ARBITRATION AWARD

Panellist/s: Hilary Mofsowitz
Case No.: PSCBC 770-13/14
Date of Award: 14 July 2014

In the ARBITRATION between:

PSA obo JANET OLIVIER
(Union / Applicant)

and

THE DEPARTMENT OF CORRECTIONAL SERVICES
(Respondent)

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DETAILS OF HEARING AND REPRESENTATION

1. This is the award in the arbitration between the Public Servants Association ("the PSA") obo Janet Olivier ("the Applicant") and the Department of Correctional Services ("the Respondent").

2. Arbitration was held on 23 June 2014. Final submissions were received on 1 July 2014.

3. Christo Olivier ("Olivier") an Official of the PSA represented Applicant.

4. Abram Luphondo ("Luphondo") of Labour Relations represented the Respondent.

5. The proceedings were digitally recorded.

ISSUE TO BE DECIDED

6. I have to decide whether the Respondent correctly applied/interpreted the provisions of the Public Service Co Coordinating Bargaining Council Resolution 3 of 1999 (travel and subsistence allowance) and Resolution 1 of 2007 (the provision of overtime).

BACKGROUND TO THE DISPUTE

7. The issue in dispute is the interpretation/application of PSCBC Resolution 3 of 1999 in relation to travel and subsistence allowance and the interpretation/application of PSCBC Resolution 1 of 2007 in relation to overtime. The Applicant attended a training program (at Kroonstad Departmental College) for the period 11 January 2014 to 25 January 2014. The Applicant did not receive a training and subsistence allowance of R 98.00 per day. The Applicant did not receive overtime pay for the days that she travelled or was expected to remain at the training venue over and above her normal days of work. The Applicant argued that she was entitled to be paid a training and subsistence allowance of R 1 351.52(for fourteen days) and overtime pay of R 4 069.60 (for five days). The content of the Collective Agreements were not disputed and forms part of the record. The Applicant's calculation of the monies was not disputed although the Respondent argued that the Applicant was not entitled to be paid these monies as the training was regarded as basic training. The parties also referred me to the Public Service and Administration Act 103 of 1994 that must be read in conjunction with the Collective Agreements. This forms part of the record.

8. The Applicant commenced service in the Respondent's employ in 1993. She was initially employed as a Switchboard Operator, translated to a Typist and appointed to the position of Secretary Human

Resources Department effective from 1 August 2011. It was not disputed that at all times the Applicant's conditions of employment resorted under the Public Service Administration Act 103 of 1994. .

9. Resolution 3 of 1999 provides for the following: "When required to perform official duties away from her/his headquarters, the employee shall travel at the employer's expense and shall be paid a subsistence allowance in accordance with the prescribed provisions". It was undisputed that the subsistence allowance was increased to R 98.00 per day with effect 1 April 2013. The provision for overtime pay is regulated by Resolution 1 of 2007 which prescribes the payment of overtime in accordance with the Basic Conditions of Employment Act 75 of 1997 (" the BCEA").

10. It was undisputed that the Applicant is expected to work a forty hour week running from Monday to Friday. It was not disputed that the Applicant accumulated five days of overtime pay as a result of attending the training program. The time was accumulated in travel to and from the training venue as well as the weekend away from home when the Applicant could not return home (due to the travel distances involved).

SURVEY OF EVIDENCE AND ARGUMENT

THE APPLICANT'S SUBMISSIONS

11. The Applicant did not testify but provided verbal and written argument to support her case. She argued that the Respondent was in breach of the particular provisions of the Resolutions described above and requested that the outstanding monies be paid to her.

12. The Applicant referred me to the details of the training program. The program was detailed as: two weeks basic short course training. The relevant documentation forms part of the record. The course subjects covered legislation and policy, security, offender rehabilitation path, health and welfare of offenders, basic personal and public finance and supply chain management. It was undisputed that the applicant successfully achieved the required results. It was undisputed that other permanent employees who participated in basic training (around December 2013) were paid subsistence and travel allowances. The Applicant referred me to the definition of basic training. In terms of the Respondent's documentation basic training is described as a basic service condition. Basic training must be completed before permanent employment can be considered. Subsistence and travel allowances can be claimed by permanent employees who attend internal departmental courses. The Respondent did

not dispute the content of this Directive dated27 March 2013. It was the Applicant's argument that the memorandum/directive dated 27 March 2013 superseded all previous communications on this subject.
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13. It was the Applicant's case that the training program could not be classified as basic training specifically that the Applicant had been a permanent employee in the Respondent's service for approximately twenty years. More specifically the Applicant had been translated into her current position approximately two years prior to the training and therefore it makes no sense to classify the training as basic training.

THE RESPONDENT'S SUBMISSIONS

14. Noluthando Mdladlamba ("Mdladlamba") the Respondent's Deputy Director Human Resources Administration testified. She referred to a Directive dated 7 March 2013 which forms part of the record. In terms of this Directive, Respondent was precluded from paying the Applicant (and the other employees who attended this program) a travel and subsistence allowance. The training program that the Applicant attended was described as basic training. As a consequence of the Applicant translating or changing her occupational classification (from typist to secretary), she was expected to attend basic training. The other employees who attended the same training program where new recruits who also were not paid the travel and subsistence allowance.

