ARBITRATION AWARD

Commissioner: **Retief Olivier**

Case No.: **PSCB 322-13/14**

Date of Award: **3 June 2014**

In the ARBITRATION between:

PSA obo H S Schoeman
(Union / Applicant)

and

Department of Correctional Services
(Respondent)

Applicant representative:	C H Olivier - PSA
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PARTICULARS OF PROCEEDINGS AND REPRESENTATION

The arbitration was held in Cape Town at the Dept. of Correctional Services, Edgemead, on 24 January 2014, and on 9 May 2014 at Pollsmoor Correctional Facility. Mr C H Olivier, a PSA shop steward, represented the employee, Mr Schoeman. Ms K Mpa represented the respondent, the Department Correctional Services. Final closing arguments were received on 23 May 2013.

THE ISSUE IN DISPUTE

I must decide whether the respondent is in breach of Resolution 7 of 2000 i.e. the interpretation or application of a collective agreement as contained in Sections 24(2) and 24(5) of the LRA and more specifically had the respondent applied the provisions of clause 7.5.1 fairly in declining the Temporary Incapacity Leave (TIL) application.

THE BACKGROUND TO THE DISPUTE

The Department of Correctional Services has employed the applicant, Mr Schoeman, since 1 January 1979 and he is currently employed as a senior Correctional Officer on salary level 8 and is based at Pollsmoor Correctional Centre.

It is common cause that the applicant has a long history of Post Traumatic Stress Syndrome since 2005, after he was charged for corruption and other similar charges on which he was found not guilty, but had to endure a temporary transfer, which became permanent. It is further common cause that he has been treated by Dr George since 2005 to 2014 due to ongoing relapses and that the applicant has at three stages been referred for second and third opinions by the Department but they have not taken into consideration the recommendations by these Psychiatrists. It is also common cause that the applicant has also applied several times for medical boarding but without success. The last time he applied was in 2013 and received feedback and was instructed to return to work for placement, which he did with the help of the EAP, but this was also not implemented as agreed too.

The applicant applied for temporary incapacity leave (TIL) for the several periods, that are in dispute, in which the applicant claims the Respondent did not comply with Resolution 7 of 2000 when it declined those applications for temporary incapacity

leave and were considered long after the presented timeframe of 30 working days as dictated by PILIR Policy lapsed.

The periods applied for are the following:

- Period 1 - 2011/04/06 (1 day)
- Period 2 - 2012/05/22 to 2012/05/25 (4 days)
- Period 3 - 2012/07/30 to 2012/08/24 (26 days) and from 2012/08/25 to 2012/09/21 (28 days)
- Period 4 – 2012/11/22 to 2012/12/14 (23 days)

The respondent denied that they did not comply with Resolution 7 of 2000.

SUMMARY OF EVIDENCE AND ARGUMENT

A bundle of documents, which included the HRM reports, were presented as evidence, together with the witnesses that testified.

Applicant's version:

The applicant Mr Schoeman did not testify, but indicated that his representative will present the documentary evidence and argue the matter, and his psychiatrist Dr George testified about his medical condition.
Dr George, specialist psychiatrist, testified that he had been treating the applicant since 2005 for major depression and had submitted medical reports about the treatment of the applicant for TIL applications, which the HRM declined. For the period from 2012/5/22 to 2012/5/25 (4 days) for instance, the TIL application was declined by the HRM, as the HRM stated that the treatment was not optimal. He did not agree with this as it was his opinion that the treatment was optimal. The applicant was suffering from a treatment refactory disorder.

He did not agree with the HRM as the applicant had been hospitalized and had been prescribed different anti-depressants and mood stabilizers. His report was included in the TIL application, but the HRM rejected this. However his diagnosis and Prof

Emsley, the Department's specialist, who gave several reports in 2010, 2011 and 2012, made the same diagnosis and conclusion, indicating that the applicant suffered from chronic treatment refractory disorder.

Regarding the periods 2012/7/30 – 2012/8/24 (26 days) and 2012/8/25-2012/9/21 – 28 days) for instance he testified that the HRM again indicated that the treatment was not optimal, and declined the application, but the applicant had achieved as much benefit as could be achieved from the treatment and his treatment was optimal. The applicant was referred to Prof R A Emsley during 2010, 2011 and 2012 and again the diagnosis and conclusions from Prof Emsley was the same. Prof Emsley found that the applicant suffered from chronic major depressive episodes and obsessive compulsive traits, and that his prognosis was poor. The HRM also indicated that the necessary treatment details were not provided, but Dr George stated that it was indeed provided, as reflected in his reports in the bundle, page 28 and 29 of bundle B.

