



PANELIST: ADVOCATE J P HANEKOM

CASE NO: PSCB285-15/16

AWARD DATE: 23 JANUARY 2017

In the matter between:

POPCRU obo NT NONTI-NQAMNDUKU

Applicant

and

SOUTH AFRICAN POLICE SERVICE (SAPS)

Respondent

ARBITRATION AWARD

DETAILS OF THE HEARING AND REPRESENTATION

1. This matter was set down for arbitration concerning an interpretation and/or application of a Collective Agreement (Resolution 7 of 2000 hereinafter referred to as “the Resolution”). Mr. P. Bester of POPCRU represented the Applicant. Capt. T. Kruger of Legal Services represented the Respondent. I digitally recorded the evidence concluded in one day. Both parties thereafter agreed and requested to submit written argument by 6 January 2017. The Respondent only submitted by 9 January 2017 and I therefore requested the Council to extend my award date to 23 January 2017.

ISSUE TO BE DECIDED

2. I must decide whether the Respondent correctly applied and/or interpreted the Resolution.

BACKGROUND

3. The Applicant is employed as a Sergeant at the Flying Squad, Emergency Services, Cape Town with more than eleven years’ service. The Applicant applied for annual vacation leave for the period 12 December 2014 to 31 December 2014 (twenty days). On receipt of the application for leave, the Unit Commander explained to the Applicant in the presence of her Shift Commander that it is difficult to get leave during the December/January period and that he would discuss it with the Provincial Emergency Services Commander for approval and consideration. Whilst the Applicant’s application was under consideration she booked off sick on 12 December 2014 until 15 December 2014, again from 20 December 2014 until 24 December 2014, and again from 27 December 2014 until 31 December 2014. According to the Respondent, the Unit Commander at the time instructed the Applicant to report to

his office once fit for duty to approve her annual leave to no avail.

4. The Applicant's Shift Commander informed her on 8 January 2015 that he intended to consider the whole period concerned as leave without pay to be deducted from the Applicant's salary. He allowed the Applicant to make representations in that regard. The Applicant stated in writing that her rest days were included in her sick certificate and her first day back at work was 5 January 2015. The Applicant alleged that she did not have knowledge of the policy in that she had to book fit for duty during her rest days or that her rest days had to be included in her sick leave. Accordingly she requested that the twenty days' leave be deducted from her annual leave instead of being considered as leave without pay.
5. The Respondent thereafter decided to deduct the twenty days from her salary as leave without pay. The Applicant then referred an interpretation dispute to the Council. The Respondent opposed the application.

EVIDENCE BY THE APPLICANT

6. The Applicant was the only witness in support of her case. I decided to summarise the Applicant's argument as far as I consider relevant for the purpose of my award.

Applicant:

7. The Applicant during her testimony confirmed her period of absence as stated in the Background above.
8. The Applicant further stated that she was not aware that she needed to book fit during her rest days that was not covered by the sick certificates for the periods

concerned. Accordingly, the Applicant requested that the employer deducted the twenty days from her annual leave.

9. According to the Applicant she became sick on 11 December 2015 and went to see the doctor on 12 December 2015 when he booked her off sick.

Closing argument:

10. The Applicant submitted that the Respondent did not correctly apply the Resolution in respect of sick leave.
11. Bester also submitted that it is possible that the Applicant was not aware of the Rule. The Applicant provided sick certificates for the periods concerned and the employer was therefore not entitled to regard those periods as leave without pay. The Respondent deducted the amount of R9 000, 00 from the Applicant's salary and therefore the Applicant requested a refund thereof.

ARGUMENT BY THE RESPONDENT

12. The Respondent led the evidence of T. Hobbs and further submitted documentary evidence in support its case.

T. Hobbs ("Hobbs"):

13. Hobbs testified that she is employed as Lieutenant Colonel with twenty-one years' service as Section Commander: Absenteeism and Terminations at the Provincial Commissioner's Office, Cape Town since 2003.
14. Hobbs stated that she responded to the Applicant's grievance in respect of the unpaid leave for the periods concerned and recommended leave without pay for the

entire period. The Applicant did not follow the prescripts when she did not apply for leave in advance and did not comply with Standing Order 77(3) (c) that states that absence from duty due to illness shall be calculated from the date on which duty was not performed until the date preceding the date on which duty was resumed. The rest days during that period may only be taken if the Applicant is found medically fit for duty and inform her Commander or a member on duty of her fitness for duty in which case an Occurrence Book entry must be made for the member to claim those rest days referred to.

