



PUBLIC SERVICE CO-ORDINATING BARGAINING COUNCIL

ARBITRATION AWARD

Case Number: PSCB250-13_14
Senior Commission / Panellist: Martinus van Aarde
Date of Award: 28 March 2014

In the **MATTER** between

PSA obo NB Sitsila

(Applicant)

and

Department of Health (FS)

(Respondent)

Applicant's representative: Mr. C Fandie
Applicant's address: C/o: PSA
PO Box 7673
BLOEMFONTEIN, 9300

Telephone: (051) 403 1300
Telefax: (051) 403 1315 / 19
E-mail: —

Respondent's representative: Absent
Respondent's address: Department of Health
Private Bag X227
BLOEMFONTEIN, 9300

Telephone: (051) 408 1105
Telefax: (051) 408 1666 / 1993
E-mail: —

1. Details of hearing / representation

The case was set down for an arbitration hearing on 28 March 2014 (14h30) at Bloemfontein, PSA Offices. Mr. C Fandie: Official PSA represented the Applicant. The Respondent failed to attend the hearing.

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 11 February 2013 *re* PDMS-assessment for the period 1 April 2011 to 31 March 2012 claiming a cash bonus payment.

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 19 June 2013 in terms of **section 24(2)/(5)/LRA '95**. The case was then set down for a conciliation hearing on 13 August 2013. The dispute was declared unresolved in terms of **section 135(5)/LRA '95**. The Applicant then filed a Request for Arbitration on 27 August 2013.

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 As pointed out, the Respondent failed to attend this hearing and it follows that the Applicant is still left in the dark as to her grievance (which she initially lodged some thirteen (13) months ago).

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. As the saying goes: "the wheels of government turns slowly" – *in casu*, this appears to be indeed the case and one can only speculate whether the wheels indeed started to turn at all and/or

whether the wagon is fitted with wheels at all. 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 tax-payers money. By frustrating the dispute causes unnecessary costs. I also did not receive any excuse or explanation for the Respondent's failure to show any appearance.

5. Award

In case PSCB250-13_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 ordering cost against the Respondent but decided to rather caution the latter (for a final time) to attend to grievances in a prompt manner and/or to attend the hearings set down by the Council in its endeavour to solve labour disputes in a speedily manner — see also the **Labour Relations Act 66/1995, section 138(1)**.



Signature:

Senior Arbitrator: **Martinus van Aarde**