

IN THE PUBLIC SERVICE CO-ORDINATING BARGAINING COUNCIL

ARBITRATION AWARD

Case Number: *PSCB 298-13/14*

Commissioner: *Anthony Maré*

Date of Award: *27 March 2014*

In the **matter** between

NEHAWU obo Boqwana

(Applicant)

and

Department of Health, Eastern Cape

(Respondent)

DETAILS OF HEARING AND REPRESENTATION

1. The arbitration in the above matter was heard on 19 March 2014 at the offices of the Department of Health, Bhisho, Eastern Cape.
2. The Applicant was represented by a NEHAWU official, Ms Twalingca and the Respondent by Mr Lose, its Employee Relations Officer.

ISSUE TO BE DETERMINED

3. I must determine whether clause 1(d) *Nurses working with psychiatric patients* of Annexure A of Resolution 1 of 2007, properly interpreted, applies to the Applicant's occupation and, if so, whether he qualified for a danger allowance.

BACKGROUND TO THE ISSUE

4. Applicant, a nurse, employed by the Department of Health in the Eastern Cape, had a history of working with psychiatric patients since 2000. He was transferred to Grey Hospital, King Williams Town, in July 2007 and then to a mobile clinic in 2008.
5. It is common cause that since 2008 the Applicant has attended to the general public at large at site clinics which includes outpatients suffering from, *inter alia*, psychiatric illnesses.
6. It is the Applicant's contention that he qualifies for a danger allowance because he falls within one of the listed occupational categories, namely nurses working with psychiatric patients as set out in Annexure A of Resolution 1 of 2007.
7. By way of relief, he asks that I make finding in his favour and award back pay from the date on which the said resolution came into force.
8. The relevant section of the Resolution under dispute at Clause 1 states: **DANGER ALLOWANCE.** *The Employer shall pay the standard danger allowance to an employee who in the course of her or his employment experiences a genuine risk to her or his life and who is employed in one of the following occupational categories and identified areas at work (where indicated).*

9. Clause 1(d) states :

Nurses working with psychiatric patients

PARTIES SUBMISSION

The Respondent

10. The Respondent's interpretation of the said collective agreement in respect of psychiatric nurses is that the employee must :

- Experience genuine risk to his or her work.
- Must work in the identified areas at work.
- Must be a nurse working with psychiatric patients.

11. They argued that the agreement was not intended to include nurses who see all patients, including psychiatric ones.

12. The Agreement did not state nurses working with all patients, including psychiatric ones. The Applicant worked with all patients. The Agreement makes reference to identified areas of work. These areas were exclusively dedicated to psychiatric patients.

Applicant

13. The Applicant argued that the Applicant ought to be paid a danger allowance on the grounds that Clause 3(a) of the said resolution states : *Danger Allowance shall be paid to employees referred to in Clause 1 (supra) on a monthly basis if they experience a genuine risk to their lives each and every time they undertake their duties.*

14. They argued that it was common cause that the Applicant worked with psychiatric patients in the mobile clinic.

15. Applicant was exposed to risk each and every time he worked with psychiatric patients.

ANALYSIS OF EVIDENCE AND ARGUMENT

16. Firstly, it must be pointed out that clause 3(a) of Annexure A of Resolution 1 of 2007 states:
.....genuine risk to their lives each and every time they **undertake their duties** (my emphasis) and not each and every time **working with psychiatric patients**, as stated by the Applicant.
17. The parties agreed that the Applicant did not work only with psychiatric patients, or put differently each and every time he undertook his duties.
18. Clause 1(d) read with Clause 3(a) of Resolution 1 of 2007 identifies nurses working with psychiatric patients if they experienced risk to their lives **each** and **every time** (my emphasis) they undertook their duties.
19. Applicant would treat psychiatric patients, but periodically. It was not a core function of his occupation each and every time he performed his duties.
20. Properly interpreted the Applicant falls outside a class of nurses that work with psychiatric patients each and every time they performed their duties.
21. If the drafters of the Resolution intended to include all nurses who from time to time come into contact with psychiatric patients, it would expressly have stated as much. The Application therefore stands to be dismissed.

RULING

22. The Applicant does not fall within the scope of Annexure A of PSCB Resolution 1 of 2007 dealing with Danger Allowance.
23. The Applicant is not entitled to a danger allowance for the period July 2007 to date.

Signature:

A handwritten signature in black ink, appearing to read "Anthony Maré", is written over a horizontal blue line.

Panelist :

Anthony Maré
