



ARBITRATION AWARD

Case Number: ***PSCBC287-22/23***

Commissioner: ***Minette van der Merwe***

Date of Award: ***11 April 2023***

In the **ARBITRATION** between

PSA obo Anna Magrieta Cornelia Classen & another

(Union/Applicant)

And

Department of Correctional Services (1st Respondent)

Department of Public Service and Administration (2nd Respondent)

(Respondent)

DETAILS OF HEARING AND REPRESENTATION

1. This is the arbitration award in the matter between the Public Servants Association (“PSA”) on behalf of Anna Magrieta Cornelia Classen and Matsediso Henro Sehloho (the Applicants) and the Department of Correctional Services (the 1st Respondent) and the Department of Public Service and Administration (“DPSA”) (the 2nd Respondent) which matter was scheduled for arbitration by digital means (Microsoft Teams) on 13 February 2023 (13h00) and held under the auspices of the Public Service Co-ordinating Bargaining Council (PSCBC).
2. Parties were invited and had attended proceedings. The Applicants were represented by Mr F Fouche, whereas the 1st Respondent was represented by Ms M Berry. The 2nd Respondent did not attend and was not represented.
3. Proceedings were recorded with handwritten notes. No interpretation was required.

ISSUE(S) TO BE DECIDED

4. The matter was referred to the PSCBC as a dispute relating to the interpretation and application of PSCBC Resolution 1 of 2007, and in terms of section 24 of the Labour Relations Act, 66 of 1995, as amended (“LRA”).
5. I am called upon to determine whether the Respondent was in contravention of Resolution 1 of 2007, and whether the Applicants are entitled to overtime payment.

BACKGROUND TO THE ISSUE

6. The representatives, mandated by the respective parties, agreed to argue the merits of the case in writing. Parties had to submit their arguments in writing as follows:
 - i. The Applicants to submit by no later than 20 February 2023
 - ii. The Respondent to submit by no later than 24 February 2023
 - iii. The Applicants to submit final arguments by no later than 28 February 2023
7. The written arguments were duly received.

SURVEY OF ARGUMENTS AND EVIDENCE

The Applicants submitted bundle “A” into evidence (documentary evidence), and the Respondent submitted its departmental Overtime Policy (“B”) into evidence. The veracity of the documents was not disputed and were accepted as it purported to be.

Arguments of the Applicants (brief summary):

8. Both Applicants worked at the Grootvlei Correctional Services in the Logistics Component Non-Centre Based. They work 40-hour weeks from Monday to Friday, which are regulated by Resolution 2 of 2009. They do not ordinarily work on Saturdays and Sundays.
9. Both Applicants were requested to work on 19 and 20 March 2022¹, a Saturday and Sunday respectively, by the Area Commissioner Rev Radebe. That the overtime was worked by the Applicants is not disputed, as an internal memorandum substantiated same². The request for abnormal overtime was, however, not approved³, and the reason provided was that the approval request was *post facto*.
10. The Applicants were requested to work overtime, and the overtime was worked. It is unfair for the Respondent, who requested the Applicants to work said overtime, to refuse to pay for the overtime worked. The Respondent refused to pay the overtime worked as it alleged that the proper procedure was not followed, however, this argument should not be entertained. The Applicants worked the overtime, on the request of a senior manager and with the written recommendation of the Area Commissioner. The Applicants are entitled to the payment of overtime worked, in terms of clause 9.1 of Resolution 1 of 2007, on 19 and 20 March 2022.
11. The Applicants seek the payment of overtime worked by the Applicants on 19 and 20 March 2022 to the amounts of R 4 023.49 for Ms Classen and R 3 508.43 for Mr Sehloho.

Arguments of the Respondent (brief summary):

12. The Applicants claimed that they were instructed to work overtime on 19 and 20 March 2022 on short notice prior to a visit from the National Inspectorate scheduled for 22 – 26 March 2022. Documentary

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² Pages 14 – 20 of “A”

³ Page 20 of “A”

evidence showed that the Area Commissioner as well as the Deputy Regional Commissioner were aware of the overtime worked.

13. It was common cause that the Applicants did work the overtime on 19 and 20 March 2022, as claimed. The Applicants' request for payment of the overtime worked on 19 and 20 March 2022 were not approved, and the Applicants were informed that the reason for the non-approval thereof was because prior approval was not sought and approved before the overtime was worked.
14. The Applicants were seeking the payment of the overtime and not the granting of time off as provided for in Resolution 1 of 2007.
15. Resolution 1 of 2007 should not be read in isolation but should be read with the Overtime Policy of the Respondent, which was developed to ensure overtime was paid within prescribed and aligned guidelines. The Respondent did not breach Resolution 1 of 2007 by declining the request for overtime worked on 19 and 20 March 2022 to be paid to the Applicants. The Respondent sought the dismissal of the claim of the Applicants.
16. The Respondent submitted that the true nature of the dispute was a claim of unfair labour practice related to benefits, if the Applicants sought the payment of overtime.

