



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

**COMMISSIONER: JB MTHEMBU
CASE NO: PSCB196-11/12
DATE OF AWARD: 17 JANUARY 2012**

In the matter between:

PSA obo D. VAN ZYL

APPLICANT

and

DEPARTMENT OF CORRECTIONAL SERVICES

RESPONDENT

ARBITRATION AWARD

DETAILS OF HEARING AND REPRESENTATION

1. The hearing was held on 2 December 2011. Mr. Greef of the PSA represented the Applicant and Mr. De Klerk stood in for the National Department.
2. By agreement, the parties were to file Heads of Argument on 15 December 2011 but the Respondent did not file its Heads of Argument.
3. The Council granted an extension for the issuing of the Award until 31 January 2012.

THE ISSUE TO BE DECIDED

4. Firstly, the interpretation and application of PSCB Resolution 7/2000 Clauses 7.5.2(b) thereof and secondly, that the Respondent failed to investigate and give feedback within 30 days of the Applicant's Application for temporary incapacity leave.

SURVEY OF THE ARGUMENT

APPLICANT'S ARGUMENT

5. It was submitted that the Applicant (D. van Zyl) applied for temporary incapacity leave on 9 September 2009 for the period 7 September 2009 to 13 September 2009. The leave was recommended by a registered Medical Practitioner.
6. The Respondent approved the Applicant's temporary incapacity leave and submitted same to the Health Risk Managers, SOMA.
7. However, the Health Risk Managers disapproved the leave and such disapproval was only communicated to the Applicant on the 13 January 2011. The temporary incapacity leave was then converted to leave without pay.
8. The Respondent therefore failed to comply with Resolution 7/2000, Clauses 7.5.1(b) and 7.5.2(b).
9. The Applicant now seeks relief that because of the non compliance with the above Resolution by the Respondent, the temporary incapacity leave in question revert to leave with full pay.

ANALYSIS OF THE ARGUMENT

10. Clause 7.5.1 – Temporary Disability Leave provides that:

- “(a) An employee whose normal sick leave credits in a cycle have been exhausted and who, according to the relevant practitioner, requires to be absent from work due to disability which is not permanent, may be granted sick leave on full pay, provided that:
- i) Her or his Supervisor is informed that the Employee is ill; and
 - ii) A relevant registered Medical and/or Dental Practitioner has duly certified such a condition in advance as temporary disability, except where conditions do not allow.
- (b) The Employer shall, during 30 working days, investigate the extent of inability to perform normal official duties, the degree of inability and the cause thereof. Investigations shall be in accordance with item 10(1) of Schedule 8 in the LRA, 1995.
- (c) The Employer shall specify the level of approval in respect of applications for disability leave.
11. It is clear from the Applicant’s unchallenged submission that the Respondent did not comply with the above Clause in particular Clause 7.5.1(b), if it did, then it did so more than a year (13 January 2011) after the Applicant applied for temporary incapacity leave and not within 30 days.
12. Needless to mention that the Resolution being a collective agreement, is peremptory and binding on the Respondent and it cannot willy nilly deviate from it. Bargaining Council Agreements have the status of subordinate legislation – see *Platinum Mile Investments (Pty) Ltd t/a Transition Transport v SATAWU & Another* [2010] 10 BLLR 1038 (LAC).
13. The second leg of the Applicant’s submission cannot find palace herein as Clause 7.5.2 deals with permanent disability leave. It is not the Applicant’s case that he had applied for permanent disability leave nor that his degree of disability had been certified as permanent.

AWARD

14. The Respondent failed to comply with Clause 7.5.1(b) of Res 7/2000.
15. The Applicant's temporary incapacity leave for the period 7 – 13 September 2009 is deemed to be leave with full pay.
16. The Respondent must remedy Clause 15 above within 30 days of receipt of this Award.
17. There is no order for costs.

JEROME MTHEMBU
PSCBC PANELIST
PUBLIC SECTOR