



ARBITRATION AWARD

Case No: **PSHS590-21/22**

Commissioner: **Mr Anand Dorasamy**

Date of award: **16 November 2022**

In the matter between:

THOLAKELE MEDICAL YVONNE KHANYILE

Applicant

and

DEPARTMENT OF HEALTH- KWAZULU NATAL

Respondent

DETAILS OF HEARING AND REPRESENTATION

1. The applicant Ms Tholakele Medical Yvonne Khanyile represented herself and Mr Manqoba Robert Masuku represented the respondent. The arbitration proceedings concluded on the 7 November 2022 at the Newcastle Department of Health Boardroom in Newcastle. The dispute concerns the alleged unfair dismissal of the applicant.

The parties agreed to submit written closing arguments on the 14 November 2022.

BACKGROUND

2. The applicant lodged a dispute challenging her dismissal and the respondent believes that her dismissal was fair. The applicant challenges the substantive aspect of her dismissal.
3. The applicant had reached the retirement age and after a period of providing a service it was discovered that she had retired and her services were terminated.

The respondent raised a Point In Limine that there was no dismissal.

ISSUES TO BE DECIDED.

- 4 I am to determine whether there was a dismissal of the applicant and make the appropriate relief if any.

SUMMARY OF THE EVIDENCE

RESPONDENT'S CASE

5. The respondent contends that there was no dismissal but it was in compliance of the law.
6. In quoting the laws the LRA section 187 (2)(b) page 5 a dismissal based on age is fair if the employee has reached the normal or agreed retirement age for persons employed in that capacity.
7. The retirement age was 65 years. The applicant applied for Pension Extension which was not recommended.
8. The employer says that the applicant had reached the retirement age and was made aware that her employment could not be extended. Hence her services were terminated.
9. Once one reaches the retirement age of 65 years the system can no longer accept the person.
10. The respondent prays for the application to be dismissed.

APPLICANT'S CASE

Ms THOLAKELE MEDICAL YVONNE KHANYILE

The salient aspects of her testimony are recorded below.

11. She understands everything and believes that all that is not relevant to the present employment contract she is disputing.
12. The employment contract is not in dispute. She was appointed from the pool that applied for the post. They were well aware of her age.
13. Her contract was terminated when the employer realized that they made a mistake.
14. She wants to be compensated because the action is unfair and she was greatly humiliated. She was terminated after three weeks and was paid for that period.

CLOSING ARGUMENTS

15. The parties agreed to submit written closing arguments on or before the 14 November 2022. The arguments were taken into account in arriving at my decision.

ANALYSIS OF EVIDENCE AND ARGUMENT

16. The respondent raised a Point in Limine contending that there was no dismissal but a termination of employment by the operation of the law.
17. The applicant agreed that she was aware of the retirement age being 65 years. At the time of her

application for employment she older than 65 years of age.

18. After 65 years of age she wanted to extend her employment but was told that it was not possible.
19. When she applied for the vacancy and in her application form she did not disclose that her services were terminated on the 30 September 2013.
20. The retirement age in her case was 65 years of age.
21. Therefore there was no dismissal but that employment contract was terminated by the operation of the law.
22. The application is dismissed and the applicant is not entitled to any relief.

AWARD

23. The application is dismissed.



Anand Dorasamy