



PUBLIC SERVICE CO-ORDINATING BARGAINING COUNCIL

ARBITRATION AWARD

Case Number: PSCB 203-13/14
Commissioner: Kelvin Kayster
Date of Award: 13 May 2014

In the **ARBITRATION** between

SAPU obo November D

(Union/Applicant)

And

South African Police Service

(Respondent)

Union/Applicant's representative: Mr. L. Naude (SAPU)

Union/Applicant's address: 38 Pickering Street

Newton Park

Port Elizabeth

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Respondent's representative: Col L. Mkalipi

Respondent's address: Private Bag X91

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0001

Telephone: 012 393 1774

Telefax: 041 393 7159

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DETAILS OF HEARING AND REPRESENTATION:

1. The arbitration hearing in this dispute was scheduled for 09 April 2014 at the offices of SAPU in Port Elizabeth.
2. The Applicant is Ms. D. November, an officer in the service of the Respondent. The Applicant was represented by Mr. Naude of SAPU.
3. The Respondent is the South African Police Service and was represented by Colonel Mkalipi.
4. At the arbitration proceedings on 09 April 2014 the Applicant submitted information that the Respondent was unaware of. The parties accordingly agreed in writing that the Respondent would be granted 14 days to investigate the new information in an attempt to resolve the dispute. The parties incorrectly agreed that the Respondent would have until 17 April 2014 to investigate the matter, but rectified this error by submitting to me an "Amended agreement to process" on 17 April 2014, in terms whereof the parties would submit a stated case on or before 22 April 2014. The parties further agreed that they would then submit written closing arguments on 22 and 29 April 2014 respectively and that the arbitrator, irrespective of compliance with the dates, may commence with the award on 08 May 2014.
5. I received the agreed stated case, as well as the Applicant's written closing arguments on 25 April 2014. Up to and including 08 May 2014 I have not received any closing arguments from the Respondent. Neither have I received it by the time this award was written. This award is therefore based on the submissions that were before me as on 13 May 2014.

ISSUE TO BE DECIDED:

6. The matter was referred to the PSCBC as a dispute relating to the interpretation/application of PSCBC Resolution 7/2000, as amended. The Applicant referred this dispute to the PSCBC after the Respondent declined her application for temporary incapacity leave (TIL) for a specified period, resulting in deductions being made from her salary for the said period, as well as for another period for which she apparently did not even apply for TIL. I am called upon to determine whether or not the Respondent correctly applied the said Resolution 7/2000.

BACKGROUND TO THE ISSUE:

7. The background to this dispute is contained in the agreed statement of case. Briefly, the Applicant was off-sick for the period 03 November 2003 until 03 December 2003. She applied for TIL for this period within the prescribed time limit. On 23 July 2012 she became aware that money would be deducted from her salary for unpaid leave for the said period, as well as for the period 13 August 2007 until 30 August 2007. She concedes that she applied for TIL for the period 03 November 2003 to 03 December 2003, but

submitted that she was not off-sick nor did she apply for TIL for the period 13 August 2007 until 30 August 2007. She was not afforded the opportunity to make representations regarding the refusals to grant TIL, nor did she give her approval for any of the deductions. During July 2012 the Respondent commenced deductions from the Applicant's salary for the periods of the declined TIL. The debt amounts were R11 172.97 and R1 018.02 respectively.

8. The parties further agreed that the relevant policy documents are National Instruction 2 of 2004 (NI 2/2004), Delegation of Powers: Consolidation Notice 22/2005 as amended by CN 3/2008 and PILIR. The Applicant submitted a bundle of documents together with her closing arguments. The parties agreed that the documents are admitted into evidence in form and content. The Respondent undertook to submit its closing arguments and more documents, but as stated, never did.

SURVEY OF SUBMISSIONS:

9. The Applicant presented her cases by means of written submissions, as agreed. Save for the Agreed statement of case, the Respondent failed to make any written submissions. Here follows brief outlines of the Applicant's closing arguments.

Applicant's submissions:

10. The Applicant submitted that she was off duty due to illness for the period 03 November 2003 to 03 December 2003 and duly applied for TIL. She does not know when the application for TIL was declined, because she only became aware thereof during July 2012 when the Respondent commenced with deductions from her salary. She further submitted that she was booked off sick for the period 13 August 2007 until 30 August 2007, but reported for duty during this time and therefore never applied for TIL in respect of this period. She referred to her Certificate of Appreciation for attendance while booked off sick, as well as an affidavit and diary entry by her commander confirming that she attended work during this time of alleged absence.
11. She further argued that Resolution 7/2000 is a collective agreement and its prescripts are binding on both parties. The Applicant applied for TIL, as required. The onus then shifted to the Respondent to consider the application in terms of Consolidation Notice 22/2005. The duration of this exercise should not exceed 30 working days. An employer may therefore not ignore such a time frame and simultaneously penalise an employee. The Applicant further argued that she was not informed of the outcome of her application for TIL, and was accordingly never afforded an opportunity to make representations as allowed in paragraph 7.3(a) of the National Leave Instruction; Consolidation notice 10/2004. In conclusion the Applicant argued that she never granted permission for the deductions being made from his salary. The

Applicant therefore seeks an order for the approval of the application for TIL, and that the Respondent be ordered to repay the amounts that were deducted from her salary.

