



ARBITRATION AWARD

Panelist: John Cheere Robertson
Case No.: PSCB255-13/14
Date of Award: 23 March 2014

In the ARBITRATION between:

SAPU obo Labane, MC

(Union / Employee)

and

South African Police Service

(Employer)

Employee's representative: Mr L Naude (SAPU)
Employee's address: 38 Pickering Street
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Port Elizabeth, 6025
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Employer's representative: Brigadier P De Kock / Col. R Mahloromela
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0001
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DETAILS OF HEARING AND REPRESENTATION

1. This matter was set down for arbitration on 24 January 2014. Mr L Naude of SAPU represented Capt. MC Labane (employee). Col. A De Witt attended on behalf of Col. Mahloromela for the South African Police Service (SAPS) (employer). The facts of the matter were common cause, however the parties could not finalise the matter, as they did not have the necessary documentation to hand. The parties undertook to submit an agreed stated case on or before 31 January 2014 and closing arguments by 28 February 2014. The parties by agreement later extended the final date for submission of closing arguments to 11 March 2014. The employee party submitted closing arguments on 25 February 2014 and the employer on 11 March 2014.

ISSUE TO BE DECIDED

2. The issue to be determined is whether the employee is entitled to a housing allowance in terms of PSCBC Resolution 2/2004(R 2/2004) as amended by PSCBC Resolution 4/2010 (R 4/2010).

BACKGROUND TO THE ISSUE

3. The parties agreed on a stated case, which forms background to this matter namely:
 - 3.1 *"The employee referred a dispute concerning the interpretation and application of PSCBC collective agreement 1 of 2007, relating to housing allowance.*
 - 3.2 *The employee received the monthly housing allowance, after being notified that he and his spouse were not both entitled to the allowance the employer discontinued the allowance on 31 May 2013 and thereafter commenced deducting the overpayment (R10 800.00) in monthly installments (See A.1).*
 - 3.3 *The employee's spouse is employed by the Department of Education and they are married in community property.*
 - 3.4 *The employee (not his spouse) is responsible for payment of the rental on their residential dwelling. (See attached lease agreement A.2 to 5).*
 - 3.5 *The employee's spouse still receives the allowance from her employer.*
 - 3.6 *The two (2) employers did not consult with each other prior to 31 May 2013 and nor the employer of the spouse consult with her. His spouse therefore still receives the allowance but does not contribute to the payment of lease."*

SURVEY OF EVIDENCE AND ARGUMENT

The employee's submissions

4. The employee argued, with reference to Par 7.1.4 of Resolution 1/2004 and Par 2 of the Determination on Housing, 2005, to the effect that although provision was made in the Resolution for a housing allowance to be paid to one spouse only, where both were employed in the public service, to qualify for a housing allowance the rental agreement had to be the employee's name. The rental agreement for the premises he rented from the Maletswai Local Municipality, which he occupied as his home, was in his name, and accordingly the housing allowance should be paid to him.
5. In the circumstances the employee sought that his housing allowance be reinstated and that the monies deducted from his salary in respect of the previous payments made to him in this regard be refunded.

The employer's submissions

6. The employer party argued, with reference to Par 7.1.4 and 7.1.10 of Resolution of 2/2004 to the effect that where both spouses were employed in the public service, whether in different Public Service Departments or not, the housing allowance was payable to only one of the spouses and further the employee was excluded by virtue of the provisions of 7.6 of the Implementation of Housing Allowance: Rentals: Phase 2
7. In the circumstances the employee was not entitled to a housing allowance and the employer was entitled to recover the amount overpaid in terms of Section 38(2)(b) of the Public Service Act

ANALYSIS OF EVIDENCE AND ARGUMENT

8. The employee's wife is employed by the Department of Education and has received a housing allowance for their home from the beginning. The employee also received a housing allowance for the period 10 April 2012 to 31 March 2013, amounting in total to R 10 800.00, which was then stopped and is now being recovered by deductions from his salary at the rate of R 1 000.00 per month.
9. The employee's spouse, to whom he is married in community of property, does not utilise the housing allowance, which she is in receipt of, towards payment of the rental and the employee, in terms of the rental agreement, is required to pay this.
10. The employee argues that by virtue of Par 2.2.1¹ of the Determination on Housing 2005² read with Par 2.2.3.1³ he as a tenant, with the rental agreement in his name, qualifies for the housing allowance. This argument however loses sight of the proviso to Par 2.2.1. Par 2.2.1 reads as follows:
*"An employee could either own (hereafter referred to as a home owner) or rent (hereafter referred to as a tenant) a home to qualify for the Housing Allowance, **provided that s/he meets all the other qualifying requirements set out in this determination**".*
11. In addition to there being a valid written rental agreement being in the tenants name (Par 2.2.3.1), payments can be made in terms of the Housing Allowance Scheme for one home only (Par 2.1.2.1) and one spouse only, unless for operational reasons they are stationed in different magisterial districts and occupy and maintain two separate homes (Par 2.1.2.2). This is not so in the instant case.
12. The fact that the employee's spouse receives the Housing Allowance accordingly prohibits the employer from paying the employee a Housing Allowance. Provision is made for a spouse, married in community of property,

¹The provisions of the Determination on Housing 2007 are similarly worded.

²The provisions of the Determination on Housing 2007 are similarly worded.

³Par 2.2.3.1 of the Determination on Housing 2007, provides as follows "An employee applying for the Housing Allowance, as a tenant, must have a valid written rental agreement in his/her name ***alone or together with (an)other co-tenant(s), e.g. a spouse, friend, sibling or parent for the house*** he/she is occupying. The words in bold and italics are in the 2007 determination. The 2005 determination refers to a home and not a house.

where the rental agreement is in the other spouses name, to obtain a Housing Allowance, see Par 2.2.2.2 (c) of the Determination on Housing 2007 which reads as follows:

“(c) If the rental agreement is in the name of the other spouse and not the spouse (employee) who applies for the housing allowance, the employee may, if married in community of property, submit [a] the rental agreement which is in the name of the other spouse together with a marriage certificate indicating that his/her marriage is in community of property, or if no such indication, a marriage certificate plus an affidavit declaring that his/her marriage is in community of property.”

13. The fact that the employee’s spouse does not apply the proceeds of the Housing Allowance is certainly contrary to the purpose and conditions of the Housing Allowance, however this cannot justify the grant of a Housing Allowance to the employee.
14. For the reasons set out above I find that the employee is not entitled to a Housing Allowance and make the following award.

AWARD

15. The employee, Captain MC Labane PERSAL No. 1641182, is not entitled to a Housing Allowance in terms of PSCBC Resolution 2 of 2004 as amplified by the Determination on Housing 2007. His claim is accordingly dismissed.
16. The employer, the South African Police Service, has complied with the provisions of PSCBC Resolution 2 of 2004 as amplified by the Determination on Housing 2007 in terminating the Housing Allowance, incorrectly awarded the employee and is lawfully entitled to the recovery of the overpayments (R 10 800.00) made in this regard, by way of monthly deductions from the employee’s salary.



John Cheere Robertson
PSCBC Panelist