



IN THE PUBLIC SERVICE COORDINATING BARGAINING COUNCIL

HELD AT BLOEMFONTEIN

ON 4 NOVEMBER 2014

IN THE MATTER BETWEEN:

PSA obo NGALONKULU N

AND

DEPARTMENT OF RURAL DEVELOPMENT & LAND REFORM-NORTHERN CAPE

PSCB 275-14/15

ARBITRATION AWARD

DETAILS OF HEARING AND REPRESENTATION

1. The present dispute between PSA obo Ngalonkulu N (hereinafter referred to as the applicant) and The Department of Rural Development & Land Reform- Northern Cape (hereinafter referred to as the respondent) was referred to Arbitration in terms of Section 24 (2) of Act no 66 of 1995, as amended (the Act). At the Arbitration hearing which was scheduled to be held at the Boardroom of the applicant in Bloemfontein on 4 November 2014, the applicant was represented by Mr. C Fandie of PSA and the respondent was represented by Mr. Monnapula.
2. The parties were afforded the opportunity to submit written arguments. The applicant was to submit his founding argument by no later than 11 November 2014. The respondent was to respond by no later than 18 November 2014. The applicant, should he wished to reply was allowed till no later than 25 November 2014.
3. Both parties filed submissions and were considered.
4. Herewith brief reasons for my decision in terms of Section 138 (7).

THE ISSUE

5. The issue to be decided by myself is whether the applicant is entitled to payment for the period 2 April 2014 till 5 April 2014, whilst on sick leave.

SURVEY OF SUBMISSIONS

APPLICANT'S SUBMISSION

6. Essentially, the applicant argued that she had produced a medical certificate for her absence from work on 2 April 2014 till 5 April 2014. However the medical certificate was not accepted the respondent deducted the amount of R 3 553.11 as unpaid leave.
7. She submitted that indeed Resolution 7 of 2000 clause 7.4 (a) read as follows: " Employees shall be granted 36 working days sick leave with full pay in a three year cycle" and Clause 7.4 (b) read "the employer shall require a medical certificate from a registered medical practitioner if three or more consecutive days are taken as sick leave".
8. She argued that based on the above sub clause(s) 7.4 (a) & (b), it was evident that an employee in her position having sick leave days, is entitled to these days on full pay on condition that she produces the medical certificate which she had produced to the respondent.
9. She insisted that, these clauses are binding on both respondent and the applicant and non-

compliance with these clauses amounted to the breach of obligation in terms of the said collective agreement.

RESPONDENT'S SUBMISSION

10. In brief, the respondent contended that the applicant had indeed sought the extension of her annual leave from 2 April 2014 till 5 April 2014, which was denied due to operational reasons. The applicant had tendered a medical certificate for the period of her absence however the respondent rejected same as it was only hearsay proof of her medical incapacity and was not supported by the medical practitioner's affidavit confirming the applicant's incapacity. The respondent cited case law to suggest that a medical certificate was not sufficient.
11. The respondent did not deny the reading of Resolution 7 of 2000.

ANALYSIS OF SUBMISSIONS

12. Resolution 7 of 2000 reads at 7.4 a) *Employees shall be granted 36 working days sick leave with full pay in a three year cycle; b) The employer shall require a medical certificate from a registered medical practitioner if three or more consecutive days are taken as leave; c) Practitioners shall for this purpose, include all practitioners as defined by the Health Practitioners Council of South Africa (Medical and Dental Practitioners); d) An employee shall produce a medical certificate at the request of the employer where a pattern has been established; e) Unused sick leave credits shall lapse at the end of the three year cycle.*
13. It is not in dispute that the applicant had not produced a sick note. Nor is it in dispute that the applicant's sick note was not a valid certificate issued by a registered medical practitioner.
14. The applicant had indeed complied by producing a valid medical certificate.
15. I am inclined towards the provisions of Resolution 7 of 2000 at 7.4 b) which allows for an employer to require a medical certificate from a registered practitioner if three or more consecutive days are taken as leave. The applicant had conformed to the said requirement.
16. It is not a requirement in the aforementioned Collective Agreement that the medical certificate be accompanied by a medical practitioner's affidavit. Therefore I am inclined to suggest that the Collective agreement mentioned supra requires a medical certificate and no further qualification as proof of medical incapacity. Until the amendment of the present Collective Agreement, a medical certificate must be accepted as proof of medical incapacity.
17. Indeed I am persuaded that the applicant might have extended her annual leave however there is nothing to suggest the probability the applicant was not medically incapacitated.

18. The said Collective Agreement does not suggest any recourse for action in the event of the abuse for sick leave. It would in my opinion be a disciplinary misconduct in the event of the abuse of sick leave.
19. There is also nothing before me to suggest that the applicant had exhausted her 36 day leave cycle in three years.
20. The applicant is entitled to paid, sick leave for the period 2 April 2014 till 5 April 2014.

REMEDY

21. The applicant sought the payment of the amount of R 3 553.11 which was deducted by the respondent from her salary for her period of absence 2 April 2014 till 5 April 2014.

AWARD

22. The applicant is indeed entitled to sick leave for the period 2 April 2014 till 5 April 2014.
23. The respondent, The Department of Rural Development and Land Reform is order to pay the applicant in the amount of R 3 553.11 (three thousand five hundred and fifty three rand and eleven cents) only.
24. The above amount is to be paid to the applicant into the same bank account the respondent ordinarily paid the applicant's salary by no later than 15 December 2014.
25. There is no order as to costs.

Signed at Kimberley on this 25th day of November 2014



**PSCBC COMMISSIONER
SHIRAZ MAHOMED OSMAN**