



Case No.: **PSCB79-11/12**
Date of Award: 16 October 2011
Panelist: Adv W F Maritz

In the matter between:

POPCRU (B CARELSE)

(Union / Applicant)

and

DEPARTMENT OF POLICE (NATIONAL)

(Respondent)

Representative of the applicant: Mr. Raolane

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Representative of the respondent Col van Rensburg

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PARTICULARS OF PROCEEDINGS

1. The arbitration was heard in Cape Town on 19 September 2011.
2. The parties tendered some documents and informed me that the documentation submitted constituted a common bundle.

3. The parties arranged to submit written argument the last of which, due to a misunderstanding only reached me on 11 October 2011. The award has consequently been delayed.
4. No *viva voce* evidence was led.

THE ISSUE IN DISPUTE

5. Resolution 5 of 2000 – whether the employer was correct in processing the application of the applicant for sick leave for two days as annual leave.

THE BACKGROUND TO THE DISPUTE

6. It is common cause that the applicant applied for sick leave for the period 16 and 17 November 2010 but that the respondent changed it to annual leave.
7. The applicant challenged the authority for the application of this procedure claiming that at the very least Carelse should have been given an opportunity to make representations before any such change was made.
8. The respondent submitted that the respondent acted correctly in terms of standing instructions in changing the leave from sick leave to annual leave.

THE SUBMISSIONS OF THE APPLICANT

9. In his written submissions Mr. Raolane noted that Carelse had applied for two days' sick leave and, despite the fact that a medical certificate was only required for three or more consecutive days he duly provided a certificate from a medical practitioner.
10. That certificate should have been accepted.
11. Carelse was not aware of any further requirement nor was he given an opportunity to make representations before the employer changed the leave.
12. In the circumstances it was the prayer of the applicant that it should stand as sick leave, as his sick leave had not been exhausted at the time.
13. Mr. Raolane relied on *PSA obo Muir /Department of Correctional Services* [2007] 9 BALR 823 (PSCBC)

THE SUBMISSIONS OF THE RESPONDENT

14. Col van Rensburg submitted that Resolution 5 of 2000 had to be read in conjunction with the National Instruction on sick leave.
15. In terms of National Instruction 2/2004 there is an eight week Rule which was applied.
16. The medical certificate was not acceptable to the respondent.

ANALYSIS

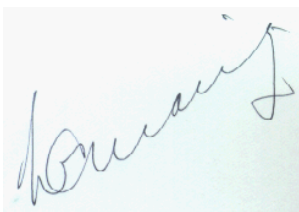
17. I have accepted that the facts, that appear from the documentation provided by the parties being either standing instructions of the respondent or formal correspondence, are common cause.
18. According to (3) Sick leave is dealt with in National Instruction 2 of 2004-(3)(d) *"If an employee has been absent from work for more than two consecutive days or on more than two occasions during an eight week period and, on request by the commander does not produce a medical certificate, the absence will be regarded as unauthorised absence without salary."*
19. According to the records regarding the absence of the applicant he had been absent for two days from 30 September 2010 to 1 October 2010 (2 days) and had then been absent again on 16 and 17 November 2010.
20. The commander was therefore in terms of the instruction entitled to demand a certificate.
21. The medical certificate which the applicant produced was dated 18 November 2010 and it was clearly stated that the medical practitioner had only seen him on 18 November 2010. It is probable that the medical practitioner had to rely on what the applicant Carelse told him rather than on an examination during the period that the applicant claimed he was ill. In my opinion the decision not to accept that certificate was therefore justified.
22. There was a circular dated 16 July 2008 in which the eight week rule was explained and according to para 3.1 read with 3.2 and considering that the certificate tendered was clearly not acceptable it seems to me that his superior had a choice between making the leave unpaid leave or converting the leave to annual leave. I am of the opinion that the decision to convert it to annual leave rather than unpaid leave was in the interests of the applicant.
23. As to the claim that the applicant did not know about the rule he was the POPCRU shop steward for the station and, according to an affidavit procured from a certain Adams, which was included in the papers the parties handed me, he had explained the eight week rule to her. His defence in that regard can, therefore, be safely rejected.
24. It is apparent from the above that the facts in the *Muir* case were to be distinguished from those in the present matter.
25. Although I have made findings on fact related to the instructions of the respondent the standing instructions are not a part of the Resolution that I was called on to interpret and, in the circumstances, the outcome was not, strictly speaking, a finding on the correctness of the application of the Resolution but rather one on the correctness of the application of the standing instructions which are not to the best of my knowledge a collective

agreement and I am therefore precluded to rule thereon in terms of section 24 of the Act.

26. In the circumstances I will record that the Council had no jurisdiction in terms of section 24 of the Act.

AWARD

1. It is accepted that the Resolution had to be interpreted in conjunction with standing instructions on sick leave.
2. The applicant was aware of those instructions and the decision made by his superior was consistent therewith.
3. Strictly speaking, the decision in terms of the instruction, which was not a part of the Resolution, cannot be regarded as an application of the Resolution and, although I have made a finding based on it, the action of the respondent was made in terms of the standing instructions and I have no jurisdiction in terms of section 24 of the Act to consider the correctness of that decision.
4. The application is dismissed for want of jurisdiction.

A handwritten signature in blue ink, appearing to read 'Adv W F Maritz', is written on a light blue background.

Adv W F Maritz
PSCBC Panelist