



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

CASE NO: PSCB 192-13/14

POPCRU obo Young

APPLICANT

and

DEPARTMENT OF POLICE

RESPONDENT

ARBITRATION AWARD

DATE OF ARBITRATION : 27 January 2014
CLOSING ARGUMENTS: : 13 February 2014
DATE OF AWARD : 20 February 2014
ARBITRATOR : I de Vlieger-Seynhaeve

1. DETAILS OF HEARING AND REPRESENTATION

1.1 Mr Visser, an Official of SAPU, represented the Applicant. The Respondent, Department of Police, did not attend the hearing. Both parties had agreed earlier to submit a bundle of documents and written arguments before or on 13 February 2014. The applicant's arguments were received but were not supported by any documentary evidence. The respondent did not submit any argument nor documentation.

2. ISSUE TO BE DECIDED

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

3. SURVEY OF EVIDENCE

3.1 The parties' representatives made the following legal submissions.

3.2.1 **Mr Visser** submitted that the applicant was booked off sick from 2011-05-30 to 2011-06-26. None of the dates were approved by the respondent ito TIL. As a consequence, the days were deducted from the applicant's salary. The applicant had submitted a medical certificate which contained a sufficient description of the illness from which the applicant suffered.

3.2.2 Paragraph 7.5 of Resolution 7 of 2000 states that" the employer shall, during 30 working days, investigate the extent of the inability to perform normal official duties, the degree of the inability and the cause thereof" The respondent failed to adhere to the 30 days period.

3.2.3 The applicant was furthermore not given a fair chance to resubmit the application with the required additional information. She was not

informed when the money would be deducted from her salary. When she enquired from HR on 2012-07-18 she was informed that the deductions were starting on 2012-08-31. He is claiming for the applicant's unpaid leave to be repaid.

3.3.1 No submissions were made obo the respondent.

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 evidence and argument necessary to substantiate my findings and decision.

4.2 I first would like to deal with the jurisdiction to hear the matter. I hereby refer to the judgements in *Minister of Safety and Security v Safety and Security Sectoral Bargaining Council and Others (2010) 31 ILJ 1813 (LAC)* and *PSA obo De Bruyn v Minister of Safety and Security and Another (2012) 33 ILJ 1822 (LAC)* where it was decided that the BC has jurisdiction to entertain disputes about the application and interpretation of Resolution 7 of 2000 in terms of section 24 of the LRA. "Interpretation" refers to the situation where the parties differ over the meaning of a provision of the collective agreement. "Application" includes both the question whether an agreement applies to the facts in question and the manner in which the agreement is applied, which includes non-compliance.

4.3 Paragraph 7.4 and 7.5 of the PSCBC Resolution 7 of 2000 deal with normal sick leave and with incapacity management in excess of the 36 days normal sick leave. An employee, who has exhausted its 36 days sick leave, MAY be granted additional sick leave (TIL) on full pay where the provisions of paragraphs 7.5.1 (a) (i) & (ii) of Resolution 7 of 2000 are complied with and the employer, after investigations, including investigations in accordance with item 10(1) of Schedule 8 of

the LRA, so decides. Resolution 7 of 2000 is amplified by the Policy and Procedure on Incapacity Leave and Ill-Health retirement (PILIR), determined in terms of section 3 (2) of the Public Service Act 1994, as amended by the Minister for Public Service and Administration. The employer has a discretion to grant the TIL, although it needs to exercise its discretion properly (must take into account relevant information, follow laid down procedures and act within the framework of the Collective Agreement). Not every failure on the part of the employer to comply with the Collective Agreement will necessarily result in a claim of right on the part of the employee. The employee still needs to show that he qualified for the relief sought, that the employer failed to comply with the agreement and in doing so prejudiced him (see also PSCB601-11/12).

4.4 No documents were submitted and therefore I can only rely on the applicant's representative's written argument. However, the argument contains a summary of facts that happened to the applicant which are not supported by any documents and therefore basically come down to hearsay evidence. If the medical documents, grievance and application forms would have been submitted to support these allegations, the applicant could have convinced me that she qualified for the relief sought. However, there is too little in front of me to conclude that the applicant has discharged the onus of proving that the Resolution was wrongly interpreted or applied.

4.5 The fact that the TIL was decided after the expiry of 30 working days, although not condoned, does not on its own, in the absence of proof to the contrary, entitle the employee to TIL for the period in question. I do not find the respondent to be in breach with resolution 7 of 2000.

5. AWARD

5.1 The respondent is not in breach with paragraph 7.5 of Resolution 7 of 2000;

5.2 The application is hereby dismissed;

5.3 There is no order as to costs.

SIGNED AT Cape Town ON THIS 20th DAY OF FEBRUARY 2014

I De Vlieger-Seynhaeve

PSCBC Arbitrator