He stated that it appeared that the HRM just rejected his medical opinion in principle, without giving reasons, that is not normal medical practice, and if an opinion is rejected a second opinion must be requested. It is not appropriate for the Department to say a person is fit to work if it is not based on a medical opinion.

Mr Olivier, the applicant representative, submitted and argued in closing that the Employer had not complied with the Collective Agreement in dealing with these specific applications, referring to each one in particular:

For **period 1 – 2011/4/6 – 1 day,** the Employer declined the TIL application after his initial application for sick leave had been granted, as it was indicated that he had 6 days sick leave to his credit. His sick certificate was faxed to the Employer on 4 April 2011. The employer however later rejected the sick leave already granted, and his supervisor then required him to submit a TIL applicant for 2011/4/6 on 12 October 2011, and he received the outcome 5 months later, on 14 March 2012. This was not in compliance with the Collective Agreement. The Employer also rejected the application on the grounds of insufficient medical evidence, but Dr George had provided medical reports. The Employer also had the internal medical reports from Prof Emsley.

It was thus submitted that the Employer was in contravention of paragraph 7.5 of Resolution 7 of 2000, receiving the outcome 5 months after submission, and it is submitted that in the case of the first period that a finding in favour of the applicant be made and ordered that the period of 2011-04-06 be accepted as temporary incapacity leave with full pay.

For **period 2 - 2012.05.22 to 2012.05.25 – 4 days,** the applicant Mr Schoeman handed in his application for this period on the 27th of May 2012 with a sick certificate as well as reports from Dr George. Feedback was received on the 16th of July 2012 nearly 2 months after application. It is also so that the HRM clearly acknowledge that there are medical reports but they are of the opinion that Mr Schoeman's treatment is not optimal and therefore his application should be declined.

Firstly this would imply that the Department was in contravention of paragraph 7.5 of Resolution 7 of 2000, as the applicant was only informed after two months that his application was disapproved.

From the evidence of Dr George, who is the treating Psychiatrist of the applicant it is clear that according to him the treatment of the applicant in this instance is optimal and he has also referred to the Departments specialist in the field, Prof Emsly who also had the same diagnosis and conclusion of that of Dr George.

It is also the submission that paragraph 7.2.9 of the Policy and Procedure on Incapacity leave and ill-Health Retirement (PILIR) states clearly that all relevant information with specific reference to paragraph 7.1.5.3 and 7.1.5.4 needs to be taken into consideration when making a decision.

Taking this into consideration that both Dr George and Prof Emsly gave several reports for the decision maker to take into consideration when making a decision, it is the applicant's submission that since there was no evidence from the Respondent to rebut the evidence from both Dr George and Prof Emsly, the Employer had not taken all relevant information into consideration when they made their decision.

It is submitted that also in this instance a finding in favour of the applicant be made and ordered that the period 2012-05-22 to 2012-05-25 to be accepted as temporary incapacity leave with full pay.

Period 3 from 30-07-2012 to 24-08-2012 (26 days) and from **25-08-2012 to 21-09-2012 (28) Days.** It was noted that Mr Schoeman handed in his application for the period 30-07-2012 to 24-08-2012 on the 27th of July 2012 with a sick certificate as well as a medical report from Dr George and a report from Prof Emsley to whom the Department referred Mr Schoeman previously for a second opinion. For the period 25-08-2012 to 21-09-2012 Mr Schoeman handed in his application for TIL on 2012-08-24 again with a sick certificate as well as a medical report attached.

On 26-02-2013, seven months after his application, Mr Schoeman received feedback for both periods. In this application the HRM again acknowledge that medical reports are attached but again are of the opinion that his treatment is not optimal and therefore is to be declined.

It was further argued that for the Respondent Ms Mdladlama testified that she was the person that disapproved this specific application. She testified that she made use of the recommendation of the HRM to make her final decision. In cross examination it became evident that Ms Mdladlamba had all documentation including reports from Prof Emsley as well as Dr George to her availability to make a decision. She however confirmed under cross examination that although she read through it she only took into consideration the HRM recommendation. Ms Mdladlamba also confirmed that she is not a Doctor and does not know if Mr Schoeman's treatment is optimal or not.

