



ARBITRATION AWARD

Panellist/s: J.J.ERASMUS
Case No.: PSCB 711 – 12/13
Date of Award: 19 August 2013

In the ARBITRATION between:

PSA OBO TSHIPELO

(Union / Applicant)

and

DEPARTMENT OF ECONOMIC DEVELOPMENT & TOURISM – NORTH WEST

(Respondent)

Union/Applicant's representative: Mr. A. Moribe - PSA

Union/Applicant's address:

Telephone:

Telefax:

Respondent's representative: Mr. J.R. Modise

Respondent's address:

Telephone:

Telefax:

PREAMBLE

- [1] This is an arbitration award issued in terms of Section 138 of the Labour Relations Act 66 of 1995 (as amended) and herein after referred to as the LRA.
- [2] This award is not intended to be a verbatim transcript of the evidence led at the arbitration hearing but rather a determination with brief reasons for such determination.
- [3] Evidence relevant to the determination or to support any of the elements of fairness as required may be referred to. This however does not mean that I failed to consider other evidence or ignored such evidence in coming to my decision.

DETAILS OF HEARING AND REPRESENTATION

- [4] The arbitration was conducted on the 16th of July 2013 at the Union's offices in Mmabatho.
- [5] The Applicant was present at the arbitration and was represented by Mr. Moribe of the PSA.
- [6] The Respondent was in turn represented by Mr. Modise an employee of the relevant department.
- [7] The proceedings were conducted in English, a digital recording was made and I also kept handwritten notes. Parties however agreed to submit detailed written arguments on the interpretation or application of the relevant collective agreement.

ISSUE TO BE DECIDED

- [8] I am required to decide whether the Applicant lodged a formal grievance and if so whether the Respondent responded thereto as provided for in Resolution 14 of 2002.

BACKGROUND TO THE ISSUE

- [9] The Applicant union referred a dispute about the interpretation and application of a collective agreement (Resolution 14 of 2002) pertaining to the alleged non-compliance of the Department (within the prescribed 30 day period) on a grievance lodged by their member, Mr. Tshipelo.
- [10] The dispute was referred to conciliation but remained unresolved. A certificate of non resolution was therefore issued. The matter was then subsequently referred to arbitration.

SURVEY OF EVIDENCE AND ARGUMENT

[11] The parties agreed to present their respective cases by submitting written arguments.

Applicant's case

[12] The Applicant inter alia made the following submissions:

- [12.1] That he had lodged a grievance around April 2012 about the reduction of his PDMS bonus for the 2009/2010 period. The Respondent then failed to address the grievance within the prescribed 30 day period in terms of the provisions of PSCBC Resolution 14 of 2002. Following this failure the Applicant declared a dispute and referred the matter to the PSCBC.
- [12.2] That their dispute was properly and timeously referred to the PSCBC and that the Secretary of the PSCBC would not have scheduled the matter for both conciliation and arbitration if proper proof of service was not submitted.
- [12.3] The Applicant lodged an appeal around February 2012 in line with the policy of the Respondent which regulate PMDS. In terms of this policy such appeal had to be considered within 14 days. The Respondent dismally failed to comply with this policy which is an embarrassment to say the least. Until today the Applicant has failed to finalise the appeal which was supposed to be done within 14 days. There is therefore nothing to suggest that the dispute was prematurely referred to the PSCBC.
- [12.4] The Respondent did not attend to the grievance within the prescribed 30 days and also did not even mutually agree to ask for extension of such period. They never intended to resolve the Applicant's grievance as they inter alia never attended the conciliation and also did not fruitfully use the pre –arbitration meeting to resolve the issue. The Respondent also tried to mislead the Commissioner during the arbitration claiming that they had not been served with the referral. The Respondent should therefore be taught a strong lesson that it is not a favour to attend to a grievance but a legal obligation. The Respondent had no reason to allow this dispute to have gone so far and continued to make the Applicant suffer the prejudice. They acted frivolous and vexatious and should therefore be held responsible for all costs incurred by the Applicant.
- [12.5] In addition to the cost, the Respondent's Head of Department (HOD) should also be ordered to charge the Director Human Resources as well as the Deputy Labour Relations with serious misconduct in terms of Section 16A of the Public Service Act, 1994.

Respondent's case

[13] The Respondent party in turn inter alia submitted that:

- [13.1] The Applicant had alleged that he had lodged a grievance around April 2012 but failed to furnish proof of this except for a letter addressed to Mr. Modise (Annexure B). The letter does not even indicate who received such letter. It is therefore contended that no such grievance was lodged.
- [13.2] The Appeal process was almost finalized and the Respondent therefore at the arbitration proceedings pleaded with the Applicant to allow them to finalize this matter.
- [13.3] The Respondent had at no point neglected its duties of resolving the Applicant's complaints. They were adamant to resolve this matter harmoniously and even engaged the Applicant party during the arbitration proceedings on the 16th of July 2013. The Applicant was however not prepared and continuously asked for costs.
- [13.4] The Applicant's failure to produce a copy of his grievance is indicative of the fact that he did not exhaust all internal remedies. Therefore his referral is ill timed.
- [13.5] The Applicant's referral is misleading, frivolous and vexatious and if cost must indeed be awarded, the party to bear these costs is the Applicant.

ANALYSIS OF EVIDENCE AND ARGUMENT

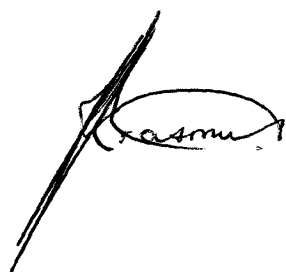
- [14] In this matter, the Applicant party had referred a dispute pertaining to the interpretation and/or application of a collective agreement namely Resolution 14 of 2002. The clause that the Applicant party is relying on is Clause F8 of the said agreement which stipulate as follows:
8. The department (including the executing authority) has 30 days to deal with the grievance. The period may be extended by mutual agreement in writing.
- [15] The Respondent (except for the letter addressed to Mr. Modise - Annexure B) however denied ever receiving a formal grievance from the Applicant party.
- [16] In order for me to decide whether the Respondent did/did not comply with the provisions of clause F8 of the said resolution, I must first determine whether a proper grievance was indeed lodged by the Applicant.
- [17] Normally (in my opinion) it would suffice to either write a grievance letter or alternatively to complete a grievance form. The letter (Annexure B) explains what the Applicant is unhappy about and what outcome he requires. However in Clause F2 of the same resolution it is stated that:

The prescribed form at Annexure A must be used when a grievance is lodged.

- [18] No such form was attached to the Applicant's papers (not even after the Respondent disputed the existence of such a grievance form). I therefore have to accept that the Applicant did not complete such a form and only wrote a letter regarding his unhappiness. As such I have to find that the Applicant himself did not comply with the stipulations of Resolution 14 of 2002 (specifically Clause F2) and that there was therefore no obligation on the Respondent to respond to the said grievance within a 30 day period.
- [19] This matter could have been resolved much earlier if it was not for the Applicant party insistence to proceed with arbitration and for cost to be awarded against the Respondent party. As such the Applicant lost sight of the key requirements to be successful in his dispute about the interpretation or application of Resolution 14 of 2002 namely to first prove that the Applicant did indeed lodge a proper grievance that was not attended to. Although I'm therefore tempted to award cost against the Applicant party, I have (after consideration of all submissions and circumstances of this case) decided that each party should rather pay their own cost.

AWARD

- [20] The Applicant failed to comply with the stipulations of Resolution 14 of 2002 (in that he did not submit his grievance in the prescribed manner).
- [21] The Respondent (The Department of Economic Development & Tourism) therefore had no legal obligation (in terms of the relevant resolution) to respond to the grievance letter written by the Applicant and as such did not fail to comply with Resolution 14 of 2002.
- [22] No order as to cost is made.

A handwritten signature in black ink, appearing to read 'J.J. Erasmus', is written over a horizontal line. The signature is stylized with a large, sweeping initial 'J'.

Panellist/s: J.J. ERASMUS
Sector: ECONOMIC DEVELOPMENT & TOURISM