

ARBITRATION AWARD

Panellist: John Cheere Robertson
Case No.: PSCB675-11/12
Date of Award: 18 September 2012

In the ARBITRATION between:

SAPU obo VL Transell
(Union / Applicant)

and

South African Police Service
(Respondent)

Union/Applicant's representative: Mr L Naude
Union/Applicant's address: SAPU
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Respondent's representative: Brigadier P De Kock / Colonel JLJ Van Rensburg
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0001
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DETAILS OF HEARING AND REPRESENTATION

- 1 This matter was scheduled for arbitration on 23 August 2012 at the SAPU offices in Port Elizabeth. Mr L Naude of SAPU represented VL Transell (employee). Col. JLJ Van Rensburg represented the South African Police Service (SAPS), the employer. The parties agreed to submit written closing arguments by 7 September 2012 and which were received on 9 September 2012.

ISSUE TO BE DECIDED

- 2 The issue to be determined is whether the employer complied with Resolution 7/2000 in refusing the employee's applications for temporary incapacity leave (TIL) as set out below.

BACKGROUND TO THE ISSUE

- 3 The parties agreed on the following common cause facts:
- 3.1 The employee, a detective warrant officer, is stationed at the Detective Branch Uitenhage
- 3.2 The employee's applications for TIL, the periods he was off duty (sick) and the decisions of the employer in respect of such TIL applications are set out below:

Item	Period	Date of application for TIL	Date of and decision on TIL
1	11 06 2003 – 26 09 2003	04 09 2004	25 June 2008. Not approved (A29)
2	03 03 2004 – 02 09 2004	26 08 2004	14 December 2005. Partially approved (A20)
3	19 08 2005 – 28 09 2005	07 09 2005	01 07 2010 Not approved (A30)

- 3.3 That the employee claims that the debts for periods 1 & 2 have prescribed
- 3.4 The employee applied for TIL for the period in item 1 on 04 September 2004, however the Office of the Station Commissioner only submitted it to Head Office for processing on 07 September 2007 (A24)
- 3.5 The employee applied for the period in item 2 to be dealt with as an IOD. The application for IOD was not approved and the employee then applied for TIL for this period on 26 08 2004
- 3.6 The employee submitted psychiatric reports from his treating psychiatrist for all three periods in his respective TIL applications.
- 3.7 The medical certificates referred to at A16 paragraph 3 were submitted by the employee in his TIL application and received by the National Office.
- 3.8 The employer advised the employee in writing that it would deduct monies for the periods of TIL not granted. To date the employer has not covered the periods of TIL by way of deduction of monies. The employee was advised of the decision during January 2012.
- 3.9 Employees do not have sight of the Health Risk Manager's recommendation in respect of their applications for TIL.

SURVEY OF EVIDENCE AND ARGUMENT

The employee's submissions

- 4 The employee argued to the effect that at the time the employer informed the employee (January 2012) that it would deduct monies for the periods of TIL not granted (i.e. item 1 and 2 above which were not granted on 25 June 2008 (A29) and 14 December 2005 (A20 partially approved)) that any claim the employer had to recover such monies had prescribed in terms of the Prescription Act, 68 of 1969. In addition the employer failed to properly consider the employee's applications (including the 3rd period) in that although the applicant attached the relevant medical certificates to his respective applications they were not forwarded to HRM for their evaluation. Accordingly HRM could not have reached an informed decision.
- 5 As and for relief the employee sought that it be found that the employee's "debt" for periods 1 and 2 prescribed on 24 June 2011 and 13 December respectively, that his leave record be credited accordingly and no monies be deducted in this regard from him, alternatively that the employer had not complied with R 7/2000 and the employer's refusal of the employee's application for TIL (inclusive of the 3rd period) be set aside and his leave record be amended accordingly.

The employer's submissions

- 6 The employer argued that in terms Resolution 7/2000 it had a discretion whether or not to grant TIL and that the failure to respond within 30 days as provided for therein, did not of its own entitle the employee to TIL. The employee was required (at the time in question) to show that he was entitled to the relief he claimed. The employee had not suffered any prejudice as the employer had not deducted any monies in respect of the periods for which TIL was not granted. In the circumstances the employee was put to the proof of his allegations i.e. to substantiate his claim for relief. The employer had complied with the collective agreement in so far as considering the employee's application in that it had accepted the recommendation of the Health Risk Manager (HRM), a medical assessor appointed by the employer to examine and make recommendations to it on the TIL applications.

ANALYSIS OF EVIDENCE AND ARGUMENT

- 7 I am satisfied that the recovery of salary paid, in respect of periods of absence, where TIL is later not granted, is a debt for purposes of the Prescription Act, the date when the decision is made being the date from when prescription will run. In the instant case the employer refused the employee's applications for TIL for the periods 11 June 2003 to 26 June 2003 (A29) and 30 June 2004 to 2 September 2004 (A20) on 25 June 2008 and 14 December 2005 respectively. However the employer only sought to recover these "debts" during January 2012 (A4), by which time the debts in question had prescribed in terms of terms of section 11(d) of the Prescription Act.
- 8 In so far as the employee's claim for the 3rd period is prefaced on the fact that no certificates, which had been handed up, were forwarded to HRM and so no proper evaluation could have been performed, this is not substantiated by the documents. A16, which refers to all three periods, amongst other things, states that a

medical certificate for period 3 was not attached; A16 is dated 2 November 2005. A21 dated 22 December 2005 and stamped 3 January 2006, makes reference, (at A21), to the fact that the application for TIL for the 3rd period could not be recommended due to insufficient information and that if the applicant could submit a detailed progress report from the treating specialist the request for TIL for this period could be reconsidered. A30 dated 1 July 2010 is the final decision by the National Commissioner not approving TIL for the 3rd period. Under comments (A30) it is noted, by the National Commissioner, that there was insufficient medical information and that the member can submit a detailed progress report from the treating specialist. A31 dated 14 July 2010 is the “re-presentation” by the employee in respect of his application for TIL for the 3rd period. At paragraph 4 thereof he states that a progress report could not be obtained from his psychiatrist as his IOD had not been approved and he was not in a position to cover the psychiatrist’s fees. In the circumstances it is evident that there never was a progress report from the psychiatrist for the period in question and that the employee, due to his personal circumstances, was unable to supply this. In the circumstances the employee has not shown that he qualified for consideration of TIL for the 3rd period in that he was unable to provide the relevant medical information¹.

9 In the circumstance I make the following award

AWARD

- 10 The employer, the South African Police Service’s claims to deduct monies from the employee, (VS Transell Persal No.0461384/8) for temporary incapacity leave not granted for the periods 11 June 2003 to 26 September 2003 and 3 March 2004 to 2 September 2004, constitute a debt and prescribed on 24 June 2011 and 13 December 2008 respectively.
- 10.2 The employee, VS Transell Persal No.0461384/8, is not entitled to temporary incapacity leave for the period 19 August 2005 to 28 September 2005 and the claim in this regard is dismissed
- 11 The employer, the South African Police Service, must endorse the employee’s personnel file accordingly and cover the period 19 August 2005 to 28 September 2005 by the application of the employee’s relevant cycle of annual leave credits, if any, failing which unpaid leave which may necessarily entail the deduction of monies of equivalent value from the employee’s salary.



John Cheere Robertson
PSCBC Panellist
Sector:Public: Safety & Security

¹ See R Schoeman and The Minister of Safety and Security and others. High Court (SECLD) Case No. 2244/06 dated 29 May 2006 at p7 and 8.

