



**IN THE PUBLIC SERVICE CO-ORDINATING BARGAINING COUNCIL
HELD AT BLOEMFONTEIN**

CASE NO: PSCB 789-13/14

PSA obo C P DE MEYER

APPLICANT

And

DEPARTMENT OF ECONOMIC DEVELOPMENT, TOURISM &
ENVIRONMENTAL AFFAIRS: FREE STATE

RESPONDENT

ARBITRATION AWARD

DATE OF ARBITRATION : 27 JUNE 2014
DATE OF AWARD : 24 JULY 2014
VENUE : DEPT. OF ECONOMIC
DEVELOPMENT, TOURISM &
ENVIRONMENTAL AFFAIRS
BLOEMFONTEIN
ARBITRATOR : CINDY DICKENS
ISSUE : INTERPRETATION AND APPLICATION
OF A COLLECTIVE AGREEMENT,
RESOLUTION 1 OF 2007

1. DETAILS OF HEARING AND REPRESENTATION

1.1 The abovementioned Arbitration was held on the 27th of June 2014 at the Offices of the Respondent in Bloemfontein.

1.2 The Applicant, Mr. C P de Meyer, was represented by Mr. Greeff, an Official of PSA. The Respondent, Department of Economic Development, Tourism & Environmental Affairs: Free State, was represented by Mr. Mothupi.

1.3 The parties requested to file Written Submissions as follows:

- Applicant before or on the 4th of July 2014
- Respondent before or on the 11th of July 2014
- Applicant before or on the 14th of July 2014

2. ISSUE TO BE DECIDED

2.1 The issue which I was called upon to consider was the interpretation of Resolution 1 of 2007. I am required to determine whether the Respondent failed to pay the Applicant's overtime for the period from the 11th of January 2010 until the 13th of February 2014.

2.2 Should I find that the Respondent has failed to comply with the provisions of the Collective Agreement, then I am required to determine whether the Respondent must be ordered to pay the overtime worked.

3. SURVEY OF EVIDENCE AND ARGUMENT:

3.1 SUBMISSIONS ON BEHALF OF THE APPLICANT:

3.1.1 I wish to state from the outset, that not all arguments presented will be set out hereunder. Only a summary of the argument is contained herein.

3.1.2 **Mr. Greeff** held that in terms of PSCBC Resolution 3 of 1999 Chapter VI Clause 6.1 (a), *"the employer shall provide compensation for normal overtime when an executing authority a) has required an employee, in writing, to perform official duties for more hours than the employee's normal working*

hours during a week". In terms of PSCBC Resolution 1 of 2007 Clause 9.1 *"without the option of time off"*.

- 3.1.3 He argued that it is undisputed that, in terms of these clauses, the Respondent should pay the overtime worked to the Applicant from the 11th of January 2010 till the 13th of February 2014. The Applicant is an Environmental Officer Grade B tasked to conduct information sessions at Soetdoring Nature Reserve close to Bloemfontein. Schools and communities visit for his sessions and he is required to perform most of these duties after normal hours and over weekends.
- 3.1.4 He held that the Applicant has been performing these duties with the knowledge of his supervisors and managers at the Department for many years. The fact that supervisors wrote letters to inform staff that they are not going to receive payment does not change the fact that the Collective Agreement states that the Applicant must be paid. The Respondent allowed him to work in this manner. The only way the Collective Agreement can be amended is with Collective Bargaining and not with the letters of his supervisor.
- 3.1.5 He argued that the Respondent has not advanced any legitimate reasons for the non-payment. The Applicant registered a grievance attached to the Heads of Argument with all the proof of the hours that he worked. In the grievance the overtime was never disputed and payment was the only issue in dispute.
- 3.1.6 He argued that the conduct of the Respondent was malicious and very unfair to expect an employee to work overtime and not pay the Applicant for the services rendered. When spring starts this year, schools and communities will visit and the unfair treatment of non-payment of overtime will continue.
- 3.1.7 He requested that the Commissioner rule that the PSA's interpretation of the Collective Agreements is correct. Secondly that the Respondent be ordered to pay the overtime worked from the 11th of January 2010 to the 13th of February 2014.

