



PUBLIC SERVICE CO-ORDINATING BARGAINING COUNCIL

ARBITRATION AWARD

Case Number: PSCB101-13_14
Senior Commission / Panellist: Martinus van Aarde
Date of Award: 12 September 2013

In the **MATTER** between

PSA obo PJ van den Heever

(Applicant)

and

Department of Justice & Constitutional Development (National Office)

(Respondent)

Applicant's representative: Mr. A. J. Greeff

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Respondent's representative: Mr. M Mokoena

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 12 September 2013 (10h00) at Bloemfontein, PSA Offices. Mr. AJ Greeff: Official PSA represented the Applicant. Mr. M Mokoena: Labour Relations Officer represented the Respondent (DJCD). The proceedings were not recorded (see arbitrator's notes).

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 20 February 2013 *re* various issues relating to general office-practices which had a negative effect on the employee/employer relationship and Applicant's state of health.

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 16 May 2013 in terms of **section 24(2)(5)/LRA '95**. The case was set down for a conciliation hearing on 10 June 2013/the dispute declared unresolved in terms of **section 135(5)/LRA '95**. The Applicant then filed a request for arbitration on 11 June 2013

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. Applicant stated as follows—

4.1.1 he is in the employment of the Respondent since 1 June 1996 in the capacity of Admin Officer (Family Advocate's Office)/job level 8. At present he is seconded to the Labour Relations Department.

4.1.2 the Respondent implemented a new electronic reporting system/format. According to the Applicant the system does not capture the essence of the CPA's/time frames and understates the employee's performance;

4.1.3 he engaged into various discussions with his Supervisor seeking clear/proper guidelines to

operate the new system (however to no avail);

4.1.4 since he lodged his grievance, the Supervisor requested five (5) audits on the case flow management system, insulted and victimised him and also threatened to take disciplinary action against him/some of the co-employees;

4.1.5 the relationship between him and the Supervisor is not good and it has a negative effect on his general performance and health condition.

4.2 Respondent, on the other hand stated that the grievance was sent to HQ but however not referred to the Labour Relations Department. They seek another 30 days to investigate and respond to the grievance.

4.3 Resolution 14/2002 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 speedily manner. I believe the underlying reasons therefore are quiet 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 (since 20 February 2013) to respond to the Applicant's grievance but failed to respond for no apparent reason. Respondent's reasons for its failure (or reluctance) to attend to the grievance are highly questionable considering that the dispute was also subject to conciliation. 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 PSCB101-13_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 The Respondent is also ordered to pay for the wasted cost for the arbitration proceedings to the total amount of R2, 736-20 (cost for ½ a day). Said cost to be paid to the Council on or before 7 October 2013 if not, the Respondent is also ordered to pay interest on the outstanding amount calculated at a rate of 1,5% per month until final date of payment.

Signature:

Senior Arbitrator: **Martinus van Aarde**

