



ARBITRATION AWARD

Panelist/s: Karen Kleinot _____
Case No.: PSCBC350-22/23 _____
Date of Ruling: 14 April 2023 _____

In the matter between:

PSA obo Manngo

(Union / Applicant)

and

Dept of Forestry & Fisheries

(Respondent)

Details of the hearing

- 1 The matter was scheduled for arbitration on 30 March 2023. Both parties attended, Mr. Louw from the PSA represented the applicant. Mr. Motsepe a Labour Relations practitioner represented the respondent. The proceedings were recorded. The issue in dispute was narrow and the parties were directed to submit closing arguments on 5 April 2023. Arguments were received from the Applicant party.

Issue in dispute

- 2 The issue that falls to be decided is the interpretation and application of Resolution 14 of 2002. Whether the respondent is obliged to comply with F8 of Resolution 14/2002 of the collective agreement when events have overtaken the grievance.

Background to the dispute

- 3 A grievance was referred to the respondent on 7 November 2022. The subject matter of the grievance referred to the respondent refusing subsistence and travel claims amongst others. The applicant in his grievance claimed he was discriminated against or that there was an unfair labour practice being perpetrated against him. This he agreed was the subject matter of the grievance.
- 4 Applicant agreed that his supervisor declined his subsistence and allowance claim and indicated such on the system that is used to claim such. The reason provided was that he had not signed a performance agreement and as such the claims would not be approved as there was no performance agreement in place. He became aggrieved at this action and referred the grievance.
- 5 The issue in dispute was determined to be narrow: in that the union sought a written response to the grievance of 7 November 2022. The respondent contended that this was unnecessary in that events had overtaken the grievance response and no response was necessary.

Survey of the submissions

- 6 Mr. Louw argued that the applicant Mr. Manngo followed the grievance procedure due to his unhappiness about work issues specifically the submission of travel and booking requests to attend an Indaba. This was declined by the supervisor on 12 October 2022. The grievance was submitted on 7 November 2022. To date there has been no response to the grievance.

- 7 Resolution 14 of 2002 of the PSCBC in clause 8 provides for a response to a grievance within 30 days. That is the respondent has 30 days within which to deal with the grievance. The period may be extended by mutual agreement in writing.
- 8 The respondent has had four months within which to respond and has not done so. It was submitted that the Respondent is in breach of Resolution 14 of 2002. The matter is correctly before the Council in terms of S24 of the Labour Relations Act. This specifies that a dispute about a collective agreement must be conciliated and thereafter arbitrated. In this instance there is a dispute as to whether the collective agreement applies to a particular set of facts or circumstances. In **NUCW v Oranje Mynbou en Vervoer Maatskappy Bpk [2000] 2 BLLR 196 (LC)** where the court found that “*a dispute about a collective agreement applies to the situation where there is non-compliance with a collective agreement and one of the parties wished to enforce its terms*”.
- 9 It was argued that the right to fair labour practices was enshrined in the Constitution. This was aimed at ensuring that the employment relationship continues in a fair manner. The Respondent by refusing to produce an outcome is undermining Mr. Manngo’s right to a fair labour practice as per the Constitution. Thus, the Respondent stands to be compelled to respond to the grievance as contemplated in Resolution 14 of 2002.
10. Mr. Motsepe argued that the grievance is dated 7 November 2022. This pertained to the fact that the supervisor declined to process the subsistence and travel claim as well as the training request. This was due to the fact that he had not signed a performance appraisal.
- 11 It was argued that the Applicant lied under cross examination when it was pointed out that the supervisor indicated that he would not be eligible for the travel and subsistence claim as well as training until he signed the performance appraisal. This reason was provided to the applicant on 12 October 2022 prior to the launching of his grievance and prior to the referral of his case. It was argued Mr. Manngo was aware of the feedback provided about his claims.
- 12 Mr. Manngo failed to sign a performance agreement for two years and disciplinary action was taken. It was argued that the letters implementing discipline for failing to sign a performance agreement must be seen as feedback to Mr. Manngo regarding his grievance. It was emphasized that without a performance agreement in place the supervisor would not approve the travel and subsistence claims.
- 13 It was argued that resolution 14 of 2002 should not be narrowly construed as a response was provided to Mr. Manngo. A written outcome providing the same reasons that his supervisor provided is academic

and repetition. The supervisor conveyed the reason for declining the travel and subsistence and training claim. This complied with the resolution.

