



AWARD

YOUR REFERENCE NUMBER FOR THIS CASE:

Please quote this reference number when communicating. It will assist us in providing information more quickly and efficiently.

PSCB635-11/12

FOR ATT: T Morifi	FOR ATT: A Mphahlele / MC Tsiri
Referring party details NEHAWU obo Mlokoti, M and 1 other PO Box 12768 Katlhong 1432 Tel: 011 385 8684 / 081 339 4103 Fax: 086 516 5708 / 6 / 011 834 4856	Responding party details Statistics South Africa Private Bag X44 Pretoria 0001 Tel: 012 310 8945 Fax: 012 321 6081 / 336 0226 / 086 622 6180

9 February 2017

Dear Sir/Madam,

Matter Between: **NEHAWU obo Mlokoti, M and 1 other**
and: **Statistics South Africa**
Issue: **24(2), [24(5)] - Collective agreement - interpretation or application (Res 1 of 2003)**

Please find attached award for this matter.

Yours sincerely,

Tracey Mokoena
Case Management Officer
Case Number: PSCB635-11/12

AWARD

Panellist: E. Tlhotlhemaje
Case No.: PSCB635-11/12
Date of Award: 14 December 2012

In the ARBITRATION between:

NEHAWU obo MLOKOTI & ANOTHER

(Union/Employees)

And

STATISTICS SOUTH AFRICA

(Employer)

Details of the hearing and representation:

[1] The arbitration proceedings were held at the premises of the Respondent in Benoni. The Union/Employees were represented by Mr. M Mokone. The Employer was represented by Mr. MC Tsiri. Given the nature of the dispute referred, the parties had agreed to file written submissions in regards to the merits of the dispute.

Background to the dispute and issues to be decided:

[2] This dispute was referred to the Council in terms of s24 of the Labour Relations Act. It pertains to the interpretation and/or application of the PSCBC Resolution 1 of 2003. The employees who are central to the dispute are Messrs Mondli Mlokoti and Thabang Mavuso, and are or were allegedly elected shop stewards. The Union's contention is that the Employer subjected the two employees to a disciplinary process without

having had regard to the provisions of the Resolution, and further without regard to the “provisions” of item 4 (2) of Schedule 8.

[3] The issue is whether there is cause to determine whether in disciplining the two employees, the Employer correctly interpreted and/or applied the provisions of the Resolution. This is assuming that there is a specific provision or clause in that Resolution which is the subject matter of determination.

The submissions and arguments:

[4] The submissions made on behalf of the Employees were that in July 2011, they were suspended, charged and subsequently subjected to a disciplinary enquiry without regard being had to item 4 (2) of Schedule 8. The Employer’s contention on the other hand, and correctly so, was that there was no collective agreement that it was required to abide by as the provisions allegedly breached pertained to those of the LRA.

[5] A bulk of other submissions made by the parties and the documentation referred to pertained to whether the two employees were shop stewards or not as there was a dispute in regard to that. Thus, no reference was made to any particular clause in Resolution 1 of 2003 that required interpretation or application by the Council.

Analysis of the submissions and arguments:

[6] It needs to be stated upfront that the issue whether the employer in disciplining a shop steward acted in accordance with the guidelines set out in item 4 (2) of Schedule 8 as contained in the Labour Relations Act cannot be a matter for determination under the provisions of s24 of the Labour Relations Act. Where this allegation is made against an employer, this is an issue that can be raised in relation to an alleged unfair dismissal of that employee, or even where an alleged unfair labour practice dispute is referred on behalf of that employee. Thus it is not within the jurisdiction of the PSCBC to determine such issues.

[7] It follows from the above that there is no issue referred by the Union/Employees that is a subject matter of interpretation and/or application of an agreement as contemplated in the provisions of s24 of the Labour Relations Act. The referral is clearly misdirected. Accordingly, the following award is made;

Award:

- i. The Council lacks jurisdiction to determine the dispute as referred by the Union/Employees.
- ii. There is no order as to costs

Dated and signed at Johannesburg on this the 14th day of December 2012

A handwritten signature in black ink, appearing to read 'E. Tlhotlhalemaje'. The script is cursive and somewhat stylized, with the first letter 'E' being particularly large and prominent.

E. Tlhotlhalemaje

Panellist: