



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

**CASE NO: PSCB77-15/16**

PSA obo Francis, MC

**APPLICANT**

and

Department of Justice & Constitutional Development

**RESPONDENT**

---

**ARBITRATION AWARD**

---

DATE OF HEARING : 17 August 2015  
DATE OF AWARD : 27 August 2015  
PANELLIST : I de Vlieger-Seynhaeve

## **1. DETAILS OF HEARING AND REPRESENTATION**

1.1 The matter was set down for arbitration on 17 August 2015 at the Master's Office in Cape Town. The applicant was represented by Mr Strydom from the PSA. The respondent was represented Mr Mzaca.

1.2 The proceedings were recorded digitally.

## **2. ISSUE TO BE DECIDED**

2.1 The issue to be determined is whether the respondent correctly interpreted and/or applied Resolution 7 of 2000

## **3. SURVEY OF EVIDENCE**

3.1 The applicant's representative made the following submissions:

3.1.2 **Mr Strydom** stated that the applicant had applied for TIL for 17 days from 12/12/2014 – 23/01/2015. She had submitted the application on 17/12/2014 with all necessary documentation. The application was declined and the applicant was informed on 16/01/15 or 18/02/15 (the document carried 2 stamps with different dates on it). The applicant claims that the respondent breached section 7.5.1 of the Resolution which states that *“the employer shall, during 30 working days, investigate the extent of inability to perform normal official duties, the degree of inability and the cause thereof. Investigations shall be in accordance with item 10 (1) of Schedule 8 of the LRA 1995.”* The 30 days must be adhered to and no exceptions are made for public holidays. She wished to be granted the 17 days that were deducted. Two court cases were submitted supporting this submission.

3.2 The respondent's representative made the following submissions:

3.2.1 Mr Mcaza stated that the delay was not in dispute, however it is a non-issue. The applicant had submitted another TIL application covering the period 07/11/2014 – 11/12/2014 which was also denied. That denied application had stated explicitly that if she would apply again they needed certain documents

to be part of that application. However, when she applied again, she did not submit those documents. Due to a lack of information, the current application was denied as well. The TIL application was received by the Department on 17/12/2014 after which it was forwarded to the HRM for assessment on 21/01/2015. The reply came on 04/02/2015. However, the applicant did not suffer any prejudice because of that. The delay was due to the closing of the office over the holiday period. Also the number of applications makes it often impossible to comply with the 30 day period. The applicant could have submitted a grievance and could have added the necessary medical information. There was a chance that her application would have been approved then. However, she did not follow that route. The applicant was not treated unfairly.

3.3 Neither party called any witnesses. All facts were common cause.

#### **4. ANALYSIS OF EVIDENCE AND ARGUMENT**

4.1 I have considered all the evidence and argument, but because the LRA requires brief reasons (s 138(7)); I have only referred to the argument necessary to substantiate my findings and decision.

4.2 The matter is about the interpretation of Clause 7.5.1 of Resolution 7 of 2000. The applicant's first TIL application for November 2014 was denied. The outcome of that application clearly stated that future applications needed to be accompanied by a set of documents which were listed (7 different documents). The applicant did not do so on her application for TIL from 12/12/2014 – 23/01/2015. There was therefore a valid reason to decline the TIL application. It is correct that the respondent did not respect the 30 days' timeframe. The application was submitted on 17/12/2014 and the outcome was received on 16 or 18/02/2015. This makes the respondent's response 31-33 days late. No further arguments were submitted that the applicant had been prejudiced because of the delay. The fact that the TIL application was decided after the expiry of 30 working days, although not condoned, does not on its own, in the absence of proof to the contrary, entitle the applicant to the TIL.

- 4.3 The applicant referred to two similar cases: *PSCB144-11/12: PSA obo Le Roux and Department of Correctional Services*: In that case Mr Le Roux had submitted three applications for TIL of which only the second one was approved. Mr Le Roux was, contrary to the applicant, not informed about the additional information that he needed to submit. The decision of the arbitrator to find the Department in breach with the Resolution was because the HRM had approved the second TIL application which was for the same reason as the first and the third application and had not informed the applicant that they needed more information. Although the Department was late in giving feedback in the matter that was not the sole reason why the TIL was approved. The approval had to do with the merits of the TIL application.
- 4.4 The second case the applicant referred to was *PSCB 196-11/12: PSA obo Van Zyl and Department of Correctional Services*: In that case Mr Van Zyl had applied for TIL for the period 09/09/2009 – 13/09/2009. The application was denied on 13/01/2011. In this undefended case it was found that the delay was excessive and the TIL was granted because of that. This case differentiates from the case before me as the delay was for more than 1 ½ years and the applicant had been prejudiced because of that. In the present case, although the respondent was 31-33 days late, the applicant was not prejudiced because of that. Based on the above, I do not find the respondent in breach with Resolution 7 of 2000.

## **5. ORDER**

- 5.1 The respondent is not in breach with Resolution 7 of 2000;
- 5.2 There is no order as to costs.

**Signed at Cape Town on this 27 day of August 2015**



**PSCBC Arbitrator**