15. According to Hobbs, it must be a distinct possibility that the Applicant was not aware of the Rule as it is common knowledge among members. If not, it would lead to ill-discipline in the Police Force. Hobbs also had her reservations about the sick certificates.

Closing Argument:

16. Kruger for the Respondent submitted that the Respondent correctly applied the Resolution.
17. The Applicant was not at home when visited during her sick leave on 15 December 2014 for which she received a verbal warning. The Applicant, regardless of her unawareness of the Rule, tendered her annual leave in respect of the days considered as unpaid leave for the periods concerned. Accordingly, it is unlikely that the Applicant with more than eleven years' service was not aware of the Rule. The Applicant's application should be dismissed.

ANALYSIS OF THE EVIDENCE ARGUMENT

18. I have decided only to focus on those issues I consider relevant.

19. Subparagraph 7.4 (a) of the Resolution states *“Employees shall be granted 36 working days sick leave with full pay in a three- year cycle ...”*. Further subparagraph 7.4 (b) of the Resolution states *“The employer shall require as medical certificate from a registered medical practitioner if three or more consecutive days are taken as sick leave.”* The Resolution is a brought guideline and cannot be read in isolation. It must be read with the Respondent’s leave policy (National Instructions and Standing Order 77) as the Respondent in terms of its leave policy has discretion to authorise an employees absence or to grant sick leave or not. Words must also b e given its ordinary meaning, unless it leads to ambiguity. The ordinary meaning of *“shall be granted”* in the contents of subparagraph 7.4 implies discretion. If not, the wording should have stated *“will be granted”* that does not allow for any discretion. I will now revert to the facts of the instant case.
20. Most of the facts of this case were common cause. It was common cause that the Applicant applied for annual leave from 12 December 2015 to 31 December 2015. Before her annual leave could be approved, the Applicant booked off sick. To my mind the Applicant during her testimony could not give a satisfactory explanation as to how she became fit on the various rest days in between and again unfit on the days that she was supposed to go back to work after the rest days. The Applicant claimed that she was not aware of the Rule that she had to book fit for duty during her rest days in terms of Standing Order 77. It was clear from Hobbs’ testimony that that was a rear possibility. Ignorance of the Rule could lead to a lake of discipline in the SAPS. The Applicant’s ignorance in that regard was unacceptable.
21. I have two opposing versions before me. The Applicant claimed that she was booked off sick and was entitle to the sick leave. She did not know the Rule. Hobbs testified to the contrary in that the Applicant should have known the Rule and that the Applicant’s period of absence was unauthorised and therefore considered unpaid

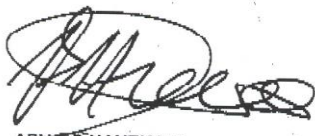
leave. It was my inference from the evidence as a whole that it was more probable that the Applicant decided to book off sick once she realised that she would not be able to get her annual leave for the period concerned. My inference is supported by the fact that the Applicant was not at home on 15 December 2015 when she was supposed to be off sick, for which she received a verbal warning. The period that the Applicant was sick, coincides with the period for which she required annual leave. That to me is rather coincidental. Further the Applicant went to different doctors to book her off sick during her working days that excluded her rest days. The doctors diagnosed the Applicant with three different illnesses during the period concerned. In my view I find it unlikely to be the case. This explains why the Applicant decided to visit different doctors as it seems unlikely for one general practitioner to book the Applicant off sick for a total of fourteen days (4 days- 12 December 2014 until 15 December 2014; 5 days- 20 December 2014 until 24 December 2014; 5 days- 27 December 2014 until 31 December 2014), excluding the rest days in between without medical intervention. The Applicant also failed to contact the Unit Commander during her rest days as instructed and failed to follow the prescripts of Standing Order 77 referred to above.

22. After consideration of the evidence as a whole, I find the Respondent's version more probable than that of the Applicant. I therefore cannot find that the employer unfairly exercised its discretion not to grant the sick leave under the circumstances. If that was not the case, any member could simply book off sick when his or her annual leave was not approved during a festive season or afterwards tender his or her annual leave credits in place of unpaid leave. Accordingly, I find that the Applicant did not discharge the onus of proving that the employer did not apply and/or interpret the Resolution correctly.

AWARD

23. In the premises, I make the following award:

- (1) I find that the Applicant did not discharge the onus of proving that the Respondent incorrectly applied and/or interpreted the Resolution. The application is dismissed.



ADV J P HANEKOM