



ARBITRATION AWARD

Panellist/s: JOYCE NKOPANE
Case No.: PSCB43-15/16
Date of Award: 09 October 2015

In the ARBITRATION between:

NEHAWU OBO MOLESIWA & 72 OTHERS

(Union / Applicant)

and

DEPARTMENT OF HEALTH

(Respondent)

Union/Applicant's representative: Mr P Tsholo

Union/Applicant's address: NEHAWU

Telephone: _____

Telefax: _____

Respondent's representative: Mr J Dlamini

Respondent's address: DEPARTMENT OF HEALTH

Telephone: _____

Telefax: _____

Details of hearing and representation

1. The matter was set down for arbitration on 22 September 2015 at Klerksdorp Hospital, Klerksdorp. There was only one applicant, Mr Molesiwa in attendance. Mr Tsholo an official of NEHAWU represented the applicants. Mr. Dlamini represented the respondent.
2. The parties agreed to submit written arguments on 2 October 2015. The arguments were duly submitted.

Issue /s to be decided

3. Whether the respondent applied and interpreted the provisions of Resolution 3/2009 in particular clauses 3.6.1, 3.6.1.1 & 3.6.1.4 correctly.
4. If I find that the respondent failed to apply and interpret the provisions of the agreement correctly, I have to determine the appropriate relief.

Background to the issue

5. The applicants were employed by the respondent on salary level 1 on different dates starting from 2008 to 2013. They were all translated to salary level 2 with effect from September 2014.
6. The applicants referred a dispute of interpretation and application of a Collective Agreement to the Council. The dispute was conciliated and it remained unresolved at Conciliation. The applicants requested that the dispute be resolved through arbitration.

Survey of the Evidence and arguments

7. The parties agreed to submit written heads of arguments and not lead viva voce evidence.
8. The following facts were identified as common cause:-
 - the applicants were appointed on salary level 1
 - In 2009 when the Resolution was passed and implemented all of them did not have five (5) years' experience.

- On 1 April 2010 the applicants did not have five years continuous service
- None of them were on salary level 2, and
- None of them had 20 years continuous service.

Analysis of the evidence and arguments

9. In this case the issue that I have to determine is whether respondent interpreted and applied the provisions of Clauses 3.6.1, 3.6.1.1 and 3.6.1.4 of Resolution 3 of 2009 correctly.

10. Clause 3.6.1.1 of Resolution 3/2009 provides that:-

“With effect from 1 April 2009 all employees on salary level 1 with five years of completed continuous service shall grade (salary level) progress to salary level 2”

Clause 3.6.1.4 provides that

“with effect from 1 April 2010 employees shall grade (salary level) progress from salary level 1 to 2 after five years of continuous service, and from salary level 2 to 3, after 20 years of combined continuous service (combined experience of salary levels 1 & 2), based on satisfactory performance (the average assessment over the last two year period would determine the performance rating.

11. It is so that the applicants were all employed on salary level one. The respondent translated all of them to salary level 2 with effect from September 2014. The respondent submitted that this was done in terms of the DPSA circular.

12. On behalf of the applicants it was submitted that Clause 3.6.1.4 of the Resolution state that “with effect from 1 April 2010, employees shall grade (salary level) progress from salary level 1 to 2 after 5 years of continuous service”.

13. The applicants argued that employer has failed to translate these officials accordingly in that for the employees who were appointed in 2008; they were supposed to be translated to salary level 2 in 2013 and not 2014 September.

14. The difficulty that is presented by the applicant’s argument is that the applicants’ through their representative only quotes a part of this clause. Conveniently the part that indicates the requirements for qualification to be upgraded is omitted. As at April 2013

the applicants who were employed in 2008 had not completed the five years referred to as they were employed in June 2008. Performance assessments were not presented.

15. It is also surprising that the applicants' representative does not address how the other employees would be entitled to grade progress as they had not completed the five-year period even in 2014 when they grade progressed to salary 2.
16. During the hearing the applicants' argument was that they should be backdated from 2009 as the people that were employed after them were employed on salary level 2.
17. It is clear that the applicant could not have been translated in terms of the above clauses as they do not meet the requirements as set out in the Resolution. The only reasonable explanation is that they were translated as per the DPSA benchmark circular and thus they cannot claim to have been entitled to translation backdated to the period when they did not qualify.
18. The argument that other people who were employed after them were appointed on salary level 2 does not assist the applicants as nothing in the agreement / Resolution stipulate that if other people are employed on a particular salary level that entitles the others who are already employed to be translated.
19. The resolution is very clear that for one to be translated in terms of the Resolution one must have five years continuous service and the applicants did not have that. When some of them attained this five years they would have already been translated.
20. On the totality of the evidence the applicants have failed to show that the respondent applied the Resolution incorrectly. The respondent cannot be faulted, as the applicants were not translated in terms of the Resolution. The Resolution is not applicable to the applicants, as they did not meet the minimum requirements. Accordingly their claim must fail.

Award

In the premise I make the following award.

- (a) The applicant's claim is dismissed.
- (b) No order as to costs

A handwritten signature in black ink, consisting of a stylized 'J' followed by a loop and a vertical stroke.

Panellist/s:

Sector: