



IN THE PUBLIC SERVICE CO-ORDINATING BARGAINING COUNCIL

CASE NO.: PSCB50-12/13

In the matter between

POPCRU P. SELOLO AND 14 OTHERS

Applicant

And

DEPARTMENT OF CORRECTIONAL SERVICES – NATIONAL

Respondent

ARBITRATION AWARD

DETAILS OF HEARING AND REPRESENTATION

1. The arbitration hearing was held on the 29 October 2012 at the offices of the Department of Correctional Services, at 1077 Hatfield Forum East, Arcadia Street, Hatfield, Pretoria.
2. The applicants were represented by POPCRU. The respondent, Department of Correctional Services was represented by Mr. Selolong. Only one of the applicants appeared and it was agreed that he would testify on behalf of all the applicants given that all the cases were similar.

ISSUE TO BE DETERMINED

3. Whether or not the applicants qualified for a special danger allowance as provided for by resolution 1 of 2007 of the Public Service Co-ordinating Bargaining Council (PSCBC).

4. Whether paragraph 2 of the above resolution is applicable to the applicants.

BACKGROUND TO THE ISSUE

5. The applicants are employed by the respondent in its Mounted Horse Unit. The said unit together with the Dog unit formed part of the Emergency Support Team falling under the Manager Facility and Security.
6. It was agreed that the applicants were part of the Reaction Unit by virtue of being employed in the Mounted Horse Unit.
7. It was further agreed that the issues did not require evidence but could be disposed of by argument. The applicant Mr. Selolo was however allowed to participate fully and present evidence.

SUMMARY OF EVIDENCE AND ARGUMENT

8. It was argued on behalf of the applicants that the respondent was interpreting resolution 1 of 2007 incorrectly. Annexure A of the said resolution under paragraph 2 (a) and (b) states that:

“The employer shall pay the special danger to an employee who works in the Department of Correctional Services and is –

- (a) Involved in duties that require direct contact with maximum security prisoners;
- (b) Is part of the Reaction Unit”.

9. The bulk of the applicants’ evidence refers to documents to prove that the applicants were part of the Mounted Horse and Dog Units and were therefore part of the Reaction Unit.
10. The applicants argued that their duties on a daily basis involved emergency reaction and they referred to several instances where they were involved with Emergency Reaction duties.
11. On behalf of the respondent it was argued that the letter which the applicants referred to in order to sustain their argument was not signed and it therefore could not be confirmed whether it was from the person it was purported to come from.

12. Further that the applicants were not reading resolution 1 of 2007 properly. In the performance of their duties, the applicants were not in contact with maximum security prisoners. The Standard Danger Allowance and the Special Danger Allowance are 2 (two) separate allowances. The Danger Allowance was already being paid to the applicants. The Special Danger Allowance however is only for those employees who work with prisoners on a daily basis.
13. The duties of the applicants were defined and reference was made to the duties of one of the applicants, Mr. Selolo on page 93 of Bundle "B" as exhibited.

ANALYSIS OF EVIDENCE AND ARGUMENT

14. John Grogan in his book Workplace law tenth edition page 362 states that:
"A dispute over the application of a collective agreement arises when the parties disagree over whether the agreement applies to a particular set of facts or circumstances".
15. In this case it is common cause that the applicants worked in the Emergency Support Team. It is further common cause that an agreement existed in terms of which employees working in the Emergency Support Team would receive a Danger Allowance and/or Special Danger Allowance.
16. The question to be determined is whether the Special Danger Allowance also applied to the applicants in terms of the agreement.
17. The collective agreement states that the persons who qualify for Special Danger Allowance should be: "involved in duties that require direct contact with maximum security prisoners and are part of the Reaction Unit". The interpretation of the above clause is that both the conditions should be satisfied. It is therefore not applicable to persons who only work in the Reaction Unit but who are not involved in duties that require direct contact with maximum security prisoners. The requirement is therefore that the contact must be direct and with maximum security prisoners.
18. The respondent has argued that the duties of the applicants are not such that they are in contact with the maximum security prisoners on a daily basis.
19. The clause does not only require them to be in contact with the above referred prisoners on a daily basis. Clause 3 of the same agreement in annexure 'A' states that:

“The Standard Danger Allowance/Special Danger Allowance shall be paid to employees referred to in paragraph 1 –

- (a) On a monthly basis if they experience a genuine risk to their lives each and every time they undertake their duties; or
- (b) On a daily basis if they experience a genuine risk to their lives at times during the performance of their duties”.

20. The respondent’s version was that the applicants already qualified for Standard Danger Allowance. The applicants’ argument was that even Special Danger Allowance should be paid to them because by virtue of their being part of the Reaction Unit they encounter genuine danger daily.

21. The contract and job description of the applicant Mr. Selolo was referred to and upon perusal of his duties I could not find anything that suggests that he is in direct contact with maximum security prisoners. It may well be that at times when required to ensure that prisoners do not escape, there could be such contact if he were to have to physically prevent them from escaping. During such time the applicant may qualify for an allowance on a daily basis scale. He or any of the applicants would have to prove such direct contact before such Special Danger Allowance could be paid.

22. The jobs of the applicants as they stand do not qualify them for a Special danger Allowance paid in terms of clause 3(a). They may, when it can be proved, qualify for payment in terms of clause 3(b). The assertion of the applicants that they qualify and that the said clause applies to them is therefore not correct.

AWARD

23. The application is hereby dismissed.

THUS DONE AND SIGNED ON THIS ____ DAY OF NOVEMBER 2012 IN PRETORIA.

ARBITRATOR: NOMSA MBILENI