



# ARBITRATION AWARD

Commissioner: **M Mbuli**

Case No: **PSHS951-21/22**

Date of award: **29 June 2022**

In the matter between:

**PSA OBO VELOKUHLE SANDILE KHOWANE**

Applicant

and

**DEPARTMENT OF HEALTH- KWAZULU NATAL**

Respondent

---

## **DETAILS OF HEARING AND REPRESENTATION**

1. This matter was placed on the roll before me for arbitration on 15 June 2022 at Dumbe Community Health Centre (CHC). Mr. Velokuhle Sandile Khowane (the Applicant) was represented by Ms. G. Hassan, a trade union official from the Public Servants Association (PSA), and Department of Health-KwaZulu Natal (the Respondent) was represented by Mr. M. Lembethe who is the Deputy Director: Labour Relations. The parties were given seven (7) days within which to file written closing arguments. The proceedings were digitally recorded.

## **JURISDICTION AND ISSUES TO BE DECIDED**

2. No other preliminary or jurisdictional issues were raised and the Public Health and Social Development Sectoral Bargaining Council (PHSDSBC/Council) has the required jurisdiction to hear the matter. I need to decide whether or not the Respondent had correctly applied and interpreted Resolution 3 of 2011 concluded in the Council.

## **BACKGROUND TO THE DISPUTE**

3. All the following issues are common cause and were agreed upon before the commencement of the arbitration process. The Applicant is currently employed as a Principal Food Services Supervisor and based at Dumbe Community Health Centre. He was nominated as a Full Time Shop Steward (FTSS) for the second term for the period 2022 to 2024 in a meeting held on 13 August 2021. On 5 October 2021 the PSA formally informed the Respondent of the Applicant's nomination in accordance with Resolution 3 of 2011. The Respondent did not approve the release of the Applicant as a Full Time Shop Steward.
4. The Applicant referred the dispute to the Council as he believe that, the Respondent had incorrectly interpreted the Resolution. The dispute was not resolved at conciliation and a certificate was issued indicating that the dispute remained unresolved. Thereafter; the applicant submitted a request for the matter to be resolved through arbitration and the dispute was scheduled for arbitration as indicated above.
5. Both parties handed in bundles of documents which were marked "A" and "B" and I was enjoined by both parties to accept the documents for what they purport to be and consider them to the extent that it may be required for the purpose of this award.

## **THE APPLICANT'S CASE**

6. The Applicant testified under oath and stated that he is employed by the Respondent as a Principal Food Services Supervisor and is based at Dumbe Community Health Centre.

7. He was nominated as a Full Time Shop Steward for the second term for the period 2022 to 2024 in a meeting held on 13 August 2021. The Respondent was informed by the union on 5 October 2021. He meets all the requirements of Resolution 3 of 2011; in particular clause 3 to be released by the Respondent to be a Full Time Shop Steward for the Public Servants Association for the period of three years from 2022 to 2024. Previously he was released by the Respondent to be a Full Time Shop Steward for the period commencing in 2019 to 2021 and there was no problem.
8. He was surprised this time around when the Respondent refused to release him to perform the duties of a Full Time Shop Steward for the second term after the trade union had followed all the proper procedures when requesting his release. When he was released for the first term there was no problem and the service delivery was never affected at his place of employment. Both his supervisor and the Chief Executive Officer had supported his release for the second term as a Full Time Shop Steward (page 72 and 73 of bundle A).
9. He does not hold a critical position at the workplace. The Respondent seconded, Mrs. Chili who was based at the Laundry to the canteen to perform his duties while, he was away for the first time and there was no problem at all. Mrs. Chili has now been permanently transferred to the canteen. There is also Mrs. Shongwe who was employed on a fixed term contract during the Coronavirus disease (COVID-19). There is a circular issued by the Respondent indicating that all those employees who were employed during the pandemic must be permanently employed and this clearly indicates that there is enough staff at the canteen to provide services at the hospital even if he is not there. This clearly shows that there is more than enough staff at the canteen.
10. He further testified that he was aware of two other hospitals where they were operating without filling the vacant positions of Principal Food Services Supervisors and the canteen services are not compromised (Itshelejuba Hospital and Dundee Hospital). In these hospitals Principal Food Services Supervisor resigned and their positions were never filled. The reason given for not filling these positions was that they are not critical post but still the service delivery at the canteen was not affected. He strongly believe that the Respondent acted unfairly by refusing to release him and failed to abide to the Resolution

11. Under cross-examination, the Applicant testified that his position is not designated as a critical post and that is the reason why in some hospitals when employees who are holding similar position resign their positions are not filled. He further insisted that there is enough staff at the canteen and the services of the canteen will not be compromised if he is released. He was also released for the first term and there were no problems of service delivery at the canteen.

