



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

CASE NO: PSCB 389-15/16

PSA obo Burger, DF and Mans, JP

APPLICANTS

and

Department of Correctional Services

RESPONDENT

AWARD

DATE OF ARBITRATION	:	25 January 2016
CLOSING ARGUMENTS	:	29 January and 5 February 2016
DATE OF AWARD	:	17 February 2016
ARBITRATOR	:	I de Vlieger-Seynhaeve

1. DETAILS OF HEARING AND REPRESENTATION

- 1 Ms Mosetic, from the PSA, represented the Applicants. The Respondent was represented by Mr Mooi. The proceedings were recorded digitally. The parties handed in documents, which were common cause and which constitute part of the record. The parties decided not to lead any evidence and argue the case in writing.

2. ISSUE TO BE DECIDED

- 2.1 The issue to be determined is whether the respondent was in breach with Resolution 7 of 2000 with regards to holiday leave.

3. SURVEY OF ARGUMENT

- 3.1 The facts are not in dispute. The applicants are Centre Based Correctional Officers and applied for leave. Mr Burger applied for annual leave from 06/07/2015 – 17/07/2015 and Ms Mans applied for annual leave from 13/07/15 – 17/07/15.

2. The applicant's rep made the following submissions:

- 3.2.1 **Ms Mosetic** stated that a letter dated 10/10/2012, issued by the DPSCA, stated that following increased requests by departments employing shift workers for assistance with the management and administration of their leave, the determination has been supplemented with specific provisions related to annual leave to facilitate the management and administration of shift workers. The applicants applied for their annual leave which was authorised. However, they were told to fill in leave forms for 18/07/2015 and 19/07/2015 even though it was a weekend and they should not have been booked. Ms Mans supervisor wrote on the leave form: "Member was ordered by CC Operational Support to submit this leave period although other previous leave form of taken leave indicated that she will be off duty for this period". Furthermore, they were not informed before the time that they would have to work that weekend. Both their leave forms Z1 (a) which were signed

on 24/06/2015 indicate that both applicants will be off for the weekend 18/07/15 and 19/07/15.

3.2.2 In paragraph 8 of the Directive: Management of annual leave for shift workers it is stated in 8.5: "If the employee applies for annual leave in advance in accordance with the leave schedule, such leave must be taken into account in the scheduling of the shifts. The employee must not be scheduled for shifts for the duration of the period of annual leave in which case the granting of annual leave will be counted as working days which shall mean Monday to Friday." The email from Mr Groenewald, dated 27/01/2015, stated that a member who takes leave and is removed from the shift roster, should remain on the Monday to Friday workweek.

3.2.3 The respondent failed to comply with this and disadvantaged the applicants in doing so. If the applicants had been removed from the shift roster as required, they would have utilized less annual leave days than what was taken from their leave credits; this causing a loss of several leave days. The applicants want to be credited with 2 annual leave days.

3.3 The respondent made the following submissions:

3.3.1 **Mr Lumphondo** stated that the rostering of the personnel is managed in such a way that when one division is off this weekend, the other division will be off the following weekend. The applicants' division was working on 18/07/15 and 19/07/15 and they did not report for duty. Therefore they had to fill in leave forms for those 2 days. He also made reference to the Leave Determination. Specifically par 8.5 which states that the employee should not be scheduled for the duration of the annual leave. The respondent did not schedule shifts during their leave which ran from Monday to Friday. Mr Burger was on leave from 06/07/2015 – 17/07/2015. He was not scheduled to work during the weekend of 11/07/15 – 12/07/15. Ms Mans applied for leave until Friday 17/07/15. She had been off the weekend of 11/07/15 – 12/07/15 and therefore had to work the weekend after. If the applicants would have been off during the weekend of 17/07/15 – 18/07/15, they would not have had to fill in leave forms. Finally, Leave Circular 1 of 2014 states in 7.1 and 7.2 that if an official's shift is off duty at the completion of his/her leave, the official will also be regarded as off-duty and will only return to his/her shift when his/her

shift starts working again. This means *mutatis mutandis*, that if the shift is on duty, the employee will return to his/her shift. The respondent is therefore not in breach with the Resolution.

4. ANALYSIS OF EVIDENCE AND ARGUMENT

4.1 In determining matters involving the interpretation and application of collective agreements, the golden rule applies, that the words in the clause are given their everyday meaning. A purposive approach is taken and these principles are reflected in *National Joint Municipal Pension Fund v Endumeni Municipality 2012 (4) SA 593 (SCA)*.

4.2 Resolution 7 of 2000 in par 7.1 states that the annual leave dispensation shall provide a framework that may further be refined, subject to service delivery requirements of any sector. The resolution is silent on what constitutes a day of annual leave for shift workers. The determinations issued in 2007 and 2009, which implement the Resolution, do not make mention of how to calculate leave for shift workers. It is common cause that the seven day establishment was introduced in 2009. It is further common cause that the determination issued in 2012 (dated 1 August 2012) specifies that if the employee applies for leave in advance, in terms of the schedule, such leave must take into account the scheduling of the shifts. Section 8.5 is of importance where it explicitly states that the employee must not be scheduled for shifts for the duration of the period of annual leave in which case the granting of annual leave will be counted as working days which shall mean Monday to Friday.

4.3 The Leave Determination of 2012 is the first document that specifically deals with the issue of the shift workers. Although the leave determination is a circular, I accept that it is an attempt to clarify the issues and is binding on the parties. In my opinion, the purpose of taking the shift workers off the shift roster during their annual leave is to simplify matters so that all employees, shift workers or not, are treated in the same way and the leave days are counted as working days from Monday to Friday. That has as a consequence that the Saturday and the Sunday of that particular week will not be seen as working days. If one would request a shift worker to put in leave for that

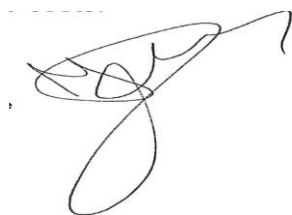
weekend as well, it would be unfair towards them as the non-shift workers are typically off during the weekend anyway. Seeing that the shift workers already had to put in 5 leave days from Monday to Friday (which most likely included off-days if they were still on the shift roster), they were entitled to have the 2 off-days on Saturday and Sunday. Although the email of Mr Groenewald, the Acting Regional Head HR, is not a binding document, he explained it correctly in there. He stated that an employee should, during his leave, be placed on a workweek schedule (Monday to Friday). This means that Saturday and Sundays are not seen as working days during that week. From the following Monday onwards, the shift workers will fall again under their shift roster.

- 4.4 Based on the above, the respondent was incorrect when it requested the applicants to submit leave for 18/07/15 and 19/07/15.

5. AWARD

- 5.1 The respondent is in breach with PSCB Resolution 7 of 2000;
- 5.2 The respondent must credit both applicants with 2 days annual leave that was taken from them in 2015;
- 5.3 There is no order as to costs.

Signed at Cape Town on 17 February 2016



I De Vlieger-Seynhaeve
PSCB Panelist