



# AWARD

Panellist/s: ABEVAN

Case No.: PSCB 109-17/18

Date of Ruling: 20 December 2017

In the ARBITRATION between:

**PSA obo MATLAPENG, R S**

(Union / Applicant)

and

**DEPARTMENT OF SOCIAL DEVELOPMENT, NW**

(Respondent)

**Union/Applicant's representative:** Ms Z Graaff (of the PSA)  
**Union/Applicant's address:** No. 19 Molopo Road, Mafikeng  
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**Respondent's representative:** Mr K Kegakilwe  
**Respondent's address:**  
**Telephone:** 018-388 4697  
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## **DETAILS OF HEARING AND REPRESENTATION**

1. The arbitration into the abovementioned interpretation and application of collective agreement Resolution 3 of 1999 ("the Resolution") was set down to be heard on 09h00 on 2 November 2017 at the offices of the Respondent in Tlhabane.
2. The Applicant was present and represented by Z Graaff of the PSA and the Respondent was represented by K Kegakilwe, a Labour Relations Official of the Respondent.
3. The proceedings were electronically recorded.
4. At the beginning of the proceedings the parties agreed that the Applicant will only call one witness, where after submission can be done in writing. The Applicant to submit her arguments on 25 November 2017, the Respondent to answer at 1 December 2017 and the Applicant to reply on 8 December 2017.

## **ISSUE TO BE DECIDED**

5. I am required to determine whether or not the Respondent correctly interpreted and applied part IX, clause 3.1 of the Resolution, when it refused or declined to pay the Applicant her reasonable costs of travel for official journeys for the periods July, August, September and October 2016 as provided for in the said Resolution.

## **BACKGROUND TO THE MATTER**

6. The Applicant referred a dispute to the Council relating to the interpretation and application of the Resolution on 17 May 2017. The dispute remained unresolved and a certificate of non-resolution in terms of section 135(5) of the Labour Relations Act, 1995 was issued on 15 June 2017.
7. The matter was set down for arbitration on 2 November 2017.

## **SUBMISSIONS OF THE PARTIES**

### ***Applicant's evidence and submissions:***

8. The Applicant's only witness, Ms Sarah Motsepe testified that she is the Service Point Administrator
9. She confirmed that the Applicant works as a core programme employee.
10. She further confirmed that the usual process is that employees apply for Scheme B, approval will be granted and employees can thereafter travel and claim as per the approval. The Applicant did apply in this regard for approval in April 2016.
11. Whilst the Applicant was still awaiting the outcome of the above mentioned submission, she phoned the

witness and requested approval to travel as she had not yet obtained the written approval.

12. The witness telephonically obtained permission from the Deputy Director Finance at the District Office for the Applicant to travel, even without the formal approval. Apparently a decision was taken during the First Quarterly Review that all core programme employees must continue to travel, even in the absence of formal approvals.
13. The witness then informed the Applicant that she is allowed to travel.
14. The witness was not cross-examined by the Respondent.

***Submissions made by the Applicant:***

15. The Resolution (**Annexure C**) provides that:
  - 14.1 The employer may meet reasonable costs of travel for official purposes (Part XI, clause 1.1);
  - 14.2 In the context of this agreement, an executing authority shall establish written policies (Part XI, clause 1.2)
  - 14.3 If an employee must use her or his private transport to carry out her or his duties, the employer may (Part XI, clause 3.1)-
    - (a) provide an allowance to cover reasonable actual costs; and
    - (b) compensate the employee according to tariffs prescribed by the Department of Transport.
15. The Applicant used her own transport to undertake official trips. The Applicant never travelled officially without authority to do so. When the written authority was still outstanding, the Applicant obtained oral permission to travel.
16. The practice at the Respondent is that the official submits his/her weekly plan to the supervisor for approval before trips are undertaken. The Applicant complied with this and was approved by the supervisor during the periods in question. (This is not in dispute since the supervisor; Ms Mosepe testified that the district office did not have a problem paying the member).
17. It is evident that the Applicant qualified to be paid the travel allowance as per clause 5.3 of the Departmental Policy. The Respondent is acting unfair by not remunerating the Applicant for the official trips undertaken by her to ensure service delivery.
18. The Applicant therefore prays that the 3491 kilometers be paid to the member in respect of her outstanding claims for the periods as mentioned above.

***Respondent's answering submissions:***

19. The Applicant claimed that her official kilometers for July, August, September and October 2016 were not paid.
20. It is common cause that the Applicant travelled official kilometers for the above mentioned months;

however the Applicant travelled prior to formal approval being granted.

