



ARBITRATION AWARD

Case No: **PSHS76-22/23**

Commissioner: **Mr Anand Dorasamy**

Date of ruling: **05 August 2022**

In the matter between:

PSA OBO RADEBE NJABULO NELSON

(Union/ Applicant)

and

DEPARTMENT OF HEALTH-KWAZULU NATAL

(Respondent)

DETAILS OF HEARING AND REPRESENTATION

1. Ms Nondumiso Mvubu of PSA, represented the applicant Mr Radebe Njabulo Nelson and Ms Saloshni Pillay represented the respondent Department of Health- KwaZulu Natal. The arbitration proceedings concluded on the 25 July 2022 at the Turton CHC. The dispute concerns the alleged unfair conduct related to promotion.

The parties agreed to submit written closing arguments on the 2 August 2022.

SUMMARY OF THE EVIDENCE

BACKGROUND

2. The applicant lodged a dispute challenging his non translation from Lay Counsellor to Pharmacy Assistant (Basic Grade 2 with effect from the date of qualification.

The respondent believes that the applicant is not entitled to be translated as contended and that the matter be dismissed.

ISSUES TO BE DECIDED

3. I am to determine whether the applicant is entitled to payment from 5 October 2020 and make a finding on the appropriate relief if any.

SUMMARY OF THE EVIDENCE

APPLICANT'S CASE

RADEBE NJABULO NELSON

The salient aspects of his evidence are recorded below.

4. Currently he is a Pharmacy Assistant but before that he was a lay counsellor.
5. In 2015 the lay counsellors were being phased out and in 2018 he began his training as Pharmacy Assistant.
6. He was selected and went to work at the pharmacy. As a lay counsellor he was at level 3 and as a Pharmacy assistant he was not sure of the level but believes it was a higher level with a higher salary.
7. Upon completion in 5 October 2020 he submitted his certificate to HR hoping that he would be translated.
8. In December 2020 he wrote to HR to translate him but there was a delay.
9. In July 2021 he lodged a grievance because of his non-translation. His colleagues who he studied with were translated.
10. In 2022 he was advised that he would be translated from 1 April 2022. The translation did not happen on that date.
11. He and Ms Juta were sent from the institution. Ms Juta was not translated. There were others who were translated from the date of their certificate.

NONDUMISA MZIZE

The salient aspects of her testimony are recorded below.

12. She is currently a Pharmacy Assistant at Southport Clinic under Port Shepstone hospital.
13. She was a lay counsellor and trained as a Pharmacy Assistant and moved to grade 2.
14. She was in the same class as the applicant.

RESPONDENT'S CASE

15. The respondent did not call any witnesses.

CLOSING ARGUMENTS

16. **The parties agreed to submit written closing arguments on or before the 2 August 2022. The arguments were taken into account in arriving at my decision.**

ANALYSIS OF EVIDENCE AND ARGUMENT

17. The applicant challenges his non-translation from the 5 October 2020 to the 1 April 2022.
18. The applicant was a lay counsellor and the respondent/ employer decided to phase out lay counsellors and in the applicant's case he elected to do a Pharmacy Assistant's course.
19. The following are contained in Human Resource Management Circular NO. 41 of 2015:
RE: TRAINING AND CAREER PATHING OF LAY COUNSELLORS AND SITE MENTORS
 4. After completion of training, Lay Counsellors and Site Mentors will be translated to the posts of equal grading within the District where they are currently employed.
 6. Lay Counsellors and Site Mentors who will be offered bursaries after completion of their training will be placed in various institutions to serve their contractual obligations.
 9. The anticipated timeframe to finalise the training and translation of Lay Counsellors and Site Mentors is 2025...
20. HUMAN RESOURCE MANAGEMENT CIRCULAR NO. 116 of 2013
RE: PHASING OUT AND TRAINING OF LAY COUNSELLORS FOR CAREER PATHING
 1. It has been decided that the Lay Counselling Occupational category should be phased out which implies that this cadre of employees will no longer be employed by the Department with immediate effect.
21. A Document dated 23 March 2022 and signed by the Director Human Resource Management Services records the following:

"Kindly be advised approval has been granted by the Head: Health on 17 March 2022 to translate the following officials from Lay counsellors to Pharmacy Assistant (Basic) Grade 2 with effect from the first day of the month following the month on which the translation is approved by the Head of Department:
Health

The name of the applicant Radebe N N and Juta CK are recorded.

Please ensure the translations are implemented accordingly on Persal.
22. Clearly the translation can only be effected once the Head of Department Health authorised and directs that such translation be effected.
23. Both the applicant and Ms Juta completed the course at the same time and were not translated on completion of the course but only after the Head of Department approved the translation,
24. As a consequence of the above the application fails and is dismissed.

AWARD

25. The application is dismissed.

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

Anand Dorasamy