



ARBITRATION AWARD

Case No: **PSHS645-22/23**

Commissioner: **Mr Anand Dorasamy**

Date of award: **25 February 2023**

In the matter between:

PSA OBO NAYIAGER ENDRESEN

Applicant

and

DEPARTMENT OF HEALTH-KWAZULU NATAL

Respondent

DETAILS OF HEARING AND REPRESENTATION

1. This matter was set down for arbitration on the 20 February 2023 at the King Edward hospital boardroom commencing at 10H00. I contacted the respondent three times and advised them of the matter. At 10H45 I contacted the respondent and advised them that as the applicant had insisted on the matter proceeding, I had no alternative but to proceed with a default award.
2. Ms Gillian Hassan represented the applicant.

BACKGROUND

3. The applicant alleged that he qualified to be promoted from Specialist grade 1 to Specialist grade 2.
4. He seeks such as promotion from 1 January 2022 with all benefits.

ISSUE TO BE DECIDED

5. I am to decide whether the Applicant was entitled to be promoted to Specialist grade 2 with effect from 1 January 2022 with all benefits.

THE EVIDENCE OF APPLICANT

6. The applicant was present and gave oral evidence that was confirmed by his representative.
7. The applicant's representative submitted as follows:
8. The evidence of the Applicant was unchallenged.
9. A synopsis of the Applicant's evidence is as follows:
 2. I hereby wish to advise that although you were registered as a Medical Specialist on 29 December 2016, you were occupying a post of Clinical Manager (Medical) which is not recognised as Speciality experience.
 3. Therefore your qualifying date for grade progression can only be calculated from the date you were translated into a Medical Specialist post, which in this case is, 1 September 2019.
 4. You will qualify for grade progression to Medical Specialist Gr 2 with effect from 1 September 2024.
10. The respondent addressed a letter to the applicant dated 22 February 2022 wherein the following are recorded:
 2. I hereby wish to advise that although you were registered as a Medical Specialist on 29 December 2016, you were occupying a post of Clinical Manager (Medical) which is not recognised as Speciality experience.
 3. Therefore your qualifying date for grade progression can only be calculated from the date you were translated into a Medical Specialist post, which in this case is, 1 September 2019.
 4. You will qualify for grade progression to Medical Specialist Gr 2 with effect from 1 September 2024.
11. The applicant disputes this contention. He stated that he had the requisite experience but the respondent refuses to recognise his experience.
12. He contends that he met the requirements on the 1 January 2022 and should have been grade promoted from 1 January 2022 with all benefits.
13. He registered as a specialist on the 29 December 2016. He fulfils the requirements and had the 5 years recognisable experience.
14. The applicant's representative stated that the applicant should be promoted to Specialist grade 2 from 1 January 2022 with all benefits. In her closing arguments the applicant's representative contended that he satisfied the condition of the Resolution to be grade progressed.

ANALYSIS OF EVIDENCE AND ARGUMENT

15. There was only the version of the applicant before me as such I determine the matter on the applicant's version.
16. In the absence of a contrary version, the version of the applicant only must be considered.
17. The applicant submitted that he had a combination of recognisable experience as a Medical Specialist. He served 2 years and 4 months at Inkosi Albert Luthuli hospital and 2 years and 8 months at Addington hospital. Therefore, he complied with the provisions to be grade progressed to grade 2.
18. The applicant in his referral form records the dispute as Unfair Labour Practice related to promotion.
19. Firstly, this dispute is not about promotion but grade progression.
20. Further the applicant has not met the required five years of recognisable experience as he occupied the post of Clinical Manager (Medical) which is not recognised as Speciality experience.
21. This dispute relates to Annexure A1 PHSDSBC Resolution 1 of 2010. (See page 45 of bundle of documents) This annexure A1 replaces Annexure A1 to PHSDSBC Resolution 3 of 2009. The following are recorded from the Resolution:
 - 3.3. Medical Specialist Grade 2: The qualification is appropriate qualification that allows registration with the HPCSA as Medical Specialist in a normal Speciality. The experience requirement is a minimum of 5 years appropriate experience as Medical Specialist.
22. In respect of Grade Progression/ Measures the following are listed:

Compliance with the educational qualifications, statutory requirements and competencies for the job level as contained in the appointment requirements as well as the following experiential competency:

Above average performance for grade progression purposes:

 - A combination of 8 years actual service and / or recognisable after registration with the HPCSA as Medical Specialist.
 - At least 2 years of this period must be actual service as Medical Specialist Grade 2.

Average performance for grade progression purposes

A combination of 10 years actual service and / or recognisable after registration with the HPCSA as Medical Specialist.

23. In the applicant's job description in the 2018 assessment he record his job title as Medical officer and his progression to the next higher post is that of Medical Specialist.
24. In his performance agreement for the period 1 April 2019 to 31 March 2020 the applicant is assessed as the Medical Officer.
25. The performance agreement for the period 1 April 2020 to 31 March 2021 the applicant is categorised as Specialist Grade 1. The applicant scored 3 in his KRAs. The applicant is fully effective if he scores between 100 and 110 %.
26. The applicant is an average performer and thus requires 10 years actual service and / or recognisable after registration with the HPCSA as Medical Specialist.
27. The respondent's response to the query by the applicant that he was not performing as a Medical Specialist but as a Medical Officer does not satisfy the conditions for grade progression as claimed by the applicant.
28. As a consequence, the applicant is not entitled to be grade progressed to specialist grade 2 with all benefits with effect from 1 January 2022.

AWARD

29. The Applicant failed to prove that the respondent's conduct constituted an unfair labour practice.

30. The applicant's claim is dismissed.

A handwritten signature in black ink that reads "aSDorasamy". The signature is written in a cursive style with a large, looping 'D' at the end.

Anand Dorasamy