

PSCB413-09/10

ARBITRATION

A. DETAILS OF THE HEARING AND REPRESENTATIONS:

[1]. The hearing took place at the offices of the Department of Roads and Transport-Limpopo Province in Polokwane on 05 May 2010.

[2]. The applicants were represented by Mr. J.M. Lesudi, an official of the applicants.

[3]. The respondent was represented by Mr. V. Mngomezulu, an Employee Relations officer.

B. ISSUE(S) IN DISPUTE:

[1]. The applicants have filed this dispute in which they allege that the respondent has failed to pay the employee applicant monies payable to employees in terms of a collective agreement.

[2]. The parties have conducted a pre-arbitration conference. In terms of the minutes thereof, I am required to determine *“whether the employee complied with the request for resubmission for purposes of compliance with resolution 3 of 1999’s application. In essence whether parties have complied with the said resolution.”*

C. BACK-GROUND:

[1]. The applicants are the National, Education, Health and Allied Workers Union, acting on behalf of their member, one M. R. Sape.

[2]. The respondent is the Department of Roads and Transport- Limpopo.

[3]. The applicant employee was originally employed by the State at the Department of Public Works-Limpopo.

[4]. The employee was transferred from one Centre to another sometime in 2002. The employee was, subsequently transferred to the current Department when the Roads Directorate was moved from Public Works to the current Department sometime in 2005.

[5]. In terms of a resolution of the PSCBC, (Resolution No. 3 of 1999) employees who get transferred, and at the instance of the employer, may be compensated for such transfers.

[6]. The applicants herein submit and argue that the employee is legible for such compensation in the circumstances herein.

[7]. The respondent argues against this claim.

D. SURVEY OF, SUBMISSIONS AND ARGUMENTS:

[1]. I do not intend to reproduce documents and arguments submitted herein since same is record hereof.

[2]. The applicants have submitted a copy of PSCBC Resolution no. 3 of 1999 as source of their claim herein.

[3]. The respondent also submitted a copy of the Departmental policy regulating the same issue as in dispute herein.

[4]. The parties have also submitted written closing arguments in this respect. [5]. There is no dispute about the form, content and validity of both documents.

[6]. There seems to be no dispute about whether the employee would, ordinarily, be entitled to the claim being made herein, including its quantification.

[7]. Resolution no.3 of 1999 makes provision for individual Departments to negotiate and conclude departmental policy to regulate transfer compensations.

[8]. The Department of Public Works- Limpopo has one such departmental policy in place.

[9]. The respondent argues that the employee failed to submit his claim in terms of the procedures laid down in the policy.

[10]. The policy provision is that a claim of the nature herein must be made and submitted within two months, or if it is made outside this time frame the delay must be mitigated (some sort of condonation).

[11]. The applicants claim that the respondent's previous Department is the cause of the delay.

E. ANALYSIS OF SUBMISSIONS AND ARGUMENTS:

[1]. The policy applicable herein is the policy that applied at the time of the instance leading to the claim herein.

[2]. Such policy is the policy of the Department of Public Works.

[3]. This is the policy submitted herein.

[4]. It is an undisputed fact that a delayed claim has to be mitigated.

[5]. The relevant clause of the policy stipulates, in parts, as follows:

" MAXIMUM PERIODS OF COMPENSATION:

Other resettlement expenditures excluding costs for bond registration should be submitted within two months maximum period from the date of settlement. However, if an employee submits a motivation to the HOD through his/her Programme manager requesting for an extension or explaining the reasons for delaying to submit claims for resettlement, same may be considered.”

[6]. This policy came into operation sometime in 2001.

[7]. The respondent argues that their investigations reveal that even the original claim herein was only submitted in 2007.

[8]. Although the applicants argue that the former Department was responsible for the delay in finalisation of the claim, they do not submit that the claim was made within two months as required by the policy.

[9]. Documentation submitted by them herein indicates that the employee was advised, sometime in 2008, to re-submit the claim.

[10]. This was after the original claim was, allegedly, misplaced by the Department’s officials.

[11]. The re-submitted claim is dated 29/09/08.

[12]. In a written statement (included in the documents submitted herein), the employee narrates the events surrounding his claim and the route it travelled.

[13]. He submits that he approached one official of the current Department who advised him that he was entitled to the claim when he was transferred whilst in the employee of the former Department.

[14]. This clearly indicates that it was well outside the time frame of two months.

[15]. Even if I were to accept that he might have submitted the original claim, and perhaps within the time frame, the fact remains that when he made the re-submission, such was supposed to have been accompanied by the mitigation as required in terms of the applicable policy.

[16]. The claim about misplaced original submission would serve as motivation thereof.

[17]. This was not the case.

[17]. It is evidently clear, in terms of what I am required to determine as per the minutes of the pre-arbitration conference that the applicant did not comply with the enabling policy to resolution 3 of 1999.

[18]. The rest of the applicants' arguments are only relevant to an application to mitigate the delay; which application should be directed the HOD through the Programme manager as per the policy.

[19]. Perhaps they may still attempt to submit the claim in terms of the procedures laid down in the policy.

F. AWARD:

[1]. The applicants have not complied with resolution no. 3 of 1999.

[2]. The application fails and is dismissed.

[3]. I make no order as to costs.

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A. S. MUVHANGO: PANELIST