



ARBITRATION AWARD

Case Number: **PSCB 440 -16/17**
Commissioner: **Minette van der Merwe**
Date of Award: **07 October 2017**

In the **ARBITRATION** between

PSA obo RR Makhema

(Union/Applicant)

And

Department of Correctional Services – Free State

(Respondent)

Union/Applicant's representative: Mr Jaco Greeff (PSA - Manager: Employment Relations)

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Respondent's representative: Ms D Mohlala (Deputy Director: Employment Relations)

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DETAILS OF HEARING AND REPRESENTATION:

1. The matter was scheduled for arbitration on 26 September 2017 in Bloemfontein.
2. Parties were represented as per the cover page of this award.
3. The Respondent called one witness to testify whereas the Applicant was the only witness to testify in his case. The Applicant submitted bundles "A", "B" and "C" into evidence. The authenticity of the bundles was not disputed, and the bundles were accepted as they purported to be.

ISSUE TO BE DECIDED:

4. The matter was referred to the PSCBC as a dispute relating to the interpretation or application of PSCBC Resolution 3 of 1999, as amended by Resolution 1 of 2007. The dispute is specifically related to the interpretation and application of clause IX of Resolution 3 of 1999 and Annexure A of Resolution 1 of 2007 in respect of Danger Allowance.
5. I am called upon to determine whether or not the Respondent correctly applied the said collective agreement.

BACKGROUND TO THE ISSUE:

6. The Applicant is a Correctional Officer at Grootvlei Maximum Prison. He used to receive Special Danger Allowance, which was stopped during 2013.
7. The Applicant seeks a competent order compelling the Respondent to comply with Resolution 3 of 1999, as amended by Resolution 1 of 2007.

SURVEY OF ARGUMENTS AND EVIDENCE:

Evidence by the Applicant:

The Applicant, **Ramora Richard Makhema**, testified under oath as follows:

8. He had been employed by the Respondent since 1987. As a Correctional Officer he received Standard Danger Allowance in compliance with Resolution 3 of 1999. He worked in the Medium A facility, which contained 138 high risk (maximum) inmates.
9. His duties entail the escorting of maximum prisoners to hospital and Court. The inmates were convicted of serious crimes e.g. murder, rape and armed robbery.
10. A circular was distributed regarding the payment of Standard and Special Danger Allowances ("C"). Page 3 of "C" stated:

"4. Special Danger Allowance:

Special Danger Allowance shall be paid to employees who work in the Department of Correctional Services and is involved in duties that require direct contact with maximum security prisoners;

- a) On a monthly basis if they experience a genuine risk to their lives each and every time they undertake their duties, or*
- b) On a daily basis if they only experience a genuine risk to their lives at times during the performance of their duties*
- c) Emergency Support Team (EST) shall qualify for special danger allowance upon activation of the team by the delegated authority."*

11. He qualified for Special Danger Allowance as he was exposed to a genuine risk as he had direct contact with maximum security inmates that he escorted and physically searched.
12. The amendments to Resolution 3 of 1999 came into effect on 01 July 2007 ("B"). His Special Danger Allowance was stopped during 2013.
13. Under cross-examination he testified that the Respondent failed to interpret and apply clause IX of Resolution 3 of 1999 as well as Annexure A of Resolution 1 of 2007 correctly, read together with the circular contained in "C". He currently escorted inmates as part of his normal duties. Since the stoppage of his Special Danger Allowance in 2013 he lodged approximately 32 grievances with the Respondent. The procedure for claiming Special Danger Allowance had always been the completion of a claim form with the attachment of attendance registers. Some of his colleagues were now automatically paid Special Danger Allowance without following the claim procedure. He testified that all 138 inmates were classified as maximum, but conceded that some of them were awaiting trial. He submitted reports to the Human Resources Department on the instances he searched maximum

inmates, yet his Special Danger Allowance was stopped. He did not know why his claims for Special Danger Allowance has not been paid since 2013. He has continued to claim for Special Danger Allowance as he had always done, even after 2013, but the claims have not been paid since 2013.