12. As stated, the Respondent did not submit any written closing arguments.

ANALYSIS:

13. This dispute relates to the application of PSCBC Resolution 7 of 2000, as amended (The Collective Agreement on the improvement in the conditions of service of public service employees). The Applicant referred the dispute to the PSCBC after the Respondent made deductions from her salary after declining her application for TIL, and also made deductions for a period that she was indeed on duty. The relevant provision to this dispute can be found in clause 7.5.1 of Resolution 7 of 2000. It reads as follows:

Temporary disability leave:

- (a) *An employee whose normal sick leave credits in a cycle have been exhausted and who, according to the relevant practitioner, requires to be absent from work due to disability which is not permanent, may be granted sick leave on full pay provided that:
 - (i) *her or his supervisor is informed that the employee is ill; and*
 - (ii) *a relevant registered medical and/or dental practitioner has duly certified such a condition in advance as temporary incapacity leave except where conditions do not allow.**
- (b) *The employer shall, during 30 working days, investigate the extent of inability to perform normal official duties, the degree of inability and the cause thereof. Investigations shall be in accordance with item 10(1) of Schedule 8 in the Labour Relations Act of 1995.*
- (c) *The employer shall specify the level of approval in respect of applications for disability leave”.*

14. By accepting the form and content of the Applicant's documents the Respondent conceded that the Applicant was indeed on duty during the period 13 August 2007 until 30 August 2007. This fact is substantiated by the Applicant's submissions, as well as her supervisor's affidavit and diary entry. Those documents would normally constitute hearsay evidence, but as stated, the Respondent in the agreed stated case accepted its veracity on form and content. The Applicant submitted that she did not apply for TIL for this period. The Respondent's act of making deductions from her salary for this period was therefore obviously wrong. It stands to be set aside.

15. With regard to the period 03 November 2003 to 03 December 2003 the agreed stated case indicates that the Applicant was indeed off sick and duly applied for TIL. She has not heard about the application until she became aware on 23 July 2012 that money would be deducted from her salary for unpaid leave. She was not afforded the opportunity to make representations regarding the refusals, nor did she grant approval for any of the said deductions. The Applicant now argues that the Respondent failed to process her application for TIL within the stipulated 30 working days, and is therefore in breach of clause 7.5.1 of Resolution 7 of 2000. The Respondent therefore acted unfairly when applying her leave credits to compensate for her absence, and also by making deductions from the Applicant's income, especially since she made no representations and did not grant consent for the deductions to be made. There is no evidence or submissions before me that suggests otherwise. I accordingly find that the Respondent was indeed in breach of clause 7.5.1 of Resolution 7 of 2000.
16. The Applicant seeks an order that the refusal of the TIL be set aside, and that the Respondent be ordered to amend her leave record and repay the deductions. I am called upon to consider whether or not the collective agreement was complied with, and to grant competent relief to remedy any non-compliance with the collective agreement. The question that arises is whether or not the Respondent's non-compliance with prescripts (that resulted in the deductions being made) was fair. The yardstick in labour issues is based on the principle of fairness. Fairness dictates that the employer's discretion should be exercised fairly and in compliance with legal prescripts. The failure to comply with the prescripts prejudiced the Applicant and is accordingly sufficient ground for the Respondent's decision to be set aside. The Respondent's conduct flies in the face of what the collective agreement has intended and is in direct conflict with the principles of fairness.
17. Therefore, the setting aside of the deductions and amendment of the Applicant's leave record would in my view constitute competent relief in the circumstances. In setting aside the deductions I am in no way crediting the Applicant with leave, but I am rather restoring the situation that would have prevailed had it not been for the Respondent's unfair conduct. I am similarly also not approving the application for TIL, but I am simply reversing the situation to the stage before the Respondent's unfair conduct occurred.
18. The agreed stated case states that the amounts of R11 172.97 and R1 018.02 were deducted from the Applicant's salary. The total amount is R12 190.99. The Applicant further submitted undisputedly that 4 days capped leave and 7 days annual leave of her leave credits were used to compensate for her absence. I consider it fair and just to set aside the refusal of TIL, and order the Respondent to refund the deductions made from the Applicant's salary and also to restore her leave record. In the premise I make the following award:

AWARD:

19. The Respondent failed to comply with clause 7.5.1(b) of Resolution 7 of 2000.
20. The Respondent's acts of making deductions from the Applicant's remuneration for the stated periods, and using her leave credits to compensate for her absence, are hereby set aside.
21. The Respondent is directed to refund the Applicant on or before 30 June 2014 in the amount of R12190.99, being the deductions made from her remuneration relating to the stated periods.
22. The Respondent is directed to credit the Applicant's leave record with 4 days capped leave and 7 days annual leave by not later than 30 June 2014.



Signature: _____

PSCBC Panelist: **Kelvin Kayster**