



AWARD

Panellist/s: Dr. Mohamed Alli Chicktay

Case No.: PSCB611-09/10

Date of Award: 7th February 2010

In the ARBITRATION between:

LC Bassed
(Union/Employee)

And

Department of Health - Mpumalanga
(Employer)

Employee's Representative: Mr. L Bassad

Telephone: 013 249 3733

Telefax: 013 2493822

Employer's representative: MR. Dan Mokoena

Employer's address: Witbank Hospital

Telephone: 013 653 2298

Telefax: 013 690 3614

1 DETAILS OF HEARING AND REPRESENTATION

This matter was heard on 19th January 2011 Middleburg. The applicant represented himself and the respondent was represented by Mr. Dan Mokoena.

2 THE ISSUE TO BE DECIDED

I was asked to determine whether the applicant was entitled to an allowance for allegedly acting as transport officer between 2000 and 2004

3 SUMMARY OF EVIDENCE AND ARGUMENT

Applicant's evidence and arguments

The applicant called two witnesses. The applicant first called himself as a witness. The applicants stated that Mrs. Swart who was a clerk who also did the work of a transport officer. When she left her post in 2000 the applicant's supervisor Mr. Aphane asked him to act as transport officer. The applicant stated that he had sent five letters to Middelburg Hospital Management regarding his letter of appointment as acting transport officer. He stated further that on 18th September 2006 a letter was sent to the labour relations officer in Nkangala District Office by Mr. Nhlapo the Chief personnel officer requesting acting allowance payments to be made to the applicant. Earlier on 19th April 2005 the Chief Executive Officer Mr. K Masilela sent a letter to Human Recourses Management in Nelspruit requesting approval to pay the applicant an acting allowance. The witness argued that one could be appointed in a post if it is vacant and funded even if it was not done by the HOD. The witness argued that the position of admin officer was the same as that of an admin clerk and the position was available.

The applicant's second witness was Mr. Nhlapo. He testified as follows. He stated that he had written the two letters for Mr. Nhlapo and Mr. Masilela. He stated that he had received a letter in response to the two letters. The letter came from Nelspruit. In the letter it was stated that the applicant had to be appointed in an acting position by head office. Since the applicant was not appointed by head office he was not working in an acting capacity and was thus not entitled to the salary of Acting

Transport Officer, the position of Transport Officer was only officially created in 2004.

Respondent's evidence and arguments

The respondent called one witness Mr. Dan Mokoena who testified as follows. He stated that the post of Transport Officer did not exist prior to 2004. There were also no funds for this post. The witness stated further that in terms of a collective agreement (resolution 1 of 2002) one needs to be appointed in an acting position by HOD, which did not occur in this case. Since the applicant was not appointed as acting Transport officer he is not entitled to any back pay. He did the work voluntarily.

4 ANALYSIS OF EVIDENCE AND ARGUMENT

I am required to determine whether the applicant is entitled to an acting allowance for doing work as a transport officer. I find that the applicant was not officially appointed in an acting capacity. While the applicant argued that one need not have approval by HOD if the post is vacant and funded he does not prove this. Mr. Mokoena had testified that there was no post as Transport officer. While the applicant argued that the admin clerk and transport officer did the same work he does not explain why he is not claiming an acting allowance for his work as an admin clerk. Also if the transport officer did the same work as an admin clerk there would be no justification for creating a transport officer post. Since no transport officer post was created prior to 2004 the applicant could not have been working in an acting capacity for a post that did not exist. The applicant's argument that one could be appointed in an acting capacity if funding is available and if the post is vacant is thus invalid. The post of transport officer was not vacant since it did not exist. Hence there was no funding for such a post. The applicant is thus not entitled to any allowance since he did not work in an acting capacity for a post that did not exist.

AWARD

5.1 I find in favour of the respondent.

Signed and dated on the 7th day of February 2011

Signature:



Commissioner:

Dr. Mohamed Alli Chicktay
