



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

CASE NO: PSCB 693-14/15

PSA obo Africa

APPLICANT

and

Department of Correctional Services

RESPONDENT

ARBITRATION AWARD

DATE OF HEARING	:	4 May 2015
CLOSING ARGUMENTS	:	12 May 2015
DATE OF AWARD	:	21 May 2015
PANELLIST	:	I de Vlieger-Seynhaeve

1. DETAILS OF HEARING AND REPRESENTATION

- 1.1 The matter was set down for arbitration on 4 May 2015 at the Department of Correctional Services in Edgemoed. The applicant was represented by Mr Olivier from the PSA. Mr Lufhondo represented the respondent.
- 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. SUMMARY OF ARGUMENTS

- 3.1 The parties did not call any witnesses as the facts were common cause and relied solely on written arguments:
- 3.2 The facts are as follows: the applicant is a driver at the Transport Section in Polsmoor Prison. He was asked to drive officials to two funerals: one from 11 April 2014 – 13 April 2014 and one from 23 May 2014 – 25 May 2014. The applicant was further asked to drive officials to a choir competition in Durban from 10 March 2014 – 15 March 2015 and from 2 June 2014 – 4 June 2014 he had to drive and fetch members who took part in the Comrades Marathon. The applicant was not paid overtime for these extra hours that he worked. The submission of the application for payment of overtime was submitted late and was disapproved.
- 3.3 Mr Olivier stated that the manager had submitted the submission for the payment of overtime for double shifts worked on 20 June 2014. He referred to clause 9.1 of Resolution 1 of 2007 where it is stated that overtime must be paid without the option of granting time-off. The letter (internal memo) from the fleet manager, Ms Du Toit, in which the overtime is claimed, stated that *Mr Africa was tasked to do the driving to the above places. However, the*

official was not informed that they needed to register and claim for double shifts as they were driving beyond official hours. It was not the applicant's responsibility to apply for authorisation but the supervisor or manager who tasked the applicant to drive. The applicant should be paid the outstanding money of R 15,926.15.

- 3.4 Mr Mpa stated that the applicant had attended the funeral and should therefore not be paid. He was requested to drive the other officials and was paid an S&T allowance. There is no policy in place that says that one needs to be paid when attending a funeral. The payment in terms of the Resolution is only applicable when the employee is performing his/her normal duties. This does not include attending funerals. In terms of the choir trip and the trip to Durban: no prior approval was received that authorised the applicant to take the trip.

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 Paragraph 9.1 of Resolution 1 of 2007 states: *"Overtime on a Sunday or public holiday shall be 2X basic salary of the employee, without the option of granting time-off. All other overtime shall be 1.5 X basic salary of the employee, without the option of granting time-off."* This paragraph falls under the heading: **Basic Conditions of Employment Act, 1997**, which indicates that this Act is applicable. The BCEA states in section 1 that overtime means *'the time that an employee works during a day or a week in excess of ordinary hours of work'*. It was common cause that the applicant was asked to do extra driving that was not part of his normal working hours. The respondent submitted that overtime is only payable when an official performs his normal duties. Although this statement is not supported by the BCEA, the applicant was performing his duties as a driver. The fact that he drove to the Eastern Cape and Durban had as a consequence that the applicant was not able to go home after he drove the members there. He had to wait there to bring them back and drive them wherever they had to be during that time. The applicant was therefore on duty and should be paid for those hours.

- 4.3 The cause of the non-payment was that the submission for authorisation was only submitted after the applicant had driven those trips. The letter of Ms Du Toit clearly stated that *“after requesting time off for these hours worked, this office realised that these officials were not aware or not made aware that they will be able to claim double shifts for this time”*. This indicates that management did not advise the applicant about what he needed to do. Consequently, management was late in submitting the claim for approval although management had already tasked the official to do the driving. The late submission cannot be held against the applicant as he only followed instructions and it was not his responsibility to submit the claim for authorisation.
- 4.4 The applicant is therefore entitled to payment for the overtime worked. The applicant submitted a claim amounting to R 15926.15 which must be paid by the respondent.

5. ORDER

- 5.1.1. The respondent is in breach with Resolution 1 of 2007;
- 5.1.2. The respondent is hereby ordered to pay the applicant his overtime amounting to R 15,926.15 for the events undertaken on 10/03/2014 – 15/03/2014; 11/04/2014 – 13/04/2014; 23/05/2014 – 25/05/2014 and 02/06/2014 – 04/06/2014 on or before 15 June 2015;
- 5.1.3 I reserve jurisdiction to determine a dispute about the calculations of the amount that needs to be reimbursed in line with paragraph 5.1.2.
- 5.1.4 There is no order as to costs.

Signed at Cape Town on this 21st day of May 2015



I De Vlieger-Seynhaeve
PSCBC Arbitrator