



ARBITRATION AWARD

Panelist: John Cheere Robertson
Case No.: PSCB14-15/16
Date of Award: 24 December 2015

In the ARBITRATION between:

SAPU obo Heidi Hendricks
(Union / Applicant)

and

South African Police Service
(Respondent)

Applicant's representative: Mr Leon Naude (SAPU)
Applicant's address: 38 Pickering Street
Newton Park, Port Elizabeth
6055
Telephone: 041 365 0101
Telefax: 041 365 0108

Respondent's representative: Brigadier P De Kok / Mr T Jalmeni
Respondent's address: Private Bag X91
Pretoria
0001
Telephone: 012 393 1774 / 040 608 7046
Telefax: 012 393 7159 / 040 6087058

DETAILS OF HEARING AND REPRESENTATION

- 1 This matter was set down for arbitration at the Joza Police Station, Grahamstown, on 19 November 2015. Mr Leon Naude of SAPU represented Ms HA Hendricks (applicant). Mr T Jalmeni represented the South African Police Service (respondent). The parties submitted written closing argument by 3 December 2015. I requested an extension within which to submit my award.

ISSUE TO BE DECIDED

- 2 The issue to be determined is whether the respondent failed to comply with Resolution 7/2000 in refusing the applicant's application for leave for the period 19 and 20 January 2015 and dependent thereon-appropriate relief.

BACKGROUND TO THE ISSUE

- 3 The parties entered into a stated case, which sets out the background and facts of this matter as follows:
1. *The applicant Ms H Hendricks is employed as a Senior Administrative Clerk in terms of the Public Service Act at Despatch Police Station Eastern Cape.*
 2. *On 19 January 2015 the applicant during the course of the morning requested permission from her Commander, Captain de Jager, to go home to attend to her child. She had received a telephone call to the effect that he was ill. Captain de Jager gave the applicant permission to go and attend to her child, but to return to duty as soon as possible.*
 3. *The applicant did not return to work on 19 January 2015 or 20 January 2015 and did not inform her commander of her whereabouts.*
 4. *The applicant resides in Port Elizabeth. On 19 January 2015 on return to her home, her child (1 year old) was running a high temperature and she had to take him to hospital, where he was admitted for extreme high fever.*
 5. *Her child remained in hospital for 19 and 20 January 2015, being released during the day of 20 January 2015.*
 6. *On her return to work, the applicant applied that the 19 and 20 January 2015 be covered by way of annual leave (A4) SAP26.*
 7. *Captain de Jager did not recommend that annual leave be given and the Station Commander. Colonel Zaza did not approve annual leave for 19 and 20 January 2015.*
 8. *On 21 January 2015 the applicant submitted a grievance (A19). The grievance was not resolved and a dispute was referred to the PSCBC (PSCB14-15/16).*
 9. *The applicant was given a verbal warning (A11, A15) on 28 January 2015.*
 10. *On 28 January 2015 the applicant submitted a medical certificate from Cape Road Medical Centre (A21). Prior to this date the applicant was not in possession of the medical certificate.*
 11. *The contents of the documents Exhibit A1 – 30 are admitted and require no further proof as to authenticity delivery and receipt.*
 12. *The provisions of Collective Agreement Resolution 7 of 2000 are applicable to this dispute*

SURVEY AND ANALYSIS OF EVIDENCE AND ARGUMENT

- 4 The applicant argued to the effect that the provisions of par. 7.7.3 of R 7/2000 were peremptory and that the respondent accordingly could not refuse the applicant family responsibility leave for the days in question. In the circumstances the applicant sought that the two days unpaid leave (19 and 20 January 2015) be converted to family responsibility leave. The respondent denied that the applicant was entitled to family responsibility leave and sought that the status quo ante remains
- 5 Par. 7.7.3 (a) (ii) of Resolution 7 of 2000 (R 7/2000) “**Family responsibility leave**” provides that:
“...Employees shall be granted 3 days leave per annual leave cycle for utilization if:
(i) ...
(ii) the employee’s child, spouse, or life partner is sick”
- 6 The following time line of events is evident from the stated case and documents handed up.
- On **19 January 2015** at approximately 08h30 the applicant requested permission of her Commander that she be allowed to go home to attend to her child, who, it was reported to her by way of a phone call, was ill. Her Commander granted her request, but that she should do so quickly and on her return book the hours off (A14, A19)
 - The applicant attended to her child in hospital on **19 and 20 January 2015**. She did not communicate this to her Commander or the respondent.
 - On reporting for work on **21 January 2015** she completed an application for leave form SAP 26 (Z1) for the two days 19 and 20 January 2015 to be covered by way of vacation leave (A4). She did not report the reason for her absence (A4, A14, A20). The applicant’s leave request was declined and converted to unpaid leave on **21 January 2015** (A4, A14)
 - On **21 January 2015** (A19-A20) the applicant referred a grievance requesting that the days in question be covered by vacation leave.
 - On **28 January 2015** the Station Commander gave the applicant a verbal warning for absence from duty for the period 19 and 29 January 2015 (A11, A15) and also endorsed this in the outcome of the step 1 of the applicant’s grievance (A23) dated 28 January 2015. The applicant submitted a medical certificate A21 on 28 January 215.
 - The applicant continued with her grievance, which was not resolved and a mediation certificate (Step 4) issued to this effect on **23 March 2015**. Thereafter the applicant referred a dispute to the PSCBC concerning the interpretation or application of R 7 of 2000.
- 7 The applicant, as is evident from the above, initially sought that the two days be covered by way of vacation leave and on being asked did not report the reason why she had remained absent. On her application for vacation leave for 19 and 20 January being refused and converted to leave without pay (A10, A14) she lodged a grievance to the same effect. Her grievance was unsuccessful and was finalized on 23 March 2015. Throughout her grievance the applicant’s stance was that the days in question should be covered by vacation leave. This

