



**IN THE PUBLIC SERVICE CO-ORDINATING BARGAINING COUNCIL
HELD AT BLOEMFONTEIN**

CASE NO: PSCB 7-17/18

PSA obo Shasha, TW

APPLICANT

and

Department of Agriculture and Rural Development, FS

RESPONDENT

AWARD

DATE OF ARBITRATION	:	4 September 2017
CLOSING ARGUMENTS	:	11, 18 and 21 September 2017
DATE OF AWARD	:	2 October 2017
ARBITRATOR	:	I de Vlieger-Seynhaeve

1. DETAILS OF HEARING AND REPRESENTATION

1.1 Mr Greeff from the PSA represented the Applicant. Mr Norval represented the Respondent.

1.2 The proceedings were recorded digitally. The parties stated that the facts were not in dispute and they agreed to make written submissions.

2. ISSUE TO BE DECIDED

2.1 The issue to be determined is whether the respondent was in breach with Resolution 3 of 1999 when it did not pay the resettlement costs of the applicant.

3. SURVEY OF EVIDENCE

3.1 The applicant's rep made the following submissions:

3.1.1. **Mr Greeff** stated that the applicant started working for the respondent as a Project Coordinator in Sasolburg on 22/02/2010. The appointment was on government cost as the post was advertised and there was a need to fill it. On 15/10/2012, the applicant requested a transfer to Bloemfontein to the post of Deputy Director: Economist by means of swapping the post with Ms Mokoena. His second choice was to be transferred to the post of Deputy Director: Support Services in Thaba Nchu as the post was vacant and was not advertised. On 24/01/2013 his requests for transfer were both denied. On 18/02/2015, the applicant made a request for a transfer to Mangaung Metro and to Welkom. Those applications were never signed by two directors and were therefore never considered. On 09/05/2016, the applicant lodged another request for a transfer to Welkom. This application was supported by two directors. The Head of Department then approved the transfer of the applicant to Thaba Nchu, which was not what he had asked for. It is clear that the respondent was not responding to the applicant's request but advanced an interest of the Department in order to strengthen service delivery. He referred to clause 1.1. of PSCB Resolution 3 of 1999 where it is stated that: *"the employer shall generally meet, within reason, the actual resettlement costs within the country, incurred by an employee and her or his immediate family as a result of official duties."* The resettlement policy of the respondent states in clause 6.1: *"If the employer requires an employee to transfer to a new place of work within the Department, the employer shall assist the employee with the associated costs."* Based on the above, it is clear that the transfer was initiated by the respondent in order to

improve service delivery. The applicant is therefore entitled to resettlement costs.

3.2 The respondent's rep made the following submissions:

3.2.1 **Mr Norval** stated that the applicant requested a transfer as he wanted to be closer to his family and his property which was situated in Bloemfontein. The applicant was transferred to Thaba Nchu which is nearer to his family and property than Welkom. This was done in line with his request for a transfer which was recommended by the relevant Senior Managers on 9 and 11 May 2016. The applicant then made a claim for resettlement costs which was refused by the respondent. This was denied because the transfer was a result of the applicant's request. If the respondent would initiate a transfer to a new place of work, he would always indicate that the transfer is on state cost which was not the case in this matter. PSCB 3 of 1999 states that an employer MAY assist the employee with the resettlement costs but this is a discretionary power of the respondent. An employee requesting a transfer is excluded from financial assistance. The Resettlement Policy of the DARD states in section 7.1: *"If an employee initiates a transfer, the employee will be responsible for his own cost, unless the head of the receiving component request and can proof that it is in the best interest of the state"*. There was no proof of such a request. The transfer of the applicant to Sasolburg in 2010 and back to Thaba Nchu in 2016 were a result of the applicant's own choice. The post in Sasolburg had been advertised and the applicant successfully applied for it. Resettlement costs were consequently paid.

The transfer to Thaba Nchu was the result of at least three written applications initiated by the applicant to address his personal circumstances. Therefore there is no entitlement to resettlement costs and the application should be dismissed.

