

Complexity of Dual Employment in Department of Health and university, South Africa

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Abstract

Background: Dual employment was inherited from the Transkei government, which ruled that all doctors who worked in hospitals also had to work in the medical school of the rural University. Policies at this university are inadequate, and where they do exist their implementation is discriminatory in nature.

Case history: Mr. BM joined the Department of Health as a medical officer and was subsequently appointed as an acting head of department in the Department. He had to work in the health care system as well as at the university full-time (Joint establishment); he was working on his own in his department. He was paid as a medical officer by the health but received no remuneration from university. This was contrary to labor law and University policy and once the council realized this, a resolution was taken granting him back payment. Unfortunately, it was not implemented.

Mr. BM was working against the post of professor and acting head and carried out all the responsibilities of that post without being remunerated. Although he was paid at the occupational-specific dispensation (OSD) scale in 2009, it was not adjusted till his retirement in 2018; therefore it affected his pension as well. The case history, short payment in salary, and unfair labor practice in respect of his dual employment are discussed in this manuscript.

Conclusion: The DOH must take responsibility in his dual employment for this shortfall in salary, as it is the source of major funding.

Keywords: *dual employment, exploitation, sandwich, health*

Introduction

South Africa introduced the OSD scale as a retention policy affecting all health professionals who are registered with the Health Professions Council of South Africa. This had a significant effect in keeping specialists in South Africa. University had a policy regarding conditions of service, allowances, leave and other privileges of persons appointed at the University. The remuneration attached to the officer's appointment as an acting officer was clearly stated on page 8 of this policy document. The right of employees must be protected and promoted, according to the amended Labor Relations Act (LRA) of 2014.¹ Describing the employment relationship under the LRA between the primary and the broker employer, the employee is deemed to be employed by both, according to the LRA

of 1983. Continuous employment in excess of three consecutive months by the broker employer triggered the acceptance of section 198A (1) (a) of the LRA.¹

The occupation-specific dispensation (OSD) scale has been regulated and implemented by way of collective agreements for health professionals, including medical specialists, since July 2009 to retain the expertise of health care service providers in South Africa. The aim of the OSD was to improve the conditions of service and remuneration of public service workers, including public sector health professionals.² The objective of the OSD was to improve the ability of the public service to attract and retain employees, to provide differentiated remuneration dispensations for the vast number of occupations in the public service, to cater for the unique

needs of different occupations, to provide unique salary structures per occupation, to prescribe grading structures and job profiles to eliminate interprovincial variations and to provide adequate and clear salary progression and career path opportunities based on competencies, experience and performance.³ Medical and dental practitioners, specialists, pharmacists and emergency medical services (EMS) were identified for implementation, and the OSD was implemented in these fields in July 2009.⁴

The commissioner in a NUMSA case was of the view that the dual employer interpretation would bring about several problems, such as disciplining of placed workers and deciding on which of the parties' disciplinary codes would be applicable.⁵ There could be

difficulties in payment and protection of an employee in a situation of dual employment. The labor court held that the rights of employees are therefore best protected by the dual employer interpretation. Primary employer in dual employment, where the employee is placed and he can be disciplined by them whenever need arise.

Results

The basic salary pattern of BM from 1996 to 2018 at the University is shown in Figure 1. The OSD scale was implemented in July 2009, but it was not revised till 2014; subsequently from 2015 to 2018 there was some increase, but whatever criteria Human Relations (HR) considered for this marginal increase, these did not reflect the implementation of the OSD scale (Figure 1).

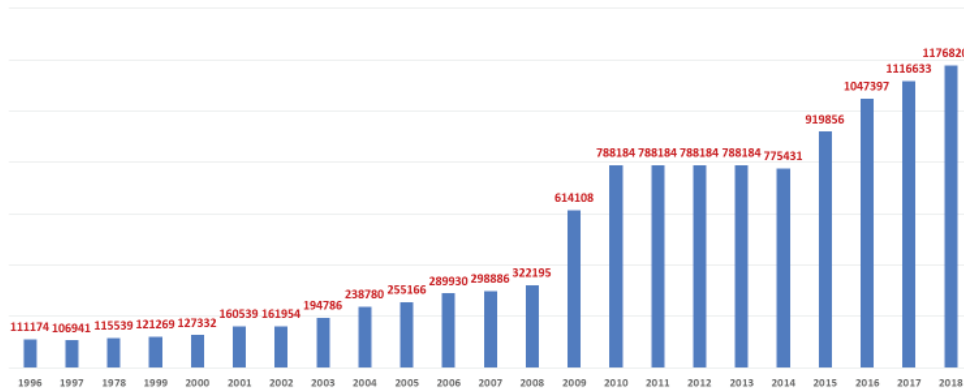


Figure 1 . Pattern of payment of salary from 1996 to 2018.

