



**PHSDSBC**

PUBLIC HEALTH AND SOCIAL DEVELOPMENT  
SECTORAL BARGAINING COUNCIL

# ARBITRATION AWARD

Commissioner: Yusuf Naqdee

Case No: PSHS769-19/20

Date of award: 27 July 2020

In the matter between:

**PSA, NEHAWU, DENOSA & HOSPERSA obo 1200 MEMBERS**      **APPLICANTS**

and

**DEPARTMENT OF HEALTH- NATIONAL**      **RESPONDENT**

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## **DETAILS OF HEARING AND REPRESENTATION**

1. The Applicants referred a dispute relating to matters of mutual interest to the Public Health and Social Development Sectorial Bargaining Council (PHSDSBC).
2. The parties were unable to resolve the dispute. The dispute revolves around essential service employees and the dispute was referred to arbitration.
3. An arbitration hearing was scheduled for the 20<sup>th</sup> July 2020 at 10H00 at the Council's premises at 260 Basden Avenue, Lyttelton, Centurion.

4. The Applicants were represented by a PSA official, Mr Jannie Oosthuizen. The Respondent was represented by Mr. Charles Mabula.
5. A number of participants joined the arbitration by Zoom.

### **ISSUES TO BE DECIDED**

6. In terms of the pre-arbitration minute between the parties, the Arbitrator was required to decide whether the Respondent has failed to table a sustainable model with salary levels and notches for FPO's.
7. The parties agreed to a common bundle of documents marked "A".
8. The proceedings were recorded by Zoom.
9. The parties agreed that witnesses will not give evidence. Documentary evidence was relied on submissions made. The parties were also required to make written submissions within 3 days of the arbitration.

### **APPLICANTS' SUBMISSIONS**

10. The Applicants presented joint submissions and submitted as follows:
  - 10.1 The parties entered into a collective agreement in the form of Resolution 4 of 2017 on the payment of a special allowance and a danger allowance for qualifying FPO's and other employees who were performing the same function;
  - 10.2 It was to be implemented from 1<sup>st</sup> April 2017. Reference was made to the monthly amounts and a once off remedial amount of R4800.00;

- 10.3 The parties were to negotiate a sustainable model to have cover within 6 months after the agreement was signed;
- 10.4 The parties were supposed to conclude the agreement by January 2018. The task team that had been appointed to look into this has been dissolved;
- 10.5 The issue was elevated to Exco and at a joint Exco on the 19<sup>th</sup> July 2019 it was resolved the Respondent should develop a model;
- 10.6 The Respondent was supposed to table this on the 29<sup>th</sup> August 2019 but stated it could not do so as it was finalising the internal mandating processes;
- 10.7 Reference was made to page 37 of the bundle in respect of the minutes of Council and it was submitted that the Respondent failed to do so;

## **RESPONDENT'S SUBMISSIONS**

11. The Respondent acknowledged the process that led upto the dispute being referred to arbitration.
12. The statutory body is not within the competencies of Council. At this point the Respondent does not have a sustainable model to present.
13. This is a vision and has to go through a mandatory process. The Respondent cannot act unless it has a mandate.

## **APPLICANTS' REPLY**

14. The Applicant stated that the Respondent acknowledged that there was no model in place.
15. Reference was made to Annexure 22E paragraph 2.1 where the task team in its terms of reference agreed that the Respondent was mandated to develop a sustainable model in terms of the standardisations of FPO job description (salary level and notches).
16. It was explicitly provided that salary levels and notches should have been considered.
17. The Respondent has failed to comply and the Applicant sought compliance by all parties in terms of clause 5 of the pre-arbitration minute.

