



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

CASE NO: PSCB 385-16/17

PSA obo Ramasimong

APPLICANT

and

Department of Health

RESPONDENT

AWARD

DATE OF ARBITRATION	:	23 January 2017
CLOSING ARGUMENTS	:	30 January and 6 February 2017
DATE OF AWARD	:	16 February 2017
ARBITRATOR	:	I de Vlieger-Seynhaeve

1. DETAILS OF HEARING AND REPRESENTATION

1.1 Mr Greeff from the PSA, represented the applicant. The respondent was represented by Mr Molokoane on behalf of Mr Mncube. The parties summarised the facts that were common cause at the hearing. No evidence was led. The parties then requested to submit their closing arguments in writing to which I agreed.

1.2 The proceedings were recorded digitally.

2. ISSUE TO BE DECIDED

2.1 The issue to be determined is whether the respondent is in breach with Resolution 1 of 2003.

3. SUMMARY OF ARGUMENT

3.1. **Mr Greeff** stated that the applicant was suspended and charged with several counts of misconduct. A disciplinary hearing was conducted and the applicant was dismissed. The PSA appealed the dismissal on 28 November 2014 within the 5 working days as required by section 8.2. The appeal documents were submitted. The respondent however, despite the appeal, terminated the salary of the applicant which is unlawful. Paragraph 7.4 of Resolution 1 of 2003 describes: **c) the employer shall not implement the sanction during an appeal by the employee.** The conduct of the respondent is therefore malicious, frivolous and a complete violation of the Applicant's constitutional right for his appeal to be considered.

3.2 The applicant is seeking the commissioner to reinstate him from the date of his termination and all backdated salaries and benefits must be paid together with interest. Compensation to the amount of at least six months wages should be ordered to compensate for the loss of income the applicant had to endure.

4. The respondent made the following submissions:

- 4.1 **Mr Mncube** stated that the respondent did not breach the Resolution as the applicant's representative was informed of the outcome of the disciplinary hearing on 13 November 2014. The applicant should have submitted his appeal by 21 November 2014 which he failed to do. The applicant did also not submit good cause for the late referral of the appeal as is required in clause 8.3 of the Resolution.

5. ANALYSIS OF EVIDENCE AND ARGUMENT

- 5.1 The applicant is relying on Resolution 1 of 2003 which contains the Disciplinary Code. The applicant relied mainly on section 7.4 c) where it states: *The employer shall not implement the sanction during an appeal by the employee.*
- 5.2 Section 8 of Resolution 1 of 2003 deals with the appeal procedure. Section 8.2 states that the employee must, within **five working days** of receiving notice of the final outcome of a hearing or other disciplinary procedure, submit the appeal for to her or his executing authority, or to her or his manager, who shall then forward it to the appeal authority.
- 5.3 The dates of when the outcome was received and when the appeal was lodged were not disputed. The outcome was received on 13 November 2014 and the appeal was lodged on 28 November 2014. As pointed out by the respondent, the appeal was not lodged within 5 working days. The applicant did also not apply for condonation as is required in clause 8.3 of the said Resolution. The applicant therefore did not follow the procedures laid out in the Resolution and has therefore not established a right in line with section 7.4.
- 5.4 Seeing that I find that the applicant did not follow the appeal procedure as required in the Resolution, the respondent is not in breach with Resolution 1 of 2003.

6. AWARD

- 6.1 The respondent was not in breach with PSCB Resolution 1 of 2003;

6.2 The case is hereby dismissed;

6.3 There is no order as to costs.

Signed at Cape Town on this 17th day of February 2017

I De Vlieger-Seynhaeve
PSCB Panelist