



ARBITRATION AWARD

Panellist/s: J.J.ERASMUS
Case No.: PSCB 518 – 13/14
Date of Award: 4 March 2014

In the ARBITRATION between:

PSA obo Thebe

(Union / Applicant)

and

DEPARTMENT OF JUSTICE & CONSTITUTIONAL DEVELOPMENT

(Respondent)

Union/Applicant's representative: Mr. Makolomakwa - PSA

Union/Applicant's address:

Telephone:

Telefax:

Respondent's representative: Mrs. K.Tlale

Respondent's address:

Telephone:

Telefax:

PREAMBLE

- [1] This is an arbitration award issued in terms of Section 138 of the Labour Relations Act 66 of 1995 (as amended) and herein after referred to as the LRA.
- [2] This award is not intended to be a verbatim transcript of the evidence led at the arbitration hearing but rather a determination with brief reasons for such determination.
- [3] Evidence relevant to the determination or to support any of the elements of fairness as required may be referred to. This however does not mean that I failed to consider other evidence or ignored such evidence in coming to my decision.

DETAILS OF HEARING AND REPRESENTATION

- [4] The arbitration was conducted on the 27th of February 2014 at the offices of the Respondent in Mafikeng.
- [5] The Applicant was present at the arbitration and was represented by Mr. Makolomakwa, an official of the PSA.
- [6] The Respondent was in turn represented by Mrs. K. Tlale, an employee of the relevant department.
- [7] The proceedings were conducted in English, a digital recording was made and I also kept handwritten notes.

PRELIMINARY ISSUES

- [8] At the start of the proceedings, the Respondent's representative requested a postponement. She indicated that a Mr. Mosuku was really handling the matter but was unavailable today. When asked what the reason for his unavailability was, she indicated that she did not know. She could also not explain why the Respondent did not earlier (properly) apply for a postponement.

- [9] The Applicant's representative opposed the request for postponement on the basis that the dispute is a simple and clear issue and has been delayed since July 2013. He was of the view that everyone knew the Council rules (specifically with regard to postponement) and they could also have engaged the PSA if they had a problem with the date of the arbitration.
- [10] After hearing both parties, I was not convinced that there was any proper reason for postponing the matter. No reasons were provided on why Mr. Masuku was the only one that could deal with this simple dispute and/or why he was not present or available. The Respondent had received adequate notice of the arbitration proceedings (already on the 22nd of January 2014) and could have either properly briefed another representative or alternatively could have timeously applied for a postponement. They clearly ignored the rules of the PSCBC and only at the arbitration request (demand) a postponement as if it is a right. No such right to postponement exists and without proper reasons for a postponement, I therefore proceeded with the arbitration process.

ISSUE TO BE DECIDED

- [11] I am required to decide on the interpretation and application clause F8 of Resolution 14 of 2002.

BACKGROUND TO THE ISSUE

- [12] The Applicant had lodged a grievance with the Respondent in July 2013, to which the Respondent failed to respond to within the prescribed 30 day period.

SURVEY OF EVIDENCE AND ARGUMENT

- [13] The parties agreed that it was common cause that the Applicant had lodged a grievance on the 8th of July 2013 and that the Respondent had failed to respond to the grievance within the prescribed 30 day period. The Respondent however alleged

that they had since responded to the said grievance which the Applicant denied. No evidence (either oral or documentary evidence) was however submitted to prove this.

- [14] As the Respondent persisted in proceeding with the arbitration despite admitting that they had failed to adhere to the stipulations of Resolution 14 of 2002, I asked both parties to address me on the issue of cost. The Respondent representative again failed to make any submission on why cost should not be awarded against the Department. The Applicant in turn stated that this is a simple and straightforward dispute and since the lodging of the grievance up until today no response has been given to them. This is clear ignorance of the rules as well as the resolution and the award must therefore come with cost.

ANALYSIS OF EVIDENCE AND ARGUMENT

- [15] In this matter, the parties in fact agreed that in terms of Resolution 14 of 2002, the Department of Justice and Constitutional Development had to address the grievance of the Applicant within 30 days and that they had in fact failed to attend to this grievance within the prescribed 30 day period.
- [16] As such there is nothing for me to decide except whether to award cost or not against the Respondent.
- [17] A cost order may be made in arbitration proceedings if it is found that a party or a representative acted in a frivolous and vexatious manner in processing a dispute or in the conduct of the arbitration proceedings. In this case the Respondent clearly acted in a frivolous and vexatious manner, by attending the arbitration proceedings totally unprepared and expecting that the arbitration proceedings would simply be postponed again. The dispute only pertains to how clause F8 of Resolution 14 of 2002 should be interpreted or applied. The parties even agreed that a grievance was lodged and received by the Respondent but that the Respondent then failed to attend to the grievance within the prescribed 30 day period. There is clearly nothing for me to interpret or to rule on the application of. One would therefore have expected of a reasonable employer to have either tried to resolve this issue or to agree on ways to possibly attend to such grievance. The Respondent however chose to rather continue

with the arbitration although they had no case whatsoever, nothing to submit and also no proof of any kind.

[18] This conduct resulted in wasted costs for the Applicant as well as the PSCBC and the Respondent should as such be held responsible for all wasted cost incurred.

AWARD

[19] The Respondent (The Department of Justice and Constitutional Development) is ordered to provide the Applicant (and also his Union) with a written response to his grievance within 7 days of receiving this award.

[20] The Respondent is further ordered to pay all the wasted cost of both the Applicant party as well as the PSCBC for the hearing on the 27th of February 2014 within 14 days of receipt of the full amount of wasted cost incurred from the PSCBC. For this reason the Applicant must submit proper proof of all their wasted costs to the PSCBC within 7 days of receiving this award.

A handwritten signature in black ink, appearing to read 'J.J. Erasmus', is written over a horizontal line. A long, diagonal stroke extends from the bottom left of the signature towards the top left of the page.

Panellist/s:	J.J. ERASMUS
Sector:	DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT