



PANELIST: ADVOCATE J P HANEKOM

CASE NO: PSCB273 -13/14

AWARD DATE: 4 MARCH 2014

In the matter between:

SAPU obo DU PLESSIS

Applicant

and

SOUTH AFRICAN POLICE SERVICE

Respondent

ARBITRATION AWARD

DETAILS OF THE HEARING AND REPRESENTATION:

1. This matter was set down for arbitration on 4 February 2014 concerning a dispute about the interpretation and/or application of a collective agreement (Resolution 7 of 2000 – hereinafter referred to as the “Resolution”). Mr. Gerber, union official of SAPU represented the Applicant. Mr. J. Van Rensburg of Legal Services within the Department represented the Respondent. Both representatives agreed to argue the case on paper and to submit written argument respectively on 11 February 2014 and 18 February 2014. I would then issue my award on or before 4 March 2014.

ISSUE TO BE DECIDED:

2. Whether or not the Respondent correctly applied or interpreted the Resolution.

HISTORICAL BACKGROUND:

3. It was common cause that the Applicant is employed by the Respondent as a Captain. It is further common cause that the Applicant has a history of epileptic seizures which resulted in hospitalisation.
4. During 2006/2007 the Applicant exhausted her sick leave credits and applied for temporary incapacity leave (TIL) for the period (29 May 2006 to 31 May 2006 – the first period); (21 February 2007 to 30 March 2007 – the second period); (13 August 2007 to 24 August 2007 – the third period). The TIL for the first period was disapproved on/or about 7 February 2008. The second and the third period was disapproved on/or about 14 March 2008.
5. According to the Applicant she was never informed of the outcome as required by Policy on Incapacity Leave and Ill Health Retirement (PILIR). Subsequently the Respondent served a notice of debt account on the Applicant on 10 July 2012 for the amount of R21 980, 95 after which the Applicant registered a grievance. Applicant received no feedback in respect of the grievance and referred the matter to the council on or about 25 July 2013.

ARGUMENT BY THE APPLICANT:

6. I have decided to summarise the Applicant's argument as far as I consider relevant.
7. It was the Applicant's argument that her applications for TIL was submitted on time. The Applicant was not informed of the outcome of the TIL applications and it only came to her attention on/or about 11 July 2012 when a debt account was opened to recover the over payment of salaries in respect of the TIL applications that were not approved.
8. It was further the Applicant's argument that the Respondent did not adhere to the 30-

day timeframe in which to investigate the matter.

9. The Applicant further submitted that the Respondent's claim to recover the amount of R21 980, 95 prescribed 2011 after 3 years. Accordingly the Respondent should not deduct any monies from the Applicant in this regard. Further that TIL applications should be approved.

ARGUMENT BY THE RESPONDENT:

10. I have decided to summarise the Respondent's argument as far as I consider relevant.
11. It was the Respondent's argument that the Respondent has discretion in terms of paragraph 7.5 of the Resolution to grant TIL or not. Applicant must establish her right to remuneration as the Applicant does not have an automatic right to remuneration during a period of absence due to illness. Applicant must also establish a *prima facie* right to such a relief. Mr. J. Van Rensburg cited case law in support of his argument.

ANALYSIS OF THE EVIDENCE AND ARGUMENT:

12. I have decided only to focus on those issues I consider relevant for the purpose of my award.
13. Most of the facts as constituted in the historical background above were considered common cause between the parties. It was further common cause that the TIL applications for the various periods were not approved and the the Respondent opened a debt account for the amount of R21 980, 95 on/or about 10 July 2012 to recover the amount of over payment of salary in respect of the TIL applications not approved.
14. It is apparent from the common cause bundle of documents submitted by the parties that the Applicant's TIL application for the first period was not approved due to poor management of her sick leave. This happened after the matter was sent to Human Risk Manager (HRM) for its recommendation which was received on 25 January

2008. From the HRM report it is clear that the Applicant has a poor sick leave profile and that the illness in respect of the first period was stomach flue. It was further apparent from the common cause bundle of documents that the second and the third period was not approved due to the fact that the applications were not complete and proper and that no specific diagnosis were mentioned. It was also noted that if detailed information is supplied at a later stage, the applications may be reviewed.

15. The written argument by the parties was limited and did not address all the issues I considered relevant. Be it as it may I will deal with the issues raised.
16. It is trite law that the Applicant does not have an automatic right to TIL. In terms of paragraph 7.5.1 of the Resolution the Respondent “may” grant sick leave under certain conditions. The Respondent therefore has discretion to grant sick leave. In respect of the first period the Respondent declined the TIL due to the fact that the Applicant managed her sick leave poorly. I cannot dictate to an employer how to manage the sick leave of its employees. It took into account the fact that the Applicant management her sick leave poorly. I cannot say under the circumstances that the Respondent acted unfairly or was not entitled to do so. As I said before the Applicant does not have an automatic right to TIL just because she was ill. The Respondent may decide to grant the sick leave or not after the Applicant exhausted her normal sick leave. In respect of the second and third period, it appears that the Applicant’s TIL applications were rejected due to the absence of detailed medical evidence. It further appears from the documentary evidence that the Applicant was only informed of the outcome when the debt account was opened in 2012. Had the Applicant been timeously informed of the outcome, she could have provided detailed medical evidence. In the absence of clear medical evidence in this regard I cannot determine whether or not the Respondent fairly exercised its discretion in respect of the second and third period.
17. Mr Gerber for the Applicant raised the issue of prescription. It is my understanding of the Prescription Act 68 of 1996 that a party may raise the issue of prescription during proceedings. Prescription in terms of Section 12 of the Prescription Act starts to run when the debt is due or when the cause of action arises. Therefore a debt prescribes after 3 years after the debt becomes due and payable or 3 years after the cause of action arose. In my view the Respondent did nothing to recover the outstanding amount of R21 980, 95 within 3 years after the TIL applications were disapproved on 7 February 2008 and 14 March 2008. Accordingly I find that the Respondent’s right to recover the debt in question has prescribed in terms of the Prescription Act 68 of

1996.

AWARD:

18. In the premises I make the following award:
- (1) I find that the Respondent fairly exercised its discretion not to grant the TIL application in respect of the first period (29 May 2006 to 31 May 2006). I do not have enough evidence before me to decide whether the Respondent unfairly exercised its discretion in respect of the TIL for the second period (21 February 2007 to 30 March 2007) and third period (13 August 2007 to 24 August 2007).
 - (2) I however find the Respondent's claim to recover the amount of R21 980, 95 prescribed and therefore the Respondent is not entitled to recover this money from the Applicant's salary. The Respondent is therefore ordered to repay the Applicant any monies deducted from the Applicant's salary in respect of the above TIL applications and to stop further deductions with immediate effect.
 - (3) I reserve jurisdiction in respect of any discrepancies between the parties as to the calculation of monies due to the Applicant. It was uncertain from the submissions made by the parties as to what amount was already deducted from the Applicant's salary.
 - (4) I make no order as to costs.



ADV J P HANEKOM