THE LABOUR APPEAL COURT OF SOUTH AFRICA, CAPE TOWN

Reportable

Case no: CA 17/2014

In the Matter between:

DEMOCRATIC NURSING ORGANISATION OF SOUTH AFRICA (DENOSA) OBO D J DU TOIT AND ANOTHER — **Appellant**

and

WESTERN CAPE DEPARTMENT OF HEALTH — **First Respondent**

PUBLIC HEALTH AND SOCIAL DEVELOPMENT SECTORAL BARGAINING — **Second Respondent**

COLIN RANI NO — **Third Respondent**

Heard: **17 March 2016**

Delivered: **12 May 2016**

Summary: Interpretation and application of Occupations for Specific Dispensation for Nurses (OSD) – employer translating employee to Assistant Manager - employees contending to have been incorrectly translated – commissioner finding that employees correctly translated – appellant contending

that the OSD agreement is unambiguous and that the translation measures must be applied so that employees be translated to a category of Deputy Manager – appellant failing to distinguish between Assistant Manager: Nursing (Head of Nursing Services) operating to small district hospitals and Deputy Manager: Nursing (level 1 and 2 hospitals) operating at large the translation tables leading to the conclusion that employees correctly translated. Appeal dismissed with costs.

Coram: Davis, Musi *et* Sutherland JJJA

JUDGMENT

Introduction

[1] This appeal against a judgment of the Labour Court, which refused to review and set aside an arbitration award, concerns the interpretation and application of the Collective Agreement, Occupations for Specific Dispensation for Nurses ('OSD Agreement') signed on 10 December 2007 by the relevant parties. The dispute which, now requires the determination of this Court, concerns the proper approach which should have been adopted by the arbitrator when interpreting and applying this agreement.

The factual background

[2] Much of the dispute is common cause. The OSD agreement is a national collective agreement which provides for a new grading system and salary levels. Prior to the conclusion of the OSD agreement, all of the nurses represented by the appellant held the position of Nursing Service Managers at salary levels 9 or 10. The OSD agreement was concluded under the auspices of the Public Health and Social Development Sectorial Bargaining Council ('the Bargaining Council'). The agreement provided for a new grading system and new salary levels. For the purposes of this case each nurse was 'to be translated' into the new organisational structure which included the post of Deputy Manager: Nursing. It is

not disputed that all of these nurses have the qualifications and experience to be translated into the post of Deputy Manager: Nursing. The key question raised by this case is whether the post of Deputy Manager: Nursing is the legally appropriate position into which these nurses are to be appointed pursuant to the OSD agreement, read together with additional documentation to which I shall make reference presently.

[3] It is also common cause that the OSD agreement was a collective agreement as defined in terms of s 23 of the Labour Relations Act 66 of 1995 ('LRA'). It is an agreement which is applicable nationwide to the public health sector and therefore to every health sector in each province of South Africa.

Key provisions of the OSD agreement

[4] The following provisions of the OSD agreement are of application to the resolution of the present dispute: Clause 1 provides for the objectives of the agreement including, '*to introduce, differentiated salary scales by identified categories of nursing professionals based on a new remuneration structure'*.

[5] Clause 3.2 reads as follows:

> *'IMPLEMENTATION DIRECTIVE*
>
> *To give effect to this agreement, the implementation of the OSD will be a determination and implementation directive issued by the Minister for the Public Service and Administration in term s of s 3(3)(c) of the Public Service Act, 1994, read with Public Service Regulations, 2001, Chapter 1, Part 1/ G.'*

[6] Clause 3.2.5 entitled '*translation measures'* contains the following:

> '*TRANSLATION MEASURES*
>
> *Measures to facilitate translation from the existing dispensation to appropriate salary scales attached to the OSD based on the following principles:*

3.2.5.1 No person will receive a salary (notch or package) that is less than what he/she received on 1 July 2007 prior to the implementation of the OSD.

3.2.5.2 Translation could be done by means of two phases (steps)

(i) 1st Phase

Minimum translation to the appropriate salary scale attached to posts (and grades in respect of production levels), as contained in Annexure B to this agreement. This implies an implementation adjustment in salary to at least the next higher notch on the salary scale attached to the post to which the employee is translated.

