



PHSDSBC

PUBLIC HEALTH AND SOCIAL DEVELOPMENT
SECTORAL BARGAINING COUNCIL

**IN THE PUBLIC HEALTH AND SOCIAL DEVELOPMENT SECTORAL BARGAINING
COUNCIL (PHSDSBC)**

Held at Centurion

Panelist: **Adv JN Matshekga**

Case No: **PSHS347-17/18**

Date of award: **8 November 2017**

In the matter between:

PSA SINENHLANHLA MAZIBUKO

THE APPLICANT

and

DEPARTMENT OF HEALTH- KWAZULU NATAL

THE RESPONDENT

S142A ARBITRATION AWARD

DETAILS OF APPLICATION AND PROCESS

1. This is an arbitration award in respect of an application brought in terms of the provisions of section 142A (1) of the Labour Relations Act 66 of 1995 ("the LRA"). The application is brought by the registered trade union Public Servants Association of South Africa (PSA) on behalf of Ms Sinenhlanhla Mazibuko ("the applicant"). I considered the application only on the papers submitted. Department of Health-Kwazulu Natal ("the respondent") did not submit a response in opposition to the application (i.e. the application is unopposed).

THE ISSUE TO BE DECIDED

2. I must decide if the settlement agreement entered by the applicant and the respondent ("the parties") on 21 July 2017 should be made an arbitration award in terms of the provisions of section 142A (1) of the LRA.

BACKGROUND TO THE APPLICATION

3. On 20 May 2017, PSA referred a dispute to the Public Health and Social Development Sectoral Bargaining Council (PHSDSBC) ("the Council") on behalf of the applicant. The dispute was alleged to concern interpretation and application of a collective agreement.
4. At an arbitration that took place on 21 July 2017 before Commissioner Charles Oakes the dispute was resolved and the parties entered into a written settlement agreement the essence of which is that the respondent agreed to translate the applicant to clinical nurse practitioner with effect from 1 April 2017 and pay her at the difference in remuneration between notch R266 083.00 per annum and R340 431.00 per annum before 30 August 2017.

SUMMARY OF EVIDENCE

5. PSA has brought an application requesting that the settlement agreement entered by the parties on 21 July 2017 be made an arbitration award in terms of the provisions of section 142A (1) of the LRA because the respondent failed to comply with its obligations as set out in the settlement agreement.

ANALYSIS OF EVIDENCE AND ARGUMENT

6. Section 142A(1) of the LRA provides that the Council may, by agreement between the parties or on application by a party, make any settlement agreement in respect of any dispute that has been referred to the Council, an arbitration award. Section 142A(2) further provides that for the purposes of subsection (1), a settlement agreement is a written agreement in settlement of a dispute that a party has the right to refer to arbitration or to the Labour Court, excluding a dispute that a party is entitled to refer to arbitration in terms of either section 74(4) or 75(7).
7. In *Molaba v Emfuleni Local Municipality* [2009] 7 BLLR 679 (LC) the Labour Court held that (at paragraph 6):

The wording of s 142A suggests that for an agreement to constitute a settlement agreement, a number of requirements relating to nature and form must be met. First, the dispute that is the subject of the settlement must have been "referred to the Commission". "Referred" cannot mean referred to arbitration in terms of s 136 - s 142A (1) requires that the dispute must be one that a party has the right to refer either to arbitration or to the Labour Court. "Referred to the Commission" therefore means referred for conciliation in terms of section 134. This section, read with the requirement that the dispute be one that a party has the right to refer either to arbitration or to the Labour Court, means that it is only settlements of disputes about a matter of mutual interest that are either arbitrable or justiciable by this Court that may be the subject of an arbitration award in terms of s 142A. This excludes, for

example, a settlement agreement in respect of a dispute about wages. Finally, the agreement must be in writing. Those cases that deal with the definition of a collective agreement (which in terms of s 213 must be a "written agreement") would obviously be helpful in giving content to this requirement. (See, for example, SAMWU v Weclogo [2000]10 BALR 1160 (CCMA)).

8. The dispute (i.e. interpretation and application of a collective agreement) is a dispute that the applicant has a right to refer to arbitration in terms of section 24 of the LRA. Lastly, the settlement agreement entered by the parties on 21 July 2017 is in writing. The respondent has also failed to comply with its obligations as set out in the settlement agreement. Accordingly, the conditions and/or requirements of section 142A have been met. I hereby exercise my discretion to make the settlement agreement entered by parties on 21 July 2017 an arbitration award in terms of the provisions of section 142A of the LRA.

AWARD

9. The settlement agreement entered by the parties on 21 July 2017 is hereby made an arbitration award in terms of the provisions of section 142A of the LRA.

Thus, done and signed at PHSDSBC offices, Centurion on this 8th day of November 2017.



ADV JAMES MATSHEKA
PHSDSBC PART-TIME RESIDENT PANELIST