Evidence by the Respondent:

The only witness, **Thamsanqa Abraham Nelane**, testified under oath as follows:

14. He was the Head of Grootvlei Maximum Prison from January 2011 until 31 July 2017.
15. Standard Danger Allowance is paid to Correctional Officers placed and utilized in correctional centers working directly and indirectly with prisoners. Special Danger Allowance is an additional allowance paid to Correctional Officers tasked with handling prisoners sentenced to maximum incarceration on a daily basis. The allowance is not paid automatically and needs to be claimed, and an averment by the Applicant of such a nature would be false. The claim process is necessary because not all prisoners are maximum prisoners. If a Correctional Officer is tasked with working with a maximum inmate and who wants to claim Special Danger Allowance, the required claim form needs to be completed and the details of the specific inmate(s) need to be reflected. Attached to the claim will be the instruction to work with the maximum inmate(s) and registers. A claim is considered and paid after the claim is verified. If the Correctional Officer's life was genuinely exposed to danger, the claim will be paid.
16. It was not common that a claim for Special Danger Allowance was not paid if the evidence in support for the claim was submitted and could be verified.
17. He knew the Applicant, who was stationed at Medium A prison. He was appointed by the Witness to work at the main gate of the Grootvlei Prison, specifically at the second gate, which controlled access to the administration block. He controlled the movement of the Correctional Officers and visitors and conducted searches on those individuals and confiscated items not allowed from Correctional Officers and visitors, and updated registers. The Applicant did not have contact with inmates during the normal course of his duties. Under exceptional circumstances the Applicant could have been exposed to an inmate that moved through his gate when such a deviation from normal order was ordered by the Head of the Facility. If there were riots in the prison, the Applicant may also be called upon to respond, and under such circumstances he may claim for Special Danger Allowance.

18. He was not aware that the Applicant claimed Special Danger Allowance and that the claims were not paid. However, if claims were not approved, it would generally be because of a lack of evidence to support the claim. He was familiar with document "C". The purpose for the circular was to give clarity because of the high number of disputes about the interpretation of the resolutions regarding Special Danger Allowance, and the required evidence to claim same. Paragraph 7(a) specifically included Correctional Facilities such a Grootvlei Maximum Prison. Page 12 of "C" gave the specific guidelines when a claim for Special Danger allowance is submitted, which document was read into record. The Respondent interpreted and applied Resolution 3 of 1999, Resolution 1 of 2007 and the Circular contained in "C" correctly and adhered to it.
19. Under cross-examination he testified that he was aware that the payment of Special Danger Allowance to the Applicant was stopped during 2013. The reason was because most allowances were stopped by him personally during 2012 as he found that allowances were paid to Correctional Officers who did not qualify, and he thus corrected various processes within the Facility. He testified that, because of the Applicant's duties he would not generally qualify for Special Danger Allowance as he was not exposed to genuine danger to his life. The Special Danger Allowance can only be claimed for and paid if a Correctional Officer is truly exposed to life-threatening danger, and mere contact with an inmate does not necessarily trigger the Special Danger Allowance. He agreed that, if the Applicant had a written instruction that required him to be in contact with a maximum inmate, he would qualify for the Special Danger Allowance in terms of page 12 of "C". He confirmed that he did not stop the payment of the Special Danger Allowance unilaterally, he merely sought compliance from Correctional Officers to page 12 of "C" and the Resolutions.

ANALYSIS OF EVIDENCE AND ARGUMENTS:

20. Closing arguments were made orally by both parties, and were duly considered, but will not be repeated herein.
21. Clause IX of Resolution 3 of 1999 on Danger Allowance reads as follows (relevant clauses quoted):

"1. The employer shall compensate an employee who risks her or his life in the course of carrying out specific duties or training.

2. *The employer shall not pay a danger allowance to an employee of the South African Police Service (SAPS), South African National Defense Force (SANDF) or the Department of Correctional Service who does not participate in the line activities of her or his department.*
3. *An employee may receive a Standard Danger Allowance and/or a Special Danger Allowance.*
6. *The employer shall pay the Special Danger Allowance to an employee who works in one or more of the following:*
 - e) *the Department of Correctional Services, in duties that require direct contact with maximum security prisoner*
9. *If an employee qualifies for both the Standard and the Special Danger Allowances, she or he may receive both simultaneously.*
10. *The employer shall pay a danger allowance on the date an eligible employee receives her or his salary. The employer shall stop paying the allowances when the employee stops being eligible."*

