer which is a level 5 position. The applicant alleged to have acted in the higher position for a period of two financial years (2018/2019) and (2019/2020). The applicant alleges that she acted on a post of employment relations officer which is on level 8. The applicant lodged the grievance with the Department for nonpayment of acting allowance. The grievance outcome was not in her favour.
7. The matter was set down for arbitration on 08 February 2021. During arbitration the parties were allowed to cross examine and re-examine the presentation of their evidence as well as present closing arguments at the conclusion of their case. For the sake of brevity, the details of this will not be repeated in the award but it should not be construed that it was not considered.

## **SURVEY OF EVIDENCE AND ARGUMENT**

8. I am required to issue an award with brief reasons. I do not wish to offer an exhaustive survey of all the evidence and arguments presented at the arbitration hearing. I have had regard to everything presented to me, and what follows is a brief summary of the evidence and arguments relevant to my findings only.

### **The Applicant's evidence and submissions**

9. Ms. Van Wyk Jani ("The Applicant") testified under oath that as per page 2-9 of bundle A documents she entered into the performance agreement to conduct duties of a Senior Employment Relations Officer.
10. As per page 13 – 16 of bundle A document, she referred to it as the job description which was given to her which confirmed the duties that she performed. The duties she performed were of Acting Employment Relations Officer a post which was on level 8.
11. She referred to page 19-21 of bundle A documents which is a collective agreement on acting allowance. As per the policy it indicates that "*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 or his/her delegate at provincial or national level ( here-after the "appointing authority") shall be paid an acting allowance to act in vacant posts provide that: the post is vacant and funded post, the acting period is longer than 6 weeks, the*

*appointing authority is a level higher than the acting appointee and that the employee must accept the acting appointment”.*

12. She was not paid the acting allowance and that can be confirmed by the service record as attached on page 10 of bundle A document. She concluded by referring to salary scales which confirms the difference in scale of the levels she was appointed on (5) and the salary of post she acted on (8).
13. Under Cross-examination, the respondent did not cross examine the applicant and indicated that there was nothing to cross examine the applicant on.

### **The Respondent’s evidence and submissions**

14. The respondent did not present any evidence and they indicated that there was no evidence or witness to call and that they did not oppose the applicant’s case.

### **ANALYSIS OF EVIDENCE AND ARGUMENT**

15. In the light of the evidence and arguments presented by both parties before me, taking into account supporting documents, I find the following:
16. The basis of the case of the applicant is that she is entitled to acting allowance as provided by resolution 1 of 2002 (agreement on acting allowance).
17. The provisions of the policy as per the resolution 1 of 2002 on clause 3.1 it provides that “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 or his or her delegate at provincial or national level (here-after the “appointing authority”) shall be paid an acting allowance to act in vacant posts provided that:
  - The post is a vacant and funded post
  - The acting period is longer than 6 weeks
  - The appointing authority is a level higher than the acting appointee
  - The employee must accept the acting appointment
18. The applicant did not receive any appointment letter for acting in a higher position but however she submitted that she contracted by performance agreements and job

description and accordingly performed those duties of higher position. The offer of acting by the applicant was not directly reduced to writing as required by clause 3.1 of resolution 1 of 2002.

19. The requirement in terms of the resolution 1 of 2002 is that the appointment of the employee shall be paid acting allowance if the appointment is made in writing by the Head of Department or his delegate at provincial or national level. In this case the applicant did not produce any appointment letter to confirm that the Head of Department or any person delegated to do so issued such a letter.
20. The applicant relied on the performance agreement and the job description to claim that she was appointed to act on higher position. The collective agreement (resolution 1 of 2002) is clear as to its provisions in order for the employee to be paid acting allowance. It cannot be correct that the performance agreement and the job description amounted to the appointment letter of acting on a higher position.
21. The applicant had failed to establish that the conduct by the respondent of not paying her the acting allowance amounted to failure by the respondent to interpret the resolution 1 of 2002 correctly. From the evidence tendered before me it had been established that the applicant failed to meet all the requirements as laid down in the resolution 1 of 2002 and that it was not wrong for the employer to have followed the provisions of resolution 1 of 2002.
22. In disputes of this nature, the onus of proof lies squarely with the applicant to show that the collective agreement in question finds application in the circumstances or that it should be interpreted in a particular manner to give effect to its objectives. However, in the present case, the applicant has done nothing more than claim an entitlement to acting allowance based on acting on a higher position as per performance agreement, a position which she was not formally appointed to act on. Accordingly, she has failed, on the balance of probabilities, to discharge the onus required of her.

**AWARD**

23. Accordingly, the applicant has failed to discharge the onus of proof required of her.

24. The matter is, therefore, dismissed.



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Musiwalo Seth Mavhungu