



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

CASE NO: PSCB 597-12/13

PSA obo D E MATSOSO & 14 OTHERS

APPLICANT

and

DEPARTMENT OF EDUCATION: FREE STATE

RESPONDENT

ARBITRATION AWARD

DATE OF ARBITRATION	:	5 SEPTEMBER 2013
DATE OF AWARD	:	7 OCTOBER 2013
VENUE	:	PSA BLOEMFONTEIN
ARBITRATOR	:	CINDY DICKENS
ISSUE	:	INTERPRETATION AND APPLICATION OF A COLLECTIVE AGREEMENT, RESOLUTION 1 OF 2007 TOGETHER WITH RESOLUTION 3 OF 1999.

1. DETAILS OF HEARING AND REPRESENTATION:

- 1.1 The abovementioned Arbitration was held on the 5th of September 2013 at the Offices of the Applicant in Bloemfontein.

1.2 The Applicants, D E Matsoso & 14 Others, was represented by Mr. Fandie, an Official of PSA. The Respondent, Department of Education: Free State, was represented by Mr. Moeketsi.

1.3 The parties requested to file Written Submissions as follows:

- Applicant before or on the 12th of September 2013
- Respondent before or on the 19th of September 2013
- Applicant before or on the 26th of September 2013

2. ISSUE TO BE DECIDED:

2.1 The issue which I was called upon to consider was the interpretation and application of Resolution 1 of 2007, together with Resolution 3 of 1999 relating to the payment of overtime.

3. SURVEY OF EVIDENCE AND ARGUMENT:

3.1 SUBMISSIONS ON BEHALF OF THE APPLICANT:

3.1.1 I wish to state from the outset, that not all argument presented will be set out hereunder. Only a summary of the argument is contained herein.

3.1.2 **Mr. Greeff** argued that the dispute relates to the Respondent's failure to pay the Applicants' overtime, standby and nightshift allowance worked from January 2010 till the 13th of February 2012.

3.1.3 He argued that should the Commissioner find that the Respondent has not complied with the provisions of Resolution 3 of 1999 and Resolution 1 of 2007, the Respondent should be ordered to pay the Applicants' hours worked in lieu of overtime, standby and nightshift allowance in cash with interest.

- 3.1.4 Mr. Greeff held that the Applicants are employed by the Department of Education stationed at Bartamea and Tswelang Schools. The Applicants are employed as cleaners, caretakers and household.
- 3.1.5 During 2010 to 2012, the Applicants performed overtime and night duty work amounting to 132 (ONE HUNDRED AND THIRTY TWO) hours per year for a period of 3 (THREE) years respectively and the Respondent failed to effect any payment.
- 3.1.6 The Applicants registered a grievance on the 5th of May 2011 requesting that their overtime and standby allowance be paid to them. On the 21st of March 2012 the Respondent undertook to investigate the grievance and communicate the finding, which they have failed to do.
- 3.1.7 He argued that in terms of Resolution 1 of 2007 Clause 9.1, 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 the basic salary of the employee, without an option of granting time off. This provision excludes employees on commuted overtime.
- 3.1.8 He held that the Applicants are employed to work 40 (FORTY) hours per week. The Respondent has compelled the employees to work 7 (SEVEN) days a week with hours fluctuating from 83 (EIGHTY THREE) to 97 (NINETY SEVEN) hours overtime worked in each week per month.
- 3.1.9 He further argued that the Respondent has failed to pay for night / standby allowance as envisaged in Clause 7.1 (a) & (b) of Resolution 3 of 1999.
- 3.1.10 He argued that the Respondent is required to pay a standby allowance amounting to 656 (SIX HUNDRED AND FIFTY SIX) days which is due to each Applicant at a rate of R 43,45 (FORTY THREE RAND AND FORTY FIVE CENTS) from 2010 to 2012 in terms of Part VIII which deals with standby allowances. The Section states that if the employer

requires an employee to be available for the performance of duty outside of her or his normal working hours, the employee shall pay a standby allowance. The Clause further states that the employer shall pay an allowance if an employee's supervisor requires an employee to be available for duty.

3.1.11 He held that it is the Applicants' submission that based on the citations the Applicants should have been paid all their overtime, standby and night allowance worked and that non-payment by the Respondent amounts to gross deviation from the said Collective Agreement.

3.1.12 He held that the Commissioner should find it unfair for the Respondent not to have paid the Applicants for the total overtime worked, and also to order the Respondent to pay all outstanding overtime due to the Applicants with interest.

3.2 SUBMISSIONS ON BEHALF OF THE RESPONDENT:

3.2.1 I wish to state from the outset, that not all argument presented will be set out hereunder. Only a summary of the argument is contained herein.

3.2.2 **Mr. Maloka** argued that it is the case of the Respondent that the Applicants did not work overtime in the period under review, and that the Respondent has not violated Resolution 1 of 2007.

3.2.3 He argued that in terms of Resolution 3 of 1999 Clause VI, the employer shall pay compensation for normal overtime where an executing authority has required or authorized in writing the performance of overtime work and compensation for the work performed. It is a determination of this Clause that approval should be sought first and the amount to be paid for overtime is spelled out.

