



ARBITRATION AWARD

Panellist/s: A BEVAN
Case No.: PSCB 761 – 14/15
Date of Award: 28 September 2015

In the ARBITRATION between:

PSA obo STRAUSS, A

(Union / Applicant)

and

DEPARTMENT OF SOCIAL DEVELOPMENT, NORTH WEST PROVINCE

(Respondent)

Union/Applicant's representative: Mrs. Z. Graaff of the PSA

Union/Applicant's address: Mafikeng

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Respondent's representative: Mr. P. Monyatsi (Labour Relations Official)

Respondent's address: Mafikeng

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PREAMBLE

1. This is an arbitration award issued in terms of Section 138 of the Labour Relations Act 66 of 1995 (as amended) and herein after referred to as “the LRA”.
2. This award is not intended to be a verbatim transcript of the evidence led at the arbitration hearing but rather a determination with brief reasons for such determination.
3. Evidence relevant to the determination or to support any of the elements of fairness as required may be referred to. This however does not mean that I failed to consider other evidence or ignored such evidence in coming to my decision.

DETAILS OF HEARING AND REPRESENTATION

4. The arbitration was conducted on 1 September 2015 at the boardroom of the Respondent at Mini-Garona Building in Vryburg.
5. The Applicant was present at the arbitration and was represented by Mrs. Z. Graaff, an official of PSA. The Respondent was in turn represented by Mr. P. Monyatsi, an official of the Respondent.
6. The proceedings were conducted in English, a digital recording was made and I also kept typed notes.
7. The parties proposed that the matter be dealt with on a stated case format, the Applicant to file her papers on 9 September 2015, the Respondent to file answering papers on 16 September and the Applicant to file replying papers on 17 September 2015.

ISSUE TO BE DECIDED

8. I am required to determine whether the Respondent has correctly interpreted and applied/complied with the provisions of the PSCB Resolution 7 of 2000, par 7.1 when the Respondent did not approve the Applicant's leave for the period 14 – 18 November 2014.

BACKGROUND TO THE ISSUE

9. The Applicant is employed by the Respondent as a Manager: Social Work at the Dr Ruth Segomotsi Mompati District Office in Vryburg. The Applicant applied for leave on 12 November 2014 to attend to urgent family matters from 13 – 18 November 2014. The Applicant submitted the request for leave at her supervisor's office. He was however not in the office and she followed the formal request in writing up with a sms to him. She did not receive any reply from her supervisor, apart from the letter dated 24 November 2014 indicating that leave without pay will be deducted for 14, 17 and 18 November 2014, as she was absent from work without approval.
10. The Respondent deducted an amount of R5832-82 from the Applicant's salary for the three days of unpaid leave. No money was however deducted for 13 November 2014 and no evidence exists that this date was taken as annual paid leave.
11. The Applicant lodged a formal grievance relating to the deduction of leave without pay. The grievance remained unresolved and she therefore referred a dispute in terms of the application/interpretation of Resolution 3 of 1999 to the Council, which was unsuccessfully conciliated and a certificate of outcome was issued in this regard on 22 April 2015.

SURVEY OF EVIDENCE AND ARGUMENT

Applicant's submissions

12. The Applicant argued that paragraphs 7.1 and 7.10 of Resolution 7 of 2000 were not correctly interpreted and/or applied by the Respondent when it dealt with her request for annual leave for the period 13-18 November 2014.
13. The Applicant also complied with the Determination and Directive on Leave of Absence in the Public Service ("the Leave Policy") which requires that a request for leave must be submitted in advance. The Applicant complied with this requirement as the request for leave was submitted on 12 November 2014, a day before the actual leave period.
14. According to the Applicant the Respondent did not comply with this Leave Policy in that it requires that any refusal of annual leave must be confirmed in writing, stating the reasons and

arrangements for rescheduling of the annual leave. The Respondent never responded in writing to the Applicant to inform her as to the fact that the leave is not approved and what the reasons therefore is.

15. The Applicant contends that the leave was unreasonably refused, without giving any reason and this is in conflict with the Leave Policy.
16. The Applicant also submitted that she still had vacation leave available; therefore there was no reason to approve leave without pay for the period applied for.

