



**PHSDSBC**

PUBLIC HEALTH AND SOCIAL DEVELOPMENT  
SECTORAL BARGAINING COUNCIL

# ARBITRATION AWARD

Commissioner: **Minette van der Merwe**

Case No: **PSHS 988 – 16/17**

Date of award: **7 August 2017**

In the matter between:

**NEHAWU obo TL Molise & 3 others**

(Union/ Applicant)

and

**Department of Social Development – Free State**

(Respondent)

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## **DETAILS OF HEARING AND REPRESENTATION:**

- [1] The default arbitration took place on **01 August 2017** at the **Thekolohelong Welfare Centre in Qwa Qwa**.
- [2] The Applicants, TC Molise, MC Molaba, NS Mothibeli and MA Molapi were present and represented by Mr KA Mokala, Union Official from NEHAWU. The Respondent was absent from proceedings.
- [3] I investigated the absence of the Respondent from proceedings and found the following:
  - [3.1] The matter was set down for arbitration on 22 March 2017 and 15 May 2017 during which proceedings Mr Lucky Beleng was the Respondent's Representative.
  - [3.2] At 09h01 on 01 August 2017 Mr Beleng phoned me and informed that Mr Dipico would be representing the Respondent on 01 August 2017 at the arbitration. He further

informed me that Mr Dipico would be late for the arbitration, but would arrive no later than 10h40. I informed Mr Beleng that I would commence with the arbitration at 10h40 promptly.

[3.3] Mr Molise, one of the Applicants, informed me that Mr Dipico phoned him and informed him that he would arrive at 10h40 for the arbitration.

[3.4] At 10h41 Mr Mokala, the Applicants' representative, phoned Mr Dipico (on speakerphone), and he duly informed us that that arbitration may proceed in the Respondent's absence, and that the Respondent was not disputing the Applicants' entitlement to grade progression and that he was only around Kestell at the time of the phonecall. I therefore proceeded with a default arbitration.

[3.5] It is recorded that there was no application before me for the postponement of this matter from or on behalf of the Respondent.

[4] As such I proceeded with the arbitration in default of the Respondent in terms of section 138 (5) (b) (i) of the Labour Relations Act, 1995 as amended (hereinafter referred to as "the LRA") read with rule 29 (2)(a) of the Rules as I have satisfied myself that the Respondent was properly served in terms of Rule 5 of the PHSDSBC Rules (hereinafter referred to as "the Rules").

[5] The proceedings were recorded by means of written notes. No interpretation was required.

[6] The Applicants, on the advice of their representative, elected to argue the matter on heads of arguments, and Mr Mokala signed for this request. The heads of arguments had to reach me on or before 04 August 2017, which was ultimately filed on 03 August 2017.

[7] It has to be recorded that Mr Lucky Beleng, since the commencement of the arbitration on 22 March 2017, also stated that the Respondent did not dispute that the Applicants were entitled to the grade progression, which formed the basis of this dispute.

## **BACKGROUND TO THE DISPUTE:**

[8] The matter was scheduled for arbitration in terms of section 24 of the LRA and is in respect of the interpretation and application of Resolution 3 of 2007.

[9] On 01 August 2017 bundles “A” and “B” were submitted into evidence on behalf of the Applicants.

## **ISSUE TO BE DECIDED:**

[10] I had to decide whether the Applicants were entitled to grade progression in terms of Resolution 3 of 2007. If I found in the Applicants’ favour, they wished to have the grade progression implemented with effect from 01 April 2012.

[11] The Respondent did not dispute the Applicants’ entitlement to the grade progression.

## **SURVEY OF EVIDENCE AND ARGUMENTS:**

### **Evidence by Applicant:**

The heads of arguments on behalf of the Applicants are summarized as follows (not a *verbatim* reflection):

[12] The dispute arose on 01 August 2016 when the Applicants lodged a grievance with the Respondent related to the non-implementation of grade progression as regulated by Resolution 3 of 2007. After several unsuccessful correspondences with the Respondent, the dispute was referred to the Bargaining Council.

[13] The Applicants qualify for translation to the OSD position of Professional Nurse Grade 2 (Special Nursing). The Applicants have their registration certificates and proof of continued registration with the SANC (Bundle “A”). Paragraph 3.2.5.3 (i)(a) states:

*“A Professional Nurse (Registered Nurse) who occupies a post in a nursing speciality and who is in possession of a post-basic clinical nursing qualification listed in*

*Government Notice 212. As amended, shall translate to the appropriate speciality post.”*

[14] It was common cause that the Respondent was not disputing the Applicants' entitlement to the translation, but was attempting to verify whether all four Applicants qualified.