however was not possible as vacation leave must be applied for in advance. The applicant has now referred a dispute concerning R 7/2000 relating to family responsibility leave on the basis that par. 7.3 of R 7/2000 provides that an employee shall be granted such leave, in other words, the respondent has no discretion to refuse the applicant the leave for purposes of family responsibility leave. In the interim the respondent had taken disciplinary action against the applicant resulting in a verbal warning being issued to her, by the Station Commander, on 28 January 2015 (A11, A15). This was endorsed by the Station Commander at page 3 and 4 of the applicant's grievance under outcome of informal procedure and outcome of step 1 on 28 January 2015, in the presence of the applicant, although it is noted that the applicant refused to sign. The applicant submitted a medical certificate dated 19 January 2015, in respect of herself for 19 and 20 January 2015 for "*Familie Sorg*" (A21) to the respondent on 28 January 2015.

- 8 It is apparent that the applicant's grievance and subsequent reliance of R 7/2000 and the disciplinary action taken by the respondent concern the same set of events, namely the applicant's absence from work for the period 19 and 20 January 2015.
- 9 In the normal course of events an employee, in the circumstances of the applicant, would be entitled to family responsibility leave. However for reasons best known to her, the applicant failed to notify her commander of the fact that she was with her child at hospital on 19 and 20 January 2015, despite his instruction that she go and see to her child quickly and return as soon as possible and write up the hours off. Given the access to mobile phones / public phones, the applicant has no excuse for not notifying the respondent / her commander. To further compound the matter, despite being asked by the respondent at the time, i.e. on her return to work, she did not state the reason for her absence, and completed the SAPS 26 (Z1) form that the days in question be covered by vacation leave. Consequent on vacation leave being declined and leave without pay being instituted, the applicant lodged a grievance and the respondent instituted disciplinary action. The grievance was unsuccessful (26 March 2015) and the Station Commander issued the applicant a verbal warning, with regard to her absence from duty on 19 and 20 January 2015, on 28 January 2015.
- 10 The respondent as employer has the prerogative to discipline employees for work infractions including absence from work without leave. The applicant was not given leave to absent herself for two days and when she did she did not attempt to call her commander to advise the reason for her absence. On her return she again did not communicate the reason. In such circumstances a responsible employer would be entitled to institute disciplinary action. This is what the respondent did and subsequently gave the applicant a verbal warning. Absence without leave for a period of two days would normally constitute serious misconduct. It is consistent with the probabilities that the circumstances of the applicant's absence were taken into account, in that she was given a verbal warning.
- 11 The applicant's absence from work on the days in question was without leave and failing to notify her employer and in respect of which she has been disciplined and given a verbal warning. In the circumstances she cannot

now claim family responsibility leave in terms of R 7/2000, for the same days. Her circumstances were in all probability, see above, taken into account in the disciplinary action. The verbal warning cannot be assailed via a claim to family responsibility leave in terms of R 7/2000 for the same events as formed the basis for the verbal warning.

- 12 In the circumstances I am of the view and find accordingly that the applicant has not made out a case for family responsibility leave in terms of R 7/2000.

AWARD

- 13 The applicant, Ms HA Hendricks's, dispute referred under case reference PSCB14-15/16 is dismissed.

A handwritten signature in black ink, appearing to be 'J.C.R.' with a stylized flourish.

JOHN CHEERE ROBERTSON
PSCBC Panelist