



# ARBITRATION AWARD

Case No: **PSHS721-21/22**

Commissioner: **Teresa Erasmus**

Date of award: **2 May 2022**

In the matter between:

**NPSWU OBO ZOLISA MENZE**

Applicant

and

**DEPARTMENT OF HEALTH- WESTERN CAPE**

Respondent

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## **DETAILS OF HEARING AND REPRESENTATION**

1. The matter was set down for Arbitration, at Room 31/32, Ground Floor, Administration Building, Stikland Hospital in terms of section 186(2)(a) of the LRA, 66/1995. Mr. Zolisa Menze (the Applicant) was represented by Mr. R Molefe from NPSWU, and Department of Health- Western Cape (the Respondent) was represented by Mr. A. Mniki, its Employee Relations Officer. The successful candidate, Ms. M Frieslaar was present throughout the arbitration hearing. Only the Respondent handed in a bundle, the Applicant did not hand in a bundle. The proceedings were mechanically recorded.

## **ISSUE TO BE DECIDED**

2. I must decide whether the Applicant was subjected to an unfair labour practice, related to promotion in terms of section 186 (2) (a) of the LRA,66/1995.

## **SUMMARY OF EVIDENCE AND ARGUMENT**

### **APPLICANT'S CASE**

3. The Applicant was not shortlisted for a post advertised by the Respondent. The Applicant qualified for the position. The Applicant wants to be promoted accordingly.
4. **The Applicant testified in support of his own case.**
5. The Applicant is employed by the Respondent at the New Somerset Hospital as Senior Administrative Officer since 2007. The Applicant is in charge of revenue, case management, information management. The Applicant applied for the position of Assistant-Director, Finance (Patient Administration, Revenue, and Information Management).
6. The Applicant was not shortlisted or interviewed for the position. The Applicant contacted Mr Cornelissen, who informed the Applicant that he failed to include a valid drivers' licence in his application. The Applicant is in possession of a valid drivers' licence. The Applicant advised Cornelissen, that the advert did not require the submission of a drivers' licence and in the event of the Applicant being shortlisted, he would have brought his drivers' licence with to the interview.
7. As far as the other qualifications required, the Respondent determined that the Applicant is not in possession of a relevant three-year diploma or degree. The Applicant is however in possession of a National Diploma in Travel & Tourism. The Applicant referred to page 22 of the Applicant's bundle from which it can be seen that the Applicant passed the following subjects all of which are business qualifications such as:
  - Economics
  - Accounting
  - People Management
8. The Applicant is also in possession of other qualifications, such as Introduction to Accounting, Advanced Diploma in Business Management. The Applicant believes that he met the requirements for the position in the light of his qualifications. According to

the Applicant the Respondent did not allege that he did not have the relevant work experience. In terms of his Curriculum Vitae, he met all the requirements for the post. it covers finance revenue and case management.

9. The Applicant lodged a grievance against the Respondent's decision not to shortlist him, he requested the Respondent to provide him with the necessary qualifications that led to the appointment of the successful candidate. The Respondent confirmed that the successful candidate has an Honours in General Nursing (1 year qualification) and no qualifications in accounting, The Applicant believes that his three-year diploma was relevant, but he is of the opinion that an Honours in General Nursing was not relevant, it was related to nursing and not to finance. Only one candidate was shortlisted, the Applicant believes that it is unfair that a person who does not have a relevant qualification was appointed. Ms Frieslaar, the successful candidate's qualification is not relevant to the post, she was the only candidate that was interviewed.

10. The Applicant referred to the organogram in bundle R (2) and stated that the successful candidate does not possess the relevant management experience. The Applicant seeks a remedy in terms whereof he is promoted to a similar position as the advertised position. The Applicant is aware that the position has already been filled. The Applicant testified that in the past, he was promoted to the position of Assistant-Director, Finance in Mitchells Plain and he was appointed to the post, which he accepted. Two months later, the Respondent decided to nullify his appointment. The Applicant referred the matter to Arbitration and the cancellation of his appointment was confirmed. The Respondent must exercise consistency, therefore Ms. Frieslaar's promotion can be nullified if she did not meet the relevant requirements.

**11. The following ensued from cross-examination:**

12. According to the Applicant the successful candidate does not have the relevant experience. It was put to the Applicant that if one challenges the experience of a candidate, one should refer to the candidate's Curriculum Vitae. Ms. Frieslaar was not

part of the organogram at the time when she was shortlisted, she is only part of the organogram at present.

13. The Applicant conceded that four years' experience was taken into consideration. The Applicant did not see the successful candidate's Curriculum Vitae, as he did not request access thereto. Reference was made to page 4 of the Respondent's bundle where the following is stated – "*the driver licence copy you supplied has an expiry date of 2014 and is therefore not valid.*" It was put to the Applicant that it is his responsibility to upload updated documents for the post, to which the Applicant conceded, but according to the Applicant there is no requirement to upload documents, but only to bring them along to the interview.
14. Reference was made to page 3 of the Respondent's bundle where the INHERENT REQUIREMENTS OF THE JOB, is listed as follows: - Valid (Code B/EB) drivers' licence.
15. The Applicant responded that the system makes provision for him to upload his Curriculum Vitae. It was put to the Applicant that the system makes provision for an applicant to upload his documents, in order that the panel can assist him and decide whether or not to shortlist him. The Applicant uploaded a driver's licence that had expired, therefore the copy that was uploaded by the Applicant, was invalid. The Applicant responded that it was the panel's responsibility to enquire whether he was in possession of a valid driver's licence, therefore the panel erred by failing to enquire whether the Applicant was in possession of a valid drivers' licence. The expired driver's licence was already uploaded, he would have been able to submit the valid drivers' licence at the interview.
16. Reference was made to page 12 of the Respondent's bundle, where it is stated that – "*the shortlisted candidate must bring along certain documentation*".
17. The Applicant's response was that this does not apply to him, as he was not shortlisted.

18. It was put to the Applicant that an applicant for a position is required to provide certain information to the panel to justify his shortlisting. According to the Applicant he submitted sufficient information to be shortlisted.
19. It was put to the Applicant that it was not the panel that erred in not enquiring from him whether he had a valid drivers' licence, as it is an applicant's responsibility to submit updated documents. According to the Applicant, panels have contacted candidates in the past to request relevant documentation (the Applicant did not provide supporting evidence to this effect). The Applicant confirmed that there is no policy in place stating that it is the panel's responsibility to request updated documents, but he is talking from experience.
20. It was put to the Applicant that his three years' Diploma in Travel & Tourism is not relevant to the advertised position as found by the panel. This was disputed by the Applicant as he believes that this qualification is relevant.
21. The Applicant failed to submit the certificates that he obtained from Mancosa.
22. It was put to the Applicant that he submitted a Curriculum Vitae to the panel, where it is stated: "*Awaiting results*". Therefore, he gave the panel the impression, the results are not yet available. The Applicant only attached his Travel & Tourism qualification; hence the panel did not consider the qualification that the Applicant obtained from Mancosa.
23. It was put to the Applicant that Cornelissen, the chairperson of the panel will testify that the short-listed candidate had a General Nursing qualification, and it was relevant to the advertised position. The Applicant responded that General Nursing is not a relevant qualification for the post of Assistant-Director, Finance.
- 24. The following ensued from re-examination:**
25. An incomplete academic achievement as per page 23 of the Applicant's bundle, means that there are still some outstanding subjects for this qualification. The

Applicant applied for this post, knowing that he is in possession of the qualifications for the position, he met all the requirements.

## RESPONDENT'S CASE

26. The Applicant was not unfairly treated. The criteria for the advertised position were listed by the Respondent, the panel assessed the Applicant's application, according to the information he presented, and it was found that he did not qualify in terms of the requirements of the position.

**27. ANDRIES JOHANNES CORNELISSEN testified on behalf of the Respondent (hereinafter referred to as "Cornelissen").**

28. Cornelissen is employed by the Respondent as the Deputy-Director Finance, he was the chairperson of the interviewing panel.

