



PUBLIC SERVICE CO-ORDINATING BARGAINING COUNCIL

# ARBITRATION AWARD

Case Number: PSCBC699-13\_14  
Senior Commission / Panellist: Martinus van Aarde  
Date of Award: 17 June 2014

In the **MATTER** between

PSA obo MP Mhanga

(Applicant)

and

Department of Health (FS)

(Respondent)

**Applicant's representative:** Mr. A. J. Greeff

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**Respondent's representative:** Ms C de Beer

Respondent's address: Department of Health

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## 1. Details of hearing / representation

The case was set down for an arbitration hearing on 17 June 2014 at Bloemfontein, PSA Offices. Mr. A. J. Greeff: Official PSA represented the Applicant. Ms C de Beer: LR Officer represented the Respondent (DOH).

## 2. Issue(s) to be decided

This is an application in terms of the **Labour Relations Act 66/1995, section 24(2)(5)** re the interpretation/application of a collective agreement, with specific reference to Resolution 14/2002: (Grievance Procedure).

## 3. Background to dispute

- 3.1 The Applicant lodged a grievance on 4 December 2013 re the upgrading of his position from job grade 4 to 5.
- 3.2 The Respondent failed to respond to the said grievance within the prescribed time limits (30 days). Subsequently, the Applicant lodged a formal dispute (LRA 7.11) on 2 February 2014 in terms of **section 24(2)(5)/LRA '95**. The case was set down for a conciliation hearing on 5 March 2014. The dispute was declared unresolved in terms of **section 135(5)/LRA '95** and a certificate on non-resolution was issued. The Applicant then filed a Request for Arbitration (LRA 7.13) on 5 March 2014.

## 4. Survey of evidence / argument

- 4.1 Applicant's argument simply boils down to the fact that the Respondent failed to comply with Resolution 14/2002 – no response to the Applicant's grievance.
- 4.2 Respondent, on the other hand did not tender any explanation why Line Management still failed to respond to the Applicant's grievance/they seek more time to do so.
- 4.3 Resolution 12/2002 deals with the handling of grievances in the public sector. In terms of the said Resolution (being a collective agreement within the context of **section 23/LRA '95**) it is incumbent on the Respondent to respond to an employee's grievance in writing within 30 working days. Respondent simply failed to follow suit.
- 4.4 The purpose of the said Resolution is simply to attend to internal grievances in a speedily manner. I believe the underlying reasons therefore are quiet obvious – *inter alia* to create 'harmony' in the workplace. It is irrelevant whether the response is acceptable to the employee. If the latter is not satisfied with the response/outcome of the grievance, then the employee can pursue the matter further through other means (e.g. unfair labour practice doctrine (**section 186/LRA**) or in terms of the **Employment Equity Act 55 1998**). However not all grievances will be arbitrable – the Council must determine whether it has the necessary jurisdiction to entertain the dispute through conciliation/arbitration.
- 4.5 I believe the Respondent had ample time to respond to the Applicant's grievance but failed to respond for no apparent reason. As pointed out, the failure to take any positive steps in this regard can only cause disharmony

in the workplace. Equally, one cannot ignore the fact that both the Respondent and Council operate on taxpayers money. By frustrating the dispute causes unnecessary costs. To grant a further postponement (even by settlement agreement) would frustrate the dispute at hand. At some point a line must be drawn.

## 5. Award

In case PSCBC699-13\_14 the following award is rendered—

- 5.1 The Respondent failed to comply with the prescriptive timeframes contained in Resolution 14/2002.
- 5.2 The Respondent is hereby ordered to respond to the Applicant's grievance in writing within seven (7) days after date of receiving this award.
- 5.3 I have seriously considered to order cost against the Respondent but decided to rather caution the latter to attend to grievances in a prompt manner.

Signature:



Senior Arbitrator: **Martinus van Aarde**