



PUBLIC SERVICE CO-ORDINATING BARGAINING COUNCIL

ARBITRATION AWARD

Case Number: PSCB423-12_13
Senior Commission / Panellist: Martinus van Aarde
Date of Award: 11 December 2013

In the **MATTER** between

PSA obo LS Daniel

(Applicant)

and

Department of Justice and Constitutional Development

(Respondent)

Applicant's representative: Mr C Fardie

Applicant's address: C/o: PSA

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Respondent's representative: Mr R Swanepoel

Respondent's address: Department of Justice and Constitutional Development

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1. Details of hearing / representation

The case was set down for an arbitration hearing on 11 December 2013 (10h00), at Bloemfontein PSA Offices. Mr. C Fardie: Official PSA represented the Applicant (Daniel). Mr R Swanepoel: Head Labour Relations represented the Respondent (DJCD).

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 is employed as a Clerk at the Virginia Magistrate Court.

3.2 The Applicant lodged a formal grievance complaining that he is dissatisfied because his Manager rotates him from one department/office to another. He seeks to know the real reason for these inter-departmental transfers.

3.3 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 2 October 2013 in terms of **section 24(2)/(5)/LRA '95**. The case was set down for a conciliation hearing on 28 October 2013. The dispute was declared unresolved in terms of **section 135(5)/LRA '95**. The Applicant then filed a request for arbitration on 28 October 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/his request to be provided with explanations regarding his transfers/rotations from office to office.

4.2 Respondent, on the other hand stated that he engaged into a pre-arbitration meeting with the Applicant in Virginia on 31 October 2013. At this meeting the Applicant was given a full explanation for the reason of his post-rotation. The Applicant also signed a grievance form (Part C) that he is satisfied with the explanation given to him. Unfortunately, the grievance form got lost/was misfiled to substantiate same. At the start of the proceedings the Respondent phoned the Applicant (at Virginia) in an endeavor to put this matter to rest. The Applicant however now stated that he seeks a written

response to his grievance.

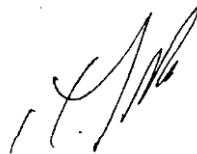
- 4.3 Resolution 12/2002 deals with the handling of grievances in the public sector. In terms of the said Resolution (being a collective agreement within the context of **section 23/LRA '95**) it is incumbent on the Respondent to respond to an employee's grievance in writing within 30 working days. Respondent simply failed to follow suit but however endeavoured to rectify same by engaging into a pre-arbitration meeting with the Applicant on 31 October 2013, however to no avail.
- 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 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.

5. Award

In case PSCB423-12_13 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.

Signature:



Senior Arbitrator: **Martinus van Aarde**