Respondent's submissions

17. The Respondent agreed that in terms of Resolution 7 of 2000, paragraph 7.1 the Applicant is entitled to accrue leave days. It is however management's responsibility to ensure that service delivery requirements are not compromised when dealing with a request for leave from an Applicant.
18. The Respondent agreed that the Applicant did submit the request for leave on 12 November 2014. The Respondent however indicated that the Applicant's supervisor requested the Applicant through another employee to come and discuss the request for leave with the supervisor on 12 November 2014. The Applicant never discussed the request with her supervisor on 12 November 2014 and as a result thereof she was informed in writing on 19 November 2014 that those days will be regarded as leave without pay. It was thus argued by the Respondent that there was no contravention of clause 7.1(e) as the supervisor of the Applicant did not unreasonably refuse to grant the Applicant's leave.
19. Leave without pay was applied in the Applicant's case as she did not first discuss the request for leave with her supervisor.

ANALYSIS OF EVIDENCE AND ARGUMENT

20. Resolution 7 of 2000 determines certain benefits of public servants, inter alia leave.
21. In terms of paragraph 7.1(e) "departments shall not unreasonably refuse to grant leave to employees who apply, taking into consideration service delivery requirements."

22. Paragraph 7.10 of this Resolution determines that an employer may grant an employee unpaid leave if an employee has utilized all his/her paid vacation leave.
23. The Applicant referred me to a document named “The Determination and Directive of Leave of Absence in the Public Sector”, dated June 2015 (hereinafter referred to as “the Leave Policy”). Part 4 of this document deals with the determination and directive on leave of absence in the public service and states clearly in paragraph 1.2 that it gives effect to clause 7 of PSCBC Resolution 7 of 2000, as amended by PSCBC Resolutions 5 of 2001, 15 of 2002; 1 of 2007, 1 of 2012 and 2 of 2015.
24. It is common cause between the parties that the Applicant complied with paragraph 5.7 of the Leave Policy in that she applied for leave in advance.
25. Par 5.12 of the Leave Policy and paragraph 7.1 (e) of the Resolution both determine that employers shall not unreasonably refuse to grant leave to employees who apply, taking into consideration service delivery requirements. These two paragraphs clearly indicate that the only reason why annual leave may be refused is if service delivery requirements demand same. The leave form completed by the supervisor in this regard (page 41 of the bundle of documents) does not indicate any reason for the refusal of leave of absence. No evidence was submitted by the Respondent that the Applicant’s absence at work (during this applied leave period) impacted the service delivery requirements of the Respondent negatively or at all.
26. The reason forwarded by the Respondent as to why leave without pay was enforced, being the fact that the Applicant did not discuss the request for leave with the supervisor before the leave is not a reason in terms of the collective agreement or the policy to refuse leave. Furthermore the Resolution and the Policy do make provision that leave forms can also be submitted after the leave, if an employee is faced with unforeseen circumstances, making it clear that discussion relating to leave is not always feasible.
27. This alleged conduct of the Applicant (of not discussing the leave with her supervisor), if proven might warrant progressive discipline in the form of an oral warning for refusing to obey a lawful instruction, but cannot be seen as a reason to refuse leave. No evidence was however submitted by the Respondent in the form of an affidavit to substantiate the allegation that the Applicant was

requested by a fellow employee to first discuss the request for leave with the Applicant's supervisor.

28. I therefore find that the Respondent did not correctly apply paragraph 7.1 and 7.10 of Resolution 7 of 2000, in that the Applicant's request for leave was unreasonably refused and furthermore that the Respondent did not provide the Applicant with written reasons as to why the leave was refused and any arrangements for rescheduling of the leave.

AWARD

29. The Respondent had incorrectly interpreted and applied the provisions of the PSCBC Resolution 7 of 2000 when the Applicant's request for annual leave was unreasonably refused and leave without pay deducted for the said three days.
30. The Respondent is ordered to process the three days as annual leave and to repay the Applicant the monies deducted as leave without pay for the period within 30 days from the date of this award.

A handwritten signature in black ink, appearing to read 'Annelie Bevan', is written over a horizontal line.

PANNELIST: ANNELIE BEVAN