



**PSCBC**  
PUBLIC SERVICE CO-ORDINATING BARGAINING COUNCIL

# IN LIMINE RULING

Case Number: PSCBC309-10/11  
Senior Commission / Panellist: Martinus van Aarde  
Date of Award: 18-Nov-2010

In the **MATTER** between

PSA obo M. T. Thagane

(Applicant)

and

Department of Water Affairs & Forestry

(Respondent)

**Applicant's representative:** Jaco Greeff

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**Respondent's representative:** K. J. Mokoena

Respondent's address: Department of Water Affairs & Forestry

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Telefax: 086 515 3442

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## 1. Details of hearing / representation

The case was set down for a conciliation hearing on 18 November 2010 (14h30) at Bloemfontein, Bophelo House (Department of Health). Mr. Jaco Greeff: Official PSA represented the Applicant (Thagane). Mr. K. J. Mokoena: Assistant Director: ER represented the Respondent (DWAF).

## 2. Issue(s) to be decided

- 2.1 The main issue in dispute relates to an application in terms of the **Labour Relations Act 66/1995, section 24** re the interpretation/application of a collective agreement (Resolution 3/1999): upgrading of the Applicant's post following a job evaluation exercise.
- 2.2 The Respondent however raised a point *in limine* challenging the jurisdiction of the Council to entertain the dispute on the basis that application was not properly filed/filed late in terms of **section 191(b)(ii)/LRA '95**.

## 3. The merits

- 3.1 From the evidence before me it is clear that the Applicant lodged a grievance on 25/02/2009 on the basis set out above (par.2.1). The parties however failed to solve the dispute internally. Subsequently, the Applicant lodged a formal dispute (LRA 7.11) on 10/09/2010 on the same basis.
- 3.2 As pointed out, the Respondent then challenged the Council's jurisdiction on basis set out in par.2.2 *supra*).
- 3.3 Although I was prepared to hear verbal argument in this regard, Mr. Greeff indicated that he did not have the case filed/full facts before him to make a proper presentation.
- 3.4 The Respondent's challenge refers to **section 191(b)(ii)** – thus to the time frames linked to an alleged unfair dismissal- or unfair labour practice dispute. The dispute before me was referred in terms of **section 24**/interpretation or application of a collective agreement. The

LRA is silent on any time frames.

3.5 In circumstances alike, common law requires that the application must be filed within “reasonable time”. I believe same principles apply as to **section 24**-applications. To hold otherwise could lead to absurd situations to finalise labour disputes. One of the crucial aims of the LRA is to deal with labour disputes in a speedily manner, and, to adopt an open-end approach will certainly defeat this very goal. The application before me was filed ± 170 days after ‘deadlock’ was reached (grievance turned down). As pointed out, Mr. Greeff was not in a position to address me on the merits thereof.

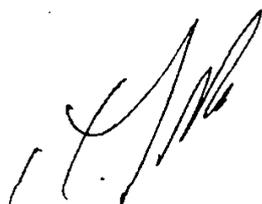
#### 4. Ruling

In case PSCB 309-10/11 the following ruling is made—

4.1 The PSCBC lacks jurisdiction to conciliate the dispute (application defective – filed out of time)

4.2 If the Applicant wishes to pursue the matter further, he now needs to formally apply for condonation for the late referral of the dispute.

4.3 No order as to cost is made.



Signature: \_\_\_\_\_

Senior Commissioner: **Martinus van Aarde**

Sector: **Water Affairs & Forestry**