



# ARBITRATION AWARD

Case Number: **PSHS129-22/23**

Commissioner: **Allan Kayne**

Date of Award: **13 October 2022**

In the matter between:

**PSA OBO SR ANNA-MARIE BOTES**

(APPLICANT/UNION)

and

**DEPARTMENT OF CORRECTIONAL SERVICES – NORTH WEST**

(RESPONDENT)

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## DETAILS OF THE HEARING AND REPRESENTATION

1. The Public Servants Association (“the PSA”) referred a dispute on behalf of the applicant to the Public Health and Social Development Sectoral Bargaining Council (“the Council” or “the PHSDSBC”) in terms of section 24 of the Labour Relations Act, 66 of 1995 (“the LRA”).
2. The arbitration proceedings took place on 12 October 2022 at the respondent’s Community Corrections offices in Wolmaransstad. The applicant was present and represented by a PSA union official, Mr Abram Moribe, while Ms Dineo Monama appeared for the respondent.
3. Only the applicant party submitted a bundle of documents to be used during the arbitration proceedings.

4. The proceedings, conducted in English, were digitally recorded, and the record was filed with the Council's administration.
5. This award is issued in terms of section 138(7) of the LRA, which requires a commissioner to provide brief reasons for his outcome.

## **BACKGROUND**

6. The respondent employed the applicant since 1997. After obtaining a post-basic qualification in primary healthcare nursing science in 2013, she was appointed to the position of Professional Nurse Grade 1 (Speciality Nursing) with effect from 01 September 2015.

## **ISSUE/S TO BE DECIDED**

7. I must determine whether the applicant is entitled to be grade progressed from Professional Nurse Grade 1 (Speciality Nursing) to Professional Nurse Grade 2 (Speciality Nursing), with effect from 01 April 2021, in terms of PHSDSBC Resolution 3 of 2007.

## **PRELIMINARY ISSUE**

8. During her opening statement, Ms Monama submitted that the applicant's dispute was prematurely referred as the matter was still in the process of being dealt with by the Chief Director.
9. Mr Moribe answered that the applicant lodged her grievance on 11 February 2022 and that the respondent had provided no feedback to her within the prescribed 30 days in terms of the Public Sector Coordinating Bargaining Council's Resolution 14 of 2002. By referring her dispute to conciliation on 19 May 2022, she had allowed the respondent more than sufficient time to attend to the grievance or approach her to formally request an extension of the time period.
10. In reply, Ms Monama submitted that the grievance was being dealt with. The respondent previously advised the applicant that she would receive feedback in due course. However, Sr Botes had refused to acknowledge the respondent's advice to her. During the previous arbitration sitting, a postponement was granted by the presiding commissioner on the understanding that the respondent was in the process of auditing the applicant's records to determine to what she was entitled.

11. Having considered the oral submissions by the parties, I ruled that the referral was not premature, noting that if the respondent failed to attend to or resolve the applicant's grievance within 30 days of 11 February 2022, she was quite entitled to refer her dispute to the Council within a reasonable time, which she duly did.

## **SURVEY OF EVIDENCE AND ARGUMENT**

12. The following constitutes a summarised version of the parties' respective, relevant evidence and has not been captured verbatim. The fact that I have not captured all of it should not be misconstrued that I have not considered it. My findings are accordingly within the context of all the evidence tendered.

## **APPLICANT'S EVIDENCE**

### **Sr Anna-Marie Botes ("Botes")**

13. The applicant testified under oath, confirming her original appointment from 1997 and that she was appointed to the post of Professional Nurse Grade 1 (Speciality Nursing) on 01 September 2021. Despite meeting the requirements for grade progression to Grade 2 from 01 April 2021, the respondent had not yet implemented same. She lodged a grievance, but it had not been resolved to date.
14. By not being grade progressed from 01 April 2021, her remuneration remained unchanged at R412,680 per annum. According to the Occupational Specific Dispensation ("the OSD") for Professional Nurses, the respondent ought to have increased her annual remuneration package to R471,333 from 01 April 2021 and then to R478,404 from 01 July 2021.
15. With the assistance of her union, she lodged a grievance on 11 February 2022 pertaining to the respondent's failure to implement the grade progression. However, she received no written feedback in this regard to date. She refuted the respondent's claim that she refused to acknowledge any feedback it provided her. The only verbal advice she received was that the respondent was investigating the situation.
16. Sr Botes explained that she met the criteria for grade progression from 01 April 2021, taking into account the following factors:
  - 16.1. As an above-average performer, whilst only 9 years of service as a Professional Nurse (General Nursing) was required, she had already accumulated 25 years.