Analysis of the submissions and argument

- 14 In **HOSPERSA obo Tshambi v the Department of Health KZN DA1/2015** the court pointed out that a dispute, requires at, minimum a difference of opinion about something between two or more persons. An interpretation and application dispute requires a difference of opinion about what a provision of the agreement means, that is where parties differ over the meaning of a clause in the collective agreement. About the application of a collective agreement, which requires at, minimum a difference of opinion whether it can be invoked. That is whether the collective agreement is applicable or whether the activity which gives rise to the controversy is covered by the collective agreement and includes whether an agreement applies to the facts in question and the manner in which the agreement is applied which includes non- compliance.
- 15 The issue that must be determined is the interpretation and application of Resolution 14/2002 as it relates to the Grievance Procedure in the Public Sector and clause 8, that requires a response within 30 days. When determining a dispute pertaining to the interpretation and application of a Collective Agreement such as Resolution 14/2002, the golden rule applies, that is the ordinary meaning of the words to the clause are applied. According to Grogan (Workplace Law tenth edition,2012) *“The constitutional injunction that where possible, all legislation must be interpreted to give effect to fundamental constitutional rights, rather than limit or exclude them. It is important to ensure that an absurdity does not result.”*
- 16 In SAMWU v SALGBC & Others (2012) 33 ILJ 353 (LAC) the court held “I am satisfied therefore that the commissioner properly applied his mind to the issues before him, that he considered all the material before him, and adopted an approach that gave effect to the purpose of the collective agreement in a manner that achieved equity and fairness amongst eThekweni’s employees.”
- 17 The court set out the test that applies in interpretation and application disputes, in National Joint Municipal Pension Fund v Endumeni Municipality 2012 (4) SA 593 (SCA) the court held that *“Interpretation is the process of attributing meaning to the words used in a document, be it legislation or some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed, and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of all these factors. The process is objective and not subjective. A sensible meaning*

is to be preferred to one that leads to insensible or unbusiness like results or undermines the apparent purpose of the document. The inevitable point of departure is the language of the provision itself, read in context and having regard to the purpose of the provision and the background to the preparation and production of the document”.

- 18 Resolution 14 of 20022 clause 8 falls under the heading “F Departmental Stages to Address a Grievance”. Clause 8 *“The department (including the executive authority) has 30 days to deal with the grievance. The period may be extended by mutual agreement in writing”.*
- 19 The argument that the supervisor’s response to Mr. Manngo constitutes an outcome is incorrect. The resolution provides steps that oblige a department to follow. This was not done. An explanation to the applicant is informal. Whilst the reason may remain the same, that he has no performance agreement in place. Mr. Manngo has not received a formal outcome from his grievance which then informs his next steps. Whether it is to refer a matter to the Council or CCMA or whether it is to escalate his grievance following the grievance procedure. By not providing an outcome the respondent is delaying the matter further by preventing the grievance procedure from being followed. It is worth noting that our courts have emphasized that parties should exhaust internal remedies. A grievance process is one such remedy and if this fails then the aggrieved has options as to where to refer the matter. But the departure point is to exhaust the internal remedies first. It matters not that it is the same issue, in that it is clear that this has not been resolved thus creating a dispute.
- 20 It was argued on 30 March 2023 that events had overtaken the grievance, and this obviated the need for a response. Section “F Departmental Stages to Address a Grievance” does not make provision for such. The following clauses are relevant, clause 9; *“If after the aggrieved employee is informed of the outcome of the grievance and he/she remains dissatisfied- (a) he/she must inform the executing authority in writing within 10 days; (b) the executing authority must in terms of section 35(1) of the Public Service Act, 1994, forward the grievance and relevant documentation to the Public Service Commission for recommendation within five day of being informed by the aggrieved employee.”* As there has been no response clause 9 has not been followed.
- 21 Clause 10 *“If the grievance constitutes an alleged unfair labour practice as defined in the LRA, the employee may inform the executing authority in writing that he/she wishes to utilise the dispute resolution mechanisms provided for in the constitution of the PSCBC or relevant sectoral council (whichever is applicable) and that the Public Service Commission should therefore not consider the grievance”.*

- 22 Clause 11 *"If there is a failure on the part of the department to respond within the period referred to in clause 8, the aggrieved officer may lodge his or her grievance with (a) The Commission directly; or (b) in the case of the alleged unfair labour practice, with the PSCBC or relevant sectoral council whichever is applicable in terms of the dispute resolution procedure."*
- 23 The words are plain and the meaning clear, if the department does not respond and issue an outcome report for the grievance Mr. Manngo has remedies, namely, to refer the alleged unfair labour practice or discrimination case to the relevant Council, or CCMA. There is no evidence that matters have been referred to the relevant Bargaining Council or CCMA. This does not excuse the Department's non-compliance with clause 8. It is common cause that an outcome report has not been issued. The Department has not complied with clause 8 but Mr. Manngo has options as per clause 10 and clause 11.

Award

- 24 The Department of Forestry & Fisheries has not complied with clause 8 of Resolution 14 of 2002.
- 25 The Department of Forestry & Fisheries is directed to provide a written outcome of the grievance to Mr. Manngo within 7 days of receipt of the award.



Signature:

Panelist/s: Karen Kleinot