PSCBC
PUBLIC SERVICE CO-ORDINATING BARGAINING COUNCIL

AT THE PUBLIC SECTOR COORDINATING BARGAINING COUNCIL

In the arbitration between:

POPCRU obo Malatse, MH and 15 others **Applicant**

and

Department of Correctional Services - National **Respondent**

JURISDICTIONAL RULING

Case Number: PSCB 350-09/10

Date of Ruling: 16 November 2010

Details of the Hearing and Representation

This matter was scheduled for arbitration on 26 October 2010. The hearing was held at the Bavianspoort Prison, Zambezi Road, Bavianspoort. The applicants were represented by Sibudi Masemola an official from POPCRU. The respondent on the other hand was represented by Pheladi Dladla.

The respondent raised a point in Limine that had to be addressed before the matter could proceed.

Point in Limine

The respondent raised a preliminary point that the applicants had forfeited their right to refer this matter since 3 years have passed and their claim had prescribed. The respondent relied on the decision by Molahlehi J in ***Fredericks v Grobler NO & others [2010] 6 BLLR 644 (LC)***

In this judgment, Molahlehi J relied on several judgments to reach his decision. He initially gave a background of the dispute that was before him. In summary he stated that the applicant had been aware of the fact that he was not promoted in 1997, despite the fact that he had been recommended. The judge acknowledged the fact that the applicant had lodged various disputes internally since 1997. In 1998 he was informed that the matter was finalised and would not be entertained further. The Public Service Commission (PSC) was also approached in 2004 and a letter to the Minister was written in 2002. The respondent responded to the PSC in 2006 stating that the applicant did not have a claim against the respondent.

The applicant then lodged a dispute with the CCMA after his attempt with the Human Resources Commission did not yield favourable result. It was against this background that the applicant was required to apply for condonation. Condonation was not granted. The applicant took the matter on review and Molahlehi J stated that the claim had prescribed. He further indicated that the laws of prescription also applied in Labour Law. The fact that the applicant referred the matter long after three years period, the claim had prescribed.

It is this decision that the Department of Correctional Service is relying on.

Masemola, on behalf of the applicants stated that the applicants did not only refer the matter in 2009. The matter was first referred in 2005 to the respondent in a form of a grievance. This was after the employees were told that they were entitled to a danger allowance. There was no response from the respondent. Through persistent

enquiries, they were informed that the first grievance could not be found. There was an acknowledgement from the respondent that the first grievance was received but was misplaced. The second grievance was lodged in 2008 and then the respondent to address the second grievance, the matter was referred to the Council.

It is the argument of the applicant that the grievance was lodged with the respondent but they failed to address it. When realizing that the grievance was not addressed, the matter was referred to the Council.

It was the argument of the applicant that the fact that the Department did not attend to the applicants' grievances cannot be used against them.

Ruling

The judgment of Molahlehi J was referred to extensively deliberately to indicate that the set of circumstances are completely different. In the Labour Court matter, it is clear that Fredericks took over ten years to refer the matter to the CCMA and subsequently the Labour Court. That is essentially the reason why the judge decided that the applicant's claim had prescribed.

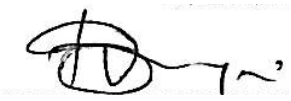
In this matter, it is however different. The applicants realized in October 2005 that they should be paid dangerous allowance. They lodged a grievance in 2006; however, it was not attended to. A second grievance was lodged and Malinga, the Area Manager, admitted that a first grievance was lodged but was not attended to and they were advised to lodge a second grievance.

The applicants, with the assistance of their union, went through all the steps and when the matter was not resolved, the matter was referred to the Council. Conciliation was held and the matter remained unresolved. A certificate of no resolution was issued and the matter was timeously referred for arbitration. It was at this point that the respondent raised a preliminary point.

Studying the arguments it is clear that the matter has not prescribed. The applicants had at all times acted within the prescribed time. It was the delays and lack of action of the respondent that led to the matter dragging for so long. Despite the delays the applicants pursued their matter. This matter is therefore *litis contentatio,* in other words, the applicants had lodge their disputes within the prescribed time and referred the matter to the Council hence the matter was heard during conciliation and was later referred for arbitration. It will therefore be prejudicial to put the blame at the door of the applicants. Their claim has therefore not prescribed.

Based on the above, it is my finding that the claim of the applicants had not prescribed. The matter must be set down for arbitration as soon as possible.

I make no order as to costs.



Thembekile Nsibanyoni
PANELLIST
16 November 2010