



**IN THE PUBLIC SERVICE COORDINATING BARGAINING COUNCIL**

**HELD AT KIMBERLEY**

**ON 8 APRIL 2014**

**IN THE MATTER BETWEEN:**

**HOSPERSA obo Samuels M M**

**AND**

**DEPARTMENT OF HEALTH-NORTHERN CAPE**

**PSCB 371-13/14**

**ARBITRATION AWARD**

## **DETAILS OF HEARING AND REPRESENTATION**

1. The present dispute between HOSPERSA obo Mr. Samuels M M (hereinafter referred to as the applicant) and The Department of Health- 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 Kimberley on 8 April 2014, the applicant was represented by Mr. T Matshoko of HOSPERSA and the respondent was represented by Mr. M Samuels.
2. At the onset of the arbitration the parties were assisted in a pre-arbitration meeting and a signed minute was handed up.
3. The parties were afforded the opportunity to submit their founding arguments by no later than 15 April 2014.
4. Both parties filed submissions and were considered.
5. Herewith brief reasons for my decision in terms of Section 138 (7).

## **THE ISSUE**

6. The issue to be decided by myself is whether the applicant is entitled to payment for the period 20 December 2012 till 25 December 2012, whilst on sick leave.

## **SURVEY OF SUBMISSIONS**

### **RESPONDENT'S SUBMISSION**

7. Essentially, the respondent contends that the respondent prepared a memo, informing employees that of a deviation from the normal leave application process. The deviation was required as a result of the expectant fatalities during the holiday season. The respondent was required to provide essential emergency health care services.
8. The respondent indeed is plagued by unauthorized absenteeism. Besides the operational need for capacity in primary health care services, employees would extend their vacation by putting in for sick leave.
9. The respondent went on to suggest the critical position in which it finds itself in and argues that the respondent gets referrals at its hospital from around the Province.
10. Hence it is argued by the respondent that it has a zero tolerance approach to absenteeism.
11. He continued to suggest that emergency operations could not be cancelled. He insists that zero

12. tolerance policy should be regarded as a legitimate operational modification aimed at protecting the interest of patients.
13. He insists that unpaid leave should be judged against the background of the operational requirements of the respondent. He suggests that the respondent has a valid operational reason to adopt a zero tolerance approach standard to unauthorized absenteeism and abuse of sick leave and insists that the respondent needs to send out a clear message to employees.
14. He argues that once the standard had been communicated to employees, little consideration of the merits of a specific case or personal circumstances of an employee. Since the applicant had disregarded the standard of the respondent, it was determined that the sick note not be considered and that unpaid leave was justifiable.
15. He contends that the respondent be allowed to set standards and the determination of complementary measures for defaulters. These circumstances were taken into account when determining the leave of absence of the applicant.
16. Employees are informed of the standard and notices were posted around the hospital. The CEO of the respondent had devoted considerable time and energy around the issue of capacity during the time of holidays. Therefore it was necessary to take a stand around the issue of unauthorized absenteeism.
17. The deduction of the applicant's salary was in a period when the respondent was experiencing an unprecedented level of unauthorized absence. It is then that the respondent had instituted the Memo relating to unauthorized absence not being tolerated.
18. The unpaid leave fell within the ambit of the respondent's reasonable options.

### **APPLICANT'S SUBMISSION**

19. The applicant contends that the respondent relies on an internal memorandum by the CEO of the hospital dated 5 March 2012 as the reason for the respondent's justification for leave without pay. He contended that the Memo was in line with both the Resolution and the Directive issued by the Minister in respect of Leave of Absence in the Public Service in that it states *all sick leave should be accompanied by a sick note and should be submitted within two days of absence.*
20. He argued that Mr. Samuel had reported his sick leave and had submitted the certificate on the first day of his arrival at work which was in line with the Directive mentioned above.

## **ANALYSIS OF SUBMISSIONS**

21. 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.*
22. The respondent's memo reads *"All sick leave during this period should be accompanied by a sick note from a doctor, should it not be submitted within two days of absence it will be regarded as leave without pay."*
23. It is not in dispute that the applicant had not produced a sick note. Nor is it in dispute that the applicant had not informed his Supervisor.
24. I am persuaded towards the version of the respondent to the extent that it indeed provides an essential service and is under severe pressure during the holiday season however the literal interpretation of the Resolution does not make provision for essential services as opposed to ordinary services.
25. Therefore the applicant had complied by producing a medical certificate.
26. The Memo issued by the respondent indeed also allows for sick leave as long as a medical certificate is produced.
27. 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.
28. In my opinion the memo is not contrary to the Resolution and if it was it cannot deny the applicant of sick leave in terms of the provisions of the above Resolution.
29. The applicant is entitled to paid, sick leave.

## **REMEDY**

30. The applicant sought the payment of R 1673.90 which was deducted from his salary by the employer. This was agreed by parties in the pre-arbitration minute.

**AWARD**

31. The respondent is ordered to pay the applicant the sum of R 1673.90 (one thousand six hundred and seventy three rand and ninety cents) only.
32. The amount as per Clause 30 is to be paid to the applicant directly into his bank account into which his salary is ordinarily paid by no later than 15 May 2014.
33. There is no order as to costs.

**Signed at Kimberley on this 22<sup>nd</sup> day of April 2014**



**PSCBC  
SHIRAZ MAHOMED OSMAN**

**COMMISSIONER**