## **APPLICANT'S WRITTEN SUBMISSIONS**

18. The Applicant submitted, inter alia, as follows:

***“1. The Arbitration was held on 20 July 2020. The Applicants submitted its argument orally in the following manner:***

***1.1 A Collective Agreement was entered into between the parties at Council and it enjoys majority signature on 29 June 2017. Clause 4.5.2 of the agreement provides for the following:***

***“Parties agree to negotiate and conclude a sustainable model to allow the FPO to register with a statutory body as professionals, to have career***

***pathing and job evaluation within six (6) months after this agreement attains the majority signature.”***

***1.2 Parties were therefore supposed to conclude on the sustainable model on 29 January 2018 which unfortunately as per the evidence presented by the Applicants did not happen. The Respondent conceded in the proceedings that they did not finalise a sustainable model.***

***1.3 The council resolved to establish a Task Team to deal with amongst others the proposed sustainable model as per (pg. 37) of the bundle of documents. The Respondent did not rebut the minutes of the Council of 29 August 2019 as presented by the Applicants. The Applicants submitted that as per the minutes on (pg. 38) in the bundle of documents: the Respondent pronounced at a Council meeting that they had collated the job descriptions, new proposed salary scales and notches for the FPOs and those would be consolidated by its organizational design department; subsequently, they would be forwarded to the Department of Public Service and Administration for confirmation.***

***1.4 The Respondent admits through their response to the Applicants' submission that they still to date do not have any such a sustainable model to present which is against the resolution and therefore the parties fail to reach an agreement as per the dispute referred. This is a clear admission that the Respondent has failed to develop such a sustainable model to, inter alia, provide for salary levels and Notches which will speak to the model as per the submission of the Applicants on page 24 par 2.1 of the bundle of documents (Consolidated hand over report on the***

***Forensic Pathology Officers to the EXCO) which was accepted and not rebutted by the Respondent.***

***2. In terms of section 31 of the Act it expressly provides that a collective agreement concluded in a bargaining council bind:***

***“The parties to the bargaining council who are also parties to the collective agreement”.***

***3. Therefore, the Collective Agreement is binding on the employer as they are a party to the Council. The provisions of clause 4.5.2 of the Collective Agreement should therefore be adhered to.***

***4. Parties at Council agreed to establish a Task Team to deal with this matter, unfortunately the Task Team did not yield the desired outcome and was dissolved through a decision of Council the matter was elevated to the ExCO to deal with this matter.***

***5. A joint ExCO and Task Team meeting was scheduled for 19 July 2019 and the decision was taken at the meeting that the Respondent should develop amongst others a sustainable model and present it at the level of the Council.***

***6. A Council meeting was convened on 29 August 2019 and the Respondent once again dismally failed to present any report or sustainable model with proposed salary levels attached to the Model (pg. 40 clause 5.1.15). The Respondent admitted that they do not have a model.***

***7. The Applicants submit that their version should be accepted as presented before the Commissioner, that the Respondent failed to table a sustainable model as per Clause 4.5.2 through their own submission. The Respondent has conceded that they do not have***

*a sustainable model which address the salary levels and notches for FPOs.*

- 8. The Respondent further indicated in their submission that they were not compelled to submit salary levels and notches. The Applicants rebutted their version and referred the commissioner to (pg. 37-38 specifically clause 5.1.3) and (pg. 24 clause 2.1) of the bundle of documents wherein the Respondent was tasked to develop a sustainable model in terms of the standardisation of FPO job descriptions( salary levels and notches ) , job evaluation , Salary progression and career progression.*
  
- 9. It is therefore Applicants' plea that the Commissioner issue an award compelling the employer to table a sustainable model inclusive of salary levels and notches, job evaluation, Salary progression and career progression as per the evidence that was submitted before the Commissioner. The Employer must table such a model within 30 days of the award."*

## **RESPONDENT'S WRITTEN SUBMISSIONS**

19. The Respondent submitted, inter alia, as follows:

- "1. The Applicants referred this matter as a new demand under mutual interest.*
  
- 2. Indeed, there were several council meetings whereby parties of the council agreed to established a task team composing of equal number of both parties of the council to focus on FPOs matters include amongst others the issue of salary levels and Notches.*

- 3. Once the Task Team finish their task they should report to the Council for endorsement.**
- 4. Unfortunately, the council task team did not meet the desired outcome as a result it was disbanded.**
- 5. The task team requested the employer representative to submit a proposed model with salary and notches.**
- 6. There was a Conciliation dated 22 October 2019, which is subsequent by pre-arbitration on 07 February 2020 outlining the facts in dispute as follows: that parties failed to reach an agreement as stipulated in clause 4.5.2 of the resolution due to the employer failure to table a sustainable model with salary levels and notches for FPOs.**
- 7. Parties agreed during the Pre-Arbitration that the issues the Commissioner has to decide is “whether the employer has failed to table a sustainable model with salary levels and notches for FPOs”.**
- 8. The relief claimed is that the employer should table a sustainable model with salary levels and notches for FPO within 30 days.**
- 9. Further, the Respondent strongly highlighted and emphasized that the demand by the applicant cannot be resolved within the expected period set by the Applicant as Collective bargaining by its very nature, is a mandate driven process, therefore it’s difficult to put time frame.**
- 10. The Respondent further likes to emphasize that the demand and the intension was never being dismissed, however the correct procedures need to be followed.**



