



**PANELIST: ADVOCATE J P HANEKOM**

**CASE NO: PSCB200 -13/14**

**AWARD DATE: 18 FEBRUARY 2014**

In the matter between:

**PSA obo NEL**

**Applicant**

and

**DEPARTMENT OF CORRECTIONAL SERVICES**

**Respondent**

---

**ARBITRATION AWARD**

---

**DETAILS OF THE HEARING AND REPRESENTATION:**

1. This matter was initially set down for arbitration on 14 November 2013 concerning a dispute about the interpretation and/or application of a collective agreement (Resolution 1 of 2007 – hereinafter referred to as the “Resolution”). Mr. A. Strydom, union representative of PSA represented the Applicant. Mr. Williams of Labour Relations represented the Respondent. On the day the parties by agreement requested to postpone the matter to obtain the necessary documentation in respect of the Applicant’s claim and to hopefully settle the matter. The matter was then postponed until 21 January 2014 for finalisation. On 21 January 2014 Mr. A. Strydom again represented the Applicant and Mr. A. Lumphondo of Legal Services within the Department represented the Respondent. Both parties then agreed and requested to argue the case on paper. The Applicant and the Respondent would

submit written argument respectively on 28 January 2014 and 4 February 2014. I would then issue my award on or before 18 February 2014.

**ISSUE TO BE DECIDED:**

2. Whether or not the Respondent correctly applied and interpreted the Resolution.

**HISTORICAL BACKGROUND:**

3. The Applicant was employed as a Correctional Officer by the Respondent at Allandale Correctional Facility.
4. At the beginning of February 2012 whilst the Applicant was still employed by the Respondent the Applicant as driver transported members from Allandale to Kroonstad for official purposes.
5. The Applicant obtained a trip authorisation for the period 3 February 2012 to 7 February 2012. The Applicant claimed abnormal hours for overtime worked for the period 4 February 2012 (Saturday from 16h00 to 24h00 – 8 hours); 5 February 2012 (Sunday from 00h00 to 07h00 – 8 hours; Sunday 16h00 to 24h00 – 8 hours); 6 February 2012 (Monday from 00h00 to 06h00 – 6 hours). At the time the Applicant was paid a subsistence and travel allowance for the trip conducted, but not for the overtime worked. Applicant thereafter submitted a grievance on 28 November 2012.
6. In a letter dated 24 December 2012, the Acting Area Commissioner: Allandale Management Area (S. Kemp) responded to the Applicant's grievance and informed the Applicant that Mr. Maissenheimer, the transport coordinator at Pollsmoor Correctional Facility referred the matter to Head Office via the Regional Office for approval as per applicable policy. However no payment was made to date. As Allandale Management Area was not initially informed of the matter, it would be handled by the Regional Office and Allandale Management Area would do the necessary follow ups to no avail.
7. The Applicant thereafter referred the matter to the council for dispute resolution.

### **ARGUMENT BY THE APPLICANT:**

8. I have decided to summarise the Applicant's argument as far as I consider relevant.
9. It was the Applicant's argument that he was entitled to the overtime payment for the abnormal hours worked as indicated in the historical background. At the time the Applicant's annual salary notch was R216 951 per annum.
10. According to Mr. Strydom he requested the Department to provide him with the necessary information as to the overtime worked to no avail. Strydom then did his own investigation and consulted with Mr. Afrika at Pollsmoor Transport Section, who calculated the abnormal hours of overtime as per the historical background referred to above.
11. Strydom further submitted that the Applicant did submit his claim for overtime, but was not paid and therefore request payment as such.

### **ARGUMENT BY THE RESPONDENT:**

12. I have again decided to summarise the Respondent's argument as far as I consider relevant.
13. Mr. Lumphondo for the Respondent submitted that most of the facts of this case were considered common cause.
14. Lumphondo further submitted that the matter was postponed on the first hearing date to investigate whether the Applicant indeed followed the correct prescripts to claim overtime for the abnormal hours worked. No paper trail of the Applicant's application could be found. Lumphondo conceded that maybe the employer did not submit the Applicant's claim for overtime.
15. The Applicant's subsistence and travel claim was paid out by Allandale Management Area and the overtime payment was administered by the Regional Office at Pollsmoor Management Area. Pollsmoor Management Area could not provide

copies of such documentation. Neither could the Applicant supply copies of such application for overtime payment.

16. Accordingly Lumphondo submitted that the Applicant did not submit such application for overtime payment. Accordingly the application should be dismissed.

