



PANELIST: ADVOCATE J P HANEKOM

CASE NO: PSCB174 -14/15

AWARD DATE: 28 OCT 2014

In the matter between:

PSA obo Janse Van Rensburg

Applicant

and

DEPARTMENT OF COMMUNITY SAFETY

Respondent

ARBITRATION AWARD

DETAILS OF THE HEARING AND REPRESENTATION:

1. This matter was set down for arbitration on 7 October 2014 concerning a dispute about the interpretation or application of a collective agreement (Resolution 2 of 2004 – hereinafter referred to as the “Resolution”). Mr. J. Munro, union representative of PSA represented the Applicant. Mr. J. Conradie of Labour Relations at Department of the Premier represented the Respondent. The leading of evidence was digitally recorded and finalised in one day. The parties thereafter agreed and requested to submit written closing argument by 14 October 2014 where after I would issue my award on or before 28 October 2014.

ISSUE TO BE DECIDED:

2. I have to decide whether the Respondent correctly applied and/or interpreted the Resolution.

HISTORICAL BACKGROUND:

3. The Applicant is employed by the Respondent as a Provincial Inspector (Traffic Officer) since 1 July 2013.
4. The Applicant together with other new intakes applied for a housing allowance. The Applicant rents a property in terms of a rental agreement and qualified for the housing allowance that was approved for one year with effect from 1 September 2013 until 31 August 2014.
5. According to the Applicant he initially applied for the housing allowance on 1 July 2013 when he started employment. During August 2013 they were allegedly called to the office to be informed that the forms that they signed on 1 July 2013 were the old and incorrect forms and that they must sign new application forms, which they did on 2 September 2013.
6. It was the Respondent's view and decision that the Applicant only qualified for the housing allowance since September 2013 as that was the time that the application for housing allowance was signed.
7. The Applicant now wishes to challenge that decision.

EVIDENCE AND ARGUMENT BY THE APPLICANT:

8. The Applicant called B. Jama as a witness and submitted documentary evidence in support of his case. I have decided to summarise the Applicant's evidence and argument as far as I consider relevant for the purpose of my award.

B. Jama ("Jama"):

9. Jama testified that he was the same intake as the Applicant. They both applied for housing allowances when they started employment.
10. Approximately 2 weeks since they started the financial clerk, Ms. Brytenbach requested them to sign application forms for housing allowance. Mr. M. Thelelo their Field Training Officer confirmed their place of residence.
11. During August 2013 Ms. Brytenbach came back to them to say that they must sign new application forms for housing allowance as the other forms that they signed in July 2013 were old forms. Accordingly the housing allowances were only approved since Sept 2013 when they signed the new forms.
12. During cross- examination Jama stated that they have kept no proof that they signed the old applications forms as it was not given back to them after they handed it to Ms. Brytenbach who retired and no longer works for the Department. Further they were inexperienced at the time and did not know that the housing allowance application forms are on intranet.

Closing argument:

13. It was the Applicant's argument that he should qualify for the housing allowance since he signed the first application form and not from when they were requested to sign new forms. Therefore the Respondent should pay the Applicant R1800, 00 for July and August 2013.

EVIDENCE AND ARGUMENT BY THE RESPONDENT:

14. The Respondent no verbal evidence, but relied on the documentary it submitted and further made written argument in support of its case. Again I have again decided to summarise evidence and argument as far as I consider relevant for the purpose of my award.

Closing argument:

15. Mr. Conradie for the Respondent submitted that the Applicant submitted no documentary proof that he signed an application form for housing allowance in July 2013. Ms. Brytenbach was also not called as a witness to support the Applicant's version. The only documentary proof was the application form that the Applicant signed on 2 September 2013 and therefore the Applicant only qualified for the

Housing allowance since then in terms of paragraph 7.4.1 of Determination on Housing of 2012. Accordingly the Applicant was not entitled to housing allowance since July 2013.

ANALYSIS OF THE EVIDENCE AND ARGUMENTS:

16. I have decided only to focus on those issues I consider relevant.
17. Most of the facts of this case were considered common cause. The Applicant's employment history was considered common cause. It was further common cause that the Applicant met the requirements for housing allowance in terms of clause 7.1.3 read with 7.1.4 of the Resolution. The only issue in disputes was from when the Applicant should qualify. The dispute was referred as a dispute about the interpretation and or application of PSCB Resolution 1 of 2007. That Resolution merely amended the amount of the housing allowance in respect of the Resolution. The real nature of the dispute was about the interpretation of the Resolution.
18. In terms of clause 7.1.3 referred to above the employer set aside funds for housing allowance for all permanent employees "*who owns or rents a home in South Africa which is occupied by the employee...*" Further clause 7.1.4 above states in sub clause (c) that "*each employee will qualify for the allowance upon application.*" There is nothing uncertain about the ordinary meaning of these words. Further it is my understanding of the case law that I only have jurisdiction to interpret a collective agreement and not the Determination of 2012. I may look at the Determination for assistance to determine the true meaning of the words that are not clear as used in a collective agreement. To my mind there is no need to do so in the instant case as the ordinary meaning of the words used in clause 7.1.4 (c) is clear and simple. Once an employee applied, he or she may qualify for a housing allowance provided he or she meets the criteria.
19. In the instant case the Applicant led the verbal evidence of Jama as to when they initially applied. Jama was honest to state that they were new recruits and did not know that they should keep copies of their initial application forms. I have no reason to disbelieve his evidence in this regard. How should they have known at that stage that Ms. Breytenbach gave them the wrong and old application forms to sign? That was the time that they applied, including the Applicant. Ms. Breytenbach was no longer available and the Respondent also did not lead evidence to rebut the Applicant's version. Under the circumstances I find that it was reasonably possible

that the Applicant did make application for the housing allowance in July 2013 and should qualify from that date. In my view the Determination of 2012 that gives effect to the Resolution does take the matter any further as paragraph 7.4.1 of the determination clearly states that "*An employee shall start to receive his/her Housing allowance on the employee's pay date in the month s/he has submitted her/his signed application...*" Nowhere does it state that any mistake in respect of the signed application form would disqualify the employee, if he/she meets the requirements. Accordingly I cannot find that the Applicant should only qualify after he signed the second application form on 2 September 2013. It was not his fault that the financial clerk requested him to sign the wrong application form and that he should not qualify simply because of that.

AWARD:

20. In the premises I make the following award:

- (1) I find that the Respondent did not apply and interpret the Resolution correctly. Accordingly the Respondent is ordered to pay the Applicant the amount of **R1800, 00** in respect of housing allowance for July and August 2013 on or before **15 December 2014**.
- (2) I make no order as to costs.



ADV J P HANEKOM