(ii) 2nd Phase (in respect of production levels/grades)

Re-calculation of relevant experience obtained by a person who occupies a post on a production level after registration in the relevant nursing category, based on full years service/experience as on 31 March 2007, in order to award a higher salary at a production level subject to and within the limits of the measure for such recognition contained in Annexure C.

If the nurse is eligible for a higher notch on the scale attached to the specific grade or for translation to a higher grade (scale attached to the higher production grade) in terms of the limits of the measures for such recognition contained in Annexure C then the higher notch or grade in terms of the re-calculation basis applies.'

[7] In an annexure to this agreement headed *"Career Streams, Salary Scales, Appointment Requirements, Recognition of Experience on Appointment and Grade Progression / Promotion Requirements"* the following appears:

PAR	JOB TITLE	SALARY LEVEL AND SCALE	APPOINTMENT REQUIREMENTS	RECOGNITION OF APPROPRIATE EXPERIENCE AT	GRADE PROGRESSION /POST PROMOTION

					APPOINTMENT	REQUIREMENTS
1.7	Assistant Manager Nursing (Area/Head of Nursing Services)	PN – A7 R 235,659 R 242,730 R 250,011 R 257,511 R 265,236 R 273,192	Basic qualification accredited with the SANC in terms of Government Notice 425 (i.e. diploma/degree in nursing) or equivalent qualification that allows registration with the SANC as a Professional Nurse.	A minimum of 8 years appropriate / recognisable experience in nursing after registration as Professional Nurse with the SANC in General Nursing. At least 3 years of the period referred to above must be appropriate/ recognisable experience at management level.	None	Promotion to higher vacant advertised post.
1.8	Deputy Manager Nursing (Level 1 & 2 Hospitals)	PN – A8 R 358,218 R 366,964 R 380,034 R 391,434 R 403,176	Basic qualification accredited with the SANC in terms of Government Notice 425 (i.e. diploma/degree in nursing) or equivalent qualification that allows registration with SANC as a [professional; Nurse	A minimum of 9 years appropriate/recognisable experience in nursing after registration as Professional Nurse with the SANC in General Nursing. At least 4 years of the period referred to above must be appropriate/ recognisable experience in at management level	None	

[8] It is common cause that the seven nurses were translated to Assistant Manager Nursing at salary level PN – A 7. This decision was taken by the first respondent in terms of circular H 123/2007. In terms of clause 2.7 of this agreement, a

division was made regarding assistant and deputy managers of nursing services in district and regional hospitals:

> *'The OSD makes provision for two salary scales for the Heads of Nursing Services at District Hospitals, namely (a) that of Assistant Manager Nursing, salary scale R 235,659 x Prog – R 273,192, and (b) that of Deputy Manager Nursing, salary scale R 358,218 x Prog – R 403, 176. It is the view of the Department that the type and size of a hospital has a direct effect on the number of beds, the size of the nursing establishment as well as the direct span of control and management responsibilities of the head of Nursing Services. At the smaller Level 1 district as well as TB hospitals direct management responsibilities will differ from those of their counterparts at a bigger district and TB hospital, and that this would justify a difference in remuneration package. This distinction is also in line with the norms as applied by the Department in the development of the Health Care 2010 organisation and post structures.*
>
> *Accordingly the Department has decided that, based on said criteria, the scale of Assistant Manager Nursing be attached to all posts of heads of Nursing Services at district and TB hospitals smaller than 90 beds. Furthermore, that the salary scale of Deputy Manager Nursing be attached to all posts of Heads of Nursing Services at district and TB hospitals equal to a larger than 90 beds, as well as regional hospitals.'*

[9] This document must be read with an Implementation Directive issued by the Minister for Public Service and Administration in terms of the Public Service Act 103 of 1994. This document included an annexure entitled '*Post, Grade and Salary Structure*' in which the following appears :

