



ARBITRATION AWARD

Panellist/s: Hilary Mofsowitz _____
Case No.: PSCBC 29-14/15 _____
Date of Award: 18 July 2014 _____

In the ARBITRATION between:

POPCRU obo JOHN RAYMOND JANSEN

(Union / Applicant)

and

THE SOUTH AFRICAN POLICE SERVICES

(Respondent)

Union/Applicant's representative: Victor Solani _____
Union/Applicant's address: POPCRU _____
Lusaka Office, Second Avenue _____
BELLVILLE _____
Telephone: 021 946 3871 _____
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Respondent's representative: Theo Kruger _____
Respondent's address: The South African Police Services _____
National Head Office _____
PRETORIA _____
Telephone: 012 393 7131 _____
Telefax: 012 393 7159 _____

DETAILS OF HEARING AND REPRESENTATION

1. This is the award in the arbitration between the Police and Civil Rights Union (“POPCRU”) obo John Raymond Jansen (“the Applicant”) and the South African Police Services (“the Respondent”).
2. Arbitration was held at the Respondent’s offices on 9 July 2014.
3. Victor Solani (“Solani”) an Official of POPCRU represented the Applicant.
4. Theo Kruger (“Kruger”) of Legal Services represented the Respondent.
5. The proceedings were digitally recorded. The dispute was argued in the form of oral and written submissions. No witnesses were called.

ISSUE TO BE DECIDED

6. I have to decide whether the Respondent correctly applied/interpreted the provisions of the Public Service Co-ordinating Bargaining Council Resolution 1 of 2012 in relation to long service recognition.

BACKGROUND TO THE DISPUTE AND SUMMARY OF ARGUMENT

7. The issue in dispute is the interpretation/application of PSCBC Resolution 1 of 2012 in relation to long service recognition. In terms of this Resolution employees with 30 years continued service qualify for a cash award of R 15 000.00 and a certificate. The content of the Resolution was not placed in dispute. The length of service of the Applicant was not disputed. It was established as common cause that the Applicant completed 30 years of continued and uninterrupted service on 10 August 2012 and therefore the Applicant qualified for long service recognition in terms of section 5.1.3 of Resolution 1 of 2012. The Respondent’s documentation confirms this. The cash award and certificate would have been paid/issued in August/September 2013. The Applicant seeks an award in his favour wherein the Respondent be ordered to pay the Applicant the cash award of R 15 000.00 and a certificate. It was undisputed that the Applicant was not paid the long service recognition/issued a certificate.
8. It is common cause that the Applicant has a criminal record relating to an offence in 1998. The Respondent’s representative argued that as a consequence of the Applicant being found guilty of a criminal offence, the Respondent has sought guidance from the Minister of State Administration relating

to the payment of long service recognition. The Minister of State Administration must advise the Respondent whether it would be proper to remunerate employees with criminal records. The purpose of long service recognition is to award employees for good service rendered and to award employees for clean disciplinary records. The Respondent's representative argued that the referral is premature in that a final decision regarding the payment of long service recognition, has not yet been made.

ANALYSIS OF EVIDENCE AND ARGUMENT

9. The dispute concerns the interpretation/application of a Collective Agreement. The dispute concerns PSCBC Resolution 1 of 2012. The applicable provision reads as follows: Long service will be recognized with 30 years continued service: a cash award of R 15 000.00 plus a certificate.
10. In essence the Applicant's dispute relates to the Respondent's failure to grant him long service recognition relating to 30 years' service in 2012. It is common cause that the Applicant did not receive this.
11. The scope of an arbitrator in an interpretation/application dispute is to determine whether the Respondent has failed to apply or interpret the provisions of a particular Collective Agreement. The scope of the arbitrator is narrowly confined to this particular task in conjunction with the application of the interests of fairness.
12. The wording of the Resolution is clear. Employees with 30 years continued service qualify for long service recognition. It was undisputed that the Applicant qualified with 30 years continued service in 2012 and that under ordinary circumstances would have qualified in terms of the applicable provision of the Resolution. The Resolution does not provide for qualifying circumstances. The Resolution does not cater for the exercise of discretion. The Resolution is clear that all employees qualify once they have achieved a certain amount of years in the Respondent's service.
13. Based on the evidence, interpreting the applicable Resolution and applying the interests of fairness, the Respondent's decision (in not awarding the 30 year recognition in 2013) warrants interference. In applying the principles of fairness, I have assumed that the Applicant has achieved 30 years of service with dedicated service to the Respondent. There was no evidence that this was not the case and therefore the balance tilts in the Applicant's favour.

14. In the circumstances and on the submissions before me, I find that the Respondent has not applied and interpreted the provisions of Resolution 1 of 2012 correctly. The provisions of the Resolution are clear. The provisions provide for the payment of long service recognition on the completion of 30 years continuous service. I have found that the Applicant has completed 30 years continuous service in 2012 and therefore the Respondent's failure to pay the long service entitlement in 2013 is in breach of the provisions of Resolution 1 of 2012 (specifically Clause 5.1.3).
15. The Respondent, the South African Police Services must pay the Applicant, POPCRU obo John Raymond Jansen, the long service recognition of R 15 000.00 by no later than 30 August 2014. The Respondent must also issue the long service recognition certificate in compliance with Resolution 1 of 2012. The certificate must be issued by no later than 30 August 2014.

AWARD

16. I find in favour of the Applicant.
17. The Respondent has not applied/interpreted the provisions of Clause 5. 1. 3 of Resolution 1 of 2012 correctly in relation to the recognition of 30 years' service.
18. The Respondent, the South African Police Services must the Applicant, John Raymond Jansen, the long service recognition of R 15 000.00 by no later than 30 August 2014. The Respondent must also issue the long service recognition certificate in compliance with Resolution 1 of 2012. The certificate must be issued by no later than 30 August 2014.



HILARY MOFSOWITZ

For the PSCBC
18 July 2014

PSCB 29-14/15