ARBITRATION AWARD

Case Number:	*PSCB468-14/15*
Senior Commission / Panellist:	*Martinus van Aarde*
Date of Award:	*4 March 2015*

In the **MATTER** between

PSA obo K G Zakwe

(Applicant)

and

Department of Justice & Constitutional Development (FS)

(Respondent)

Applicant's representative:	*Mr A J Greeff / Mr C Fandie*
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Respondent's representative:	*Mr R Swanepoel*
First Respondent's address:	*Department of Justice & Constitutional Development*
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1. Details of hearing / representation

The case was set down for an arbitration hearing on 24 February 2015 at Bloemfontein, DJCD-Offices. Mr C Fandie: Offical PSA represented the Applicant. Mr R Swanepoel: LRO represented the Respondent (DJCD).

2. Issue(s) to be decided

This is an application in terms of Section 24(2)/(5)/LRA *re* the interpretation/application of a collective agreement with specific reference in terms of Resolution 7/2000 (Clause 7.1) *re* the application of leave benefits.

3. Background to dispute

3.1 The Applicant was in the employment of the Respondent in the capacity of Administration Clerk at the Botchabelo Magistrates Court (job level 5). The Applicant lodged a formal dispute/LRA 7.11 on 9 October 2014 on basis set out above. See also initial grievance dated 20 August 2014.

3.2 The case was set down for a conciliation hearing on 3 November 2014. The dispute was declared unresolved in terms of Section 135(5)/LRA. The Applicant then filed for arbitration on 4 November 2014.

4. Survey of evidence / argument

4.1 I have heard brief arguments from both parties (the factual issues not in dispute). The parties also requested to file written closing submissions/closing arguments in support of their respective cases (see also Annexure A/B respectively).

4.2 <u>Applicant's case (Annexure A)</u>

4.2.1 The Applicant's case briefly boils down to the following —

(a) the Applicant applied for leave for the following periods:

- 9 November 2007 (implemented by the employer as 8 January 2014)
- 17-19 November 2010 (implemented by the employer as 13-15 January 2014)
- 20 December 2010 (implemented by the employer as 9 January 2014)
- 4-3 January 2012 (implemented by the employer as 31 January 2013 to 11 February 2014)
- 24-25 January 2013 (implemented by the employer as 6-7 January 2014)

4.2.2 The Applicant argues that the Respondent contravened Clause 7.1 (a – e) of the said Resolution (7/200) in that they eroded the present leave credits of the employee. It is argued that the Applicant suffered a loss eight (8) days in the 2014 financial year. Applicant seeks an order to compel the employer to accredit her leave credits accordingly.

4.3 <u>Respondent's case (Annexure B)</u>

4.3.1 Following an internal audit on employee leave credits, the Respondent detected that the Applicant did not have the necessary leave credits/initially captured wrongly by *bona fida* mistake.

4.3.2 The Applicant initially qualified for only twenty two (22) days leave per annum. In 2010 the leave days were increased to twenty six (26) days per annum and to thirty (30) days in 2012 (to be read with the leave records).

4.3.3 The Respondent relied on Clause 12.1/2 of the said Resolution arguing that they are entitled to implement the wrongly captured leave in the subsequent leave cycle.

5. Analysis of evidence / argument

I will address the material issues separately —

5.1 The relevant provision reads as follows:

5.1.1 Resolution 7/2000

<u>Leave:</u>

(a) The annual leave dispensation in this agreement shall provide a framework that may be further refined, subject to service delivery requirements of any sector

(b) Employees shall accrue leave days per annual leave cycle, which shall be granted according to Annexure A.

(c) A period of 10 working days leave per annual leave cycle shall be a compulsory requirement. The utilisation of this leave must take into account sectoral service delivery requirements.

(d) The remaining days shall be utilised within an 18 month period. All remaining unused leave shall fall away thereafter. However, where leave due is not taken due to the employer's service delivery requirements, such leave shall be paid at the end of the 18 month period.

(e) The departments shall not unreasonably refuse to grant leave to employees who apply, taking into consideration service delivery requirements.

and;

5.1.2 Leave Policy

<u>Annual leave with full pay granted in excess:</u>

12.1 An employee may not be granted annual leave with full pay in excess of that which the employee is entitled to in terms of Annexure A plus capped leave in respect of persons who were in service prior to 1 July 2000.

12.2 If due to a bona fide error, an employee had been granted annual leave with full pay in excess of that which stood to his/her credit at that time, such over-grant must be deducted from the subsequent leave cycle.

5.2 From the documentation/leave records I am confronted with conflicting versions of fact. In my own evaluation it however appears that the Applicant did not have the required leave credits to her name in the various leave cycles. There is also no evidence before me to indicate that the Respondent acted in *male fide* when they initially granted/captured the Applicant's leave for the said periods with full pay. Respondent only detected the errors *via* an internal audit in 2013/14. There is also an obligation on Government to recover any financial losses in terms of the PFMA. I have also considered the source documents (Resolution 7/2000 (Clause 7) is a collective agreement in terms of Section 23/LRA) read with the Applicant's written arguments. The Resolution is however silent on the procedural aspect how to deal with leave granted in excess due to a *bona fide* error (Leave Policy, Clause 12).

5.3 Having said the above I am not convinced that the Applicant —

5.3.1 were legally entitled to the excess leave in question; nor

5.3.2 that the Respondent acted *contra* to the leave provisions and/or acted unfairly to implement the excess leave to the 2013/14 leave cycle.

6. Award

In case PSCB468-14/15 the following award is made —

6.1 The general interpretation of Resolution 7/2000 (Clause 7.1 (a – e)) must also be read with the Leave Policy (Clause 12) to have a clear understanding of the parties respective rights/entitlements.

6.2 As pointed out in par. 5.3 *supra*, the Respondent did not act *contra* the policy framework or unfairly in terms of the said provisions/due process were indeed followed.

6.3 The Applicant's claim to be re-accredited for the said excess leave days in question is dismissed for reasons mentioned.

6.4 No order as to costs is made.

Signature:

Senior Commissioner: ***Martinus van Aarde***
PSCBC: Panelist