	POST	GRADE (If Applicable)	JOB PURPOSE (short description)	SALARY SCALE – SEE APPENDIX 1	POST CLASS CODE	JOB TITLE CODE
6	Assistant Manager Nursing (Head of Nursing Services)		- To ensure that a comprehensive nursing treatment and	PN – A7		

			care service is delivered to patients in a cost effective, efficient and equitable manner by Small District Hospitals, including the overall management of nursing services (i.e. operational, HR and finance of the hospitalisation. - Ensure compliance to professional and ethical practice.			
7	Deputy Manager Nursing (Level 1&2 Hospitals)		- to ensure that a comprehensive nursing treatment and care service is delivered to patients in a costs effective, efficient and equitable manner by Large District and Secondary Hospitals, including the overall management of nursing services (i.e. operational, HR and Finance of the hospital/institution). - Ensure compliance to professional and ethical practice.	PN – A8		

The court *a quo*

[10] Third respondent was required to interpret the OSD agreement in light of these further documents to which I have made reference in order to determine that, the members of the appellant should have been translated not to Assistant Manager: Nursing but to Deputy Manager: Nursing at grade PNA 8 with retrospective effect from 1 July 2007. Third respondent found that the third respondent in translating the members of the appellant had complied with paragraph 3.2 of the OSD agreement and accordingly dismissed appellant's claim.

[11] Visagie AJ, in the court *a quo*, found that there was no basis for the argument that third respondent had misconstrued the dispute. Furthermore, it could not be said that the decision determined that the comprehensive service plan for the implementation of health 2010 (FCSP) and departmental circular page 123/2007 had not given proper effect to the implementation of OSD agreement in terms of paragraph 3.2 of that agreement.

Appellant's case

[12] Having set out the key provisions of the OSD agreement, I turn to the case made out by appellant. In essence, appellant argues that the provisions to which I have referred support the claim that all of the nurses represented by appellant fall to be classified as Deputy Managers: Nursing (level 1 and 2 hospitals). See paragraph 1.8 of the OSD agreement. Appellant refers to a further document attached to the OSD document, entitled *"translation tables"*; that is a translation from the old position to the new one provided for in the OSD agreement. Appellant relies on the document entitled '*The translation of professional nurses on salary levels 9, 10, 11 and 12 to Deputy Manager Nursing (district and secondary hospitals)*'. From this document, appellant contends that it is clear that, for nursing managers previously at level 9 and at level 10, the translation to be effected was to the post of Deputy Manager: Nursing (level 1 and 2 hospitals). The same document provided for the quantum of their total package.

[13] Appellant contended that third respondent was obliged to give effect to the plain meaning of the OSD agreement. It was common cause that the individual nurses had qualified to be translated as Deputy Mangers: Nursing and the decision to translate them to Assistant Managers: Nursing was based on a justification which fell outside of a collective agreement. A study of the plain meaning of the OSD agreement together with the applicable translation of tables D – F was sufficient to conclude that no distinction had been made between level one and level two hospitals. In short, the conclusion of the third respondent that appellant's members were all Nursing Services Managers of hospitals with less than 90 beds and hence had been correctly translated to Assistant Managers was at war with the plain meaning of the OSD agreement.

[14] Mr Stelzner, who appeared together with Ms Harvey on behalf of the appellant, submitted that only where there was a lacuna in a collective agreement or if the agreement was ambiguous or silent in respect of a particular issue, could the arbitrator have resolved the matter by fashioning an interpretation which was consistent with the overall purpose of the agreement. Absent such a lacuna, silence or ambiguity, none of which according to Mr Stelzner was the case in the present dispute, third respondent was obliged, as a reasonable decision maker, to apply the clear wording of the OSD agreement which did not, in any way, draw a distinction between the size of hospitals in the translation process.

