



**AT THE PUBLIC SERVICE COORDINATING BARGAINING COUNCIL**

In the matter between:

**PSA obo Hoyi**

**APPLICANT**

And

**Department of Basic Education - National**

**RESPONDENT**

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**ARBITRATION AWARD**

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CASE NUMBER: PSCB 35-10/11

DATE OF AWARD: 15 November 2010

**Details of the hearing and representation**

This hearing was scheduled for arbitration hearing on 25 October 2010 at the offices of the Department of Labour in Pretoria. The applicant, Mr. Hoyi, was represented by Mr. Julian Ntwampe, from PSA and the respondent was represented by Ms. Thandi Khoza, the Director: Training Labour Relations and Social Responsibility.

**Issue to be decided**

I am called upon to decide on the interpretation and application of the collective agreement, Resolution 14 of 2002

### **Background to the issue**

The applicant is employed by the respondent as the Director: Economic Analysis. He stated that he had lodged a grievance following an unfavourable performance review for the year 2008/09. This grievance was lodged on 30 April 2009. The applicant lodged a second grievance on 11 December 2009 with regards to the interference of his supervisor who was undermining him by directly giving instructions to his subordinates. He stated that the latter grievance was not dealt with in terms of Resolution 14 of 2002, in that it was not resolved within the 30 days period.

The respondent on the other hand indicated that with regards to the first grievance, the matter was in a process of being dealt with by the Department when the applicant indicated that it had been referred to the Public Service Commission. With regards to the second grievance, it was indicated that the Acting Deputy Director General addressed this matter in the correspondence to the applicant.

### **Survey of evidence and argument: Applicant and Respondent**

The parties had one witness each and the applicant was the first to testify. He confirmed that he is employed by the Department of Basic Education as the Director: Economic Analysis. On 11 December 2009, he lodged a grievance against his supervisor, Mr. S Padayachee.

In summary he stated in his grievance that Padayachee undermined and interfere with the leadership and management of his directorate. He alleged that Padayachee will unilaterally nominate his subordinates to act in different capacity without consulting with him. He further stated in his grievance that Padayachee has allowed and/or caused the performance audit in his directorate.

The outcome he sought was that Padayachee apologise in writing and that he will not interfere with his directorate. He further requested that a comprehensive report with corrective measures should be produced for the Minister of Basic Education to make a ruling on the matter. Finally, he proposed that the managers liable in employing external service providers to conduct a performance audit be held responsible for the expense and not the State.

The applicant stated that his problems with the supervisor started as early as 30 April 2009. This was after his performance assessment whereby he was not happy with his assessment score. He had lodged a grievance but it was not addressed timeously. He also stated that the latest grievance has not been addressed and this is in contravention of Resolution 14 of 2002. He stated that these issues have to be resolved amicably or they will have to part ways.

Ms. Thandi Khoza stated that the first grievance was addressed and the applicant was not happy with the outcome. He then referred the matter to the Public Service Commission (PSC). With regards the second grievance, she stated that indeed the applicant had lodged a grievance on 11 December 2009. The grievance was not attended to within the 30 day period as per the Resolution.

On 29 July 2010, a letter was written to the applicant authored by the Director General, MP PB Soobrayan. The letter addressed the second grievance and Soobrayan stated that his grievance relating to the relationship with Padayachee is being addressed by the Acting DDG. It was further stated that an audit firm had been appointed to do an audit on the functions and performance of the Economic Analysis Directorate and the report had already been presented to the Department. Some of the recommendations in the report were being implemented.

The letter from Soobrayan further stated that, Padayachee, as a manager has the prerogative to give instructions and communicate to any of his subordinates if he/she deems it necessary.

Khoza further stated that this is a personality issue and has absolutely nothing to do with the interpretation and application of Resolution 14 of 2002.

### **Analysis of evidence**

The applicant referred a dispute in terms of Resolution 14 of 2002. It is the claim of the applicant that the respondent did not attend to his grievance within the 30 day period as prescribed by the above mentioned Resolution. He made mention of the first grievance and indicated that it was not timeously dealt with.

The first grievance was lodged by the applicant on 30 April 2009 and it was with regards to his performance assessment. It is true that the matter was not dealt with within 30 days, it was however dealt with and the applicant subjected himself to the process. The outcome was not acceptable to him and he referred the matter to the PSC. The council therefore has no jurisdiction to make a judgment on this matter.

With regards to the latter and primary dispute, the applicant again stated that his grievance was not addressed within the prescribed time. Again it is true that the respondent did not respond to the grievance within 30 days. The correspondence in the bundle indicate that Soobrayan wrote a letter to the applicant indicating that it is the prerogative of his supervisor to give instruction to his subordinates, even if they report to the applicant.

It is not clear whether the applicant required a formal hearing, but to my mind, the letter dated 29 July 2010, addresses his grievance. The respondent is in essence stating to the applicant that they will not interfere with the management style of Padayachee and this was the gist of the complaint of the applicant. The response was indeed outside the 30 day period but there was a response.

It appears that the applicant is not happy with the outcome; this however does not mean that his grievance has not been addressed. It had been addressed late, which is something that the respondent must avoid at all cost, however, it was addressed. The fact that he is not happy with the outcome of his grievance does not in any way mean that the respondent did not attend to his grievance albeit late.

It is therefore my finding that the respondent did address the grievance lodged on 11 December 2009; it is therefore not a dispute relating to lack of attending to the grievance.

### **Award**

The respondent did address the grievance of the applicant, it was therefore not in breach of Resolution 14 of 2002.

This matter is therefore dismissed.

I make no order as to costs.

**Thembekile Nsibanyoni**

**PSCBC Commissioner**