### **THE RESPONDENT'S CASE**

12. The Respondent's only witness, Mrs. E. P. Mdlalose, testified under oath that she was employed by the Respondent as an Assistant Director: Human Resources and has been in the position for the past seven years. She is based at Dumbe Community Health Centre.

13. In the beginning the management at Dumbe Community Health Centre was not in favour of releasing the Applicant for the second term. After careful consideration and speaking to the Applicant they agreed that the Applicant could be released, as they have identified an employee who will perform the duties of the Applicant while he is away. They also believe that having a Full Time Shop Steward coming from their institution will benefit them in the near future.

14. She confirmed that (page 72 and 73 of bundle A) were letters written by the management of the hospital recommending that the Applicant be released from duty to be a Full Time Shop Steward.

15. Under cross-examination, Mrs. Mdlalose confirmed that the services of the canteen will not be compromised if the Applicant is released as there was enough staff at the canteen.

### **ANALYSIS OF THE EVIDENCE AND ARGUMENTS**

16. Clause 3 of Resolution 3 of 2011 deals with the appointment and deployment of the Full Time Shop Steward. Clause 3.1 of the same Resolution specifically provides for the eligibility to be appointed as a Full Time Shop Steward as follows:

- *Be employed in a permanent capacity in the Public Health and Social Development Sector;*
- *Have been duly nominated in writing by the relevant Trade Union;*
- *Be a member in good standing of the relevant Trade Union;*

- *Not hold a critical post; and*

*In determining whether a post is critical, the following criteria should be considered:*

- *The number of employees performing similar work in the relevant Department;*
- *The type of services provided;*
- *The nature of the work performed;*
- *The current and expected allocation of resources; and*
- *The non-availability of similar skills to replace the employee in the relevant Department.*

17. It is common cause that the Applicant is currently employed as a Principal Food Services Supervisor at Dumbe Community Health Centre. It is also common cause that the Applicant's position was not designated as a critical post. He was nominated as a Full Time Shop Steward for the second term for the period from 2022 to 2024 in a meeting held on 13 August 2021. The Applicant's trade union wrote a letter informing the Respondent about the nomination for the Applicant as a Full Time Shop Steward. The letter was also requesting the Respondent to release the Applicant but that request was turned down by the Respondent.

18. The Applicant further testified that he met all the requirements of Resolution 3 of 2011 to be appointed as a Full Time Shop Steward. This piece of evidence was not disputed by the Respondent. In fact the Respondent supported the Applicant's secondment as a Full Time Shop Steward.

19. To say the least; it is surprising why the Respondent would support the Applicant's appointment and secondment as a Full Time Shop Steward and turnaround and disapprove the same appointment. Remarkably, even the testimony of Mdlalose; the only witness called by the Respondent did not contradict the evidence of the Applicant. Therefore, the Respondent could not probate and reprobate at the same time without giving any reasons.

20. Reading of clause 3.1 of Resolution 3 of 2011 as stated in paragraph 16 sets out unambiguously how a candidate becomes eligible to be appointed as a Full Time Shop Steward and the Applicant meets all those requirements.

21. Notably, the Respondent failed dismally to advance any reason what disqualified the Applicant to serve the second term as a Full Time Shop Steward in accordance with the provisions of Resolution

3 of 2011. Hence I fully agree with Hassan's averment that the Applicant's nomination complied with all the requirements of Resolution 3 of 2011.

22. Accordingly, I find that the Applicant is eligible to be appointed as a Full Time Shop Steward for the period 2022 to 2024 in accordance with the provisions of clause 3.1 of Resolution 3 of 2011. The question of the Applicant's trade union not meeting the threshold or not following the necessary protocols contemplated in the Resolution did not arise. I therefore conclude that the Applicant's trade union met the threshold to nominate the Applicant as a Full Time Shop Steward and submitted all the required documentation for the Respondent to finalize the Applicant's appointment as a Full Time Shop Steward.
23. Accordingly, in my view there was no justification for the Respondent to reject the Applicant's appointment as a Full Time Shop Steward for the period in question. It is for this reason that the Respondent had applied the provisions of Resolution 3 of 2011 incorrectly, in particular clause 3.1 of the said Resolution by failing to release the Applicant to perform his duties as a Full Time Shop Steward.
24. I make the following award:

## **AWARD**

25. It is my finding that the Applicant is eligible to be appointed as a Full Time Shop Steward for the period commencing in 2022 to 2024 in accordance with the provisions of clause 3.1 of Resolution 3 of 2011.
26. I therefore order the Respondent to release the Applicant to perform his duties as a Full Time Shop Steward.
27. I further order the Respondent to release the Applicant by no later than 31 July 2022.



---

**M Mbuli**