Evaluation

[15] The basis upon which both appellant and respondent sought to deal with this appeal was in terms of the test for an arbitration award as fashioned in *Sidumo and Another v Rustenberg Platinum Mines Ltd and Others* (*Sidumo*)[1] and its further explication in *Herholdt v Nedbank Ltd and Another* [2] as follows: "A review of a CCMA award is permissible if the defect in the proceedings falls within one of the grounds in s145(2)***(****a)* of the LRA. For a defect in the conduct of the proceedings to amount to a gross irregularity as contemplated by s145(2)*(a)*(ii),

[1] (2007) 28 ILJ 2405 (CC).
[2] (2013) 34 ILJ 2795 (SCA) at para 25.

the arbitrator must have misconceived the nature of the inquiry or arrived at an unreasonable result. A result will only be unreasonable if it is one that a reasonable arbitrator could not reach on all the material that was before the arbitrator. Material errors of fact, as well as the weight and relevance to be attached to particular facts, are not in and of themselves sufficient for an award to be set aside, but are only of any consequence if their effect is to render the outcome unreasonable."

[16] A consideration of the context of the development of this test becomes important in considering its application in the present dispute. In *Sidumo*, Navsa AJ, faced with a case dealing with an unfair dismissal, carefully analysed the appropriate standard for review required in terms of s 145 of the LRA; that is the provision which empowers any party to a dispute who alleges a defect in any arbitration proceedings under the auspices of the Commission for Conciliation Mediation and Arbitration (CCMA) to apply to the Labour Court for an order setting aside the arbitration award. Section 145 (2) provides that:

> 'A defect referred to in subsection (1), means-
>
> (a) that the commissioner-
>
> (i) Committed misconduct in relation to the duties of the commissioner as an arbitrator;
>
> (ii) Committed a gross irregularity in the conduct of the arbitration proceedings; or
>
> (iii) Exceeded the commissioner's powers; or
>
> (b) that an award has been improperly obtained.'

[17] Within the context of the present dispute, the question arises as to whether the so called *Sidumo* test which applies in the case of an unfair dismissal, applies equally to what might otherwise be considered to be an error of law .Expressed

differently, does an error of law on its own justify a review in a case such as the present dispute?

[18] In *Head of the Department of Education v Mofokeng and Others*[3] Murphy AJA stated:

> *'However, sight may not be lost of the intention of the legislature to restrict the scope of review when it enacted section 145 of the LRA, confining review to "defects" as defined in section 145(2) being misconduct, gross irregularity, exceeding powers and improperly obtaining the award. Review is not permissible on the same grounds that apply under PAJA. Mere errors of fact or law may not be enough to vitiate the award. Something more is required. To repeat: flaws in the reasoning of the arbitrator, evidenced in the failure to apply the mind, reliance on irrelevant considerations or the ignoring of material factors etc. must be assessed with the purpose of establishing whether the arbitrator has undertaken the wrong enquiry, undertaken the enquiry in the wrong manner or arrived at an unreasonable result. Lapses in lawfulness, latent or patent irregularities and instances of dialectical unreasonableness should be of such an order (singularly or cumulatively) as to result in a misconceived inquiry or a decision which no reasonable decision-maker could reach on all the material that was before him or her.'*

[19] Murphy AJA went on to state further at para 33:

> *'Irregularities or errors in relation to the facts or issues, therefore, may or may not produce an unreasonable outcome or provide a compelling indication that the arbitrator misconceived the inquiry. In the final analysis, it will depend on the materiality of the error or irregularity and its relation to the result. Whether the irregularity or error is material must be assessed and determined with reference to the distorting effect it may or may not have had upon the arbitrator's conception of the inquiry, the delimitation of the issues to be determined and the ultimate outcome. If but for an error or irregularity a different outcome would have resulted, it will ex hypothesi be material to the determination of the dispute. A material error of this order would point to at least a prima facie unreasonable*

[3] (2015) 36 ILJ 2802 (LAC) at para 32.

result. The reviewing judge must then have regard to the general nature of the decision in issue; the range of relevant factors informing the decision; the nature of the competing interests impacted upon by the decision; and then ask whether a reasonable equilibrium has been struck in accordance with the objects of the LRA Provided the right question was asked and answered by the arbitrator, a wrong answer will not necessarily be unreasonable. By the same token, an irregularity or error material to the determination of the dispute may constitute a misconception of the nature of the enquiry so as to lead to no fair trial of the issues, with the result that the award may be set aside on that ground alone. The arbitrator however must be shown to have diverted from the correct path in the conduct of the arbitration and as a result failed to address the question raised for determination.'

