



PUBLIC SERVICE CO-ORDINATING BARGAINING COUNCIL

ARBITRATION AWARD

Case Number: PSCB110-13_14
Senior Commission / Panellist: Martinus van Aarde
Date of Award: 9 September 2013

In the **MATTER** between

PSA obo O Olivier

(Applicant)

and

Department of Agriculture, Forestry & Fisheries (National)

(Respondent)

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

Applicant's address: C/o: PSA

PO Box 7673

BLOEMFONTEIN, 9300

Telephone: (051) 403 1300

Telefax: (051) 403 1315 / 19

E-mail: —

Respondent's representative: Absent

Respondent's address: Department of Sgriculture, Forrestry & Fisheries

PO Box 250

PRETORIA, 0001

Telephone: (012) 321 8558

Telefax: (012) 319 7243

E-mail: —

1. Details of hearing / representation

The case was set down for an arbitration hearing on 9 September 2013 (10h00) at Bloemfontein, PSA Offices. Mr. A. J. Greeff: Official PSA represented the Applicant (Olivier). The Respondent failed to attend the proceedings despite proper notice by fax. The proceedings were digitally recorded (CD on file with 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 12 February 2013 *re* Respondent's failure to assess the Applicant's performance for the financial year 2009-2010 which had a negative effect on her financial income/payment of bonuses.
- 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 17 May 2013 in terms of **section 24(2)/(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.
- 4.2 It is also clear that the case was set down for conciliation on 10 June 2013 before Commissioner JB Mthembu. The Respondent also failed to attend these proceedings and the dispute was accordingly declared unresolved in terms of **section 138(5)/LRA '95**.
- 4.3 The Respondent on the other hand simply failed to attend any of the formal proceedings. I did not receive any excuse or explanation for their absence.
- 4.4 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.

- 4.5 Equally, it is clear that the Respondent's failure to assess the Applicant's performance had a direct impact on the payment of her salary position (e.g. 1% pay progression and annual bonuses).
- 4.6 The purpose of the said Resolution is simply to attend to internal grievances in a speedily 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.
- 4.7 I believe the Respondent had ample time to respond to the Applicant's grievance (since February 2013) 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 and it appears that the Respondent do not have any 'respect' for its own agreements/employee's representative bodies or even the Council. Obviously, this cannot be tolerated in an open administration.

5. Award

In case PSCB110-13_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 the wasted cost for the arbitration proceedings to the total amount of R2,780-20 (cost for ½ a day). Said cost to be paid to the Council on or before 30 September 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**