From the evidence of Dr George, who is the treating Psychiatrist of the applicant it is clear that according to him the treatment of Mr Schoeman in this instance is optimal and he has also referred to the Departments specialist in the field, Prof Emsley who also had the same diagnosis and conclusion of that of Dr George. Taking this into consideration that both of them have given several reports for the decision maker to take into consideration when making a decision, it is submitted that since there was no evidence from the Respondent to rebut the evidence from both Dr George and Prof Emsley, the Employer had in fact not acted in accordance with paragraph 7.2.9 of the Policy and Procedure on Incapacity leave and ill-Health Retirement (PILIR), which

states clearly that all relevant information with specific reference to paragraph 7.1.5.3 and 7.1.5.4 needs to be taken into consideration when making a decision.

It is thus submitted that also in this instance a finding in favour of the applicant be made and ordered that the period 2012-07-30 to 2012-08-24, as well as 2012-08-25 to 2012-09-21, be accepted as temporary incapacity leave with full pay.

Fourth Period from **22-11-2012 to 14-12-2012 – 23 days**, the applicant applied for this period on 27-11-2012. He attached a sick certificate as well as medical report from Dr George.

On the 29th of January 2013 Mr Schoeman received feedback that his application for this period will not be accepted for assessment as at a meeting on 2012-10-30 he was informed that he needs to report for work for re-integration into the workplace. According to the employer Mr Schoeman was found fit to render services by the Health Risk Manager. It seems that this application was not even forwarded to the HRM for a recommendation.

It was however disapproved by the decision maker in paragraph 3 on the feedback letter, p 38 of the Bundle. It is clear that although Mr Schoeman handed in an application for temporary incapacity leave the decision maker had decided that they will not forward this application and goes as far as saying that following applications will not be accepted or referred to the HRM, but goes ahead and makes a decision to disapprove this application.

Ms Mdladlamba testified however that the decision maker cannot make a decision without the recommendation of the HRM.

In this case however she had made a decision to disapprove this period. It is therefore submitted that because she has made a final decision, the applicant can submit this for a finding as Resolution 7 of 2000 is clear on how applications should be handled and with this instance the Department was clearly in breach thereof by not referring his application.

It is therefore request that it also be ordered that the period for 22-11-2012 to 14-12-2012 it be accepted as temporary in capacity leave with full pay.

Respondents version:

Ms Noluthanda Mdladlamba, acting human resource manager at the time and current deputy director human resources testified that she was familiar with the TIL applications and that she was the decision maker. She based her decisions on the recommendation of the HRM, as she was not a doctor and was not familiar about what optimum treatment would be and relied on the HRM. Regarding the medical reports of Prof Emsley, the Departments expert who also indicated that the applicant was not fit for work, she indicated that she could not speak on behalf of Prof Emsly.

When questioned she indicated that she had received the applications back from the HRM with all the attached documentation, including the reports from Dr George, as well as the detail for the medication that he had prescribed, as well as the reports of Prof Emsley, but she followed the recommendation of the HRM that the applicant was fit to work by declining the TIL applications. She indicated that she had the information before her that the applicant suffered from a refractory disorder and that therefor there would not be any improvement of his condition. She re-iterated that there was sufficient medical evidence from the HRM before her to make her decision.

In closing Ms Kego Mpa, the employer representative argued that regarding the first period, **2011/4/6 – 1 day** it is common course that the applicant applied for this day on 2011/10/24. In terms of the PILIR the applicant was supposed to apply with in a period of seven days. The applicant submitted his application after six months, taking that into account the applicant thus failed to comply with the policy. The feedback which was provided to the applicant on 2012 /03/04 by the respondent requested as per recommendation of HRM that the applicant must submit his application with detailed medical information on or before 2012/03/19 for reassessment. However the applicant failed to comply with the request of the HRM. Since the applicant was duly informed and opted not to comply the respondent cannot be held accountable. The applicant request should therefore be dismissed. Bearing in mind that the applicant applied six month after the prescribed time, the employer instead of refusing the application took efforts to refer the application to HRM for consideration.

Regarding the second period, **2012/05/22 – 2012/5/ 25 for 4 Days**, the applicant applied for this period on 2012/05/27 and he received his feedback on 2012/07/16. In terms of the resolution the employer must submit feedback within a period of 30 (thirty) working days. In his application the applicant argue that the respondent failed to comply with the requirements of the resolution that is thirty working days, since the respondent provided feedback two months after the application. The respondent wishes to deny this accusation. Bearing in mind that 27 May 2012 was on Sunday. The first working day was 2012/05/28 counting from 28 May to 31 May 2012 it is equal five days. The following week from Mondays the 04 - 08 June 2012 it is five days, from 11-15 June 2012 five days, from 18-22 June 2012 five days, from 25-29 June 2012 five, and from 02-06 July 2012 five days that adds to 30 working days.

