

ARBITRATION AWARD

Panelist: John Cheere Robertson
Case No.: PSCB374-13/14
Date of Award: 20 March 2014

In the ARBITRATION between:

SAPU obo Terblanche
(Employee)

and

South African Police Service
(Employer)

Employee's representative: Mr L Naude (SAPU)
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Employer's representative: Brigadier P De Kock / Colonel A De Witt / Colonel L Mkalipi
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DETAILS OF HEARING AND REPRESENTATION

- 1 This matter was scheduled for arbitration on 25 February 2014 at the offices of SAPU in Newton Park, Port Elizabeth. Mr L Nadu (SAPU) represented Mr L Terblanche (employee). Colonel A De Witt represented the South African Police Service (employer). The parties agreed on a written statement of case, see below, and to submit written closing arguments by 7 March 2014.

ISSUE TO BE DECIDED

- 2 The issue to be determined is whether the employer complied with Resolution 7/2000 in refusing the employee's application for sick leave as submitted and requiring her to take sick leave for a period including her rest days, as set out below, 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 employee referred a dispute concerning the interpretation and application of a collective agreement 7/2000 relating to a claim for Sick Leave for the period 22 February to 10 March 2013.
2. The employee duly applied for Normal Sick Leave for the period above.
3. The employee at the time worked 12 hour shifts spread over an eight day cycle, her duty roster at that time as follows:

22 February 2013	-off duty
23 February 2013	-off duty
24 February 2013	-off duty
25 February 2013	-off duty

26 February 2013	-on duty
27 February 2013	-on duty
28 February 2013	-on duty
1 March 2013	-on duty

2 March 2013	-off duty
3 March 2013	-off duty
04 March 2013	-off duty
05 March 2013	-off duty

06 March 2013	-on duty
07 March 2013	-on duty
08 March 2013	-on duty
09 March 2013	-on duty

10 March 2013	-off duty
11 March 2013	-off duty
12 March 2013	-off duty
13 March 2013	-off duty

4. *The Employee completed a SAP 26 for sick leave for the periods she would have been on duty, namely from 26 February 2013 to 01 March 2013 and from 06 March 2013 to 09 March 2013 (8 days sick leave).*
The employer refused to accept the SAP 26 in relation to the above period (8 days) and wanted the employee to complete a SAP 26 for the period 22 February 2013 to 13 March 2013 (20 days sick leave) and requested the employee to go back to her doctor so that he could amend the sick certificate from 22 February 2013 to 13 March 2013 (20 days sick leave). The employee refused to do so and submitted a grievance.
5. *Persap 4.05.11(04) reflects that the employer has taken 17 days sick leave for the period 22 February 2013 to 10 March 2013.*
6. *Documents A.1 to 5 (in addition to further documents that may be handed up by agreement) attached hereto are admitted and require no further proof as to authenticity, delivery and receipt."*

SURVEY OF EVIDENCE AND ARGUMENT

The employee's submissions

- 4 The employee argued to the following effect. She as a shift worker worked a schedule of 4 days on, 4 days off. Para 7.4(a) of PSCBC Resolution 7/2000 (R 7/2000) provided for sick leave in respect of **working days** and the NI 2/2004 at Para 2(n) and Para 4(3)(a) defined a **working day** as a day on which an employee **performs her duty** and provided for an entitlement of up to 36 **working days** sick leave
- 5 Consequently, so the employee argued, sick leave could only be granted in respect of days that the employee normally worked, i.e. the shifts she would have worked had she not been booked off sick, a total of 8 days. She sought as relief that her sick leave records be amended accordingly.

The employer's submissions

- 6 The employer party argued to the following effect. SAPS had a Constitutional duty to combat crime and that its human and physical resources were optimally utilized in this regard. Absenteeism and the abuse of sick leave had to be controlled and managed in accord with NI 2/2004 and R 7/2000. To this end the Divisional Commissioner had addressed a letter (A2) to all commanders that directing *inter alia*:

"Futhermore, any member on sick leave after rest days, must, when the sick leave or any other leave period expires, report immediately for duty at the police station/unit. This implies that in some instances this member will be accommodated on another shift than on his/her original shift to ensure that personnel work the prescribed number of hours per shift cycle and does not take rest day(s) which is in conflict with official directives."

- 7 The employee had not reported for duty on the expiry of her sick leave and accordingly the employer was justified in requiring her to complete a leave form for the whole period, in order to regulate the work environment.

