



In Limine Ruling

Panelist: Stephen Bhana
Case No.: **PSCB26—10/11**
Date of Ruling: 1 February 2011

In the ARBITRATION between:

Hospersa obo De Waal and 1 other

(Union / Applicant)

and

Department of Community Safety- Western Cape

(Respondent)

Union/Applicant's representative: M Rademeyer _____

Respondent's representative: C Arendse _____

PARTICULARS OF PROCEEDINGS AND REPRESENTATION

The conciliation was scheduled for 27 July 2010 at the area commissioner (Correctional Services) office, Edgemoor, Cape Town. The parties were represented as indicated above. The respondent raised a point in limine about the Council's jurisdiction at the start of the conciliation. It was agreed that parties would present oral argument and submit written representations on this issue. The last submission was received on or about 8 August 2010.

THE ISSUE IN DISPUTE

The issue to be decided in this case is whether the Council has jurisdiction to arbitrate the dispute given the long delay between the event and the referral of the dispute.

SUMMARY OF EVIDENCE AND ARGUMENT

It was common cause that the union had previously referred the matter to the GPSSBC as an unfair labour practice. The applicants had to apply for condonation for their arbitration, which was subsequently declined.

The facts of the case, in summary, are as follows. The applicants were appointed as Provincial Inspector Grade 1 (Salary level 2). They became aware of the rank and leg promotion system, which was abolished in 2003. They had not been promoted in terms of this system and referred a case of unfair labour practice (promotion) to the GPSSBC in 2008. The final outcome of this case was the declining of their condonation application, for a late referral to arbitration. The applicants then referred the matter to the PSCBC as an interpretation and application of Resolution 7 of 2000 in 2010.

ANALYSIS OF THE EVIDENCE AND ARGUMENT

It is common cause that the applicants' case centred on their non-promotion. It is further common cause that they had not taken the condonation ruling on review in the Labour Court. The applicants, assisted by an experienced union, elected to refer the matter as an unfair labour practice in 2008, at which time Resolution 7 of 2000 on which they now rely, was already in place and operative. They had not explained why the matter had not been referred in terms of the said resolution from the start. It would appear that the applicants elected to refer their case as a promotion dispute, which in my view was the correct way to do it. I'm further of the opinion that the matter at hand is not a dispute about the application and interpretation of the said resolution.

The PSCBC is not able to hear any individual disputes like dismissals and unfair labour practice disputes. The applicants had chosen the correct forum for its unfair labour practice dispute and that

forum had dealt with the matter. It is now res judicata and the PSCBC thus has no jurisdiction to hear the matter. If the applicants wanted to pursue the matter, they should have taken the condonation ruling on review.

RULING:

The issue at hand is an alleged failure to promote the applicants. The PSCBC has no jurisdiction to hear the matter.

A handwritten signature in black ink, appearing to read 'S Bhana', written in a cursive style.

Stephen Bhana
ARBITRATOR