



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

CASE NO: PSCB 819-14/15

PSA obo G L MELESI

APPLICANT

and

DEPARTMENT OF HEALTH: FREE STATE

RESPONDENT

ARBITRATION AWARD

DATE OF ARBITRATION	:	24 JULY 2015
DATE OF AWARD	:	12 AUGUST 2015
VENUE	:	KWJ – BLOEMFONTEIN
ARBITRATOR	:	CINDY DICKENS
ISSUE	:	INTERPRETATION AND APPLICATION OF A COLLECTIVE AGREEMENT, RESOLUTION 7 OF 2000

1. DETAILS OF HEARING AND REPRESENTATION

- 1.1 The abovementioned arbitration was held on the 24th of July 2015 at the offices of Kramer, Weihmann & Joubert Attorneys, 24 Barnes Street, Westdene, Bloemfontein.
- 1.2 The Applicant, G L Melesi, was represented by Mr. Fandie, an Official of PSA. The Respondent, Department of Health: Free State, was represented by Mr. Liphoko, Senior Employment Relations Officer.
- 1.3 The parties requested to only file written submissions as follows:
- Applicant before or on the 27th of July 2015
 - Respondent before or on the 3rd of August 2015
 - Applicant before or on the 5th of August 2015

2. ISSUE TO BE DECIDED

- 2.1 The issue which I was called upon to consider was the interpretation of Resolution 7 of 2000, relating to payment of sick leave.

3. SURVEY OF EVIDENCE AND ARGUMENT

3.1 SUBMISSIONS ON BEHALF OF THE APPLICANT

- 3.1.1 I wish to state from the outset, that not all argument presented will be set out hereunder. Only a summary of the argument is contained herein.
- 3.1.2 **Mr. Fandie** held that the Applicant is an employee of the Respondent and is employed as a Pharmacy Assistant at National Hospital in Bloemfontein.
- 3.1.3 On the 4th of June 2014 the Applicant was booked off sick for the period 4 to 6 June 2014 by a registered medical practitioner for emotional distress. On return to work she submitted a medical certificate and, although she had 19 (NINETEEN) days paid sick leave available to her credit, the Respondent granted her leave without pay and deducted an amount of R 1 626-73 (ONE THOUSAND SIX HUNDRED AND TWENTY SIX RAND AND SEVENTY THREE CENTS) from her salary on the 15th of August 2014.

- 3.1.4 He argued that in terms of the Collective Agreement the Employee is entitled to 36 (THIRTY SIX) working days sick leave with full pay in a 3 (THREE) year cycle. The Collective Agreement further states that the Employer shall require a medical certificate from a registered medical practitioner if three or more consecutive days are taken as sick leave.
- 3.1.5 He held that the Respondent failed to comply with the provisions of Section 7.4 (a) & (b) of the Collective Agreement by not granting the Applicant paid sick leave.
- 3.1.6 Mr. Fandie held that the Respondent must be ordered to grant the Applicant paid sick leave subject to the provisions of Section 7.4 (a) of Resolution 7 of 2000.
- 3.1.7 In reply, Mr. Fandie held that Resolution 7 of 2000 makes no provision for “policy” to be followed with regard to sick leave and hence the Respondent’s argument must fail. The requirement is that the Applicant must produce a medical certificate if so required and has complied with the provision of the Collective Agreement. The Respondent must therefore also comply. The provisions contained in Section 7.4 (a) and (b) are peremptory and provides no deviation or additions to it.

3.2 SUBMISSIONS ON BEHALF OF THE RESPONDENT

- 3.2.1 I wish to state from the outset, that not all argument presented will be set out hereunder. Only a summary of the argument is contained herein.
- 3.2.2 **Mr. Liphoko** held on behalf of the Respondent that, in terms of the Leave Policy Guidance, it remains the responsibility of the employee to inform the employer in time when he or she is not reporting for duty. In this case, the Applicant failed to inform the Respondent about her inability to report for duty. The conduct of the Employee jeopardized the administration and efficiency of the department as the service delivery was hampered.
- 3.2.3 He argued that the Applicant failed to comply with the provisions of the Leave Policy Guidance which states that if an employee is unable to report for duty

due to sudden illness, he or she must notify his or her immediate supervisor of his or her inability to report for duty.

- 3.2.4 He requested that the Commissioner upholds the decision that was taken by the Employer to give the Applicant leave without pay for failing to notify the Respondent in time about her inability to report for duty.

4. ANALYSIS OF EVIDENCE AND ARGUMENT

- 4.1 The dispute which has been referred to the Bargaining Council relates to the interpretation and the application of Section 7.4 of Resolution 7 of 2000. For ease of reference I will quote the relevant Section.

“7.4 Normal Sick Leave

- a) Employees shall be granted 36 working days sick leave with full pay in a three-year cycle.*
- b) The employer shall require a medical certificate from a registered medical practitioner if three or more consecutive days are taken as sick leave.*
- c) Practitioners shall, for this purpose, include all practitioners as defined by the Health Professions Council of South Africa (Medical and Dental Practitioners).*
- d) An employee shall produce a medical certificate at the request of the employer where a pattern has been established.*
- e) Unused sick leave credits shall lapse at the end of a three year cycle.”*

- 4.2 The following factors are common cause:

- That the Applicant was booked off work for the period 4 to 6 June 2014 by a registered medical practitioner.
- That upon her return to work she submitted the medical certificate to her immediate supervisor.
- That leave was granted without pay and an amount of R 1 626-73 (ONE THOUSAND SIX HUNDRED AND TWENTY SIX RAND AND SEVENTY THREE CENTS) was deducted from her salary on the 15th of August 2014.

- 4.3 It is the Respondent's version that in terms of the Leave Policy Guidance, the Applicant should have informed the Respondent in time that she would not be

in a position to report for duty. As a result of this failure, the Respondent did not grant her paid sick leave.

- 4.4 I have perused the whole of Resolution 7 of 2000 and cannot find any provision which directs the parties to incorporate any Leave Policy Guidance into the said Collective Agreement.
- 4.5 Taking into consideration the provisions of Section 7.4 of Resolution 7 of 2000, I find that the Applicant has complied with the requirements set out therein. She had sick leave credits available, was booked off by a registered medical practitioner and she submitted a medical certificate upon her return to work. I therefore find that the Applicant did comply with the provisions of the Collective Agreement and is therefore entitled to paid sick leave for the period 4 to 6 June 2014.
- 4.6 The Respondent should have granted the Applicant paid sick leave for the period in question. It must follow that the Respondent interpreted Section 7.4 of Resolution 7 of 2000 incorrectly.

5. AWARD

- 5.1 The Respondent, Department of Health: Free State, interpreted Section 7.4 of Resolution 7 of 2000 incorrectly as the Applicant is entitled to paid sick leave for the period 4 to 6 June 2014.
- 5.2 The Respondent, Department of Health: Free State, is ordered to repay the Applicant the amount of R 1 626-73 (ONE THOUSAND SIX HUNDRED AND TWENTY SIX RAND AND SEVENTY THREE CENTS), which was deducted from her salary, which amount must be paid to her before or on the 31st of August 2015.

SIGNED AT BLOEMFONTEIN ON THIS 12th DAY OF AUGUST 2015



C L DICKENS

PSCBC Arbitrator