

AWARD

Panellist/s: Zolashe Lallie

Case No.: PSCB 374-09/10

Date of Award: 19 May 2010

In the ARBITRATION between:

PSA obo PUREN M

(Union / Applicant)

And

THE DEPARTMENT OF PUBLIC WORKS – EASTERN CAPE

(Respondent)

Union/Applicant's representative: MR. T ZAAIMAN

Union/Applicant's address:

Telephone:

Telefax: 041 501 6812

Respondent's representative: MR T RATHAHA

Respondent's address:

Telephone:

Telefax: 012 326 8701

DETAILS OF THE HEARING AND REPRESENTATION:

[1] This arbitration was held at the offices of the Department of Health in Port Elizabeth on 30 April 2010. The Applicant was represented by Mr Zaaiman (Zaaiman) an official of the PSA (the union). The Respondent was represented by one of its employees, Mr Rathaha (Rathaha). The proceedings were digitally recorded.

BACKGROUND TO THE DISPUTE

[2] The Union referred a dispute to the Council in terms of sections 24 (2) and 25 (5) of the Labour Relations Act 66 of 1995 (the LRA) pertaining to the interpretation and/or application of Resolution 14 of 2002 (the collective agreement). The dispute could not be resolved at the conciliation stage and the union requested that it be arbitrated.

THE ISSUE TO BE DETERMINED:

[3] I have to determine whether the Respondent acted in breach of Resolution 14 of 2002 by its failure to give the Applicant a written response to her grievance within 30 days from the date she lodged the grievance.

SUBMISSIONS:

[4] It is common cause that the Applicant acted in a level 9 post for a period of time. She was paid an acting allowance. She is presently not acting in that position. On 14 July 2009 she lodged a grievance on the basis that she was on post level 9, executing the duties attached to the post but was not receiving the salary that employees on post level 9 are entitled to. She proposed that the grievance would be solved if she could be appointed to the level 9 post and be remunerated at the rate at which level 9 employees are remunerated. The Respondent advised the Applicant in September 2009 by e-mail that the matters she raised in her grievance would be referred to its head office.

[5] Zaaiman argued that the Respondent breached the collective agreement by not giving the Applicant the outcome of her grievance in writing as the head office did not revert to the Applicant.

[6] Rathaha argued that the matter before me should not have been handled as a grievance as the level 9 post the Applicant was referring to was questionable. He explained that the post is presently occupied by the Applicant and Ms Nkayi.

ANALYSIS OF THE EVIDENCE AND ARGUMENTS:

[7] It is clear from the wording of the Applicants' grievance form and Zaaiman's submissions that the real dispute is the Respondent's refusal to appoint the Applicant to the post level 9 she had acted in and to remunerate her accordingly.

[8] In Minister of Safety and Security and Safety and Security Bargaining Council, John Cheerie Robertson and Adri Badenhost , case number PA2/09 an unreported decision, the Labour Appeal Court decided as follows:

"[11] ...The dispute that was before the second respondent in this case was a dispute concerning the fairness or otherwise of Commissioner Diani's refusal to approve the third respondent's application or request for a transfer and the application of the provisions of the collective agreement was an issue in a dispute. It was an issue which had or may have had to be dealt with in order to resolve the real dispute. That is the main dispute. The dispute itself did not relate to an application of the collective agreement."

[9] The Labour Appeal Court found in the light of the above reasons that the Safety and Security Bargaining Council had no jurisdiction to arbitrate the dispute that had been referred to it as it has no jurisdiction to arbitrate disputes relating to transfers of employees.

[10] In the present matter the real dispute before me is the Respondent's refusal to appoint the Applicant to the post level 9 in which she had acted and to remunerate her accordingly and the application of the provisions of the collective agreement is an issue in that dispute. It is an issue which has or may have to be dealt with in order to resolve the main dispute.

AWARD:

- I. The dispute referred by the PSA on behalf of Maureen Puren is not about the application or interpretation of a collective agreement.
- II. The application is therefore dismissed.

Dated and signed in Port Elizabeth on this the 19th day of May 2010.

Z LALLIE

Panelist