21. The evidence of the Applicant's witness, Ms S Motsepe that she instructed the Applicant to travel without formal approval based on the announcement made by Chief Director: Corporate Services during one of the quarterly reviews meetings should not be considered as the minutes of the said meeting was not submitted as evidence.
22. Both the Applicant and Ms Sarah Motsepe are fully aware of the practice and procedure required prior to travelling official kilometers with your own vehicle. They are aware that the Chief Financial Officer is the only delegated officer to approve or disapprove the application, due to the financial implications relating to such an application. Ms Motsepe (the Service Point Manager) have no delegated powers to such, therefore she was not in a position to give instruction to an employee to travel without formal approval.
23. Transport Circular No 1 of 2016 (attached as annexure "A") was circulated to inform employees to submit their application to Head Office before 22 April 2016 and employees were allowed to travel for April (only) without approval. (See Annexure "A").
24. Furthermore, the Applicant is aware that she needed to apply for scheme "B" before the beginning of April each year. She only applied for the scheme "B" on 21<sup>October</sup> 2016 (see annexure "B").
25. In addition Section 5.3.1.5 of Departmental Transport Policy stipulates that ***"should an official travel prior to the approval being granted, the Department will reserve the right to exercise the option of not paying the expenses unless the Head of Department has approved a submission that substantiate the circumstances that led to the unauthorized travelling"*** (see annexure "C").
26. In this case the Head of Department did not approve the submissions that substantiate the circumstance that led to the unauthorized travelling; therefore the Respondent reserves to exercise the option of not paying.
27. It must also be noted that the same Resolution No 3 of 1999 clearly emphasizes that if an employee takes an official journey that violates a policy of her or his department, ***the employer may compensate the employee for none or only part of the costs. {Section XI, 1.3}***. The Respondent therefore chose not to compensate the Applicant, because the official decided to violate departmental transport policy. (Annexure "D").
28. Based on the above mentioned, it is the Respondent's plea that the Applicant failed to comply with the Transport Policy and also choose to ignore Transport Circular No 1 of 2016 whereby it was emphasized that employees should send their applications to Head Office before 22 April 2016 and she only made application during October 2016. The case should therefore be dismissed.

## ANALYSIS OF THE SUBMISSIONS AND EVIDENCE

29. I intend to offer brief reasons in my analysis as per Section 138 (7) of the *LRA* as amended, which provides that, “*Within 14 days of the conclusion of the arbitration proceedings – the commissioner must issue an arbitration award with brief reasons.*”
30. The purpose of Resolution 3 of 1999 is to introduce a collective agreement on remuneration, allowances and benefits as contained in Annexure B to the agreement.
31. In interpreting the Resolution I am cognizant of the fact that the interpretation must be in line with the primary ~~object~~ *purpose* of the *LRA*, namely, to promote the effective, fair and speedy resolution of labour disputes. In addition, I am striving to adopt an interpretation and application that is fair to the parties.
32. The Labour Appeal Court has succinctly defined an interpretation and application dispute in the matter of ***Hospersa obo Tshambi v Department of Health, KwaZulu Natal (DA 12/15) [2016] ZA:AC 10 [2016]*** by stating that a dispute about the interpretation of a collective agreement requires, at minimum, a difference of opinion about what a provision of the agreement means. A dispute about the application of a collective agreement requires, at minimum, a difference of opinion about whether it can be invoked.
33. It seems from the arguments submitted by the parties that there is a difference of opinion as to whether prior approval to claim travelling for official journeys should be obtained in writing or whether oral approval is acceptable.
34. Part XI of the Resolution deals with Official Journeys and determines in paragraph 1.1 and 1.2:
- “1.1 The employer may meet reasonable costs of travel for official purposes.
- 1.2 In the context of this agreement, the Executive Authority shall establish written policies on amongst others,
- (a) Procedures for approving an official journey.....”
- 1.3 If an employee takes an official journey that violates a policy of her or his department, the employer may compensate the employee for none or only part of the costs.”
- Part XI of the Resolution, paragraph 3.1(b) determines:
- “3.1 If an employee must use her or his private transport to carry out her or his duties, the employer may –
- (a) Compensate the employee according to tariffs prescribed by the Department of Transport.”
35. It is clear from the Resolution that it does not determine how approval for official journeys should be obtained and that every Department should develop a policy in this regard. Neither the Applicant nor the Respondent attached the Respondent’s policy on transport / travelling, I could therefore not defer to the policy document for an indication as to whether or not prior approval for travelling should always be obtained in writing as alluded to by the Respondent’s representative.
36. The Applicant’s witness testified that although written approval was not obtained by the time that the Applicant travelled officially in July, August, September and October 2016, oral authorization was obtained by the Applicant before she undertook the journeys. This evidence was not contested, although the Respondent was granted an opportunity to cross-examine this witness. It seems further evident from the testimony of this witness that a decision was taken at a higher level that core programme employees

should not be prohibited to travel in the absence of the formal written approvals as it will hamper service delivery.

37. Section 5.3.1.5 of Departmental Transport Policy also only refers to when “approval is not granted” and does not give any indication that such approval need to be in writing. This clause can therefore not be applicable to the Applicant’s case
38. I therefore find that the Respondent had incorrectly interpreted and applied the Resolution when it refused or declined to pay the Applicant her travelling allowances for the period July, August, September and October 2016

***Relief:***

39. In terms of section 138(9) of the LRA the commissioner may make any appropriate arbitration award in terms of the LRA, including, but not limited to, an award-
- (a) that gives effect to any collective agreement;
  - (b) that gives effect to the provisions and primary objects of this Act;
  - (c) that includes, or is in the form of, a declaratory order.
40. In giving effect to the collective agreement the provisions and primary objects of the LRA I determine that the Respondent reimburse the Applicant her travelling allowance as claimed in terms of the applicable tariffs prescribed by the Department of Transport for the periods July, August, September and October 2016.

**AWARD**

41. The Respondent had incorrectly interpreted and applied part IX, clause 3.1 of the Resolution, when it refused or declined to pay the Applicant her reasonable costs of travel for official journeys undertaken for the periods July 2016, August 2016, September 2016 and October 2016 as provided for in the said Resolution.
42. The Respondent is ordered to re-imburse the Applicant within 30 days of receipt of this award her reasonable costs for travelling for the abovementioned periods at the applicable rate as determined by the Department of Transport for the periods in question.
43. Should the parties not be able to agree on the amount due to the Applicant in terms of this award, the Applicant is to request the Council to set the matter down for a quantification hearing.



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**PANNELIST: ANNELIE BEVAN**