11. *The Respondent's position was that once the mandating process is done and ready to table the model it will be done.*
12. *The Applicants failed to discharge the onus that the FPOs are prejudiced and that all FPOs have been translated to correct salary levels and notches as per collective agreement and there is no dispute.*
13. *The Applicants did not have a problem with the implementation of the Resolution 2 of 2010 and which confirms that the Respondent implemented the Resolution accordingly.*
14. *The Respondent is very much mindful that, whatever the Applicants are raising during the scheduled date has nothing to do with the PHSDSBC referral and that no clause of PHSDSBC Resolution 2 of 2010 was referred as a nature of dispute.*
15. *The referral by the Applicants is a dispute of mutual interests.*
16. *Parties of the council (labour unions and Employer) failed to honour clause 4.5.2 of the PHSDSBC Resolution 4 of 2017.*
17. *There was a council decision that employer will table the model, and did not until date.*
18. *The Respondent will submit the model when it is readily available.*
19. *PHSDSBC Resolution 2 of 2010 abolished all the Public Service levels and notches by compressing them into GRADES.*

20. ***It introduced only two Grades for operation of Forensic Pathology Services, which are Forensic Pathology Officer Grade 1 and 2.***
21. ***There is No dispute recorded during the implementation, meaning the Respondent implemented the Resolution accordingly.***
22. ***The Applicants are regarded as Forensic Pathology Officer Grade 1 and 2 which are currently under PHSDSBC Resolution 2 of 2010 and PHSDSBC Resolution 4 of 2017.***
23. ***The forensic pathology officers are categories and designated as essential services.***
24. ***It worth mentioning that it is by consensus that parties at the council agreed that this matter still part of the negotiations process.***
25. ***The APPLICANTS relief is that employer must table a proposed model for FPOs which must cover the salary levels and notches for the FPOs within 30 days.***
26. ***The applicants' relief must NOT be considered, as there is NO evidence. Which is compelling the respondent to provide a sustainable model with FPOs salary levels and notches within 30 days.***
27. ***The Applicants case is purely a dispute of mutual interest.***
28. ***The respondent strongly believe that specific performance is not within the power of the commissioner.***

**29. The relief sought by the respondent is for the Commissioner to dismiss the matter.”**

**ANALYSIS**

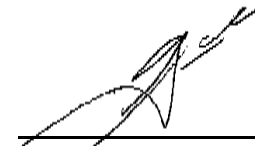
20. The submissions made by the parties were carefully considered. It is common cause that a collective agreement was entered into;
21. It is also common cause that the parties agreed to negotiate and conclude a sustainable model to allow the FPO's to register with a statutory body as professionals.
22. It is in dispute whether the parties reached agreement due to the Respondent's failure to table a sustainable model with salary levels and notches for FPO's.
23. The collective agreement contemplates that there were certain time periods within which to register the Statutory Body. The Respondent acknowledged that a model was not in place.
24. It is further worthy of note that in Annexure E on page 22, the task team adopted a resolution that the Respondent in the task team had to develop a sustainable a model in terms of the standardisation of FPO job descriptions (salary level and notches). The Respondent is best suited to do this.
25. The Respondent is in any event reported in a progress report at Exco that a model had been developed and that it would present same. This has not happened. A considerable period has passed and this has not materialised.
26. It does not assist the Respondent's case by placing reliance on mandatory processes. This is an important process and should be finalised.

## **AWARD**

27. Accordingly, the following award is rendered:

27.1 The Respondent is to table a sustainable model with salary levels and notches for FPO's within 30 days of receipt of this award.

27.2 There is no order as to costs.



**YUSUF NAGDEE**