ANALYSIS OF EVIDENCE AND ARGUMENTS

17. It was held in *Tabane v PSCBC and others (LC) C27/15 (28 September 2017)* that "*the purpose of section 24 of the LRA is to resolve disputes where a party to an agreement is alleged to have been in breach of the provisions of that agreement by failing to apply its terms either correctly or at all. The principles applicable to the interpretation of collective agreements are trite as restated in Western Cape Department of Health v Van Wyk & others (2014) 35 ILJ 3078 (LAC) [22].*"
18. It is trite law that a Commissioner cannot make a monetary order in disputes referred in terms of section 24 of the LRA; a Commissioner may only make an order that gives effect to a collective agreement (section 138(9) of the LRA).
19. The onus vests in the Applicants to prove that the Respondent was in breach of Resolution 1 of 2007. It is trite law that any party to a Collective Agreement does not have a discretion to comply with such a Collective Agreement or Resolution but is obliged to comply with it.

20. PSCBC Resolution 1 of 2007 states in clause 9.1 as follows:
- “Overtime on a Sunday or public holiday shall be 2 x basic salary of the employee, without the option of granting time-off. All other overtime shall be 1.5 x basic salary of the employee, without the option of granting time-off. This provision excludes employees on commuted overtime.”*
21. The Overtime Policy on which the Respondent relied in their arguments were submitted into evidence. The Respondent is entitled to develop its own policy to set qualifying criteria and streamline the implementation of a specific Resolution, in this instance, Resolution 1 of 2007, on overtime specifically. This departmental policy on overtime was implemented in July 2015. In this instance, Resolution 1 of 2007 must be read with the departmental Overtime Policy, in order to determine this dispute.
22. The departmental Overtime Policy states as follows (relevant excerpt):
- “7. POLICY PRINCIPLES**
- 7.1 OVERTIME**
- 7.1.1 *All officials qualify to perform overtime except Learners, Interns and members of Senior Management Services.*
- 7.1.2 *No overtime duties may be performed without the written prior approval from the Delegated Authority, **except in exceptional circumstances.***
- 7.1.3 ***Exceptional circumstances** refer to situations and circumstances which could not have been foreseen and where obtaining approval prior to the commencement of overtime is not possible, e.g. double shifts. Planned events are not regarded as exceptional circumstances.”*
23. From the Applicants’ own documentary evidence⁴ it showed that the Applicants were aware that they had to seek approval for overtime before the overtime may be worked in normal circumstances, as alleged by the Respondent.
24. The Overtime Policy of the Respondent does make provision for “exceptional circumstances” in which overtime can be worked without prior approval. In this instance, the Applicants did not work the overtime of their own volition but worked the overtime on 19 (Saturday) and 20 (Sunday) March 2022 on the request of Area Commissioner Radebe, and on short notice for preparation for the National Inspectorate visit on 22 – 26 March 2022 (Tuesday – Saturday). This was endorsed by the Deputy Regional

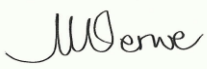
⁴ Bottom of page 13 of “A” WhatsApp message

Commissioner in an internal memorandum⁵. It is thus clear the Applicants had prior approval to work said overtime. In my view, these circumstances constitute 'exceptional circumstances', as defined in the departmental Overtime Policy. Prior approval would not have been reasonably possible, considering the aforementioned timeframe. Although the National Inspectorate visit was a planned event, the evidence does not show that the Applicants carried any knowledge that they would have to be involved in the preparation for the visit prior to the WhatsApp request on 17 March 2022⁶ (Thursday) from Area Commissioner Radebe.

25. It is my interpretation of clause 9.1 of Resolution 1 of 2007, read with clause 7.1 of the departmental Overtime Policy of the Respondent, and in considering documentary evidence submitted, that the Respondent failed to consider its own Overtime Policy, which makes provision for exceptional circumstances, when it declined the Applicants' request for payment of overtime. It then follows that the Respondent is in breach of Resolution 1 of 2007 read with the departmental Overtime Policy.
26. The Applicants' request for payment of overtime was not approved by the Respondent, and this non-approval was in contravention of the departmental Overtime Policy read with Resolution 1 of 2007.
27. As previously stated, a Commissioner cannot make a monetary order in disputes of this nature, but can only make an order that gives effect to the Collective Agreement (Resolution 1 of 2007 in this instance).

AWARD

28. The Respondent, **Department of Correctional Services**, is in contravention of clause 9.1 of Resolution 1 of 2007 read with the departmental Overtime Policy.
29. The Respondent is ordered to comply with Resolution 1 of 2007, read with the departmental Overtime Policy, by no later than 31 May 2023.
30. No order is made as to cost.



PSCBC Panelist: **Minette van der Merwe**

⁵ See "A"

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