



PUBLIC SERVICE CO-ORDINATING BARGAINING COUNCIL

ARBITRATION AWARD

Case Number: PSCB281-14_15
Senior Commission / Panellist: Martinus van Aarde
Date of Award: 14 October 2014

In the **MATTER** between

PSA obo BD Shasha

(Applicant)

and

Department of Education (FS)

(Respondent)

Applicant's representative: Mr AJ Greeff

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Respondent's representative: Mr P Tladi

Respondent's address: Department of Education

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1. Details of hearing / representation

The case was set down for an arbitration hearing on 14 October 2014 (12h00) at Bloemfontein, PSA Offices. Mr AJ Greeff: Official PSA represented the Applicant (Shasha). Mr P Tladi: LR Official represented the Respondent (DOE). The proceedings were digitally recorded (CD with arbitrator's notes).

2. Issue(s) to be decided

This is 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 1/2007 (overtime payment).

3. Background to the Dispute

3.1 The Applicant in this matter, a Chief Personnel Officer, lodged a grievance on 10 March 2014 on basis set out above *re* overtime worked in March 2011 (*sic*). Subsequently, the Applicant engaged into consultation with the PSA on 4 June 2014. The latter then filed a formal dispute (LRA 7.11) on 30 June 2014 on the same basis.

3.2 The case was then set down for a conciliation hearing on 25 August 2014. The dispute was declared unresolved and a certificate of non-resolution was issued in terms of section 135(5)/LRA '95. The Applicant then filed a Request for Arbitration (LRA 7.13) on 2 September 2014.

4. Survey of Evidence / Analysis of Argument

I have heard brief arguments from both parties.

4.1 Respondent's argument briefly boils down to the following: The Applicant's claim relates back to March/June 2011. There are also no supporting documents as proof that the overtime claimed was indeed requested by the supervisor and/or as such approved in terms of the governing policy. There are thus no supporting documents to substantiate the Applicant's claim. Mr Tladi argued that the Applicant neither filed the dispute timeously nor did he apply for condonation of the late filing. Equally, it is argued that the Applicant's claims have prescribed.

4.2 Mr Greeff on the other hand could not shed any light on the background of the dispute and/or the supporting facts. I have thus to rely on the bundle of documents submitted to me (Annexure A).

4.3 From the outset I must point out that the Applicant's claim dates back to March 2011 and for a limited period thereafter. It is thus not an ongoing dispute. No condonation for this late referral was made or granted. See *Pick 'n Pay Supermarkets (NT) v CCMA & Others* [2000] 21 ILJ 234 (LC) read with *Gold Fields Mining South Africa (Pty) Ltd (Kloof Gold Mine) v CCMA & Others* [2009]/JR 2006/08 (LC).

4.4 It is furthermore accepted that the principles of the Prescription Act applies equally to our labour law. See *inter alia* *Conor Holdings (Pty) Ltd v Mazibuko & Others* [2014] 35 ILJ 477 (LC); *Technicon Pretoria (Tswane University of Technology) v Nel NO & Other* [2012] 33 ILJ 293 (LC); *Chillibush Communications (Pty) Ltd. v Gericke & Others*

[2010] 31 ILJ 1350 (LC). *In casu* there is simply no evidence that the Applicant is indeed entitled to the said overtime pay (102 hours) an even if that was not the case, it appears that the Applicant's claim has since prescribed — the application materially defective.

5. Award

In case PSCB281-14_15 the following award is rendered—

- 5.1 The application/claim for overtime payment of the Applicant (BD Shasha) in terms of Resolution 1/2007 is hereby dismissed.
- 5.2 No order as to cost is made.

Signature:



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