22. Annexure A of Resolution 1 of 2007 reads in paragraph 2 as follows:

"The employer shall pay the Special Danger Allowance to an employee who works in the Department of Correctional Services and is –

- a) *involved in duties that require direct contact with maximum security prisoners; and*
- b) *is part of the Reaction Unit"*

23. Resolution 1 of 2007 further states in Annexure A in paragraph 3 as follows:

"The Standard Danger Allowance / Special Danger Allowance shall be paid to employees referred to in paragraph 1 –

- a) *on a monthly basis in they experience a genuine risk to their lives each and every time their undertake their duties; of*
- b) *on a daily basis if they only experience a genuine risk to their lives at times during the performance of their duties. "*

24. The Circular on the Payment of Standard Danger Allowance and Special Danger Allowance as contained in "C" give the following guidelines on the payment of the allowances on a pro rata basis (page 12 of "C"):

1. *Paragraph 2.2(b) of the principles on the interpretation and application of the standard danger allowance gave rise to the following procedures*

2. *The following procedures must be adhered to when officials have to be compensated the standard or special danger allowance in terms of the abovementioned paragraph:*

2.1 *The official must claim the allowance in writing at the end of the month in which she/he was exposed to danger. Annexure A*

2.2 *The following supporting documents must be attached together with the claim:*

(i) document instructing or authorizing the performance of such duties (the instruction / authorization must indicate the place / center and dates where such duties must be performed)

(ii) Copy of the official visitors register or copy of approval in case of officials performing weekend overtime

(iii) Copy of the journal of the Unit where the duties were performed (where the official endorsed and entry and signed)

2.3 *On receipt of the claim(s) the personnel clerk consolidates the information and complete the G224 form*

2.4 *The official responsible for checking and control must ensure that all amounts are correct and are in line with the formula provided below."*

25. The Applicant testified that he used to submit claim forms to claim Special Danger allowance, and that he continued to claim Special Danger Allowance after the payment thereof had been stopped in 2013. It is thus evident that the Applicant is aware that the process involved in the payment of the Special Danger Allowance is a claims procedure, as per page 12 of "C", and that the Special Danger Allowance cannot be automatically paid, as he averred.
26. The Applicant's evidence is further deceptive regarding the fact that all inmates at Grootvlei Maximum Prison is regarded as maximum inmates as individuals that are awaiting trial would not yet been categorized as maximum prisoners as they have not yet been found guilty or acquitted of the crimes they have been charged with.
27. I did not find the Applicant's evidence reliable as he materially contradicted himself in his testimony under oath.
28. Mr Nelane testified, in his capacity as the Head of the Grootvlei Maximum Prison for the period July 2011 – July 2017, that the payment of, amongst others, Special Danger Allowances was stopped during 2012 where Correctional Officers did not qualify in terms of Resolution 3 of 1999, as amended.

29. Mr Nelane testified as to the Applicant's duties that he personally assigned him to, and that the Applicant did not have contact with the maximum inmates during the normal course of his duties, as he was station at the gate that controlled access to the administration building which was used by Correctional Officers and Visitors. The evidence was not challenged by the Applicant under cross-examination. Mr Nelane further testified that the Applicant's claims for Special Danger Allowance would only be rejected if could not substantiate the claim / entitlement to the allowance. It was further his uncontested evidence that all claims for Special Danger Allowance would be considered and paid only once the claims were verified.
30. There was no evidence that the Respondent did not comply with Resolution 3 of 1999, or Resolution 1 of 2007 or the Circular on the Payment of Standard and Special Danger Allowance. None of the Applicant's claims, that formed the basis of this dispute, was submitted into evidence to peruse in order to scrutinize whether the Respondent failed to properly consider the claims, in terms of said Resolutions.
31. The Applicant may submit his claims to the Respondent, in line with the requirements as set out on page 12 of "C", for the Respondent's consideration.

AWARD:

32. The Respondent was not in contravention of Resolution 3 of 1999, as amended by Resolution 1 of 2007 or the Circular on the Payment of Standard and Special Danger Allowances.
33. The claim is thus hereby dismissed.

A handwritten signature in black ink, appearing to read 'M. van der Merwe', is centered within a light green rectangular box.

Signature: _____

PSCBC Panelist: **Minette van der Merwe**