



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

CASE NO: PSCB 583-12/13

POPCRU obo Wiehan

APPLICANT

and

DEPARTMENT OF POLICE – NATIONAL

RESPONDENT

ARBITRATION AWARD

DATE OF ARBITRATION	:	22 July 2013
CLOSING ARGUMENTS	:	6 August 2013
DATE OF AWARD	:	19 August 2013
ARBITRATOR	:	I de Vlieger-Seynhaeve

1. DETAILS OF HEARING AND REPRESENTATION

- 1.1 Mr. Bester, a union official, represented the Applicant. The Respondent, Department of Police, was represented by Mr Van Rensburg. The parties agreed to submit their bundle and heads of argument on paper.

2. ISSUE TO BE DECIDED

- 2.1 The issue to be determined is whether the respondent correctly interpreted and applied the provisions of Resolution 7 of 2000.

3. SURVEY OF EVIDENCE

- 3.1 The parties' representatives made the following legal submissions. The facts are as follows:

3.2.1 **Mr Bester** submitted that the applicant, applied for TIL for the period 2010-09-28 to 2011-01-31. She suffered from several illnesses that caused her to be off duty for extended periods of time. On 2012-08-01 she was informed that her TIL was not approved. The respondent was in breach with the Collective Agreement in that it did not make its decision within 30 days. Deductions were made and this period was qualified as unpaid leave. The applicant does not agree with this either as unpaid leave is only used for court appearances etc.

3.2.2 Mr van Rensburg submitted that the Council has no jurisdiction to hear the matter as the case is about the fairness of the decision not to approve TIL. In the event that the Council decides that it has jurisdiction to hear the matter, the applicant's TIL application was not approved because the number of days requested was excessive for the alleged medical condition. Furthermore, the applicant claimed to have been hospitalised for 2 weeks but no proof was submitted in that regard.

3.2.3 The applicant wishes that the deductions will be stopped and reimbursed.

4. ANALYSIS OF EVIDENCE AND ARGUMENT

4.1 I have considered all the evidence and argument, but because the LRA requires brief reasons (s 138(7)), I have only referred to the evidence and argument necessary to substantiate my findings and decision.

4.2 I first would like to deal with the jurisdiction to hear the matter. I hereby refer to the judgements in *Minister of Safety and Security v Safety and Security Sectoral Bargaining Council and Others (2010) 31 ILJ 1813 (LAC)* and *PSA obo De Bruyn v Minister of Safety and Security and Another (2012) 33 ILJ 1822 (LAC)* where it was decided that the BC has jurisdiction to entertain disputes about the application and interpretation of Resolution 7 of 2000 in terms of section 24 of the LRA. "Interpretation" refers to the situation where the parties differ over the meaning of a provision of the collective agreement. "Application" includes both the question whether an agreement applies to the facts in question and the manner in which the agreement is applied, which includes non-compliance.

4.3 Paragraph 7.4 and 7.5 of the PSCBC Resolution 7 of 2000 deal with normal sick leave and with incapacity management in excess of the 36 days normal sick leave. An employee, who has exhausted its 36 days sick leave, MAY be granted additional sick leave (TIL) on full pay where the provisions of paragraphs 7.5.1 (a) (i) & (ii) of Resolution 7 of 2000 are complied with and the employer, after investigations, including investigations in accordance with item 10(1) of Schedule 8 of the LRA, so decides. Resolution 7 of 2000 is amplified by the Policy and Procedure on Incapacity Leave and Ill-Health retirement (PILIR), determined in terms of section 3 (2) of the Public Service Act 1994, as

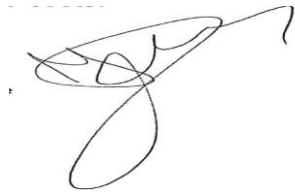
amended by the Minister for Public Service and Administration. The employer has a discretion to grant the TIL, although it needs to exercise its discretion properly (must take into account relevant information, follow laid down procedures and act within the framework of the Collective Agreement). Not every failure on the part of the employer to comply with the Collective Agreement will necessarily result in a claim of right on the part of the employee. The employee still needs to show that he qualified for the relief sought, that the employer failed to comply with the agreement and in doing so prejudiced him (see also PSCB601-11/12).

- 4.4 Besides pointing out that the Respondent did not adhere to the 30 days period, there were no further arguments submitted that the applicant was prejudiced because of the delay. The applicant did not submit additional medical information after her TIL application was disapproved. Furthermore, in terms of the unpaid leave, paragraph 7.10 states that if an employee has utilised all his or her paid vacation leave, the *employer* may grant him or her unpaid vacation leave. It further states that an *employee* shall use unpaid leave for absence from work due to arrest, imprisonment or appearance in court; or due to a criminal sentence. There is nothing unfair about qualifying the days that were disapproved into unpaid leave. The fact that the TIL was decided after the expiry of 30 working days, although not condoned, does not on its own, in the absence of proof to the contrary, entitle the employee to TIL for the period in question. I do not find the respondent to be in breach with resolution 7 of 2000.

5. AWARD

- 5.1 The respondent is not in breach with paragraph 7.5 of Resolution 7 of 2000;
- 5.2 The application is hereby dismissed;

5.3 There is no order as to costs.

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke extending to the right.

SIGNED AT Cape Town ON THIS 19th DAY OF AUGUST 2013

I De Vlieger-Seynhaeve

PSCBC Arbitrator