- 16.2. Being appointed as a Professional Nurse (Speciality Nursing) – Grade 1 on 01 September 2015, she had amassed more than 5 years of experience within the speciality as of 01 September 2020.
17. Under cross-examination, Sr Botes denied receiving any feedback from Mr Bolao pertaining to her grievance during May 2022. She acknowledged talking to Ms Monama on the telephone but could not specifically recall being advised that the respondent was looking into her matter or that a memorandum had been sent to the regional office for approval.

### **RESPONDENT'S EVIDENCE**

18. The respondent did not call any witnesses to testify.

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

19. The relevant facts of this dispute are straightforward and not disputed by the respondent.
20. As a Professional Nurse (Speciality Nursing) – Grade 1, the PHSDSBC's Resolution 3 of 2007 (the OSD for Nurses) sets out the requirements for grade progression to Professional Nurse (Speciality Nursing) – Grade 2 for above average performers as follows:
- “A combination of 9 years actual service and/or appropriate/recognisable post-registration experience in General Nursing. At least 5 years service of this period must be appropriate/recognisable experience in the speciality after obtaining the relevant 1-year post-basic qualification for the relevant speciality. Further, at least 4 years of this period must be actual service as a Professional Nurse Grade 1 (Speciality Nursing).”*
21. On the applicant's undisputed version, she was an above-average performer, with 25 years of experience in General Nursing post-registration. She had amassed more than 5 years of service as a clinician since her appointment in the speciality on 01 September 2015 after obtaining her post-basic qualification in 2013. Given that the applicant meets all the requirements and that these were not disputed by the respondent, the provisions for grade progression in terms of the collective agreement find application to the applicant with effect from 01 April 2021.
22. Accordingly, the respondent ought to have grade progressed Sr Botes to the rank of Professional Nurse (Speciality Nursing) – Grade 2 from 01 April 2021. After being grade

progressed, the applicant's remuneration should have been adjusted to R471,333 from 01 April 2021 and R478,404 from 01 July 2021.

23. At the end of the current pay cycle for October 2022, back pay amounting to R102,295.25 for the period 01 April 2021 to 31 October 2022 is calculated as follows:

Period	Actual Monthly Remuneration	Corrected Monthly Remuneration	Difference
April 2021	R34,390.00	R39,277.75	R4,887.75
May 2021	R34,390.00	R39,277.75	R4,887.75
June 2021	R34,390.00	R39,277.75	R4,887.75
July 2021	R34,390.00	R39,867.00	R5,477.00
August 2021	R34,390.00	R39,867.00	R5,477.00
September 2021	R34,390.00	R39,867.00	R5,477.00
October 2021	R34,390.00	R39,867.00	R5,477.00
November 2021	R34,390.00	R39,867.00	R5,477.00
December 2021	R34,390.00	R39,867.00	R5,477.00
January 2022	R34,390.00	R39,867.00	R5,477.00
February 2022	R34,390.00	R39,867.00	R5,477.00
March 2022	R34,390.00	R39,867.00	R5,477.00
April 2022	R34,390.00	R39,867.00	R5,477.00
May 2022	R34,390.00	R39,867.00	R5,477.00
June 2022	R34,390.00	R39,867.00	R5,477.00
July 2022	R34,390.00	R39,867.00	R5,477.00
August 2022	R34,390.00	R39,867.00	R5,477.00
September 2022	R34,390.00	R39,867.00	R5,477.00
October 2022	R34,390.00	R39,867.00	R5,477.00
<b>Total</b>			<b>R102,295.25</b>

## **AWARD**

24. Grade progression, as provided for in terms of paragraph 2.1 of the PHSDSBC's Resolution 3 of 2007, applies to the applicant's circumstances with effect from 01 April 2021.
25. The respondent, the Department of Correctional Services – North West, is ordered to grade progress the applicant, Sr Anna-Marie Botes, retrospectively to 01 April 2021.
26. The respondent, the Department of Correctional Services – North West, is further ordered to pay the applicant, Sr Anna-Marie Botes, the difference in remuneration between what she received and the remuneration to which she was entitled for the period in question, amounting to R102,295.25, by no later than 15 November 2022.



**Allan Kayne**