Respondent submitted that in line with the resolution of 30 working days the applicant was supposed to be informed on 06 July 2012 about the outcome of his application. The applicant is a Centre Base official meaning that he is working seven days period, however it is important to note that TIL applications and others are handled by officials working five days (Monday to Friday) that is Non Centre Base officials. The respondent submitted therefor that he was 9 (nine) working days over 30 working days as prescribed by the resolution. The respondent submitted that the applicant calculations of two months are not in line with the requirements of the resolution, and further submit that nine working days cannot be viewed as extreme non-compliance of the resolution. The reason of non-compliance is not due to respondent but to the HRM.

Secondly when HRM consider the applications they took all relevant factors into consideration. It cannot be true as submitted by the applicant that the respondent failed to take into account the report of Dr George and Professor Emsely for advisory purpose. The resolution does not bind the respondent to take consideration only the applicant doctor's report; therefore the submission by applicant that the respondent failed to take into account such reports cannot be substantiated and should therefore be dismissed. HRM recommendation does not request additional information, but they recommend that the application should be declined.

Regarding the third application for the periods which is **2012/07/30 – 2012/08/24 (26 days**) it is common course that the applicant applied on 2012/07/27 and the feedback was provided on 2013/02/26 and the period **2012/08/25 – 2012/09/21 (28)** the

applicant applied on 2012/08/24 and feedback was provided on 2013/02/26. For both periods the recommendation of the HRM was that the treatment may not be optimal. According to HRM there were no details provided of consultation during the period of absence with his Clinical Psychologist, and that there is no indication that medication was adjusted or that Mr Schoeman suffered any complications to treatment during the period of absence.

Paragraph 7.2.2.1 (b) (ii) of policy and procedure on incapacity leave and for ill-health retirement - Optimal information – indicates not older than two months in the case of psychiatric cases. It is the respondent submission that there was no way to expect the decision-maker to deviate from what HRM considered not to be optimal. If independent treating doctors (Dr George and Prof Emsely) of Mr Schoeman had provided optimal information which satisfied the analysis and assessment standards of HRM, surely TIL applications for the said periods could have been approved. HRM however recommended that both applications should be declined. HRM did not recommend or request additional information therefore both applications were declined based on recommendation by HRM and other related factors.

The resolution required that the respondent should investigate the extent of the inability to perform the duties, in order to comply with the requirement of the resolution relating to investigation, and the respondent will submit the application to HRM to assist with the investigation. It is common course that HRM are rendering services to all Public Service Departments and as such they normally do not comply with time frame as stipulated in the resolution. This challenge has been discussed and highlighted at different arbitration hearings.

The respondent submits that the applications were referred to HRM on the following dates respectively. – Date sent 2012/08/10 was received from HRM on 2013/02/11 and the application of 2012/08/25 – 2012/09/21 it was send on 2012/09/05 to HRM and feedback received on 2013/02/11. Once the applications are sent to HRM the respondent does not have power to insist that HRM must comply with 30 working day period.

It should be noted that by the time the resolution was signed by parties the issue of the HRM problems did not exist. The parties did not at that time anticipate this long procedure of the involvement of HRM and that further that it will be difficult to separate

the involvement of HRM from the resolution, meaning that HRM should be considered as the integral part of the resolution. The same resolution is empowering the employer to investigate the extent of inability to perform duties of the applicant it does not request the employer to consider the applicant medical reports. It must also be noted that the respondent had been for quite some time without a HRM, and therefore there was slow processing of TIL applications. To argue and advance non-compliance with 30-day rule in these circumstances would defeat the mission and intention of PILIR Policy.

Regarding the fiinal application for the period **2012/11/22 – 2012/12/14 (23 Days)** the application was not sent to HRM and it was subsequently agreed between the two parties that the applicant will resubmit the application to HRM. The applicant did not resubmit stating that it was the responsibility of the respondent to resubmit his application to HRM. It was agreed by the parties that the applicant should resubmit his application and that he failed to comply with the agreement. It is the respondent's submission that this request should be dismissed or the arbitrator should order the applicant to resubmit his application. It must also be brought fore that the burden lies with the applicant to submit his application of TIL to the employer.

