



PHSDSBC

PUBLIC HEALTH AND SOCIAL DEVELOPMENT
SECTORAL BARGAINING COUNCIL

ARBITRATION AWARD

Commissioner: **Minette van der Merwe**

Case No: **PSHS963-18/19**

Date of award: **11 April 2019**

In the matter between:

PSA obo HM Oosthuizen & 2 others

(Union/ Applicant)

and

Department of Health- Free State

(Respondent)

DETAILS OF HEARING AND REPRESENTATION:

- [1] The arbitration was held on **05 April 2019** at the Respondent's provincial office, Bophelo House.
- [2] The Applicants were all present and represented by Mr N Cloete, Office Bearer from PSA (Public Servants Association), whereas the Respondent was present and represented by Mr M Supi, Labour Relations Officer.
- [3] Proceedings were mechanically recorded, and copious notes were taken. Interpretation was not required.

BACKGROUND TO THE DISPUTE:

- [4] The matter was scheduled for arbitration in terms of section 24 of the Labour Relations Act (Act 66/1995) (hereinafter referred to as the "LRA"), related to an allegation of non-compliance to PHSDSBC Resolution 2 of 2010 (hereinafter referred to as "the Resolution").
- [5] The Applicants in this dispute are identified as:
- a) Ms HM Oosthuizen (main Applicant)
 - b) Ms S Oosthuizen
 - c) Ms BM van der Merwe
- [6] It is common cause that the Applicants are currently employed as Nuclear Medicine Radiographers Grade 2.

ISSUE TO BE DECIDED:

- [7] I was called to determine whether the Respondent was in breach of the Resolution by failing to implement grade progression for the Applicants from Grade 2 to Grade 3.
- [8] It was common cause that the Applicants were recommended for grade progression by the Respondent as follows:
- a) Ms HM Oosthuizen with effect from 03 March 2013 (bundle A3)
 - b) Ms S Oosthuizen with effect from 01 July 2013 (bundle A2)
 - c) Ms BM van der Merwe with effect from 01 July 2011 (bundle A4)

SURVEY OF EVIDENCE AND ARGUMENTS:

Documentary:

- [9] Bundles A1, A2 A3 and A4 submitted into evidence by the Applicants. The veracity of the documents was not disputed and as such accepted as it purported to be.

Evidence on behalf of the Applicants:

[10] Mr Cloete argued, on behalf of the Applicants, that the Applicants sought grade progression from Grade 2 Nuclear Radiographers to Grade 3 Nuclear Radiographers, in terms of Resolution 2 of 2010. The Applicants qualified in terms of clause 3.2 of Annexure B3 of the Resolution to be grade progressed, as they had the appropriate qualification, was registered with HPCSA and had more than the required minimum of 24 (twenty-four) years' experience after said registration. Ms HM Oosthuizen and Ms S Oosthuizen were registered with HPCSA in 1989 (A2 & A3), whereas Ms BM van der Merwe was registered with the HPCSA in 1986.

Evidence on behalf of the Respondent:

[11] Mr Supi argued, on behalf of the Respondent, that it was in the process of determining who qualified for grade progression, and only after such verification was completed could the Respondent determine the date of implementation for qualifying Employees. Said implementation carried with it a financial implication, which could further only be determined upon finalization of the verification.

ANALYSIS OF EVIDENCE AND ARGUMENT:

[12] In terms of section 138(7) I must issue an arbitration award with brief reasons.

[13] Essentially, the Respondent did not dispute the Applicants' entitlement to grade progression from Grade 2 to Grade 3, and further the date of implementation (A2, A3 and A4).

[14] In terms of clause 1 of the Resolution, grade progression is defined as "*the salary movement from one salary grade (scale) to the first salary notch of the higher salary grade (scale) attached to the post*".

[15] Clause 4.1.10 further describes grade progression as follows:

“4.1.10.1 Creation of posts in the identified occupations as a single post per career stream, with the linking of more than one salary grade (scale) to facilitate grade progression.

4.1.10.2 Progression to the next salary grade (scale) attached to the post, provided that candidates meet all the requirements to progress to the relevant higher grade as indicated in Annexure B.

4.1.10.3A system of differentiated periods for grade progression, as indicated in Annexure B, based on performance, to enable serving professionals or professionals on appointment from outside the public sector, and who have distinguished themselves from their peers in terms of performance, to progress faster to higher grades attached to the post. “

[15] From the Resolution it is clear that the Respondent has no discretion to implement grade progression when Employees qualify. Once an Employee qualifies for grade progression, the Respondent must comply with the Resolution and implement.

[16] Paragraph 3.2 of Annexure B3 of the Resolution (Page 17 of A1) states as follows:

“Nuclear Medicine Radiographer Grade 3

Requirements:

- 1) Qualifications: Appropriate qualification that allows for the required registration with the HPCSA in Nuclear Medicine*
- 2) Registration: Registration with the HPCSA in Nuclear Medicine*
- 3) Experience: 24 years appropriate experience after registration with the HPCSA as Diagnostic Radiographer, of which 20 years must be after registration in Nuclear Medicine Radiography”*

[17] The undisputed evidence is that the Applicants are registered with the HPCSA, that said registration was dated 1989 and 1986 respectively, further that such registration was as Radiographer: Nuclear Medicine for all three Applicants, and finally that the Applicants have experience in said occupations for more than 24 years.

[18] The Respondent issued recommendations that the Applicants be grade progressed as follows (pages 1 of A2, A3 and A4):

- a) Ms HM Oosthuizen with effect from 03 March 2013

- b) Ms S Oosthuizen with effect from 01 July 2013
- c) Ms BM van der Merwe with effect from 01 July 2011

[19] The Applicants have proved that they qualify for grade progression from Nuclear Medicine Radiographer Grade 2 to Nuclear Medicine Radiographer Grade 3, and that the Respondent was in contravention of Resolution 2 of 2010.

[20] Said grade progressions must be implemented by the Respondent for the Applicants in compliance with Resolution 2 of 2010.

AWARD:

[21] The Respondent, **Department of Health – Free State**, is in breach of Resolution 2 of 2010.

[22] The Applicants, HM Oosthuizen, S Oosthuizen and BM Oosthuizen are entitled to grade progression from Nuclear Medicine Radiographer Grade 2 to Nuclear Medicine Radiographer Grade 3.

[23] Said grade progression to be backdates and effected as follows:

- a) Ms HM Oosthuizen with effect from 03 March 2013
- b) Ms S Oosthuizen with effect from 01 July 2013
- c) Ms BM van der Merwe with effect from 01 July 2011

[24] The Respondent is hereby ordered to implement by no later than 01 June 2019.

Signature:



Minette van der Merwe