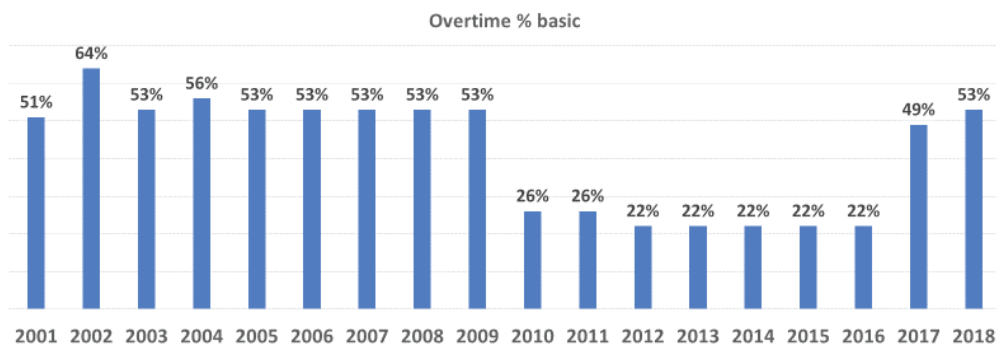


Figure 2. The pattern of Overtime paid in percentage of basic salary from 2001 to 2018.

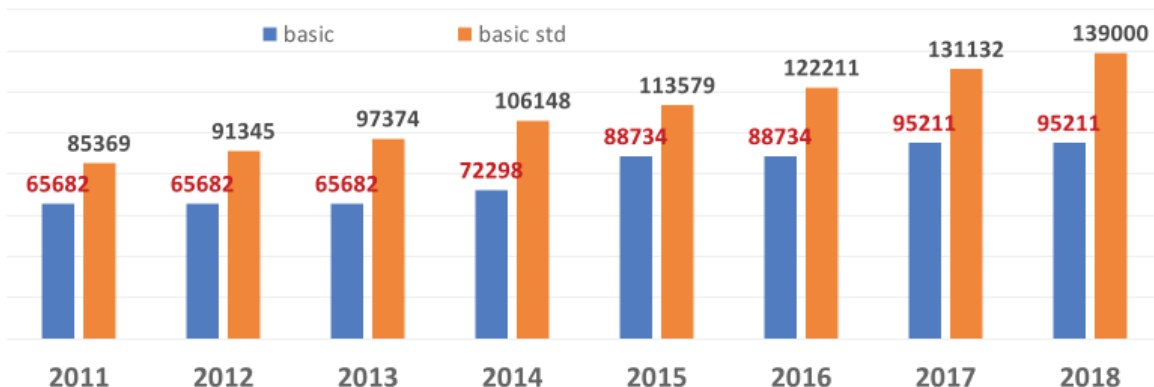


Figure 3. Comparison of a basic salary of a student vs. mine(2011-18).

The pattern of overtime payment from 2001 to 2018 is shown in Figure 2. The unilateral reduction in overtime payment from 2010 to 2016 is clearly visible in Figure 2. So, what happened was firstly a reduction in basic salary that automatically reduced over time, as it linked to basic salary. It is coming out about 53% of the basic salary (Figure 2). So, when salary has reduced, the overtime has also decrease as it is linked to it. It is 53% of a basic salary. It has not paid 53% from the year 2010 to 2016 (Figure 2).

It is very interesting to see the amounts reflected in Figure 3, indicating that a student of BM’s, who qualified in 1996, was getting a basic salary significantly higher than his from 2011 to 2018.