ANALYSIS OF THE EVIDENCE AND ARGUMENT

The issue in dispute is whether the respondent is in breach of PSCBC Resolution 7 of 2000.

PSCBC Resolution 7 of 2000, par 7.5.1 reads as follows:

> *"a) An employee who normal sick leave credits in a cycle have been exhausted and who, according to the relevant practitioner, requires to be absent from work due to disability which is not permanent, may be granted sick leave on full pay provided that:*
> *i) her or his supervisor is informed that the employee is ill, and*
> *ii) a relevant registered medical and/or dental practitioner has duly certified such a condition in advance as temporary disability except where conditions do not allow.*

b) The employer shall, during 30 working days, investigate the extent of inability to perform normal official duties, the degree of inability and the cause thereof. Investigations shall be in accordance with item 10(1) of Schedule 8 in the Labour Relations Act of 1995."

Resolution 7 of 2000 Paragraph 7.5.1 b) requires as stated above, that the employer shall, during 30 working days, investigate the extent of inability to perform normal official duties, the degree of inability and the cause thereof. Investigations shall be in accordance with item 10(1) of Schedule 8 in the Labour Relations Act of 1995.

This must also be read together with paragraph 7.2.9 of the Policy and Procedure on Incapacity Leave and Ill-Health Retirement (PILIR) which states “The Employer must within 30 days after receipt of both the application form and medical certificate referred to in paragraphs 7.1.4 and 7.1.5, approve or refuse temporary incapacity leave granted conditionally.”

It is common cause that temporary incapacity leave is not a statutory entitlement but can be applied for in cases where an employee’s normal sick leave had been exhausted. It is also not an unlimited amount of additional sick leave at the employee’s disposal, but can be granted at the employer’s discretion based on its investigations.

Without repeating all the evidence and arguments it is noted that the Employer acknowledged that they had not complied with the time frames in the collective agreement, but it was argued in closing argument that applicant’s TIL applications for the **period 2012/05/22 – 2012/5/ 25** was only 9 days late and was as a result of the applicant being a Centre Base official, meaning that he is working seven days period, however it is important to note that TIL applications and others are handled by officials working five days (Monday to Friday), that is as Non Centre Base officials.

Regarding the other periods specifically **2012/07/30 – 2012/08/24 (26 days**) and the period **2012/08/25 – 2012/09/21 (28 days)** it was also argued that it was because of the problems the employer experienced with the HRM and that it is common course that HRM are rendering services to all Public Service Departments and as such they normally not comply with time frame as stipulated in the resolution.

It is obvious that the parties to the resolution intended that such applications should be dealt with speedily and expeditiously. The employer representative acknowledged in closing argument the application had not been dealt with in terms of the time frames, but that because the time delays were not long it should not be viewed as extreme and unfair was because of the problems created by the HRM.

Compliance with a Collective Agreement is however not a discretionary matter, and whoever or whatever is responsible for the delay does not change the fact that the employer does not comply with the Collective Agreement. In a recent case Judge Steenkamp in ***SAMWU v City of Cape Town and Others (C 701/13) dated 26 May 2014*** reiterated that adherence to Collective Agreements are peremptory. He noted that that concerns about time frames, in that particular instance about time frames in the disciplinary procedure, as agreed to in a Collective Agreement, because of its peremptory nature and its embodiment in contracts of employment, lead to non-compliance, and may in fact be defeating he purpose of the process. He noted however "But that is the deal that the parties brokered through collective bargaining. They may have to reconsider their deal. But that can only be done through a process of collective bargaining."

Regarding the reasons for declining the applications it was also submitted by the applicant that the employer did not consider the medical reports from both Dr George and their own medical expert, Prof Emsly, and neither did the employer attempt to seek any further medical evidence from the applicant or the applicant's doctors, as the applicant had agreed too in his application, yet the employer indicated there was not sufficient medical evidence to grant the application.

The employer witness Ms Mdladlamba confirmed that the applications were declined because the HRM indicated that the treatment was not optimal and that the applicant did not submit sufficient medical information. Ms Mdladlamba, who decided on the TIL applications, testified that she accepted the recommendation from the HRM, as she was not a doctor, and could not express a medical opinion. However the applicant had submitted specialist psychiatrist reports containing the detailed information on the medicines prescribed by Dr George, as well as the medical reports from Prof Emsly, the Employer's medical expert, which Ms Mdladlamba, acknowledged she had before her

when making her decisions, which implies that Ms Mdladlamba rejected these specialist medical reports, yet acknowledged that she is not a medical expert. No evidence was presented as to the medical qualifications of the persons conducting the HRM assessment, nor was any evidence led by the HRM in refuting the medical evidence presented at the arbitration hearing on behalf of the applicant.

