

ARBITRATION AWARD

Commissioner: **Bhekinhlanhla Stanley Mthethwa**

Case No: **PSHS387-18/19**

Date of award: **10 June 2019**

In the matter between:

PSA obo Zinhle P Nxele

(Union/ Applicant)

and

Department of Health- KwaZulu Natal

(Respondent)

Details of hearing and representation:

1. The matter was scheduled for arbitration on 11 October 2018 and 30 January 2019 at 10h00, at McCord Provincial Eye Hospital in Durban. Mr R Naidoo, a trade union representative from PSA represented Ms Zinhle P Nxele (hereinafter referred to as the Applicant) and Ms. P Maphumulo who is a Deputy Director: Labour Relations represented Department of Health- KwaZulu Natal (hereinafter referred to as the Respondent). The proceedings were digitally recorded.
2. On the last day (30 January 2019) parties agreed to exchange their statements of case and submit the same to the Council by 28 February 2019 and they only did so on 30 May 2019.

Preliminary points:

3. There were no preliminary points raised.

Issues to be decided:

4. I have been called upon to decide whether or not the Respondent has correctly applied and interpreted Resolution 1 of 2014 concluded in the Council; and
5. Whether or not the provisions of the Human Resources Circular 64 of 2014 supersedes the provisions of Resolution 1 of 2014.

Background to the issue:

6. The Applicant referred a dispute concerning interpretation and/or application of Resolution 1 of 2014 concluded in the Council.
7. It was common cause that the Applicant was appointed as the Human Resource Officer on 1 June 2008. It was also common cause that the Applicant resigned on 31 December 2014 and rejoined the Respondent on 5 January 2015 in the same capacity.
8. The Applicant is currently on salary level V and she is earning R13 833.75 in monthly remuneration. In the year 2016 she was earning R10 623.50 and in 2017 she was earning R11 871.75 in monthly remuneration.
9. It was also common cause that the Applicant obtained her Degree of Bachelor of Technology in Human Resources Management in November 2013. It was further common cause that the Applicant submitted her degree certificate to the Respondent in June 2017 for the purposes of being paid the once off cash bonus of 10% of her annual salary notch.

10. It was the Applicant's case that she was entitled to be paid the once off cash bonus in terms of Resolution 1 of 2014 since she has obtained her B. Tech Degree in Human Resources Management in November 2013.
11. On the other hand, the Respondent's contention was that the Applicant does not qualify to receive the once off cash bonus in terms of Human Resources Management Circular 64 of 2014, specifically in terms of clause 5.10 of the Circular because she had resigned on 31 December 2014.

Summary of evidence and arguments:

12. At the commencement of the arbitration proceedings parties agreed that no oral evidence would be led and this would be a stated case.
13. Hereunder is a summary of submissions and evidence adduced by both parties through their statements of case and it reflects all the relevant evidence and arguments made and considered in deciding this matter. Their respective cases may be summarised as follows:

Applicant's case:

14. The Applicant stated that she had attained her qualification, B Tech Human Resources Management Degree on 29 November 2013. However, she only physically obtained this additional qualification in June 2017.
15. This qualification was self-funded and it was for the duration of 12 months. She obtained this degree through the Durban University of Technology, an institution registered with the Department of Higher Education. The said degree is recognised by SAQA and it carries 480 credits.
16. The Applicant further testified that she has met all the conditions to be paid a once off cash bonus of 10% of her annual salary in terms of clause 5 of

Resolution 1 of 2014. However, the Respondent has refused to pay the once off bonus on the basis that she had a break in service after resigning on 31 December 2014.

17. The Applicant also stated that the Respondent had incorrectly applied clauses 4 and 5 of Resolution 1 of 2014 when it refused to pay her once off bonus.

Respondent's case:

18. It was the Respondent's case that the Applicant does not qualify to receive the once off cash bonus in terms of Human Resources Circular 64 of 2014, specifically in terms of clause 5.10
19. It is so because the Applicant resigned from the service on 31 December 2014 and rejoined the service on 5 January 2015, it was for this reason that the Applicant does not qualify for the once off cash bonus.
20. However, the Respondent acknowledges that the Applicant completed her final examination in 2013; nevertheless, she only graduated in June 2017 and that was when she obtained her degree certificate.
21. It was therefore the submission of the Respondent that the Applicant was not in possession of her B. Technology Degree in Human Resources Management between the year 2014 and May 2017.