15. Mdladlamba confirmed that as a consequence of the Applicant not qualifying for the travel and subsistence allowance, she also did not qualify for the payment of overtime. When employees attend basic training employees do not qualify for either of these benefits.

16. In terms of the Respondent's submissions, the program that the Applicant attended dealt with the induction and orientation of newly appointed officials into the Respondent's employ. Emphasis would have been placed on introducing the employees into the environment of correctional services, the policies, functions, expectations and dynamics of being employed in a security related environment. It also focused on responding to challenges presented by offenders/officials within such a specialized environment. Employees who attend basic training do not qualify for the subsistence and travel allowance as the training is a prerequisite for permanent employment. It was conceded that employees attending official purposes (excluding basic training) outside of normal working hours qualify for "abnormal" overtime pay. Abnormal overtime payments are regulated by different Resolutions that do not form the subject matter of this dispute.

ANALYSIS OF EVIDENCE AND ARGUMENT

17. The dispute concerns the interpretation/application of a Collective Agreement. The dispute concerns PSCBC Resolution 3 of 1999 and 1 of 2007. It is common cause that the Applicant attended a training course for the period 11 January 2014 to 25 January 2014. It is common cause that when employees are required to attend to official duties away from headquarters, such employees are paid a travel and subsistence allowance of R 98.00 per day. It is undisputed that the Applicant was not paid this allowance as the Respondent argued that the training was classified as basic training and employees, who attend basic training, do not qualify for such an allowance.

18. It was conceded that basic training is a basic service condition. It was conceded that basic training must be attended before permanent employment will be considered. The Respondent's Directive dated 27 March 2013 confirms this. It was conceded that the Applicant was permanently appointed into the Respondent's employ in 1993 and translated/promoted on two different occasions. On the last occasion she was promoted into the position within the Human Resources Department in August 2011. I have therefore concluded that the Applicant attended training to enable her to add value to her job which is more akin to on the job training. In the Applicant's situation this cannot be regarded as basic training even if it were basic training for the others that attended. The Respondent's representative alerted me to the Directive issued on 27 March 2013. This Directive made it clear that travel and subsistence allowance can be claimed by permanently employed employees who attend internal departmental courses. This Directive appears to have clarified the payment of travel and subsistence allowances as no further/later Directives were tabled at arbitration. The training was not afforded to the Applicant before permanent employment could be considered. The Applicant was a permanent employee for approximately twenty years and her last translation/promotion took place approximately two years before the training.

19. The scope of an arbitrator in an interpretation/application dispute is to determine whether the Respondent has failed to apply or interpret the provisions of a particular Collective Agreement. The scope of the arbitrator is narrowly confined to this particular task in conjunction with the application of the interests of fairness.

20. The wording of Resolution 3 of 1999 read with the Public Service Act 103 of 1994 is clear. An employee will be paid a travel and subsistence allowance in circumstances where an employee is required to perform official duties away from headquarters. It was accepted that this provision does not apply to employees who attend basic training. However having concluded that this particular training program

does not qualify as basic training (in the Applicant's case), I have found that the Respondent has not applied interpreted the provisions of the Resolution correctly. The quantum of the travel and subsistence allowance was not disputed. I therefore find that the Respondent owes an amount of R 1 351.52 to the Applicant. In the application of the interests of fairness, it was conceded that other employees who attended basic training were paid the travel and subsistence allowance. In this case, the employees concerned were permanent employees who received training for further advancement.

21. In relation to the payment of overtime, the Applicant referred me to Resolution 1 of 2007. Section 9.1 provides for the payment of overtime. It regulates the payment of overtime for a Sunday or public holiday to be twice the basic salary (without the granting of time-off) and all other overtime to be payable at one and a half times basic salary (without the granting of time-off). It was conceded that the Applicant accumulated five days of overtime during the period in question as she normally works a forty hour week. It was conceded that this equates to an amount of R 4 069.60. Mdladlamba argued that if travel and subsistence allowance is not applicable, then overtime is not applicable. Having found that the travel and subsistence allowance is applicable and having found that the Resolution does not specify this exception, the terms of Resolution 1 of 2007 regulate the payment of overtime in accordance with the BCEA. The Respondent did not dispute the Applicant's calculation of overtime and therefore I find that the Resolution has not be applied/interpreted correctly and an amount of R 4 069.60 is owed to the Applicant. The Respondent's argument about "abnormal" overtime (suggested in its closing written submissions) was not placed before me at arbitration and hence I have no evidence to consider.

22. Based on the evidence, interpreting the applicable Resolutions and applying the interests of fairness, the Department's decision (in not paying the Applicant the travel and subsistence allowance and overtime pay) warrants interference.

23. In the circumstances and on the submissions before me, I find that the Respondent has not applied and interpreted the provisions of Resolution 3 of 1999 and Resolution 1 of 2007 correctly. Accordingly the Applicant is owed R 1 351.52 (travel and subsistence allowance) and R 4 069.60 (overtime pay). The total due to the Applicant is R 5 421.12.

AWARD

24. I find in favour of the Applicant.

25. The Respondent has not applied/interpreted the provisions of Resolution 3 of 1999 (in relation to travel and subsistence allowance) and Resolution 1 of 2007 (in relation to overtime pay) correctly.

26. The Respondent must pay the Applicant an amount of R 5 421.12 by no later than 14 August 2014.

HILARY MOFSOWITZ
For the PSCBC
14 July 2014

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