



PUBLIC SERVICE CO-ORDINATING BARGAINING COUNCIL

# ARBITRATION AWARD

Case Number: PSCB265-14\_15  
Senior Commission / Panellist: Martinus van Aarde  
Date of Award: 14 October 2014

In the **MATTER** between

PSA obo GA Botha

(Applicant)

and

Department of Rural Development & Land Reform

(Respondent)

Applicant's representative: Mr AJ Greeff  
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## 1. Details of hearing / representation

The case was set down for an arbitration hearing on 14 October 2014 (09h00) at Bloemfontein, PSA Offices. Mr AJ Greeff: Official PSA represented the Applicant (Botha). Mr MC Manyasha: Deputy Director Labour Relations represented the Respondent (SRDLR). The proceedings were digitally recorded (CD with arbitrator's notes).

## 2. Issue(s) to be decided

The main issue in dispute relates to an application in terms of the Labour Relations Act 66/1995, section 24(2)/(5): interpretation/application of a collective agreement with specific reference to Resolution 7/2000 (clause 7.5 relating to TIL benefits).

## 3. Background to the Dispute

3.1 The Applicant in this matter is Me GA Botha. She is in the employment of the Respondent since 23 May 1988 and holds the rank of Senior Examiner, job level 9.

3.2 The Applicant suffers from asthma/reported sick on various occasions. She exhausted her normal paid sick leave benefits. The Applicant applied for temporary incapacity leave for the following periods:

3.2.1 6-8 August 2013;

3.2.2 19-23 August 2013;

3.2.3 14-18 October 2013 and

3.2.4 21-25 October 2013

All the applications were properly filed within the prescribed time frames (Annexure A).

3.3 It is also common cause that there were contractual disputes between the PSA and the SOMA (medical contractors) and it follows that the latter did not attend to (all) of the applicants within the prescribed time frames as in the case before me. *In casu* the SOMA responded to the Applicant's grievance on 19 May 2014 (*sic*) requesting further medical information before they could finalise the application. It is common cause that the Applicant did not make use of this opportunity. It is furthermore clear that the SOMA/Respondent turned all the above mentioned applications down on 13 August 2013.

## 4. Survey of Evidence / Analysis of Argument

4.1 I have heard brief arguments from both parties.

4.1.1 Mr Greeff argued that the Respondent failed to comply with its own collective agreement (Resolution 1/2000, clause 7.5) by not responding to the Applicant's grievance and/or to take alternative remedial action. It is furthermore argued that despite the contractual dispute between the PSA/SOMA it was incumbent on the

Respondent to nevertheless address applications alike using other medical practitioners to tend to the workload/applications in the meantime.

4.1.2 Mr Manyasha argued the opposite pointing out that the Applicant does not *per se* have an unfettered legal right to payment of salary during temporary incapacity. The latter was also afforded the opportunity to supplement her medical reports which she failed to do.

4.2 I will address the material issues separately.

4.2.1 The relevant provisions relied upon read as follows—

*“7.5 Disability management leave:*

*7.5.1 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 disability except where conditions do not allow.**
- b) The employer shall, during 30 working days, investigate the extent of the 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.”*

Schedule 8, item 10(1) reads as follows—

*“Code of Good Practice: Dismissal*

*10. Incapacity: Ill health or injury*

*(1) Incapacity on the grounds of ill health or injury may be temporary or permanent. If an employee is temporarily unable to work in these circumstances, the employer should investigate the extent of the incapacity or the injury. If the employee is likely to be absent for a time that is unreasonably long in the circumstances, the employer should investigate all the possible alternatives short of dismissal. When alternatives are considered, relevant factors might include the nature of the job, the period of absence, the seriousness of the illness or injury and the possibility of securing a temporary replacement for the ill or injured employee. In cases of permanent incapacity, the employer should ascertain the possibility of securing alternative employment, or adapting the duties or work circumstances of the employee to accommodate the employee’s disability.”*

4.2.2 Having regard to Resolution 7/2000, clause 7.5.1 it is also clear that the following preconditions are relevant—

4.2.2.1 firstly, temporary disability leave can only come into the picture once the employee exhausted her/his sick leave credits in a specific leave cycle;

- 4.2.2.2 the granting of paid temporary disability leave is in the discretion of the employer (“may be granted ...”). It is not a right *ex contractu per se*.
  - 4.2.2.3 it is further incumbent on the employee to inform his employer (supervisor) of her/his illness and supports same with medical proof;
  - 4.2.2.4 obviously, the employee must formally apply to be granted additional paid sick leave (within a reasonable period — preferably prior to taking leave of absence);
  - 4.2.2.5 the employer must (“shall”) within 30 working days (after date of receiving the said application) investigate the extent of the employee’s inability to perform normal duties, the degree of inability and the cause thereof within the context of **Schedule 8, item 10(1)**;
  - 4.2.2.6 the employer must consider the application objectively and notify the employee whether the application is disapproved, partly approved or fully approved.
- 4.2.3 I have addressed a similar question in *PSA obo D van Zyl v Department of Correctional Services (FS)*: PSCB73-11/12 dd. 17 September 2011, pointing out that—
- 4.2.3.1 the time frames in question are not cast in stone;
  - 4.2.3.2 clause 7.5.1(b) & (c) *supra* is silent on the question of whether the employer is obliged to ‘investigate’ the merits of the application and, ‘inform the employee of its decision within the required 30 working days’ time period’; and
  - 4.2.3.3 in practical application, each case must be decided on its own merits/fairness the ultimate criteria.
- 4.3 Having stated the above, there is no evidence before me to indicate that the Respondent/SOMA was reluctant/negligent to address these medical applications within the prescribed time frames. I am also not totally convinced that these time frames are cast in stone and that by failing to meet them gives legal right to the employees. *In casu* the Applicant’s application was indeed considered and turned down, however inviting the Applicant to provide further medical reports before her application could be determined in full. She failed to do so.

## 5. Award

In case PSCB265-14\_15 the following award is rendered—

5.1 The Applicant (GA Botha) is not entitled to full payment *re* her application for TIL-benefits for the periods:

5.1.1 6-8 August 2013;

5.1.2 19-23 August 2013;

5.1.3 14-18 October 2013; and

5.1.4 21-25 October 2015.

5.2 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***