

AWARD

Panellist/s: Zolashe Lallie

Case No.: PSCB375-0910

Date of Award: 19 May 2010

In the ARBITRATION between:

PSA obo ALBERTS A

(Union / Applicant)

And

THE DEPARTMENT OF AGRICULTURE – EASTERN CAPE

(Respondent)

Union/Applicant's representative: MR. T ZAAIMAN

Union/Applicant's address:

Telephone:

Telefax: 041 501 6812

Respondent's representative: MR LOONAT

Respondent's address:

Telephone:

Telefax:

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 Loonat (Loonat). 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 his grievance within 30 days from the date he lodged the grievance.

SUBMISSIONS:

[4] It is common cause that the Applicant uses a 3G card in the execution of his duties for which he is receiving an allowance.

[5] The Respondent deducted money monthly from the Applicant's remuneration for allegedly exceeding his 3G allowance. The total amount which has been deducted from the employee's remuneration is about R7000,00.

[6] On 1 October 2009 the Applicant lodged a grievance regarding the deductions. He asked that the deductions be stopped and that he be reimbursed all the money that had been wrongfully deducted. Zaaiman submitted that the money was deducted unlawfully from the Applicant's salary and that instructions by a senior manager to stop the deductions and reimburse the Applicant were disregarded. Applicant received no response to his grievance.

[7] Loonat submitted that the money was correctly deducted from the Applicant's salary because he exceeded his monthly allowance. He added that the Respondent was investigating the manner in which the Applicant used his 3G card.

ANALYSIS OF THE EVIDENCE AND ARGUMENTS:

[8] 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 stop the deductions from his salary and to reimburse him all the money that has been deducted.

[9] 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 Dlani'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 stop the deductions from the Applicant's salary and to reimburse him the amount of about R7000,00 which had been deducted from his salary for exceeding his 3G allowance. 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.

[11] The Public Service Co-ordinating Bargaining Council lacks jurisdiction to arbitrate the dispute regarding money which was wrongfully deducted by the Respondent from the Applicant's salary for exceeding his 3G allowance.

AWARD:

- I. The dispute referred by the PSA on behalf of Andre Alberts is not about the application or interpretation of a collective agreement.

- II. The Public Service Co-ordinating Bargaining Council lacks jurisdiction to arbitrate the real dispute in this matter.
- III. The application is therefore dismissed.

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

Z LALLIE

Panelist