29. The position reports to Cornelissen, it is the position of Assistant-Director Patient administration Revenue which includes the following: - Management of the following departments:

- Patient administration and medical records
- Patient billing – fees department
- Case management
- Information management

30. There are two Assistant–Directors Finance positions that report to him, the first position includes budgets, payments, supply pay management and asset management, whilst the other position (the position in question) deals with:

- Information management, revenue, case management, combined medical records and admissions
- IT and case management of patient folders and billing
- The panel agreed that the following qualifications will be deemed relevant for the position: Appropriate three-year qualification - Degree or Diploma (finance, management, case management or information management qualification)

31. The successful candidate could be a nurse or a paramedic, as long as it is a three-year qualification. A case manager has to work through a folder and understand the

required procedures, as well as which codes to use on the invoice. The successful candidate has a successful three-year qualification. Reference was made to page 4 of the Respondent's bundle, being an email in terms whereof Cornelissen replied to the Applicant. The Applicant made enquiries to establish whether interviews had been conducted and he wanted to know why he was not shortlisted.

32. Cornelissen explained to the Applicant that the drivers' licence that he supplied had expired, and his three years' qualification was also not relevant. The Applicant attached an expired drivers' licence and a three-year qualification in Travel and Tourism. The Applicant referred to a qualification in his Curriculum Vitae of which he was still awaiting the results, as well as another incomplete qualification. The panel was unable to determine whether the qualification was completed. It remains the Applicant's responsibility to submit the correct information to the panel, otherwise the panel assumes that the applicant for the position does not possess a valid drivers' licence if it is not attached. The panel assumes that an applicant for a position would submit an updated Curriculum Vitae. The Applicant only listed his work experience up to 2017 in his Curriculum Vitae.

33. It is not the panel's responsibility to phone an applicant for a position to request updated information if expired documentation is submitted. A member of the panel is not allowed to use knowledge of an applicant if it is not part of the documentation submitted when the shortlisting is done. It is the Applicant's responsibility to ensure that the updated documentation is submitted. An applicant is allowed to attach uncertified documentation, as long as he/she brings the certified documentation to the interview if the Applicant is short listed. If an applicant states that he/she has a drivers' licence the latest one must be submitted.

34. The only completed qualification that was attached by the Applicant, was a qualification in Travel and Tourism and according to the panel, tourism was not relevant for the advertised position.

35. The Applicant avers that the successful candidate did not have management experience. Frieslaar however had case management experience. She also acted in



the position for two years, she worked as a senior administration officer, fees, she was on the same level as a supervisor/fee. She had relevant supervisor fees and case manager experience.

**36. The following ensued from cross-examination:**

37. The successful candidate had management and revenue and case management experience. Ms. Frieslaar worked in the capacity of a supervisor for at least five years', she had juniors reporting to her, she filled a management position. Cornelissen confirmed that the panel looked at the experience of the successful candidate. The successful candidate acted in a supervisory role in the case management department.

38. Cornelissen disagreed with the Applicant, that the nursing qualification is irrelevant in terms of finance. The requirement is any relevant three-year qualification, the qualification must be attached, and the Applicant must prove that the qualification is relevant.

39. Cornelissen testified that the qualification in nursing is relevant as ICB9 and ICB10 CODING is used by case managers at bigger hospitals, they have the knowledge to assist the case managers with the coding and fees. Only one candidate was shortlisted and interviewed. It is relevant as per the shortlisting document. There is nothing wrong with shortlisting only one candidate, it might even happen that not a single candidate is shortlisted if no suitable candidates are found by the panel. It is not ideal to short list only one person, but it does not mean that it cannot happen.

40. Cornelissen does not believe that the Applicant, who currently works in finance, should have been short listed, as there are a few hurdles that have to be passed before one qualifies to be short listed.

41. There was only completed qualification on his Curriculum Vitae, the rest are listed as incomplete. It is the Applicant's obligation to attach proof of completed qualifications.