[20] These *dicta* necessitate a recapitulation of the doctrine of error of law. In the pre-constitutional era, the jurisprudence with regard to a review for error of law was clarified in the seminal case of *Hira and Another v Booysen and Another.*[4] Corbett CJ determined, at 93 C-F, that in terms of common law review:

'Where the complaint is that the tribunal has committed a material error of law, then the reviewability of the decision will depend basically, upon whether or not the Legislature intended the tribunal to have exclusive authority to decide the question of law concerned. This is a matter of construction of the statute conferring the power of decision.

Where the tribunal exercises powers or functions of a purely judicial nature, as for example where it is merely required to decide whether or not a person's conduct falls within a defined and objectively ascertainable statutory criterion, then the Court will be slow to conclude that the tribunal is intended to have exclusive jurisdiction to decide all question, including the meaning to be attached to the statutory criterion, and that a misinterpretation of the statutory criterion will not render the decision assailed by way common-law review. In a particular case it may appear that the tribunal was intended to have such exclusive jurisdiction, but then the legislative intent must be clear.'

[4] 1992 (4) SA 69 (AD).

[21] Since the advent of the Constitution of the Republic of South Africa Act 1996 ('the Constitution'), the concept of review is sourced in the justifications provided for in the Constitution and, in particular, that courts are given the power to review every error of law provided that it is material; that is that the error affects the outcome. See in particular *City of Johannesburg Metropolitan Municipality v Gauteng development Tribunal and Others* 2010 (6) SA 182 (CC) at para 91; see also the remarks of Malan J (as he then was) with regard to the implications of *Hira, supra* in the constitutional dispensation in *South African Jewish Board of Deputies v Sutherland N.O and Others* 2004 (4) SA 368 (W) at para 27.

[22] To recap, Navsa AJ said in *Sidumo* at para 105, that the review powers in terms of s 145 *'must be read to ensure that administrative action by the CCMA is lawful, reasonable and procedurally fair'.* Given that the section must be interpreted to be in compliance with the Constitution, it would appear that the concept of the error of law is relevant to the review of an arbitrator's decision within the context of the factual matrix as presented in the present dispute; that is a material error of law committed by an arbitrator may, on its own without having to apply the exact formulation set out in *Sidumo*, justify a review and setting aside of the award depending on the facts as established in the particular case.

[23] However, for reasons which are advanced below, it is not strictly necessary for this Court to make a final decision with regard to the role of error of law in this case.

Evaluation of appellant's case

[24] Appellant's case was, in essence, based on the submission that the OSD agreement is unambiguous and that the translation measures must be applied accordingly so as to conclude that the individual nurses had to be translated to a category of Deputy Manager: Nursing (level one and two hospitals). In short, the argument advanced by appellant is that, had the arbitrator accepted the common cause fact that all of the individual nurses had the qualifications and experience for the post of Deputy Manager: Nursing, and the added fact that they were, prior

to the OSD agreement, on salary levels 9 and 10, the arbitrator should have applied the OSD agreement, read together with the translation tables, and concluded that all of these individual nurses should have been translated to Deputy Manager: Nursing in level 1 and 2 hospitals.

[25] Appellant's' argument is further based on an examination of the founding and answering affidavits. In her founding affidavit, Ms du Toit on behalf of the appellant states:

> *'However, I was not translated on the basis of the duties I was performing as at 30 June 2007, which would have been the position of Deputy Manager Nursing (Level 1 and 2 Hospitals) at grade PN – A8 as provided for in Part F of the Translation Tables to the Collective Agreement. Instead I was translated to the position of Assistant Manager Nursing (area) at grade PN – A7 in terms of Part D of the Translation Tables.*
>
> *My translation was incorrect: my actual duties performed as at 30 June 2007 differed entirely from those of a Nurse managing an 'area'. An 'area' refers to a specific department such as the labour ward, the psychiatric ward or the orthopaedic ward. Nurses managing areas were translated in terms of Part D of the tarnation tables to Assistant Manager Nursing (Area).*
>
> *As the nurse in overall charge of a Level 1 hospital, I was not the manager of an area, but of nursing services for the entire hospital covering all areas. The applicable part of the translation table was accordingly Part F. This is the only Part which provides for translation of nursing managers at Level 1 and 2 hospitals.'*