3.2.4 He argued that Resolution 1 of 2007 must be read and applied in conjunction with PSCBC Resolution 3 of 1999, in that prior approval must be granted. He held that the Applicants and the Union are

“exhorting” the money from the Employer by claiming hours that were not authorized.

3.2.5 He argued that the Human Resources Policy of the Department states that the Department shall provide compensation for overtime only where an executive authority or her or his delegate had required or authorized so in writing. He argued that this provision is consistent with PSCBC Resolution 3 of 1999 and Resolution 1 of 2007 respectively.

3.2.6 He argued that according to the Policy, record of overtime must be kept, and formal attendance registers must be kept and must be signed by the official who worked overtime as well as the Supervisor to ensure that the overtime was worked.

3.2.7 He held that it is after the claim forms are signed and certified as correct by the Supervisor and the delegated authority that they are then processed.

3.2.8 He argued that the documents submitted by the Applicant show that the forms were not monitored by supervisors. He argued that no claim form of any kind was presented to the Respondent or the Commissioner to quantify the claims. He held that it is evident that there is no proof of the processing of any claim.

3.2.9 He argued that overtime is allocated for a specific period and that it can not be that one claims overtime for 2 (TWO) years. It is the belief of the Department that the claim is vexatious and it aims at “exhorting” money from the Employer.

3.2.10 In conclusion he held that the claim is vexatious and frivolous and that the Applicants have failed to prove their claim with any convincing evidence.

3.2.11 He argued that the Departmental Policy on Overtime is consistent with PSCBC Resolution 3 of 1999 and Resolution 1 of 2007 respectively, and have therefore not impeached Resolution 1 of 2007.

4. **ANALYSIS OF EVIDENCE AND ARGUMENT:**

4.1 I have been requested to interpret PSCBC Resolution 3 of 1999 Chapter VII Clause 6 and PSCBC Resolution 1 of 2007 Clause 9. I have also been requested to interpret Clause 7.1 (a) & (b) of the last mentioned Resolution.

4.2 For ease of reference I will quote the relevant Sections here below:

“PSCBC Resolution 3 of 1999 Chapter VII Clause 6

Normal overtime

6.1 *The employer shall provide compensation for normal overtime when an executing authority*

(a) *has required an employee, in writing, to perform official duties for more hours than the employee's normal working hours during a week, but*

(b) *has not required Sunday work as defined in paragraph 5, or night overtime as defined in paragraph 7.”*

And

“PSCBC Resolution 01 of 2007 Clause 9.

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 granting time-off. This provision excludes employees on commuted overtime.”

4.3 Resolution 3 of 1999 clearly states that compensation for normal overtime will be paid when an executing authority has required an employee in writing to perform official duties.

- 4.4 It is the Respondent's case that no authorisation was given in writing to any of the Applicants to work overtime. The existence of the authorisation is therefore in dispute.
- 4.5 No documentation was submitted by the Applicants to prove that the Executing Authority required the Applicants, in writing, to perform official duties.
- 4.6 Further to this, Time Registers were submitted by the Applicants. These registers were signed by the Applicants and that not all the registers were authorised by the Supervisors. I therefore accept that the Supervisor did not confirm or approve all the time worked.
- 4.7 The Applicants have failed to show that the overtime was approved by the Executing Authority, prior to the overtime having been worked. They have further failed to prove that they worked all the overtime as some of the registers were only completed by the Applicants and not monitored by their Supervisor. The overtime sheets were also not certified correct and payment was not approved.
- 4.8 The next aspect which the Applicant have required me to interpret is Clause 7.1 (a) & (b) of Resolution 3 of 1999. For ease of reference I will quote the Section hereunder:

"7 Night overtime

7.1 The employer shall provide compensation for overtime when

(a) an executing authority has required an employee, in writing, to perform paid overtime between 20:00 hours and 6:00 hours, and

(b) the employee does not normally work at night."

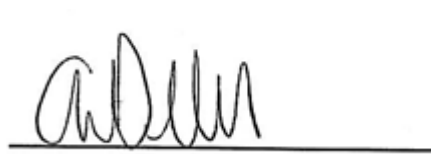
- 4.9 Once again the Section requires that authorisation must be given in writing. No such written authorisation has been furnished by the Applicants or their representative.

- 4.10 The Applicant has failed to show that the overtime was approved in writing and in the absence of same, there is no obligation on the Respondent to pay such overtime.
- 4.11 It must follow that the Respondent, Department of Education, did interpret Resolution 3 of 1999 and Resolution 1 of 2007 correctly.
- 4.12 I wish to point out that as Commissioner I am not required or permitted to decide on the fairness of a Collective Agreement. I am only required and entitled to interpret the contents of the Collective Agreement. See ***PSA obo Strauss & Others vs Minister of Public Works NO and Others (2013) 7 BLLR 710 (LC)***.

5. AWARD:

- 5.1 The Applicants have failed to show that the Executing Authority instructed or authorized them, in writing, to work overtime and / or night work. I therefore find that the Respondent has interpreted Resolution 1 of 2007 and Resolution 3 of 1999 correctly.
- 5.2 No order as to costs is made.

SIGNED AT BLOEMFONTEIN ON THIS 7th DAY OF OCTOBER 2013

A handwritten signature in black ink, appearing to read 'C L Dickens', is written over a horizontal line.

C L DICKENS
PSCBC Senior Arbitrator