



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

CASE NO: PSCB 596-13/14

PSA obo KHOELE, N

APPLICANT

and

DEPARTMENT OF HEALTH – FREE STATE

RESPONDENT

ARBITRATION AWARD

DATE OF ARBITRATION	:	10 APRIL 2014
DATE OF AWARD	:	6 MAY 2014
VENUE	:	PSA BOARDROOM – BLOEMFONTEIN
ARBITRATOR	:	CINDY DICKENS
ISSUE	:	INTERPRETATION AND APPLICATION OF A COLLECTIVE AGREEMENT, RESOLUTION 1 OF 2007

1. DETAILS OF HEARING AND REPRESENTATION

- 1.1 The abovementioned Arbitration was held on the 10th of April 2014 at the Offices of PSA, M Floor, Absa Building, Cnr. Aliwal & Maitland Streets, Bloemfontein.
- 1.2 The Applicant, Mr. Khoele, was represented by Mr. Greeff of PSA. The Respondent, Department of Health – Free State, was represented by Me. Charlene de Beer, Senior Employment Relations Officer.

1.3 The parties requested to submit Written Closing Arguments only, as follows:

- Applicant before or on the 17th of April 2014
- Respondent before or on the 24th of April 2014
- Applicant before or on the 25th of April 2014

2. ISSUE TO BE DECIDED

2.1 The issue which I was called upon to consider was the interpretation of Resolution 1 of 2007. I am required to determine whether the Respondent failed to pay the Applicant's overtime for the period 2007 till 2010.

2.2 Should I find that the Respondent has failed to comply with the provisions of the Collective Agreement, then I am required to determine whether the Respondent must be ordered to pay the overtime worked.

3. SURVEY OF EVIDENCE

3.1 The parties' representatives made the following legal submissions. The facts are as follows:

3.2.1 **Mr. Greeff** held that the dispute relates to the Interpretation and Application of Resolution 1 of 2007. He held that it is common cause that in terms of the Resolution the Respondent does not have any option but to pay overtime worked as from the 1st of July 2007.

3.2.2 The Applicant is employed as a District Manager: EMS Thabo Mofutsanyane District, and it is compulsory for all EMS staff to work overtime. The Applicant submitted claims for overtime from 2007 till 2010.

- 3.2.3 He argued that it is further common cause that the Applicant registered a grievance on the 18th of May 2012 and the Respondent did not respond to the grievance. Overtime was approved as it is required of the member to work compulsory overtime as an employee of EMS.
- 3.2.4 He argued that it is extremely unfair of the Respondent to expect the Applicant to work overtime and not to remunerate the Applicant. The Applicant could have spent this time better with his family.
- 3.2.5 He held that the Commissioner must order the Respondent to pay all the outstanding overtime from 2007 till 2010.
- 3.2.6 In reply, Mr. Greeff held that not all overtime payments have been made and that the Commissioner should order the Respondent to pay all outstanding claims.
- 3.3.1 **Me. De Beer** held that Annexures A to C are annexed to her Arguments, which is proof of payments for overtime worked. In certain instances additional payments were made to the Applicant.
- 3.3.2 She held that the Applicant did not provide proof that he worked those periods for which payment was not made, hence no payments were effected.
- 3.3.3 She held that once proof of overtime is submitted, payment will accordingly be effected, provided it is substantiated as to why the overtime claims were not submitted on time.
- 3.3.4 She requested that the Commissioner should find in their favour based on the submissions made.

4. ANALYSIS OF EVIDENCE AND ARGUMENT

4.1 As stated hereinabove, the parties requested to file written submissions only. The matter was therefore decided on the papers before me, and there was no need to call witnesses.

4.2 Paragraph 9.1 of Resolution 1 of 2007 reads as follows:

“9.1 Payment rate for normal overtime

Overtime on a Sunday or public holiday shall be 2 x 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 provision excludes employees on commuted overtime.”

4.3 It is the Applicant’s case that claims were submitted for overtime from 2007 till 2010. The Applicant failed to annex proof of the said claims to their Application, neither did they make mention of which specific periods overtime is being claimed for.

4.4 The Respondent annexed proof of overtime payments made during the period 2007 to 2010. It is their case that all overtime claims were processed and paid.

4.5 In reply to the Respondent’s written submissions, Mr. Greeff merely stated that, *“not all have been paid”*. Once again he failed to provide us with details of which hours have not been paid.

4.6 The onus rests on the Applicant to prove that the Respondent has failed to comply with Resolution 1 of 2007. The Applicant has failed to prove that the Respondent failed to pay overtime to the Applicant, in that they failed to specify for which period / periods overtime was worked and not paid.

4.7 I can not find that the Respondent has failed to comply with Resolution 1 of 2007 in any respect.

5. AWARD

5.1 I can not find that the Respondent failed to comply with Resolution 1 of 2007.

5.2 No order as to costs is made.

SIGNED AT BLOEMFONTEIN ON THIS 6th DAY OF MAY 2014

C L DICKENS

PSCBC Senior Arbitrator