



ARBITRATION AWARD

Commissioner: ARCHIBALD NGOAKO MAFA

Case No: PSHS964-18/19

Date of award: 14 March 2019

In the matter between:

DENOSA obo Moeti G

(Union/ Applicant)

and

Department of Health- North West

(Respondent)

DETAILS OF HEARING AND REPRESENTATION

1. This matter was set down for arbitration on 25th February 2019 at Christiana Hospital in Christiana, North West Province and at 10:00 am. Both parties attended the proceedings.
2. The applicant was represented by Mr. T.I Moeng from DENOSA, and Mr. K Oseile represented the respondent.
3. The proceedings were digitally recorded and detailed handwritten notes were also taken which forms part of the record.

PRELIMINARY ISSUES

4. None

ISSUE TO BE DECIDED

5. Whether the Respondent applied Clause 3.1.5 of PHSDSBC Resolution 3 of 2007 correctly by not pay Applicant pay progression and by excluding a year of service to Applicant as a Professional Nurse in a community service.

BACKGROUND TO THE ISSUE

6. The Applicant started working in on 5th July 2010 as student nurse at Excelsior Nursing College.
7. He completed the course on 30 June 2014 and on 1st July the same year he was transferred to Bloemfontein CHC (Lekwa–Teemane).
8. He completed community service on 30 June 2015.
9. On 1st March 2016 he took a transfer to Christiana Hospital where he is still employed to date as a professional nurse.
10. Both parties submitted two separate sets of bundles of documents. The Applicant submitted 3 sets of bundles being annexure A1 (page 1 – 9), annexure A2 (page 1 – 45), annexure A3 (page 46 – 49) and annexure A6 (Applicant’s qualifications). The Respondent on the other hand submitted 2 sets of bundles being annexure “B” (page 1 – 11) and annexure “B1” (page 1 – 8).

SURVEY OF EVIDENCE AND ARGUMENT

11. Both parties agreed not to lead *viva voce* evidence and to file written arguments in that the material facts are not in dispute. I received written submissions from both parties and in arriving at my findings I took same into account.

ANALYSIS OF EVIDENCE AND ARGUMENTS

12. From the evidence presented during the arbitration proceedings and written submissions filed, it is not in dispute that the dispute referred to Council relates to interpretation and application of PHSDSBC Resolution 3 of 2007.
13. The specific Clause that appears to be contentious is Clause 3.1.5 dealing with pay progression.
14. However, from the evidence presented before me and the written arguments filed by both parties it appears not to be in dispute on the interpretation and implementation of Clause 3.1.5.1, 3.1.5.2 and 3.1.5.3. of Resolution 3 of 2007.
15. What is crisp appears to be whether the Applicant at the time of his first registration he was a professional nurse or not
16. The registration certificate of the Applicant on 30 June 2014 after completing his Diploma in Nursing Science indicates that he is registered as Nursing Practitioner in the category of Community Services whereas his registration after completing community service on 30 June 2015 describe him as Nurse (General, Psychiatric and Community) and Accoucheur.
17. In terms of the Nursing Act “Professional Nurse” means a person registered as such in terms of section 31. The same Act also define a “practitioner” as any person registered in terms of section 31 (1) of this Act.
18. The requirements for registration for both instances seem to differ in that before community service the registration is for Nursing Practitioner in the Category of Community and after completing community service one gets registered as Nurse General.
19. Although Resolution 3 of 2007 does not define professional nurse, I cannot locate any provision in the resolution which seek to suggest that Applicant was registered as professional nurse for the first time.
20. The two certificates of registrations of the Applicant being “A5” and “A6” in the Applicant’s bundle clearly draw a distinction on the different registration requirements.
21. Clause 2.1 of Regulations Relating to Performance of Community Work, Nursing Act 33 of 2005 provides that “Any person who is a citizen of South Africa intending to register for the first time as a professional nurse in terms of the Act, as having

met the prescribed requirements to qualify as such, must perform remunerated community service for a period of one year.”

22. In my view, a pre-condition for registration as professional nurse is for the Applicant to perform remunerated community service for a period of one year hence his description as a nursing practitioner in the category of community service.
23. Accordingly, I find that the meaning of professional nurse (registered nurse) as per clause 3.1 of the resolution does not envisage a nursing practitioner in the category of community service and as such Applicant does not meet the requirements for pay progression in terms of the resolution as at 31st March 2017 and cannot pay progress effectively from 1st July 2017
24. I therefore find on a balance of probabilities that the applicant has not succeeded in making out a case against the Respondent for interpretation/implementation of Resolution 3 of 2007.
25. Consequently, I proceed to render the following award:

AWARD

26. The Applicant failed to make out a case for interpretation and/or implementation of Clause 3.1.5 of Resolution 3 of 2007.
27. The Applicant’s case is hereby dismissed.
28. I make no order as to costs.



Signature:

Commissioner:

Sector:

Archibald Ngoako Mafa

Public Health