#### **ANALYSIS OF THE EVIDENCE AND ARGUMENT:**

17. I have decided only to focus on those issues I consider relevant for the purpose of my award.
18. Most of the facts of this case were considered common cause between the parties. It was common cause that the Applicant was authorised to conduct an official trip to Kroonstad for the period 3 February 2012 to 7 February 2012. It was further common cause that during such trip the Applicant travelled over the weekend, which included the Saturday and the Sunday that amounted to abnormal hours of overtime worked.
19. It is clear from the letter dated 24 February 2012 (documentary evidence) referred to above that the Applicant was indeed authorised to claim for overtime worked and that such overtime payment was recommended via Regional Office for approval.
20. It appears from Mr. Lumphondo's argument that it was uncertain as to whether or not the Applicant did submit an application for overtime. Lumphondo however conceded to the possibility that the employer did not submit the application for overtime payment to Head Office. Further Lumphondo in his argument did not contest the overtime hours as calculated and stipulated in the Applicant's written argument. I therefore find that the Applicant was indeed entitled to overtime payment for the hours that he claimed.
21. The dispute was referred to the council as a dispute about the interpretation and/or application of Resolution 1 of 2007. The Resolution *inter alia* deals with the conditions of employment as per clause 9 of the Resolution. Clause 9.1 the Resolution states "Overtime on a Sunday or public holidays 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 the option of granting time off ..." Further clause 9.2, in respect of the calculation of overtime reads as follows "The basis for the calculation of overtime worked shall be the actual salary notch of the employee,

provided that it shall not be higher of a basic salary of R122 841 per annum. This amount will be increased by the percentage of the annual general salary adjustment with effect from 1 July of each year commencing on 1 July 2007...” Neither of the parties in their written argument made any reference to clause 9 of the Resolution and the basis for the calculation of overtime.

22. Clause 9 of the Resolution refers to the Basic Conditions of Employment Act of 1997 (BCEA). It is therefore my interpretation and understanding of clause 9 that the calculation of overtime must be in accordance with the BCEA, provided that there is a limitation on the annual salary to be used as a basis for the calculation of overtime. In other words the Applicant’s overtime payment cannot be calculated on the Applicant’s own annual salary notch. The Minister in terms of section 6(3) of the BECA on an annual basis (with effect from 1 July each year) sets the earnings threshold for employees who qualifying for the minimum conditions of employment that include overtime payment. With effect for 1 July 2012 the threshold was R183 008 per annum. This amount was increased to R193 805 with effect of 1 July 2013.
23. It was common cause that the Applicant’s salary was above the threshold during February 2012 when he performed the overtime. Under normal circumstances an employee earning above the threshold does not qualify for overtime claim unless agreed by the parties like in the instant case where the parties agreed to the Resolution. Therefore my interpretation of clause 9.2 of the Resolution as to the calculation of overtime will be limited to a certain basis be it the threshold or not. The increase in the basic salary referred to in clause 9.2 is subject to annual general salary adjustments. I was not given the basic salary adjustment on 1 July 2012 and therefore I am uncertain as to the basis for the calculation of overtime in the Applicant’s case.
24. According to my calculations the Applicant worked 16 hours overtime on Sunday 5 February 2012 (Sunday from 00h00 to 07h00 – 8 hours, Sunday 16h00 to 24h00 – 8 hours) at a rate of 2 x basic salary. The Applicant worked 8 hours overtime on Saturday 4 February 2012 and 6 hours overtime on Monday 6 February 2012 totalling 16 hours overtime at a rate of 1.5 x basic salary. I therefore find that the Applicant is therefore entitled to overtime payment in terms of clause 9 of the Resolution as stipulated here. To my mind the Respondent did not correctly apply the Resolution when it refused to pay the Applicant for the overtime worked.
25. As to the issue of costs the parties agreed and requested to investigate the matter in

order to try and resolve the dispute. It was clear that the necessary documentation was untraceable and under the circumstances I do not deem it necessary to make a cost order.

**AWARD:**

26. In the premises I make the following award:

- (1) I find that the Respondent did not correctly apply and interpret the Resolution.
- (2) I order the Respondent to pay the Applicant for the overtime worked as per paragraph 24 of my award. The fact that I was not given the basis on which to calculate the overtime I reserve jurisdiction if there is any discrepancy between the parties as to the calculation of monies.
- (3) I make no order as to costs.



ADV J P HANEKOM

**ADV J P HANEKOM**