[15] Bundle “A” annexure B page 15 indicated in paragraph 2.1 under GRADE PROGRESSION / POST PROMOTION REQUIREMENTS that for a Professional Nurse on Grade 1 (Speciality Nursing) salary scale PN-B1 to progress to Professional nurse Grade 2 (Speciality Nursing) salary level PN-B2 the requirements to be met. In line with same, the Applicants met the requirements as follows (Bundle A annexure D pages 1 – 16):

[15.1] Mr TC Molise obtained his post-basic qualification in Community Nursing Science from the University of the Free State in 2010 and the qualification was registered with SANC on 29 November 2010. He commenced employment with the Respondent on 01 September 1990 and he obtained his Diploma in 1995. (pages 1 – 5)

[15.2] Ms NS Mothibeli obtained her post-basic qualification in Community Nursing Science during 2000 and the qualification was registered with SANC on 01 April 2000. She has 26 years of service with the Respondent and 19 years service in the speciality area. (pages 6 – 8)

[15.3] Ms MC Molaba obtained her post-basic qualification in Community Nursing Science during 1988 and commenced employment with the Respondent during 1998.

[15.4] Mr MA Molapi obtained his post-basic qualification in 2010 and has 29 years of service with the Respondent and 21 years service in the speciality area.

[16] All Applicants possess a post-basic qualification in Community Nursing Science. All the Applicants are still remunerated at Grade 1 (salary advises bundle “A”). All four Applicants should be translated to Grade 2.

**Evidence by Respondent:**

[17] No evidence was led by the Respondent as a result of its failure to attend the proceedings.

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

[18] The entitlement to grade progression was expressly undisputed by the Respondent.

[19] Resolution 3 of 2007 states in paragraph 3.2.5.3:

*“Translation of Professional Nurse (Registered Nurse) to speciality posts:*

*(1) A Professional Nurse (Registered Nurse) who occupies a post in nursing speciality and who –*

*(a) is in a possession of a post-basic clinical nursing qualification listed in Government Notice R 212, as amended, shall translate to the appropriate speciality post.”*

[20] Government Notice R 212 includes “Community Nursing Science” as one of the course choices.

[21] According to the Applicants’ payslips, their job titles are “*PN-B1 Professional Nurse Grade 1 (Speciality Nurse)*”. In terms of Annexure A of Resolution 3 of 2007 the requirements are as follows:

*“Qualifications:*

*Basic qualification accredited with the SANC (i.e. diploma / degree in nursing) plus a post-basic nursing qualification with duration of at least one year accredited with SANC in the relevant speciality.*

*Experience:*

*A minimum of 4 years appropriate / recognizable experience in nursing after registration as Professional Nurse with the SANC in General nursing.*

*Grade Progression / Post Promotion Requirements:*

*Compliance with the abovementioned 2 criteria, as well as a combination of 9 years’ actual service and/or appropriate / recognizable post-registration experience in General Nursing. At least 5 years of this period must be appropriate / recognizable experience in the speciality after obtaining the relevant 1 – year post-basic qualification required for the relevant speciality. Further, at least 4 years of this period must be actual service as Professional Nurse Grade 1 (Speciality Nurse). “*

[22] From the evidence submitted in paragraph 15 herein above, supported by the documentary evidence in bundle “A” addendum D, it is clear that the Applicants met the requirement for grade progression.

[23] The Applicants have established their entitlement to grade progression from Professional Nurse Grade 1 (Speciality Nursing) to Professional Nurse Grade 2 (Speciality Nursing).

[24] The Applicants sought the grade progression to be retrospectively implemented from 01 April 2012. I have no reason not to award same.

**AWARD:**

[25] The Applicants, **TC Molise, MC Molaba, NS Mothibeli and MA Molapi**, were able to prove their entitlement to grade progression from Professional Nurse Grade 1 (Speciality nursing) to Professional Nurse Grade 2 (Speciality Nursing), and that the Respondent, **Department of Social Development – Free State**, was in non-compliance of Resolution 3 of 2007.

[26] The abovementioned grade progression should be with retrospective effect from 01 April 2012, in line with Resolution 3 of 2007, appendix B to DPSA Circular 3 of 2016.

[27] The grade progression should be implemented and finalized by no later than 02 October 2017.

[28] I make no order as to cost.

Signature:



Commissioner: **Minette van der Merwe**