



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

**CASE NO: PSCB132-14/15**

PSA obo CL Wessels

**APPLICANT**

and

Department of Correctional Services

**RESPONDENT**

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**ARBITRATION AWARD**

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DATE OF HEARING : 1 December 2014  
CLOSING ARGUMENTS : 8 December 2014  
DATE OF AWARD : 10 December 2014  
PANELLIST : I de Vlieger-Seynhaeve

## 1. DETAILS OF HEARING AND REPRESENTATION

- 1.1 The matter was set down for arbitration on 1 December 2014 at the Area Commissioner's office in Goodwood. The applicant was represented by Mr Strydom from the PSA. Mr Lumphondo represented the respondent.
- 1.2 The proceedings were recorded digitally.

## 2. ISSUE TO BE DECIDED

- 2.1 The issue to be determined is whether the respondent correctly interpreted and/or applied Resolution 7 of 2000.

## 3. SURVEY OF EVIDENCE

- 3.1 The applicant made the following submissions.
  - 3.2.1 **Mr Strydom** stated that the applicant is a shift worker and handed in his request for leave for the period 29/03/2014 – 07/04/2014 at the beginning of January 2014. He was instructed that he also needed to apply for leave for the weekend 05/04/2014-06/04/2014. The Determination and Directive on Leave of Absence in the Public Service states under clause 8.5 *that if the employee applies for annual leave in accordance with the leave schedule, such leave must be taken into account in the scheduling of shifts. The employee must not be scheduled for shifts for the duration of the period of annual leave in which case the granting of annual leave will be counted as working days which shall mean Monday to Friday.* He wants to be credited with those two days that were taken away from his annual leave.
  - 3.2.2 **Mr Lumphondo** stated that an employee's leave application must be made in advance otherwise he will be booked for shifts. The applicant did not prove that the conditions of clause 8.4 were met. Clause 8.4 of above Determination states that *if an employee takes unplanned annual leave for a day that he was scheduled to work for a shift, the employee's annual leave is counted according to the work days the employee is scheduled for shifts.*

#### **4. ANALYSIS OF EVIDENCE AND ARGUMENT**

4.1 I have considered all the evidence and argument, but because the LRA requires brief reasons (s 138(7)), I have only referred to the argument necessary to substantiate my findings and decision.

4.2 Resolution 7 of 2000 mentions leave in paragraph 7.1. Section 7(1)(a) states that *the annual leave dispensation in this agreement shall provide a framework that may further be refined, subject to service delivery requirements of any sector.* The Resolution is quiet on how to count annual leave working days in the case of shift workers. Fairness and equity in my view, dictate that I can fill the gap in the Resolution by looking at the Leave Determination. That Determination deals with annual leave in paragraph 8.5. Paragraph 8.5 states: *If the employee applies for annual leave in advance according with the leave schedule, such leave must be taken into account in the scheduling of shifts. The employee must not be scheduled for shifts for the duration of the period of annual leave in which case the granting of annual leave will be counted as working days which shall mean Monday to Friday.*

4.3 The applicant did apply for annual leave in advance, at the beginning of the year. This was not unplanned leave. He should therefore not have been booked for shifts. The request that he needed to put in leave for the Saturday and Sunday, although par 8.5 states that leave should be counted from Monday to Friday, was therefore ill-conceived. There was no need to apply for 2 extra days of leave and those days were incorrectly deducted from the applicant's total days of annual leave.

#### **5. ORDER**

5.1.1. The respondent is in breach with Resolution 7 of 2000;

5.1.2. I order the respondent to credit the applicant with 2 days of annual leave on or before 31 December 2014;

5.3 There is no order as to costs.

**Signed at Cape Town on this 10th day of December 2014**

A handwritten signature in black ink, consisting of several loops and a long, sweeping tail that curves upwards and to the right. The signature is positioned to the right of a horizontal dashed line.

**I De Vlieger-Seynhaeve**  
**PSCBC Arbitrator**