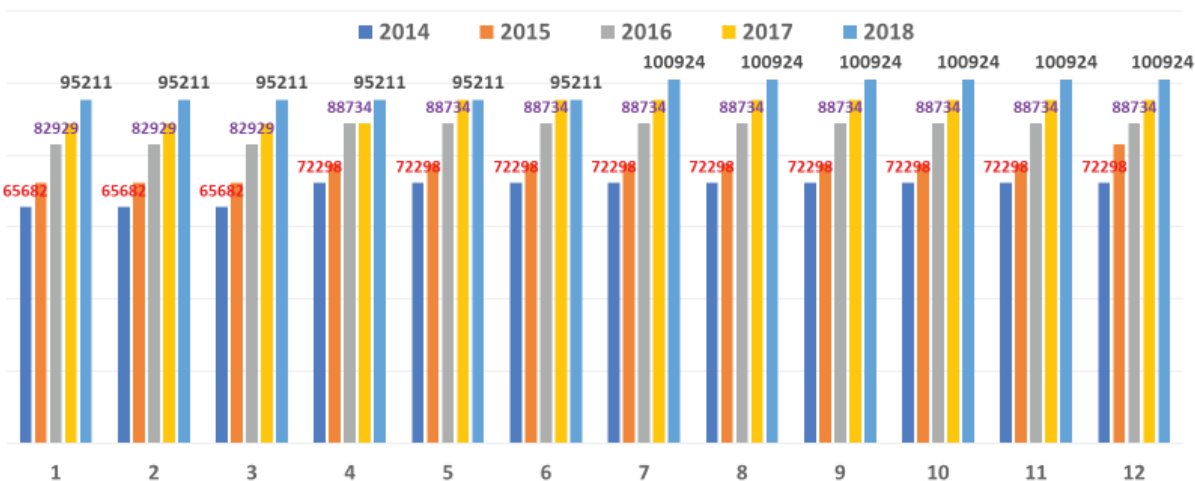


Figure 4. Monthly variability in the payment of salary from 2014 to 2018.

There was constant gross variability and lower payment in salary (Figure 1). This variability was not limited to years, but also occurred monthly (Figure 4).

Discussion

South Africa has been liberated from apartheid, but there is a tough challenge in terms of transformation into a stable, equitable, and non-racial society. Universities are regarded as power houses regarding generation of knowledge, but are also victims of racism and xenophobia.⁶ Although only a few cases of racism and xenophobia have been reported; these constitute the tip of an iceberg.⁷

Some of the employees of the health and the University were in the position of a floating ball; they keep on shifting one institution to other without any difficulties. These entities kept changing to a position where they could get more benefit. The work entailed mainly service in hospital and teaching medical students at university. The work remains the same either employed in university or in hospital especially in the case of Mr. BM. The salary is almost equal, as a professor's post is equivalent to that of a chief specialist (Level 13 and university level 5). The University receives 60% of the required funds from the DOH for the payment of their joint staff on the university payroll, according to an agreement.⁹ In addition to this, the health pays an overtime allowance, which is about 53% of the basic salary, and so overall health contributes about 80% of the funds for university joint staff. Mr. BM was not paid appropriately at any time, although he was working in both the university and the health full-time. He was getting a salary that was almost that of a lecturer, whereas one of his previous students was appointed was almost getting twice higher scale (Figure 3). Mr. BM as a specialist fell in a scarce skills specialty. What criteria the University considered and how it increased the salary of staff was a mystery. Prof. D, who was assessor of the University and submitted a report, mentioned that the University was like Afghanistan, and there were indications of failure of multiple organs, including HR.⁸

The University appointed HODs in various departments, and health employees worked according to their instructions. This was an exception in the case of Mr. BM, as he was on his own in both the health and the University, so he was the head and tail of the department.⁹ With the inception of the OSD scale in July 2009, most of the staff, especially the favored ones, were shifted to the health side, and other were in National Health

Laboratory Services (NHLS), left few on university payroll. It was surprising fact that all the members of the clinical staff were not absorbed by the hospital. This happened without any notice by HR. Where such a change is made, there should be communication with all the staff, and they decide, to stay in university or on health payroll. But this did not happen.

When the OSD scale was instituted in 2009, a lump sum was paid with the December 2009 salary in university. University has paid less than should have been done but did pay. At that time, the faculty head wrote a letter to the HR director and head of the institution, regarding back payment on the OSD scale in 2011. BM's name was included at that time, but later the list of joint staff who supposed to get back pay of pending (2010 & 2011) OSD scale, Mr. BM name excluded in HR. When enquiries were made, the HR director replied that the faculty had decided to exclude BM's name. When HR was asked who the specialist deciding on salaries in the faculty was, he did not answer. In 2011 and 2012, most of the staff mobilized on the health side, leaving BM at the University. These facts only came to light later, as BM never suspected that this kind of thing was possible at the University. It was only at the beginning of 2012, when the medical school director showed the salary scales on his computer, that BM suspected that there was something wrong and started working on it.

