



ARBITRATION AWARD

Panellist/s: Faith Ncumisa Bantwini
Case No.: PSHS88-10/11
Date of Award: 12-Dec-2011

IN THE ARBITRATION BETWEEN

HOSPERSA obo Gxolo and other : APPLICANT/EMPLOYEE

AND

Dept of Health- EC : RESPONDENT/EMPLOYER

Union/Applicant's Representative : Mr. I.S. Jacobus
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Respondent's Representative : Mr. E. Peters

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DETAILS OF HEARING AND REPRESENTATIONS

1. This arbitration was heard on 09 November 2011 at PE Hospital Complex in Port Elizabeth. It came before the PHSDSBC in terms of Section 191 (1) 5(a) read with section 186 (2) (a) of the Labour Relations Act 66 of 1995 (the LRA). Ms. N.M. Gxolo was present and was represented by Mr Jacobus, an official from Health and Other Service Personnel Trade Union of South Africa (HOSPERSA). The respondent, the Department of Health was represented by Mr. E. Peters. The second respondent, Ms. Marishe Desree Manuel was also in attendance and she appeared in person.

ISSUE TO BE DECIDED

2. The issue to be decided is whether the position of Deputy Director: Clinical Support Services can be re-advertised or not.

BACKGROUND TO THE DISPUTE

3. The applicants, Misses. Gxolo and Padayache referred a dispute to the PHSDSBC through their union, HOSPERSA regarding failure of the respondent to appoint a suitable qualified candidate to a position of a Deputy Director: Clinical Support Services which was advertised by the respondent. When the dispute could not be resolved at conciliation level, the union filed a request for arbitration.

SURVEY OF EVIDENCE AND ARGUMENT

Applicant's case

4. According to Mr. Jacobus 's opening statement the dispute arose when the respondent failed to appoint one of the applicants or a suitable qualified candidate but appointed the second respondent, Mrs. Marisha Desree Manuel to a position of a Deputy Director: Clinical Support Services. The respondent deviated from the council registration that was indicated in the advertisement and appointed a candidate with SANC instead of HPCSA registration. The second respondent does not possess HPCSA registration and as such she does not qualify for the position. The applicants seek re-advertisement of the position as a remedy.
5. One of the applicants, **Mrs. Ntombizodwa Marian Gxolo** testified that Mrs. Manuel does not meet the requirements of the advertised position as she is not a member of Health Professionals Council of South

Africa (HPCSA). The respondent deviated from the advertisement as the candidate has to be registered with HPCSA not South African Nursing Council (SANC). If both SANC and HPCSA were reflected in the advertisement she and Ms. Padayache would not have referred the dispute to the PHDSSBC. The appointed employee is not a member of HPCSA and she does not qualify for the position.

6. Under cross-examination, the applicant testified that a health related qualification could mean any qualification like physiotherapy, Occupational therapy or a nursing degree.
7. Under re-examination, the applicant confirmed that the respondent should have considered a candidate with HPCSA registration.
8. In closing, **Mr. Jacobus** argued that the respondent created an expectation by advertising a position with HPCSA registration to the applicants. The applicants would not have bothered to apply if the required registration was SANC. The panel deviated from the requirements that were set out in the advertisement without advising the candidates. The appointed candidate does not qualify for the position as she is not registered with HPCSA.
9. The HPCSA and SANC have different scope of duties. The second respondent is not registered as an Allied Health Professional but as a Nurse practitioner and does not have the appropriate training, experience to supervise the Allied Health Professionals. The remedy sought by the applicants is that the position must be re-advertised.

Respondent's case

10. According to Mr. Peters' opening statement, the processes that were followed by the respondent were fair. All the candidates were afforded equal opportunity to present themselves during the interview process. **The respondent could not succeed in getting the applicants positions** upgraded. Neither the 2 applicants qualified for the position in question as they were not rated as the first second or the third candidates during the interview process.
11. **Mrs. Chaimaine Jagers**, the respondent's witness testified under oath as follows:

12. She is holding a position of an Assistant Director Administration and her focus is on integrated Human Resources Management. During the recruitment process, the position was advertised, shortlisting and interviews were conducted and NEHAWU attended the process.
13. The HPCSA is a body regulating the categories of health professionals. The second respondent has nursing qualifications and is registered with SANC. Both the SANC and HPCSA are health regulating bodies and serve the same purpose of health workers. The recruitment process was fair to all candidates and no concerns were raised by NEHAWU.
14. Under cross-examination the witness testified that the panel looked at the qualifications during short listing. The witness testified further that she is not sure as to why employees/candidates must be registered to HPCSA as per the advertisement.
15. Under re-examination Mrs. Jagers confirmed that the candidates were asked the same questions. The panel recommended the highest scoring candidate for the position. Mrs. Gxolo was number 6.
16. In closing, Mr. Peters argued that the selected candidate was registered with SANC. Each candidate was measured against a set of questions which were posed to all interviewees. The scores obtained reflect the performance of each candidate during the interview. Unions were invited to observe the recruitment process from the sifting and short listing stage up to the stage when a recommendation to appoint the second respondent was made.
17. The respondent's witness indicated clearly that all steps in accordance with the recruitment and selection policy were followed. The fact that the aggrieved applicants opt for re-advertising of the position is totally irrelevant due to the following reasons:
 - The selection and interview process was procedurally and substantively fair and all candidates were given equal opportunity to promote themselves during the interview.
 - Educational qualifications should not alone predetermine suitability
 - NEHAWU did not raise any concerns during the recruitment process
 - The aggrieved employees lacked the ability to promote themselves as they were rated as number 4 and 6 in terms of scoring.
18. Mr. Peters finally submitted that the trust invested in the panel of interview was indeed to ensure that a person of the highest caliber is selected for the position for effective service delivery, following the recruitment and selection policy.

ANALYSIS OF EVIDENCE AND ARGUMENTS

19. It is common cause that the applicants applied for an advertised position of Deputy Director: Clinical Support Services. It is also common cause that Mrs. Manuel was appointed to the position hence she was joined to the proceedings as the second respondent.
20. It is the applicants' case that the second respondent does not qualify for the above mentioned position as she is not registered with HPCSA but with SANC. The suitable candidate according to the advertisement must be registered with HPCSA. This then means that the respondent deviated from the requirements as set out in the advertisement.
21. It was the respondent's evidence that both the SANC and HPCSA are health regulating bodies but the respondent could not justify as to why the job specifications/requirements were changed.
22. The respondent's representative in his opening statement submitted that the he could not succeed in getting the applicants positions upgraded after they lodged a grievance regarding the appointment of the second respondent (Ms. Manuel).
23. It is undisputed evidence that all unions including HOSPERSA were invited to observe the recruitment and selection process from the short listing to the stage where a recommendation to appoint the best candidate was made.
24. It is my view that the applicants succeeded in discharging the onus to prove the claim of unfair labour practice against the respondent.

AWARD

25. I therefore make the following award:

25.1 The respondent, **Department of Health-EC** is ordered to re-advertise the position of Deputy Director: Clinical Support Services.

25.2 There is no order as to costs.



Signature

Faith Ncumisa Bantwini

PHSDSBC PANELIST