



# ARBITRATION AWARD

Case No: **PSHS349-23/24**

Commissioner: **Kelvin Kayster**

Date of award: **09 October 2023**

In the matter between:

**PSA obo Faheen Chetty & 8 Others**

Applicant

and

**Department of Health – Eastern Cape**

Respondent

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## DETAILS OF HEARING AND REPRESENTATION

1. The arbitration hearing in this dispute was held on 19 September 2023 at the Livingstone Tertiary Hospital in Gqeberha.
2. The Applicants are Mr. Faheem Chetty, Ms. Heidi Beckett, Ms. Noluthando Kalawe, Mr. Deon Williams, Mr. Quinton Mitchell, Ms. Diane van Zyl, Ms. Khusewa Gqozo, Ms. Gloria Petrus, and Mr. Tarquin Erasmus. They were represented by Mr. Bradley Benson of the PSA.
3. The Respondent is Department of Health- Eastern Cape and was represented by Ms. Nomkhita Lungile.
4. The hearing was finalised, and the parties requested to submit their written closing arguments by 26 September 2023.

## **ISSUE TO BE DECIDED**

5. The matter was referred to the PHSDSBC as an unfair labour practice dispute. The Applicants contend that they are entitled to grade progression from salary level 6 (SR6) to salary level 7 (SR7) after having served 15 years on SR6. I am called upon to determine whether the Respondent's failure to grade progress the Applicants to SR7 constituted an unfair labour practice.

## **BACKGROUND TO THE ISSUE:**

6. The background to this dispute is mostly common cause and is a matter of record. Briefly, the Applicants are currently being remunerated on SR6. They all have more than 15 years of service at SR6 and have performed satisfactorily over the entire period. They accordingly argue that they should have been upgraded from SR6 to SR7 with effect from the date after they have completed 15 years of service on SR6.

## **SUMMARY OF ARGUMENTS**

7. The Applicants handed up a bundle of documents, which was accepted in form and content. Herewith, brief summaries of their respective cases:

### **Applicant's case:**

8. For the Applicants, Mr. Tarquin Erasmus testified that Resolution 3 of 2009 gives them the right to grade progression after they have served for more than 15 years on SR6 and have satisfactory performance ratings for the last 2 years. With reference to the name list attached to their grievance, he explained that they reached 15 years of service on SR6 at differing times. They discovered that staff in similar situations at other hospitals in Gqeberha were granted grade progression after their HR officers directed a memo in that regard to the Head Office. The Applicants lodged a collective grievance, and their HR officer eventually directed a memo to the HOD to seek approval for their grade progression. They are still awaiting feedback. In conclusion, he argued that the delay in granting them grade progression has resulted in frustration and financial distress. They accordingly seek an award for their backdated grade progression, as well as financial compensation equal to 12 months' salary for the inconvenience of having to pursue this dispute. He conceded that the grade progression will increase his salary by approximately R1000,00 per month, which is disproportionate to compensation of 12 months' salary.

### **Respondent's case**

9. The Respondent elected not to lead any oral evidence, but Ms. Lungile argued that the Respondent is in the process of addressing the issue. They submitted a memo to the HOD to seek approval for the Applicants' grade progression from SR6 to SR7. The Applicants referred this dispute to the PHSDSBC while the Respondent was still busy resolving the matter. She further argued that Livingstone Tertiary

Hospital has no decision-making powers in respect of grade progression of staff. The final decision rests with the HOD, and it is expected that the HOD will approve the Applicants' grade progression from SR6 to SR7.

## **ANALYSIS**

10. Herewith brief reasons for my award. This dispute was referred to the PHSDSBC after the Respondent failed to implement the Applicants' grade progressions from SR6 to SR7.
11. The issue of grade progression is regulated by Resolution 3/2009. It entitles employees to be "grade progressed" after having served 15 years on SR6 and have achieved satisfactory performance evaluations.
12. The Respondent conceded that the Applicants meet the requirements for grade progression from SR6 to SR7. That should effectively be the end of the dispute. However, Ms. Lungile made it clear that the HR staff and management of the Livingstone Tertiary Hospital do not have decision-making powers in this regard. The final decision rests with the HOD, to whom a submission has already been made to seek approval for the Applicants' retrospective grade progression. It is expected that the HOD will approve the Applicants' grade progression.
13. The only remaining issue is the relief that the Applicants are seeking. Since their eligibility for grade progression is not in dispute, it would be appropriate to direct the Respondent to implement it with effect from the dates when they became eligible. They also seek to be compensated for the inconvenience they had to endure when the Respondent delayed the implementation of their grade progression, and the fact that they had to lodge a grievance and refer this dispute to the PHSDSBC. The grievance was lodged on 17 July 2023. They referred this dispute to the PHSDSBC on 17 August 2023. The memo to seek approval for the grade progressions from head office was submitted on 29 August 2023. There appears to be constant action by the parties and a definite attempt by the Respondent to address and resolve this issue. The Respondent has also not defended this dispute referral in a vexatious fashion. Under the circumstances, I do not consider it appropriate to award any compensation to the Applicants.



## AWARD

14. The Applicants are entitled to grade progression from SR6 to SR7, and the Respondent is directed to implement it with effect from the following dates. The Respondent is further directed to pay to the Applicants by not later than 30 November 2023 the difference in salary between their current remuneration and the starting notch of SR7, in the following amounts:

• Noluthando Kalawe	01 November 2020	R38 286.00
• Deon Williams	01 October 2021	R29 215.50
• Gloria Petrus	01 April 2022	R23 282.50
• Tarquin Erasmus	01 April 2022	R22 219.00
• Khuselwa Gqozo	01 May 2022	R19 798.50
• Faheen Chetty	01 April 2022	R22 219.00
• Heidi Beckett	01 April 2022	R22 219.00
• Quinton Mitchell	01 April 2022	R23 630.25
• Diane Van Zyl	01 January 2022	R26 281.00



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**Kelvin Kayster**