ANALYSIS OF EVIDENCE AND ARGUMENT

- 8 The employee was booked off sick for the period 22 February 2013 to 10 March 2013. This period according to her duty roster included 9 rest days and 8 shift work days i.e. a total of 17 days.
- 9 Although she was instructed to submit a leave form for the period 22 February 2013 to 13 March 2013, i.e. including the full period of the last cycle of rest days, she according to the persap records has only been “debited” with 17 days sick leave, i.e. up to and including 10 March 2013.
- 10 NI 2/2004 provides as follows:

“2. Definitions

- (c) *“calendar day” means every day of the month, including a day on which an employee would not ordinarily work.*

...

- (n) *“working day” means a day on which the employee normally performs his or her duties. If the employee is a shift worker, the day on which a shift commences is regarded as a working day: Provided that where a shift commences on the day prior to the day for which leave has been granted, that shift must first be completed before the leave of the employee commences.*

...

4. (3) Sick Leave

- (a) (i) *An employee is entitled to 36 working days’ sick leave with full pay in a sick leave cycle.*

...

- (f) *A medical certificate serves as a recommendation for the granting of sick leave for the period of absence. Sick leave may be refused if the National Commissioner is of the opinion that there are sufficient grounds to do so. ...”*

- 11 R 7/2000 provides as follows:

“7.4 Normal Sick Leave:

- (a) *Employees shall be granted 36 working days sick leave with full pay in a three year cycle.”*

- 12 In the instant case the employee who was booked off sick from the commencement of her 4 rest days, covered the following shift of 4 working days, the next 4 rest days and next shift of 4 working days, ending on the 1st day of the commencement of the next 4 rest days. It is the employee’s case that she should only be required to take sick leave for the working days that fall within the period she was booked off sick and not for the whole period including the rest days. The employer however states that as she did not report for duty on the expiry of

the period for which she was booked off sick, for the reasons set out above, it is entitled to apply sick leave to the whole period in question. The employer has however only reflected sick leave for the period 22 February 2013 to 10 March 2013 on the employee's records.

- 13 The objective of the Divisional Commissioner's letter / instruction to all commanders is to draw attention to and provide guidance to commanders in an effort to manage, curb and control absenteeism and the abuse of sick leave. One of the instances of abuse of sick leave is mentioned as shift members reporting sick after rest days, i.e. not attending their working shift after their rest days on the basis of being off sick. In such cases commanders must now require a medical certificate from the employee, irrespective of the number of days off sick, in other words not only in respect of 3 days and more see NI 2/2004 Paragraph 4 (3) (c) and R7/200 Paragraph 7.4 (b) and (d). To prevent employees from abusing sick leave and extending their absence from work via the stratagem of a medical certificate booking an employee of work up until and including the last working day of the shift, (which places an additional burden to attending employees and reduces the number of hours worked by the employee in question per shift cycle), the Divisional Commissioner has instructed that shift employees, who may be on sick leave, are required to report for duty immediately should their sick leave expire on a rest day. In such an event the employee will be assigned a different shift, for the more effective utilization of the employer's human resources.
- 14 A perusal of R7/2000. NI 2/2004 and the Divisional Commissioner's letter does not suggest that where a shift worker is booked off sick for a period of time that may cover intervening rest days, that these rest days are to be taken as sick leave. On the contrary it is clear that sick leave applies to working days and that in the case of shift workers, the days of the shift on which they work are treated as working days (NI 2/2004 Para 2(n)).
- 15 What the Divisional Commissioner's instruction does require is that when the period a shift worker is booked off sick expires during the scheduled rest days, such shift worker must then immediately report for duty, in order to ascertain the viability of assigning him / her to another shift. Sick leave applies to working days as defined in NI 2/2004 and subject to NI 2/2004 paragraph 3
- 16 In the circumstances the employee should only have been "debited" with 8 days (working days) sick leave and not 17. I make the following award.

AWARD

- 17 The employer, the South African Police Service, did not comply with PSCBC Resolution 7/2000 as amplified by NI 2/2004 in deducting 17 days as sick leave from the employee, Ms L Terblanche for the period 22 February 2013 to 10 March 2013.
- 18 The employer is required to amend the employee's sick leave record for the above period to reflect sick leave for the working days in question, namely:

- 26 February 2013 to and inclusive of 01 March 2013 (4 days), and
- 06 March 2013 to and inclusive of 09 March 2013 (4days)

19 The employer must attend to 18 above within 30 days of the date of this award.

A handwritten signature in black ink, appearing to read 'J. Robertson', with a stylized flourish at the end.

John Cheere Robertson

PSCBC Panelist

Sector: Public: Safety & Security