PSCBC
PUBLIC SERVICE CO-ORDINATING BARGAINING COUNCIL

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Case number PSCB 315-09/10

In the matter between

L C MATLEJOANE **Applicant**

And

STATISTICS SOUTH AFRICA **Respondent**

ARBITRATION AWARD

DETAILS OF HEARING AND REPRESENTATION

1. The arbitration in this matter was held in De Aar on 4 June 2010.

2. The applicant represented himself and the respondent was represented by Mr D Masher

BACKGROUND

3. It is common cause that the applicant worked for the respondent on a series of fixed term contracts from the beginning of February to the end of October 2006, after which he was appointed on a permanent basis. During the period of his contract work, the applicant was

paid his normal monthly salary plus a service bonus but he received no other benefits nor any other amount to supplement his salary.

4. The applicant then referred the present dispute to the Council where it remained unresolved at conciliation and proceeded to arbitration.

ISSUE IN DISPUTE

5. It is in dispute whether the respondent properly interpreted and/or applied the provisions of PSCBC Resolution 3 of 1999 ('the resolution'), particularly in respect of clause XXXVI 5.2 thereof.

SURVEY OF EVIDENCE AND ARGUMENT

6. Both parties handed in documentation that was accepted as being what it purported to be. Essentially this documentation consisted of the resolution and a DPSA circular relating to the resolution. The applicant indicated that he wished to add documentation during argument; while I am unable to consider this, it does not make any material difference in this instance.

7. The applicant testified that he was employed by the respondent on a series of continuous fixed term contracts during 2006 – a two month contract for February and March 2006, a three month contract for April, May June 2006, and a four month contract for July, August, September, October 2006. After that he was appointed on a permanent basis during November 2006 which only came into effect in December 2006. The applicant stated that he earned the same salary as an equivalent permanent worker at salary level 5.

8. For the period February to November 2006 the applicant was paid his monthly salary as well as a service bonus. He alleges that, in terms of clause XXXVI 5.2 of the resolution, he is entitled to an additional 30% of his salary in lieu of benefits, from which he is willing to deduct the service bonus received. He stated that he was not, at the time, a member of a registered medical aid scheme by his own choice. He was also not allowed to become a

member of the state pension fund while a contract worker. After he became a permanent employee he joined the state medical aid scheme and pension fund and the respondent paid its contributions to such funds.

9. The applicant stated that it was the aim of the resolution to place contract workers on the same basis as permanent workers and that the respondent acted unfairly in not placing him on the same level as permanent workers. He claimed that, under PSCBC resolution 1 of 2007, contract workers were paid their service bonus plus an additional 30% the following year and he should have been treated similarly.

10. The respondent chose not to testify but to deal with the dispute solely by way of argument.

11. The arguments of the parties are summarized below during the analysis.

ANALYSIS OF EVIDENCE AND ARGUMENT

12. It is common cause that the resolution is applicable in this instance. The resolution is headed 'Agreements on Remuneration, Allowances and Benefits'. Chapter XXXVI clause1 states its purpose as being, inter alia, to pay contract and part-time employees on the same basis as permanent and full-time employees (clause1.1b).

13. Clause 5.2 of the resolution states that if an employee has a fixed term contract of over three months and earns the same salary as an equivalent permanent worker, the employer may pay her or him 30% of salary in lieu of benefits.

14. It is agreed that the applicant earned the same salary as an equivalent permanent worker. As to whether the applicant had a fixed-term contract of over three months, this was only partially conceded by the respondent; for the purposes of analysis, however, I will assume that the applicant qualifies under clause 5.2 in this regard and this issue will be re-visited later in the award only if necessary.

15. The parties agreed that the word 'may' in clause 5.2 relates to the right of the employer to decide whether to pay the 30% salary supplement or the benefits. It is also noted that the

DPSA circular of 30 March 2007 confirms the right of the employer to make this election, it confirms that only those benefits for which an employee is qualified are payable, and it expressly prohibits a combination of benefits or the extra 30% in the employer's election (paragraph 6 thereof). It is noted, in addition, that no conditions are attached to the employer's election – for instance, it is not required to make the election which is most beneficial for the employee.

16. With regard to whether the respondent was obliged to pay the applicant the extra 30% of salary claimed by him, the respondent's case was it was entitled to make the election, that it had paid the applicant all the benefits to which he was entitled and that it was therefore not required to pay the 30% of salary in addition to this. The applicant, on the other hand, denied that his benefits had been paid to him (with the exception of the service bonus) and claimed the 30% - though he was willing to offset the bonus received against that amount.

17. It is therefore necessary to consider first whether the respondent has indeed complied with its obligations to pay the applicant his benefits. If it has, it is not required to pay the extra 30%; if it has not, then the 30% may be payable and the ancillary issues will have to be considered.

