



PUBLIC SERVICE CO-ORDINATING BARGAINING COUNCIL

ARBITRATION AWARD

Case Number: PSCB207-14_15
Senior Commission / Panellist: Martinus van Aarde
Date of Award: 3 October 2014

In the **MATTER** between

PSA obo CJ Brown & 4 others

(Applicant)

and

Department of Police, Roads & Transport (FS)

(Respondent)

Applicant's representative: Mr AJ Greeff
Applicant's address: C/o: PSA
PO Box 7673
BLOEMFONTEIN, 9300

Telephone: (051) 403 1300
Telefax: (051) 403 1315 / 19
E-mail: —

Respondent's representative: Mr SK Mojanaga
Respondent's address: Department of Police, Roads & Transport
BLOEMFONTEIN

Telephone: (051) 405 1404
Fax: 086 509 8819
E-mail: —

1. Details of hearing / representation

The case was set down for an arbitration hearing on 3 October 2014 at Bloemfontein, DPRT Offices. Mr AJ Greeff: Official PSA represented the Applicants. Mr SK Mojanaga: Employee Relations represented the Respondent (DPRT). The proceedings were digitally recorded (CD with arbitrator's notes).

2. Issue(s) to be decided

2.1 The main issue in dispute relates to an application in terms of section 24(2)/(4): interpretation/application of a collective agreement with specific reference to Resolution 14/2002.

2.2 At the start of the proceedings Mr Mojanaga raised a point *in limine* requesting me to recuse myself on basis that I also acted as the conciliator in this matter.

3. Background to the Dispute

3.1 The Applicants lodged a combined grievance (*re* PDMS-payment/increment for the financial year 2012-13 on 8 March 2014. Respondent failed to respond to the said grievance within the prescribed time frame (30 days). Subsequently, the Applicant then lodged a formal dispute/LRA 7.11 on 8 July 2014.

3.2 The case was set down for a conciliation hearing before me on 8 August 2014. The dispute was declared unresolved and a certificate of non-resolution was issued in terms of section 135(5)/LRA '95. The Applicants filed a Request for Arbitration (LRA 7.13) on 11 August 2014.

3.3 As pointed out, the case was set down for an arbitration hearing before me on 3 October 2014 (11h30). Notice was served on the parties on 20 August 2014.

4. Point *in limine*: Recusal

4.1 At the start of the proceedings Mr Mojanaga raised a point *in limine* requesting my recusal on basis that I was also appointed as conciliator in this matter. According to Mr Mojanaga it is unfair to expect that the same commissioner acts as conciliator and later as arbitrator. According to argument the position is akin to a person initially appointed as a Magistrate and then later as a Judge in the same case (*sic*).

4.2 Mr Greeff opposed this application also referring to the nature of the dispute at hand.

4.3 Mr Mojanaga also conceded that the merits of the case was not discussed in detail at the conciliation hearing, but that he nevertheless believe that it can prejudice the Respondent's case if the same person is appointed as conciliator and arbitrator.

4.4 The basic principles underlying an application of recusal are based on the doctrine that "justice must be done and seen to be done". It is also incumbent on the applicant-party to lay a sound foundation for the appreciation of

bias/recusal – it cannot be done on mere speculation alone. See *inter alia* *BTR Industries SA (Pty) Ltd. v MAWU* [1992] 13 ILJ 803 (A).

4.5 Such question are also governed by section 136/LRA which reads as follows—

“136. Appointment of commissioner to resolve the dispute through arbitration.

- (1) *If this Act requires a dispute to be resolved through arbitration, the Commission must appoint a commissioner to arbitrate that dispute, if—*
 - (a) *a commissioner has issued a certificate stating that the dispute remains unresolved; and*
 - (b) *any party to the dispute has requested that the dispute be resolved through arbitration.*
- (2) *A commissioner appointed in terms of subsection (1) may be the same commissioner who attempted to resolve the dispute through conciliation.*
- (3) *Any party to the dispute, who objects to the arbitration being conducted by the same commissioner who conciliated the dispute, may file an objection with the Commission and must satisfy the Commission that a copy of the objection has been served on all the parties to the dispute.*
- (4) *When the Commission receives an objection it must appoint another commissioner to resolve the dispute by arbitration.”*

4.7 Having stated the above, there is no real need, either in logic or in law, to justify the application that I must recuse myself.

5. Merits of main dispute

From the (factual basis of) evidence before me, I am of the opinion that the Respondent had ample time to respond to the Applicants’ grievance. They simply failed to do so. As pointed out, Resolution 14/2002 was adopted for this very same reason to address in-house grievances in a speedy manner. All the Respondent had to do is to provide a simple response to the Applicants’ concerns why they did not receive their PDMS-increase/increment for the financial year 2012/13 (and/or any other reason that might be relevant to the question at hand, e.g. grievance filed outside the prescribed time frames.

6. Award

In case PSCB207-14_15 the following award is rendered—

- 6.1 The application for recusal is dismissed for reasons mentioned.
- 6.2 The Respondent failed to comply with the provisions of Resolution 14/2002.
- 6.3 The Respondent is hereby ordered to respond to the Applicants’ grievance within 7 days after receiving a copy of

this award.

6.4 No order as to cost is made.

Signature:

A handwritten signature in black ink, appearing to be 'M. van Aarde', written in a cursive style.

Senior Arbitrator/Panellist: ***Martinus van Aarde***