

IN THE LABOUR COURT OF SOUTH AFRICA
HELD AT DURBAN

NOT REPORTABLE

CASE NO: **D103/08**

In the matter between:

HEALTH & OTHER SERVICES PERSONNEL

TRADE UNION OF SA ("HOSPERSA")

First Applicant

GYSBERT JOHANNES VICTOR AUDIE

Second Applicant

GYSBERT JOHANNES VAN SCHALKWYK

Third Applicant

and

**THE MEMBER OF THE EXECUTIVE COUNCIL
FOR HEALTH, KWAZULU-NATAL**

First Respondent

DEPARTMENT OF HEALTH, KWAZULU-NATAL

Second Respondent

JUDGMENT

CONRADIE AJ

INTRODUCTION

1. This matter came before me together with Case No: D102/08. Both matters involve Hospersa, on behalf of its members on the one hand and the Member of the Executive Council for Health, Kwazulu-Natal and Department of Health, Kwazulu Natal on the other hand. The same counsel also appeared on behalf of the respective parties in both matters.
2. The parties agreed that the issues to be decided in the two matters were identical and as such any finding that I make in respect of Case No: D102/08 should be applied to this case as well. Based on the approach which I took in Case No: D102/08 I do not think that the two cases are identical to the extent that my decision should be the same in respect of both cases. The two cases should therefore be read together for purposes of my decision, to the extent that they are not inconsistent with each other.
3. In Case D102/08 I granted relief in favour of the Applicants although not exactly along the lines requested by them in their Notice of Motion. As stated in that judgment the reason why I came to the Applicants assistance in that matter was because it appeared to me that the position which the Second Applicant occupied was identical to the position which the Respondents regarded as newly created. There was also nothing on the papers which explained the circumstances which led to the decision to create the new post. I was thus left with no choice but to accept that the posts were identical, the only difference being that the "new" post was created at a higher level than the "old" post.
4. In this matter, however, the Respondents have given much detail on the papers as to the differences between the two posts, the reasons why the post of District Engineer was created and the procedures that were followed in creating the post. Based on the papers before me in this matter I am therefore satisfied that the post of District Engineer is a new post as opposed to an upgraded post. For that reason I see no basis on which the Applicant can simply be appointed into the post. It also means that the provisions of Chapter 1 part V paragraphs C 5 and C 6 do not apply.
5. As far as costs are concerned I can see no reason why the Applicant should not pay the Respondents costs.
6. In the circumstances I make the following Order:
 - 6.1. The application is dismissed with costs.

Conradie A J

Date of hearing: 1 December 2009

Appearance for Applicants: P J Biomkamp instructed by Llewellyn Cain Attorneys

Appearance for Respondents: N G Winfred instructed by the State Attorney

Date of judgment: 5 February 2010