



ARBITRATION AWARD

Commissioner: Retief Olivier _____

Case No.: **PSCB 125-15/16** _____

Date of Award: 14 February 2016 _____

In the ARBITRATION between:

POPCRU obo B Rululu

(Union / Applicant)

and

SAPS – Western Cape

(Respondent)

Applicant representative:

Union/Applicant's address

M Mbahle - POPCRU _____

8 2nd Ave, Boston _____

Bellville _____

7530 _____

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Respondent: SAPS _____

Respondent's representative: M Mbandisa _____

SAPS _____

Pretoria _____

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PARTICULARS OF PROCEEDINGS AND REPRESENTATION

1. The arbitration was held on 20 October 2015 and 9 February 2016 at the POPCRU Offices. 2nd Ave, Bellville. Mr Mbahle, a union official from POPCRU, represented the employee, Ms B Rululu. Mr M Mabindisa, legal officer, represented the employer, the SAPS.

THE ISSUE IN DISPUTE

2. The matter was referred about the Interpretation and Application of Resolution 7 of 2000 relating to leave provisions in sec 7.1. I must decide whether the respondent is in breach of Resolution 7 of 2000 i.e. the interpretation or application of a collective agreement as contained in Sections 7.1 (a) – (e), regarding annual leave.

THE BACKGROUND TO THE DISPUTE

3. The applicant Ms Rululu, a sergeant as SAPS in Belhar, submitted her annual leave plan for leave in December 2013 and January 2014 in 2012. She submitted her leave application in October 2013 and submitted leave for the period 23 December 2013 to 2 January 2014. She enquired in November 2013 whether her leave was approved and the Station Commander indicated that he has not dealt with it yet. The application for leave was eventually declined. It is disputed whether the applicant was informed that the leave was declined.

4. The applicant argued that the employer did not comply with the Collective Agreement 7 of 2000 regarding the leave provisions and the determination of leave of the Public Service, in that her leave plan indicating that she intended taking leave in December 2013 was not declined and neither was she requested to re-schedule her leave. She was also not informed that her leave application was declined. The employer argued that the leave was not unreasonably declined, considering the service delivery requirements.

SUMMARY OF EVIDENCE AND ARGUMENT

Applicant's version:

5. Key aspects of Ms Rululu's testimony was the following: that she submitted her Annual Leave Plan in October 2012 as per the leave requirements of SAPS, indicating that she intended taking leave from 15 December 2013 to 7 January 2014. She submitted a leave application for the period 23 December 2013 to 2 January 2014, as those were the number of leave days available to her, to the Acting Station Commander, Capt De Jager, on 12 November 2013. She later went to the Acting Station Commander to enquire whether the leave was approved and he indicated that he was still considering it. She also went to Human Resources and they indicated to her that only 10% of staff was entitled to take leave in the December period due to operational requirements, but that she still fell within the 10%. After that time her sister passed away and she took family responsibility leave from 10 December 2013 to 18 December 2013. She heard nothing from the Acting Station Commander and no one informed her that her leave was declined and she went on leave from 23 December 2013. Her shift commander, W/O Behr booked her off for vacation leave in the duty roster for that period.

6. She only learnt that her leave was declined when she noticed in 2014 that monies were deducted from her salary and when she enquired she learnt in June 2014 that her leave had been declined and the employer had changed it to unpaid leave, and deducted the monies from her without informing her. She was aware of the 10% provision but she was never informed that due to operational requirements her leave was not approved. She denied that the human resources clerk Ms Celest Primo informed her at any time that the leave was declined.

7. In closing it was submitted that the employer did not inform the applicant that her leave was not granted, nor did the employer provide reasons for refusing the leave to the applicant and therefore it was unreasonable. The employer also failed to inform the applicant that her leave plan is not approved and did not allow her to reschedule as her leave as per the National Instruction 2/2004 regarding the planning of leave. It is stated

in Sec 3.3 “if a period of leave of an employee, that was scheduled in accordance with subparagraph (2), cannot be granted due to service delivery requirements, the commander must, in consultation with the employee, reschedule the period to ensure that the employee does not forfeit his or her annual as set out in paragraph 4.1 (d) (i).

8. It was also argued that the national instruction provides that only 10% of staff may take leave during the December period and there was no indication or response from the employer that she did not fit into that criteria, and by not responding to the applicants' leave application the employer did not comply with the said resolution and sector instructions. The applicant in fact only learnt that the leave was not granted some 6 months later in July 2014 when the employer deducted monies from her salary, again without informing her or giving her any opportunity to respond to make representations, and thereby again contravening the national agreement regarding deductions from salaries. The employer clearly did not comply with the said resolution 7 of 2000, and sector arrangements arising out of the resolution. The employer should be instructed to comply with the said resolution and pay back monies deducted unfairly.

Respondent's version:

9. Ms Celeste Primo, human resources clerk stationed at Belhar, testified that she captured the applicant's leave application and explained the leave application process and forms, indicating that a leave form, SAPS 26, must be submitted and that it must be approved by her Commander, Capt De Jager, but as he was on leave the Station Commander Capt Versatz, dealt with the applicant's application and indicated that on operational grounds the leave was not approved.

10. She noticed that the applicant's shift commander W/O Behr completed the duty roster during the period when the applicant was absent from 23 December 2013 and asked him about it because he indicated that the applicant was on vacation leave, which she knew was wrong because the leave had been denied. He said the applicant had told him so. She captured the application and had informed the applicant on 30 November 2013 that her leave was denied when she went to the applicant to pay her rent, as she

was renting form the applicant. The Station Commander had informed her that day that the leave was declined and she captured it on that day. She also called the applicant telephonically on 2 and 4 December 2013 and informed her that he leave had not been approved and that she must reschedule it.