[26] To this, Mr Liebenberg on behalf of the first and second respondent, stated the following:

> *'It is admitted that applicants were not translated to the position of Deputy Manager Nursing at Grade PNA 8 simply because they were not managing a hospital consisting 90 or more beds.'*

[27] Mr Oosthuizen, who appeared together with Mr Joseph on behalf of the first respondent, resisted the argument that Mr Liebenberg had made a fatal concession that the distinction drawn between hospitals with more or less than 90 beds was not sourced in a clear justification. He referred in addition to paragraph 6 of the opposing affidavit in which the following appears:

> *'In terms of the Director General's aforementioned delegated powers the latter issued a directive/circular dated 28 September 2007 which was addressed to inter alia the Provincial Departments of Health.'*

[28] The directive, to which Mr Liebenberg refers to in his affidavit, is to a circular to which I have already made reference and in which a distinction is drawn between Assistant Manager: Nursing (Head of Nursing Services) who appear to operate in what are referred to as small district hospitals and Deputy Manager: Nursing (level 1 and 2 hospitals) who appear to operate for a large district and secondary hospitals.

[29] Manifestly, first respondent is correct that this document generated by the National Minister had to be read together with the OSD agreement in order to glean the intended meaning.

[30] Further support for the need to look beyond the OSD agreement and the translation tables for a complete answer to the issue of translation is to be found in the translation tables themselves. Three categories of translation tables were potentially applicable to the present dispute, namely one that refers to Nursing Managers at levels 9 and 10, to Assistant Manager: Nursing (area), a further to Assistant Manager: Nursing (head of nursing service) and a third to Deputy Manager: Nursing (level 1 and 2 hospitals). It is clear that the reference to "area" is to a section of a hospital and that therefore, given the activities performed by the individual nurses, this particular translation table is inapplicable.

[31] Beyond this distinction it is difficult to determine, without more, whether the translation of a level 9 or 10 Nursing Manager should be translated to Assistant

Manager: Nursing (Head of Nursing Services) or to a Deputy Manager: Nursing (level 1 and 2 hospitals). If the interpretation offered by the appellant is correct, it would be difficult to determine whether the translation to Assistant Manager: Nursing (Head of Nursing Services) would ever be applicable. On appellant's construction, a nursing manager at level 9 and 10 would inevitably have to be translated to Deputy Manager: Nursing (level 1 and 2 hospitals), notwithstanding that provision is made for a translation to Assistant Manager: Nursing (Head of Nursing Services) in the very agreement upon which appellant relies.

[32] Much reliance was placed by the parties upon the decision in *Natal Joint Municipal Pension Fund v Endumeni Municipality (Endumeni*)[5] (with regard to the proper approach to the interpretation of the OSD document and, in particular, that the language of the document falls to be construed in the light of its context and the apparent purpose to which is directed as well as the material known to those responsible for its production. In his judgment, Wallis JA after examining precedent with regard to the interpretation of legislation or documents said at para19: "All this is consistent with the 'emerging trend in statutory construction'. (*Jaga v Dönges NO and Another, Bhana v Dönges NO and Another* 1950 (4) SA 653 (A) at 662G-663A) It clearly adopts as the proper approach to the interpretation of documents the second of the two possible approaches mentioned by Schreiner JA in *Jaga v Dönges NO and Another*, namely that from the outset one considers the context and the language together, with neither predominating over the other. This is the approach that courts in South Africa should now follow, without the need to cite authorities from an earlier era that are not necessarily consistent and frequently reflect an approach to interpretation that is no longer appropriate." See also *DexGroup v Trust Co Group International (Pty) Ltd and Others* 2013 (6) SA 520 (SCA) at para 16.