Analysis of evidence and arguments:

22. In this instance the Applicant was aggrieved that the Respondent had applied clauses 4 and 5 of Resolution 1 of 2014 incorrectly. Further that in terms of clause 4.1 of the said Resolution she was entitled to be paid the once off cash bonus

since she had obtained her B. Technology Degree in Human Resources Management in November 2013.

23. On the other hand, the Respondent contended that Applicant did not qualify to receive the once off cash bonus in terms of the Human Resources Circular 64 of 2014, specifically in terms of clause 5.10.
24. In terms of Human Resources Circular 64 of 2014 once there is a break in service an employee shall not qualify for the once off cash bonus. In this instance the Applicant resigned from the service on 31 December 2014 and rejoined the service on 5 January 2015, it was for this reason that the Applicant does not qualify for the once off cash bonus.
25. In my view the point of departure in this dispute is found in purposive interpretation and application of clauses 4 and 5 of Resolution 1 of 2014. Clause 4 amongst others; provide that the objectives of the Resolution were that:
 - 1.1 the Employer will recognise the attainment of an improved qualification which is related to the employee's scope of work and enhances the employee's performance and the service delivered by the employee;
 - 1.2 upon attainment of the said qualification, the employee will receive a once off cash bonus of ten percent (10%) of his or her annual salary notch, provided this does not exceed the minimum notch of salary level 8, payable with effect from 1 January 2013;
 - 1.3 the cash bonus is limited to attainment of one additional qualification; and
 - 1.4 employees funded by the state for the attainment of an improved qualification are not eligible for the once off cash bonus;

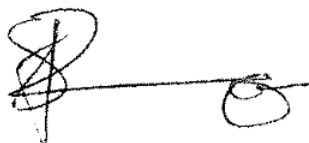
26. In terms of clause 5 only qualifications which have been obtained through a recognised institution registered with the Department of Higher Education will be entitled to receive the bonus. Furthermore, it would be international qualifications recognised by SAQA that will also be acceptable.
27. It is common cause that the Durban University of Technology was registered with the Department of Higher Education. It is also common that the Degree of Bachelor of Technology in Human Resources Management was recognised by SAQA and it carries 480 credits.
28. In light of the above passages, clauses 4 and 5 of Resolution 1 of 2014 outline the conditions for the payment of the once off cash bonus of ten percent. Therefore, to come to the correct interpretation and application of this collective agreement it requires a purposive interpretation so that you shall give effect to the objects of this Resolution. Looking closely at these two clauses there is no requirement that an employee shall only qualify if she/he had unbroken service with the employer. Therefore, it would be wrong to rely on the provisions of the Human Resources Circular 64 of 2014 in applying and interpreting this collective agreement. It is so because that is just an internal memorandum of the employer. This internal memorandum has no legal effect as compared to the collective agreement concluded in the Council. In terms of section 23 of the Labour Relations Act 66 of 1995 a collective agreement binds the parties to the collective agreement and every member of those parties. Obviously, the collective agreement supersedes an internal memorandum of the employer. Therefore I do not find anything in this collective agreement that supports the Respondent's contention that the Applicant did not qualify to receive the once off cash bonus of ten percent of her annual salary.
29. The construction and interpretation placed on this collective agreement by the Respondent is incorrect and must be rejected. I must also point out that there is a limit to which the wording of a statute or rule/agreement may be disregarded in the process of application of purposive interpretation. Clearly, the Respondent's

application and interpretation of this collective agreement would lead to an absurdity and a total negation of the intention of the collective agreement. It is for these reasons that the Respondent's contention must be rejected.

30. In the circumstances I make the following award:

Award:

31. I find that clause 4 read in conjunction with clause 5 of Resolution 1 of 2004 concluded between the trade unions and the Department of Health in the Council gives an entitlement to the Applicant to receive the once off cash bonus of ten percent (10%) of her annual salary for the year 2017 when she handed over her degree certificate of the Bachelor of Technology in Human Resources Management to the Respondent in June 2017.
32. I therefore order the Respondent to pay the Applicant R14 253.00 (fourteen thousand,two hundred and fifty-three rands) which is equivalent to ten percent once off cash bonus of her annual salary as of June 2017 ($R1187.75 \times 12$).
33. The above payment must be paid into the Applicant's bank account as reflected in her personal record on or before the close of business on 15 July 2019.
34. There is no order as to costs.



Bhekinhlani Stanley Mthethwa