I find that the employer acted unreasonable in this respect and did not comply with the PILIR policy. The evidence before me shows that the respondent had not investigated the applicant's situation thoroughly by requesting more medical evidence, if that was required, nor within the required time frame. I therefore find that it is in breach of Resolution 7 of 2000.

It is also necessary to note the determination in the matter of ***PSA obo H C Gouvea v PSCBC and others, LC Case no D751/09, dated 26 February 2013*** where it was found:

"[20] The limited facts of this matter suggest that on 24 June 2008 the third respondent had finalised all investigations and had made its decision which it communicated to Ms Gouvea by a letter it issued to her on that day. She had to report back at work on 1 July 2008. From the given facts, as I understand them, a report was issued by the Health Risk Manager declining the application for a periodical temporary incapacity leave for 4 December 2007 to 30 June 2008. This report sought to have a retrospective effect. **The consequence of a retrospective effect is that it amounts to an unreasonable and arbitrary exercise of discretion with unfair consequences to an employee**." (my emphasis).

I therefore deem it fair to order the respondent to grant the applicant the TIL for the periods submitted and the applicant be paid back accordingly.

Regarding to the **period 1 – 2011/4/6 – 1 day,** it was noted that the Employer declined the TIL application after his initial application for sick leave had been granted, as it was indicated that he had 6 days sick leave to his credit. The employer however later rejected the sick leave already granted, and his supervisor then required him to submit a TIL applicant for 2011/4/6 on 12 October 2011, and he received the outcome 5 months later, on 14 March 2012. This was not disputed by the employer, but the employer argued that he had submitted the TIL application late and did not comply

either. The applicant had submitted his medical certificate timeously, and it was only after the employer changed his sick leave status, that he was required to submit a TIL application. This was not a delay as a result of the applicant's doing, but as a result of employer amending his sick leave record after he had submitted his initial sick certificate, and as the supervisor accepted his TIL application, it had to be dealt with by the Employer, and the Employer then failed to comply with the Collective Agreement.

The employer further argued that for the **period 2012/11/22 – 2012/12/14 (23 Days)** the applicant did not apply for TIL, however the documentary evidence submitted by the applicant confirms that he had submitted an application. On the 29th of January 2013 the applicant received feedback that his application for this period will not be accepted for assessment as at a meeting on 2012-10-30 he was informed that he needs to report for work. The TIL application was not submitted to the HRM, and without it being submitted to the HRM the employer informed the applicant that his applications will not be accepted by the Employer, but then makes a decision to decline it, as noted on p 38 of the Bundle. Ms Mdladlamba testified however that the decision maker cannot make a decision without the recommendation of the HRM. It is very clear that the Employer had not complied with the Collective Agreement, and had in fact not even submitted the application to the HRM.

There is a dispute as to what was agreed by the parties in the initial arbitration hearing, but it should be noted that this concerns a re-submission of the application, and does not negate that the applicant had made an application, that was not referred to the HRM.

I have found that the Employer was in breech of the Collective Agreement and that the the TIL for the periods submitted should be granted as per the decision in ***PSA obo H C Gouvea v PSCBC and others*** (supra), and any unpaid leave deducted should also be converted to paid leave and paid back to the applicant.

AWARD

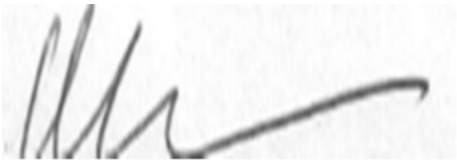
The respondent is in breach of Resolution 7 of 2000. I therefore order the following:

1. That the Employer approves the Temporary Incapacity Leave for:

- Period 1 - 2011/04/06 (1 day)
- Period 2 - 2012/05/22 to 2012/05/25 (4 days)
- Period 3 - 2012/07/30 to 2012/08/24 (26 days) and from 2012/08/25 to 2012/09/21 (28 days)
- Period 4 – 2012/11/22 to 2012/12/14 (23 days)

2. The parties have not quantified the amounts involved, but if necessary the parties can present documentation to vary the award accordingly so that the approved TIL applications be paid out and any moneys deducted for unpaid leave be paid back accordingly.

3. That the employer implements this award by not later than 30 June 2014.



Arbitrator: Retief Olivier
PSCBC 332-13/14
3 June 2014.