42. The position was advertised on the 2<sup>nd</sup> of July 2021 and the closing date was 21 days later. The MANCOSA subjects passed by the Applicant were towards a Diploma and not a completed Diploma yet. The Applicant also referred to an incomplete qualification in his Curriculum Vitae. Not knowing whether these were subjects or a further qualification, is exactly what the panel was struggling with.

43. It was put to Cornelissen that the reason why only one candidate was shortlisted, was because Ms. Frieslaar had a nursing qualification, and the post was in the hospital environment. This was disputed by Cornelissen, as Ms. Frieslaar had experience in fees, case management and she was a supervisor for 5-6 years. Ms. Frieslaar's Curriculum Vitae was completed up to the date of the application. The fact that the Applicant passed a management subject as part of his Travel and Tourism qualification, does not qualify as a management qualification.

**44. The following ensued from re-examination:**

45. The document on page 2 of the Applicant's bundle was in front of the panel. None of these subjects that are relevant to the advertised post, other than perhaps communication and English, but at the end of the day it does not make it a management position.

**ANALYSIS OF EVIDENCE AND ARGUMENT**

46. In terms of Section 186(2)(a) of the LRA 66/1995, an *"Unfair labour practice" means any unfair act or omission that arises between an employer and an employee involving (a) unfair conduct by the employer relating to the promotion, demotion, probation (excluding disputes about dismissals for a reason relating to probation) or training of an employee or relating to the provision of benefits to an employee."*

47. The Applicant referred a dispute based on an alleged unfair labour practice committed by the Respondent. The Applicant alleged that the Respondent committed an error in not shortlisting the Applicant, as the Applicant met the requirements for the advertised position. The Respondent only listed one candidate, which according to the Applicant

is against practice. The purpose of calling people for interviews, is to choose the best candidate out of those short listed. The Applicant alleged that a candidate with a General Nursing qualification does not qualify for this position.

48. The Respondent submitted that the Applicant failed to render evidence in support of its case that the Respondent contravened a policy. The Applicant led evidence regarding to Travel and Tourism that was relevant to the advertised position. Cornelissen on behalf of the Respondent gave evidence that the position dealt with patient administration, and medical records, patient billing, case management, as well as information management, and nothing is related to Travel and Tourism. The reason why the Applicant was not shortlisted, was because the Applicant had a responsibility to present relevant documentation to the panel, which he failed to do. It is the Applicant's responsibility to update his Curriculum Vitae and not the Respondent's responsibility to request updated information. The Applicant referred to "awaiting results" in his Curriculum Vitae. The Applicant failed to update his information in his Curriculum Vitae since 2017.

49. The onus is on the Applicant to prove that he qualified to be short listed, before he can make a claim that he must be short listed, which he failed to do. The onus is on the Applicant to prove that he was subjected to an unfair labour practice, by the Respondent.

50. The advertised position was that of Assistant Director: Finance (Patient Administration, Revenue, and Information Management) at the Paarl Hospital. The following were required in terms of the advertised position: - appropriate 3-year Diploma/Degree, appropriate experience in revenue management, patient administration, medical records, and case management. Appropriate experience in information management, within the 'clinicom' environment, management, and supervisory experience. It was specifically stated that it is an inherent requirement of the job that an applicant for the position should be in possession of a valid driver's license.

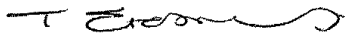
51. The Applicant was informed by Cornelissen via email on the 8<sup>th</sup> of October 2021, that he was not shortlisted for position, because he did not meet the requirements for the

position, more particularly based on the fact that he included a copy of his driver's license, which had already expired in 2014 and the completed three-year qualification that he attached to his Curriculum Vitae was not relevant to the advertised position. The successful candidate, Ms. Frieslaar on the other hand met the requirements for the post.

52. The Applicant failed to prove that he met the requirements for the position to be shortlisted. The Respondent did not commit an unfair labour practice by failing to shortlist the Applicant for a position for which he did not qualify.

## **AWARD**

53. The Respondent did not commit an unfair labour practice as envisaged in section 186(2)(a) and the application is dismissed.



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**TERESA ERASMUS**