This shortfall in salary occurred from 1996 to 2018, and it cannot be prescribed, as salary is like a debt. The council itself broke the prescription by its resolution in 2003 to grant back pay to Mr. BM from 1996. Secondly, there is supportive evidence of a decision in a case heard in the Constitutional Court where the employer paid after 30 years of prescription. Mr. BM has constantly been writing to the University about his back payment.³ In 2015, National Union of Tertiary Education (NTEU) lodged a dispute on the shortfall in salary with the head of institution and demanded back pay from 1996. He replied without mentioning a word about prescription. There is a history of personal visits to offices at the University; in addition to almost 50 letters being written to the University, twice this number of personal visits occurred since 1996.

Mr. BM was sandwiched between two employers, where the health was bigger, and the University was

the agency, and pay to his employee as they like it. BM was initially (1996-2001) on the payroll of the health but worked at the University like a full-time employee. This does not need any explanation, as it is evident from a resolution by taken by the University's highest body. The University's policy on conditions of service is quite clear: to pay the difference in salary of an acting officer against the post in which that officer is working. In the case of BM, he had always worked in the post of professor and head. The health has always claimed BM as their employee and given instructions to the University. A letter written by the clinical manager gave direction to the faculty head on an enquiry about abscondment of Mr. BM. This implies that the health considered itself his first-line employer, and the University as secondary. Dual employment is always problematic, and one must report to both authorities. BM was removed from the head post after 20 years, in April 2015, but the hospital always regarded him as head and used his services accordingly.

It is difficult to know how much the health paid to the University in the case of Mr. BM. From a meeting held on September 2018 between HR of Health and university HR, it looks as if that all OSD scale funds were paid solely by the health and there was hardly any contribution from the University. The chief director who was chairing the meeting was surprised that Mr. BM was getting such a low salary, almost half of the norm, especially from 2010 to 2018. One of his students, who were working at the university and then at a hospital were getting much higher than Mr. BM.

Whatever amount of salary was paid by the health is not clear, but at the University HR was always paying a low salary to Mr. BM. The salary scales changed up to three times in a year, and at least twice in a month. This frequent fluctuation in a salary is a sign of bad management by second employer. Mr. BM has reported to the head of institution but there is no effect. Overtime was also like playing musical chairs, with payment of 53% (2001-2009) going down to 22% (2010-2016) and again being elevated to 53% (2017-2018). BM was used to working the same hours, as he was almost on his own in the department. In short, the figures indicate that there was no consistency in payment. He was paid considerably less than could be expected especially after OSD scale started in 2009. This irregularity in lower payment did

not occur only yearly, but also within months, which is evident when one looks at the monthly payment record. The decrease in salary and switching on 3 consecutive disciplinary enquiries, 2 suspensions, and a forensic audit, showed that the university management has some hands, and wanted his constructive termination. Moreover, they did not allow to Mr. BM to go to Laboratory, so that he stop getting material for publication. This is called as professional death sentence. The meeting with HR health and HR University was held in the central city and matter was discussed. Mr. BM was penalized by not paying him birthday bonus, and accompanying union member, salary was decreased. Mr. BM's reduction in salary and allowances, about which he was not even informed. Since labour laws were disregarded by the HR department in the case of Mr. BM, this matter must receive urgent attention.¹⁰

Conclusion

The health must take responsibility for payment, as it is the primary employer, and refund the employee's salary and pension. The University has exploited Mr. BM, as an employee, by carrying out unfair labor practice. It is regrettable that university management has taken decision unilaterally, and not informed to Mr. BM. It is sad that even council resolution was not implemented.

Ethical Issues

Proper care was taken in this manuscript, as not to disclose directly to any institution or an individual, but if is knowingly or unknowingly someone find it, and then it is not author intention. It is failure of system in both health and university, and that led to victimization of Mr. BM. The author would like to high light this system failure in this report, not an individual or institution.

Conflict of Interest: The facts in this report could be submitted in demand. The references were not labeled but can be produced if necessary.

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