11. Regarding the 10 % quota for staff wanting to take leave in December she stated that HR could not have informed the applicant about that because it is not a determination they make. She stated that applicant was aware that her leave was not approved; she had informed the applicant and the applicant stayed away deliberately.

12. During cross-questioning it was put to her that the 30 November 2013 was a Saturday and she acknowledged that she was not at work as she did not work week-ends. She also acknowledged that she had called the applicant, but the applicant had not answered the phone and she did not speak to her. She stated she left a message on the phone, but could not indicate why she did not state that in her evidence in chief. She further acknowledged that she could not say what the applicant may have told W/O Behr. Responding to the arbitrator she stated that it can be assumed that the applicant's leave plan was approved as she was not requested to reschedule her leave as per the National Instructions.

13. In closing it was argued that the employer was not in breach of the Collective Agreement as the decision to decline the leave application was based on service delivery requirements. It was not refused unreasonably. It was also argued that the dispute is not about an unfair labour practice, and therefore it is not about the fairness of the employer's decisions, but only related to the Interoperation and/or Application of the Collective Agreement.

ANALYSIS OF THE EVIDENCE AND ARGUMENT

14. The issue in dispute is whether the respondent is in breach of PSCBC Resolution 7 of 2000.

15. PSCBC Resolution 7 of 2000, clause 7 reads as follows:

7.1 Annual Leave

"(a) The annual leave dispensation in this agreement shall provide a framework that may be further refined, subject to service delivery requirements of any sector:

(b) Employees shall accrue leave days per annual leave cycle, which shall be granted according to annexure A

(c) A period of 10 working days per annual leave cycle shall be a compulsory requirement. The utilization of this leave must take into account sectoral service delivery requirements.

(d) The remaining 18 days shall be utilized within an 18 month period. All remaining leave shall fall away thereafter. However where leave due is not taken due to employer's service delivery requirements, such leave shall be paid at the end of the 18 month period.

(e) The Departments shall not unreasonably refuse to grant leave to employees who apply, taking into consideration service delivery requirements.

16. The applicant had submitted her leave plan as required and it is common cause that the applicant was not requested or required to re-schedule her leave plan, should it not meet operational requirements. The employer witness Ms Primo stated that it could be assumed that the leave plan was approved, as there was no request to reschedule. The applicant also submitted an application for annual leave on 12 November 2013, and followed up and made enquiries with the acting station commander and with human resources as to whether the leave was approved, and it was not then indicated that it was not approved.

17. The employer submitted that the leave was not approved, but the employer witness, Ms Celest Primo, who testified that the applicant was informed that it was not approved, was a very poor witness in this regard, and may in fact have perjured herself. At first she stated that she had informed the applicant personally at her home on 30 November 2013, but then conceded during cross questioning that it was not possible as she was not at work on 30 November 2013 as it was over the weekend, and the station commander could not have informed her on that day. She then stated she had informed the applicant telephonically, but again conceded that she had not spoken to the applicant. The applicant was not a credible witness and her evidence in these regards must be rejected. I find that the applicant was not informed that her leave was not granted.

18. Neither had the employer complied with the National Instructions and the Sector Agreements that the applicant must be informed that her leave plan is declined and that she must be allowed to reschedule the leave. Similarly monies were deducted from the applicant without following the employer's own requirements for doing so. The National Instructions and Sector Agreements is not part of the Collective Agreement, but in interpreting the Collective Agreement one can not discount these as the Collective Agreement in fact indicated that the leave provision may be further refined according to sector needs.

19. The employer further argued it is not an unfair labour practice dispute and fairness of the employers decision should be considered, but Commissioner Craig Bosch in the matter of case **GPBC 4604/2021 PSA obo Dire and Dept of Education Western Cape, dated 21 February 2012**, referring to **SAMWU v South African Local Government Bargaining Council & others, unreported case no DA06/09, 29 November 2011** where the Labour Appeal Court endorsed considerations of equity and fairness as relevant considerations in interpreting Collective Agreements, found in that instance that the employer did not consider equity and fairness. As per the case law in the matter of **SAMWU v South African Local Government Bargaining Council & others** above, I am in agreement with that contention that considerations of equity and fairness should be

considered. I therefore deem it fair to grant relief to the applicant, and find that the applicant should be should be paid back any leave monies deducted from her.

20. The final consideration is that the employer argued that the leave was declined on the basis of the operational requirements of the employer, but it was not disputed that the employer allows for a 10% quota of staff to take leave in the December holiday period. The employer led no evidence in this instance that the applicant fell outside that provision when the leave as declined. I find that the employer has not complied with the said Collective Agreement.

AWARD

21. The employer is in breach of Resolution 7 of 2000. The employer has not complied with the provisions of the said resolution.

22. I further order the employer to paid back any monies deducted from the applicant Ms Rululu pertaining to the leave period of 23 December 2013 to 2 January 2014. Payment of these monies must be finalized and paid back to the applicant not later than 29 February 2016.

24. The parties had not quantified the amounts involved related to the leave that was declined, and If there is a dispute about the quantification for this award in the event of the leave having to be paid out, they must submit accurate facts and figures before 29 February 2016, and I will vary the award accordingly.

Retief Olivier

A handwritten signature in black ink, appearing to read 'Retief Olivier', with a long horizontal flourish extending to the right.

ARBITRATOR

PSCBC 125-15/16