4. ANALYSIS OF EVIDENCE AND ARGUMENT

4.1 I have considered all the evidence and argument, but because the LRA requires brief reasons (s 138(7)); I have only referred to the evidence and argument necessary to substantiate my findings and decision.

- 4.2 The dispute which has been referred relates to Resolution 3 of 1999, more specifically clause 1.1 which states: *“the employer shall generally meet, within reason, the actual resettlement costs within the country, incurred by an employee and her or his immediate family as a result of official duties.”* It further states in clause 3.1 **under costs associated with transfer** that *“If the employer requires an employee to transfer to a new place of work, the employer may assist the employee with the associated costs”*. It also states in clause 2.1 that *“an Executing Authority shall establish and where appropriate negotiate written policies on resettlement”*. The Department of Agriculture and Rural Development has done so and issued a Resettlement Policy dealing in more detail with the different costs. That Policy confirms in 6.1 that *“if the employer requires an employee to transfer to a new place of work within the Department, the employer shall assist the employee with the associated costs”*.
- 4.3 The argument of both parties centred around the issue whether the transfer was initiated by the employer or by the employee. It was common cause that the applicant had put in three requests for transfers. One in 2012, which was denied. Another one on 18/02/2015 for a transfer to Mangaung or Lejwelephutswa district where no feedback was received at the time. And a last one on 09/05/2016 where he also requested a transfer to Lejweleputswa district. The applicant was then informed of a transfer on 19/05/2016 to Thaba Nchu (Mangaung). The applicant stated that the transfer was of the respondent's own accord as he had not asked about a transfer to Thaba Nchu. The respondent stated that the senior managers recommended the second request for transfer on 09/05/2016 and 11/05/2016 and informed the applicant on 19/05/2016. Seeing that the parties did not lead any evidence, it is very difficult for me to draw an inference from the arguments as to what the intent of the parties was when they requested and approved the transfer. I hereby refer to *Arends and Others v South African Local Government Bargaining Council and Others (2015) 36 ILJ 1200 (LAC)*. However, looking at the dates that were submitted it seems probable that the transfer was in relation to the second request of transfer by the applicant. It is not because an employee requests a transfer, that this happens in the next month. The respondent cannot create a post just because an employee wants a transfer. There needs to be a vacancy and there needs to be a match between the vacant position and the applicant's position. Even if there is a vacant post, there also needs to be a need for the post to be filled. It is not because the approval came a year after the application that it is impossible that

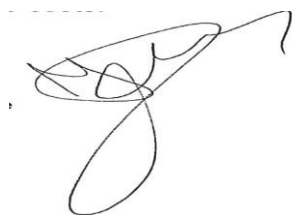
the transfer was in reply to the second request. Secondly, the applicant wanted to be transferred closer to Bloemspruit where he lived. Thaba Nchu is closer to his home than any of the other cities he requested a transfer to. It does therefore seem that the respondent did consider his request for a transfer close to his home and acted accordingly. The applicant further stated that his letter of transfer indicates that the transfer was done to strengthen and improve their services to their clients and can therefore not have happened because of his request. Again, it is difficult for me to comment on this as no-one gave evidence about the intentions of the Respondent. Based on the above I find it most probable that the transfer occurred after the applicant submitted a request for a transfer. Seeing that the transfer was initiated by the applicant, the applicant is responsible for his own costs.

- 4.4 Even if my interpretation of the facts is wrong, clause 3.1 of the Resolution uses the word MAY. This indicates that there is no obligation and the employer has a discretion to pay the costs of transfer or not. I therefore find that the respondent did not breach the Resolution.

5. AWARD

- 5.1 The respondent is not in breach with Resolution 3 of 1999;
5.2 The application is hereby dismissed;
5.3 There is no order as to costs.

Signed at Cape Town on this 2nd day of October 2017



I De Vlieger-Seynhave
PSCB Panelist