18. I am satisfied that the benefits which an employer is required to pay refers only to benefits to which an employee is entitled. This is confirmed by a reading of the resolution, by common sense, and by the contents of the DPSA circular relating to this provision dated 30 March 2007, cited above. The resolution refers to a number of benefits to which even the applicant agrees he is not entitled – these include benefits such as the home–owner allowance, the danger allowance and the motor finance scheme for senior employees – and it would be absurd to find that these should have been paid.

19. The next question is which benefits the applicant was entitled to during his time as a contract worker.

20. It is common cause that the applicant was entitled to receive his service bonus and that he did, in fact, receive same.

21. The applicant did not belong to a registered medical aid scheme – Chapter III clause 1.1 states that an employer shall pay two-thirds of an employee's normal subscription to a registered medical scheme up to a stated maximum. As the applicant had no medical aid scheme membership, he made no contributions and was not entitled to any from his employer. The applicant's argument that it was his choice not to belong to a medical aid is irrelevant here – had he been a member of any registered fund he would have been entitled to this benefit.

22. The applicant did not belong to the state pension fund. According to the information presented at arbitration, this fund was – at least at that time – only available to permanent staff members. While this, in effect, deprives every contract worker of such a benefit, this is not a decision of the respondent, nor does it mean that the respondent was not entitled to make its election to pay benefits rather than the 30%. If an employer pays the contract worker the benefits to which he or she is entitled, there is no obligation on the employer to pay any further amount in terms of the resolution. While I understand the applicant's view that this effectively undermines the aim of the resolution, the wording of the resolution is perfectly clear in this regard.

23. The applicant argued that he was entitled to effectively the same salary as a permanent worker and that, in failing to pay him what he would have earned as a permanent worker, the respondent undermined the aims of the resolution. This argument is rejected; the resolution does not give its aim as paying the same salary but, rather, to pay contract and part-time employees *on the same basis* as permanent and full-time employees (clause1.1b). Nor does it prescribe conditions for the employer's election. As a matter of interpretation, therefore, it is incorrect to read the aim of the resolution as a simple equaling of the two remuneration packages. The resolution is a step towards equity between contract and permanent workers and must be interpreted according to its own terms. The fact that it is a collective agreement means that all parties to the Council agreed on it and, even if it needed to be improved later, it must be respected on its own terms.

24. The applicant further argued that his constitutional rights to equal treatment and fair labour practices were infringed and that he was discriminated against by the respondent's failure to pay him the same as permanent workers were paid. These arguments are taken into account but they do not take this dispute from the terms of the referral and the jurisdiction of the Council. Thus, while they may be considered, the issue before me remains whether the respondent correctly interpreted and applied the resolution in this instance.

25. However that may be, I will accept that contract workers prior to the resolution were in a worse position than the applicant and that those that came after him were in a better position than him. This is how employment equity progresses and it would be quite impractical to find that every prior step was unfair because it was only part way along the road. I understand the applicant's frustration in that he was relatively worse off than his successors but the question remains whether the respondent complied with the resolution, not whether any particular worker could have been better or worse off had he worked at a different time.

26. Having considered the evidence and the argument, I accept – as stated above – that the respondent may elect whether to pay the benefits or the 30% supplement and it is clear that in this instance the respondent elected to pay the benefits. I find, further, that the respondent was entitled to make its election to pay benefits or the 30% without any restriction. I find that the respondent was required to pay to the applicant only those benefits to which he was entitled at the time – not every benefit mentioned in the resolution or in the DPSA document - and that the applicant was not entitled to any further benefits other than the service bonus. There was a suggestion from the respondent that the applicant was not even strictly entitled to his service bonus but this was – fairly, in my opinion – not pursued.

27. I therefore find that the respondent correctly interpreted the resolution and applied it.

28. In these circumstances, it is not necessary to make a finding on the respondent's two ancillary issues mentioned above – namely, whether the term of the applicant's contracts

entitled him to a 30% supplement at all and whether prescription operated over the applicant' claim.

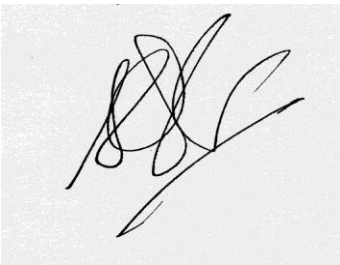
29. In the light of the above finding, the respondent owes the applicant no further amounts.

AWARD

1. **The respondent correctly interpreted and applied provisions of PSCBC Resolution 3 of 1999.**

2. **The applicant is entitled to no relief.**

3. **There is no order as to costs.**



ANTONY OSLER
Arbitrator