3.2 SUBMISSIONS ON BEHALF OF THE RESPONDENT:

- 3.2.1 I wish to state from the outset, that not all arguments presented will be set out hereunder. Only a summary of the argument is contained herein.
- 3.2.2 **Mr. Mothupi** argued that most of the facts are common cause, save for those that the Respondent would specifically deny and place the Applicant to prove or the Respondent to disprove them. In the arbitration the Applicant alleges that the Respondent has failed to pay the Applicant overtime worked from the 11th of January 2010 to the 13th of February 2014.
- 3.2.3 He stated that the facts in dispute are whether the Applicant is supposed to be paid for the alleged overtime worked as stipulated in paragraph 6.1 (a) of PSCBC Resolution 3 of 1999 read with the Departmental Overtime Policy.
- 3.2.4 He held that it is common cause that the Applicant was duly informed and instructed not to perform any unauthorized overtime. This fact was put to the attention of the Applicant by his supervisor.
- 3.2.5 Despite all the necessary instructions the Applicant nonetheless allegedly continued to do the same, even though a computer generated document was given to the Respondent by the Applicant, which document's authenticity could not, factually, be proven by the Applicant.
- 3.2.6 He argued that the fact of this case are that the Applicant is not entitled to any payment as this would not be just and fair on the part of the Respondent.
- 3.2.7 He held that it is common cause that the Respondent and the Applicant are bound by Resolution 3 of 1999. The Resolution and Departmental Policy provides that in order for an employee to do overtime work the following must happen:

“6(6.1) the employer shall provide compensation for normal overtime when an executing authority

(a) Has required an employee, in writing, to perform official duties for more hours than the employee's normal working hours during a week.”

3.2.8 He argued that, before any overtime can be undertaken, written approval must be obtained. He held that in this case the Applicant was instructed not to work overtime.

3.2.9 In the light of the above it would not be fair and just for the Applicant to be paid for the alleged overtime as this will be a violation of the Resolution and the Departmental Policy. He also stated that ignorance of the law on the part of the Applicant is not justifiable.

3.2.10 He argued that they correctly implemented both its Policy and the Resolution. He also held that the Applicant has failed to indicate how the Respondent has incorrectly implemented these two prescripts.

4. ANALYSIS OF EVIDENCE AND ARGUMENT

4.1 I have been requested to interpret PSCBC Resolution 3 of 1999 Chapter VII Clause 6 and PSCBC Resolution 1 of 2007 Clause 9.

4.2 For ease of reference I will quote the relevant Sections here below:

“PSCBC Resolution 3 of 1999 Chapter VII Clause 6

Normal overtime

6.1 *The employer shall provide compensation for normal overtime when an executing authority*

(a) *has required an employee, in writing, to perform official duties for more hours than the employee’s normal working hours during a week, but*

(b) *has not required Sunday work as defined in paragraph 5, or night overtime as defined in paragraph 7.”*

And

“PSCBC Resolution 1 of 2007 Clause 9

9.1 *Payment Rate for Normal Overtime*

Overtime on a Sunday or public holiday shall be 2 x basic salary of the employee, without the option of granting time-off. All other overtime shall be 1.5 x basic salary of the employee, without granting time-off. This provision excludes employees on commuted overtime.”

- 4.3 Resolution 3 of 1999 clearly states that compensation for normal overtime will be paid when an executing authority has required an employee in writing to perform official duties.
- 4.4 It is the Respondent's case that no authorisation was given in writing to the Applicant to work overtime. The existence of the authorisation is therefore in dispute.
- 4.5 No documentation was submitted by the Applicant to prove that the Executing Authority required the Applicant, in writing, to perform official duties. Documentation was however submitted to prove that specific instructions were given, in writing that no employee may work overtime.
- 4.6 Further to this, a Time Register was submitted by the Applicant. No signatures are present on the said register to prove that the hours were indeed worked.
- 4.7 The Applicant has failed to show that any overtime was approved by the Executing Authority, prior to the overtime having been worked. He has further failed to prove that he worked overtime as no signed time sheets were submitted.
- 4.8 The Applicant has failed to show that the overtime was approved in writing and in the absence of same; there is no obligation on the Respondent to pay such overtime.
- 4.9 It must follow that the Respondent, Department of Economic Development Tourism and Environmental Affairs, did interpret Resolution 3 of 1999 and Resolution 1 of 2007 correctly.

4.10 I wish to point out that as Commissioner I am not required or permitted to decide on the fairness of a Collective Agreement. I am only required and entitled to interpret the contents of the Collective Agreement. See ***PSA obo Strauss & Others vs. Minister of Public Works NO and Others (2013) 7 BLLR 710 (LC)***.

5. **AWARD:**

5.1 The Applicant has failed to show that the Executing Authority instructed or authorised him, in writing, to work overtime. I therefore find that the Respondent has interpreted Resolution 1 of 2007 and Resolution 3 of 1999 correctly.

5.2 No order as to costs is made.

SIGNED AT BLOEMFONTEIN ON THIS 24th DAY OF JULY 2014



C L DICKENS

PSCBC Senior Arbitrator