



PUBLIC SERVICE CO-ORDINATING BARGAINING COUNCIL

ARBITRATION AWARD

Case Number: PSCB622-13_14
Senior Commission / Panellist: Martinus van Aarde
Date of Award: 29 March 2014

In the **MATTER** between

PSA obo Mgwadleka

(Applicant)

and

Department of Home Affairs (FS)

(Respondent)

Applicant's representative: Mr. C Fandie

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Respondent's representative: Mr. A Tauetsile

Respondent's address: Department of Home Affairs

PRETORIA

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1. Details of hearing / representation

The case was set down for an arbitration hearing on 28 March 2014 (13h30) at Bloemfontein, PSA Offices. Mr. C Fandie: Official PSA represented the Applicant. Mr Tauetsile represented the Respondent (DOH).

2. Issue(s) to be decided

This is an application in terms of the **Labour Relations Act 66/1995, section 24(2)(5)** *re* the interpretation/application of a collective agreement, with specific reference to Resolution 14/2002: (Grievance Procedure).

3. Background to dispute

- 3.1 The Applicant lodged a grievance on 5 September 2013 *re* back-payment of 'unpaid sick leave'.
- 3.2 The Respondent failed to respond to the said grievance within the prescribed time limits (30 days). Subsequently, the Applicant lodged a formal dispute (LRA 7.11) on 20 December 2013 in terms of **section 24(2)/(5)/LRA '95**. The conciliation hearing was held on 31 January 2014. The dispute was declared unresolved in terms of **section 135(5)/LRA '95**. The Applicant then filed a Request for Arbitration (LRA 7.13) on 3 February 2014.

4. Survey of evidence / argument

- 4.1 Applicant's argument simply boils down to the fact that the Respondent failed to comply with Resolution 14/2002 – no response to the Applicant's grievance.
- 4.2 Respondent, on the other hand stated the latter is still in the process of 'investigating' the matter – they are not in a position to address/respond to same at this stage. What transpired is that the Applicant took sick leave on 27-28 June 2013 without notifying her Supervisor. As such the leave days were deducted from her salary as unpaid leave. The Applicant seeks to reverse same.
- 4.3 Resolution 12/2002 deals with the handling of grievances in the public sector. In terms of the said Resolution (being a collective agreement within the context of **section 23/LRA '95**) it is incumbent on the Respondent to respond to an employee's grievance in writing within 30 working days. Respondent simply failed to follow suit.
- 4.4 The purpose of the said Resolution is simply to attend to internal grievances in a speedy manner. I believe the underlying reasons therefore are quite obvious – *inter alia* to create 'harmony' in the workplace. It is irrelevant whether the response is acceptable to the employee. If the latter is not

satisfied with the response/outcome of the grievance, then the employee can pursue the matter further through other means (e.g. unfair labour practice doctrine (**section 186/LRA**) or in terms of the **Employment Equity Act 55 1998**). However not all grievances will be arbitrable – the Council must determine whether it has the necessary jurisdiction to entertain the dispute through conciliation/arbitration.

- 4.5 I believe the Respondent had ample time to respond to the Applicant's grievance but failed to respond for no apparent reason. As pointed out, the failure to take any positive steps in this regard can only cause disharmony in the workplace. Equally, one cannot ignore the fact that both the Respondent and Council operate on tax-payers money. By frustrating the dispute causes unnecessary costs.

5. Award

In case PSCB622-13_14 the following award is rendered—

- 5.1 The Respondent failed to comply with the prescriptive timeframes contained in Resolution 14/2002.
- 5.2 The Respondent is hereby ordered to respond to the Applicant's grievance in writing within seven (7) days after date of receiving this award.
- 5.3 I have seriously considered to order cost against the Respondent but decided to rather caution the latter to attend to grievances in a prompt manner. I also have taken into account the fact that the local office (Free State) does not have IR Specialists and the manager/supervisor depend on advice from HQ.

Signature:



Senior Arbitrator: **Martinus van Aarde**