I remain uncertain as to whether or how these *dicta* have significantly changed the approach to the interpretation of a legal text. In *Coopers & Lybrand and*

[5] 2012 (4) SA 593 (SCA) at para 18.

Others v Bryant,[6] Joubert JA referred expressly to the golden rule of interpretation and stated that:

> *'the correct approach to the application of the 'golden rule' of interpretation after having ascertained the literal meaning of the word or phrase in question is, broadly speaking, to have regard:*
>
> *To the context in which the word or phrase is used with its interrelation to the contract as a whole, including the nature and purpose of the contract'.*

[33] The difference in this approach from that articulated in *Endumeni, supra* is not easy to determine. Of course, context is not a secondary consideration but is part of the very process required to resolve any linguistic difficulty. The words employed and the purpose of the speaker are inextricably linked. This follows inherently from the very concept of the language. In the same manner, the content of an ordinary conversation cannot, in general, be divined from the meaning of the sentences employed or even with the conversationalist's goals in saying what they did, so the content of a legal text cannot, in general, simply be determined by the ordinary or technical meanings of the sentences in the text or indeed with the policy goals motivating the drafting thereof. As Scott Soames has noted:

> *'the content of a legal text is determined in essentially the same way that the contents of other texts or linguistic performances are, save for complications resulting from the fact that the agent of a legislative speech act is often not a single language user but a group, the purpose of the speech is not usually to contribute to the cooperative exchange of information but to generate behaviour modifying stipulations, and the resulting stipulating contents are required to fit smoothly into a complex set of existing stipulations generated by other actors at other times.'*

See Scott Soames "*Toward a Theory of Legal Interpretation*" in Analytic Philosophy in America: and other historical and contemporary essays (2014) 299

[6] 1995 (3) SA 761 (AD) at paras 10-11.

at 301; see also Stephen Neale "*Interpreting Legal Texts: What is, and What is not, Special about the Law"* in Scott Soames (ed) Philosophical Essays: Volume 1 (2009) at 403.

[34] Returning to the present dispute, the words employed in the OSD agreement read together with the translation tables compels interpretative work. The interpretation, as urged upon us by appellant cannot, on any reasonable or even rational basis, lead to the conclusion that the individual nurses on levels 9 or 10, should inexorably, by weight of the wording employed in the text , be translated to a Deputy Manager as opposed to an Assistant Manager. That the National Minister provided further guidance in a 2000 circular, to which I have made reference, to guide the behaviour contemplated by the language employed in the legal text in question, recalls the observations made by Soames cited above and lends support to the interpretive approach urged upon us by first respondent. At the very least, as noted already, it provides for an interpretation which gives effect to a translation either to an Assistant Manager: Nursing or to a Deputy Manager: Nursing.

[35] For these reasons, it cannot be said that the first respondent unilaterally and impermissibly varied the OSD agreement when it determined for translation purposes that a distinction was to be drawn between nursing personnel employed at small or district level hospitals (accommodating less than 90 beds and those employed at large or regional hospitals accommodating 90 or more beds). I accept that the distinction between less or more than 90 beds may itself be vulnerable to some form of legal attack. But that is not the dispute with which this Court is seized. When the directive issued by the National Minister on 28 September 2007 which was designed to facilitate the implementation of the OSD is read together with the OSD agreement and the translation tables, the interpretation which was adopted by third respondent is, in my view, the most compelling on the basis of the factual matrix which confronted this Court.

[36] For these reasons, I conclude that there is no basis by which to find either that the third respondent committed an error in law or acted in a manner which would not be congruent with that of a reasonable arbitrator faced with these set of facts. It must follow, therefore, that the appeal is dismissed with costs, including the costs of two counsel.

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Davis JA

Musi and Sutherland JJA concur in the judgment of Davis JA

APPEARANCES:

FOR THE APPELLANT:	Adv Stelzner SC and Adv Harvey Instructed by Chennells Albertyn Attorneys –
FOR THE FIRST RESPONDENT:	Adv A Oosthuizen SC and Adv Brenton Joseph Instructed by the State Attorneys