



ARBITRATION AWARD

Case No: **PSHS880-19/20**

Commissioner: **Lillian Goredema**

Date of award: **15 July 2020**

In the matter between:

PSA OBO JOHANNES LE GRANGE

(Applicant)

and

DEPARTMENT OF HEALTH- WESTERN CAPE

(Respondent)

DETAILS OF HEARING AND REPRESENTATION

1. This is an award in the matter between the Applicant, Johannes Le Grange and the Respondent, Department of Health, Western Cape. The Applicant was present and represented by Craig Appels, a PSA official, and the Respondent was represented by Abraham Solomon.
2. The matter was heard on 9 July 2020 at the Western Cape College of nursing, Athlone.
3. The proceedings were digitally recorded.

ISSUE TO BE DECIDED

4. I have to decide whether the Applicant was entitled to be granted 8 days study leave as a benefit in terms of section 186(2)(a) of the Labour Relations Act 66 Of 1995 (LRA).

BACKGROUND TO THE DISPUTE

5. The Applicant is employed by the Respondent as an Administrative Officer and is currently studying part time Accountancy with the Cape Peninsula University of Technology. He applied for 8 days study leave in May 2019 for preparation and writing examinations for a number of subjects, and he was granted 50/50 special leave, as the Department said the leave was not for final examinations.
6. He alleges that the leave was for examinations, therefore he was entitled to be granted study leave for preparation for the examination as well as leave for the actual examination days. He alleges that the leave benefit was denied to him unfairly and in contravention of the provisions of the LRA and he would like the days that were deducted from his annual leave to be reversed and approved as study leave.
7. Mr. Abrahams submitted that the alleged examinations were not final as stipulated in the Special Leave Policy of the department, therefore the applicant was not entitled to study leave.

SURVEY OF THE EVIDENCE

APPLICANT'S EVIDENCE

8. The Applicant testified under oath and stated that he joined the Public Service in 2015 and he submitted documents showing that he had been granted special leave for examinations in 2017 and 2018 in terms of codes 595 and 596 when he was still employed in the Premier's department.
9. He testified that he transferred to the Health Department and expected his study leave to be granted.

10. He applied for study leave for preparation and examination for the Cost Accounting examination on 16 and 17 May 2019, and for Entrepreneurial skills on 21 and 22 May, for the Auditing 2 examination on 27 and 28 May and for Taxation 1 examination on 30 and 31 May 2019. The leave was not approved and the days were deducted from his annual vacation leave days.
11. He felt aggrieved by this decision as he said he was entitled to this leave in terms of the Special Leave Implementation of the Western Cape Government Resolution P7 of 2002 dated 8 June 2012. Paragraph 10.1 of the Special Leave Policy states that one day special leave to a maximum of 8 days with full pay may be granted to an employee for each day on which she/he sits for an examination.
12. He testified that the study leave he applied for was having done half of the courses in June with the final examination being written in November. Study leave for the same half year examinations had been granted in 2017 and 2018.
13. In answer to questions during cross examination, he said the special leave Policy applied after 1 July 2000 was still applicable when he applied for the study leave. He agreed that paragraph 10.1.2 of the leave policy states that special leave may only be granted for final examinations not for class tests and that for the purpose of this policy, a final examination referred to an examination that leads to the conclusion of the subject (including semester courses) and the subject content should not be tested again by the institution.
14. He was referred to proof of registration for his Accountancy part time courses with the Cape Peninsula University of Technology for 2018, which showed that the courses for which the applicant registered were for the year January to November, but he said only the Department of Health had declined to approve his study leave for mid-year examinations.
15. He said he had lodged a grievance about the leave not being granted in full and the Department had responded by saying he did not qualify for 8 days study leave and 50/50 leave would be granted to him. He appealed against this decision to the Public Service Commission and the Commission recommended that the application of paragraph 10.1.2 of the Special Leave Policy should be reconsidered by the

Department and the issue was remitted to the department. However, on 14 October 2019, he was advised that the department had discussed the interpretation of the paragraph with the Human Resources manager of the department of the Premier and it was confirmed that Special Leave Policy is consistently applied and the department of health approach was confirmed as being correct.

16. The applicant said he was given an option to take annual vacation leave for every day that he took study leave, which is what he did and hence his dispute that the 8 days, vacation leave should be granted as study leave.

RESPONDENT'S EVIDENCE

17. Velda October testified under oath and stated that she is an Assistant Director in People administration of the Respondent. Her duties include auditing the leave applications of employees.

18. The applicant submitted his application for study leave in May 2019 and she determined whether to grant it or not, in terms of his registration documents for the year. She declined granting him study leave in terms of paragraph 10.1.2 of the Special Leave Policy, as his registration forms indicated that his courses were registered for the full year and final examinations would be written in November 2019. She advised the applicant to utilize paragraph 10.3.1 which states that a maximum of 8 days special leave supplemented by 8 or more days-vacation leave credits may be granted an employee on a 50/50 basis per leave cycle.

19. The Premier's department had stated that they realized their mistake in previously granting the applicant study leave for mid-year examinations.

20. In answer to cross-examination she said although the registration form submitted was for 2018, the same was applicable for 2019 as she had checked the 2019 form before considering the applicant's application for study leave. She said if the June examination were final then the applicant should have submitted the results but he did not do so confirming that these were not final examinations.

ANALYSIS OF THE EVIDENCE AND ARGUMENT

21. In deciding whether the applicant was entitled to be granted study leave for 8 days for preparation and writing examinations in May and June 2019 as a benefit, I have considered both parties' oral and documentary evidence, as well as the closing statements made by the respective representatives.
22. The applicant has the onus to prove that the non-granting of study leave was unfair.
23. Mr. Appels argued that the Applicant had been granted such leave in both 2017 and 2018 whilst working in the Premier's department and therefore it is unfair to ask him to utilize his annual vacation days for study leave. The university form clearly states that the leave was for the examinations in the relevant subjects.
24. Mr. Abrahams responded by submitting that the examinations were not the final ones for the courses and paragraph 10.1.2 of the Leave Policy is applicable and the applicant was not entitled to be granted study leave.
25. In considering this case I was guided by paragraph 10.1.2 of the Study Leave Policy which reads as follows "special leave may only be granted for final examinations and not for class tests. For the purpose of this policy, a final examination refers to examinations that lead to the conclusion of a subject (including semester courses) and the subject content should not be tested again by the institution."
26. I accept Mrs. October's evidence as being credible and probable as it was the correct interpretation of the paragraph 10.1.2. I also accept her evidence that the Premier's department admitted to having approved the applicant's study leave in previous years in error.
27. I therefore find that the applicant failed to discharge the onus of proving that the non-granting of his study leave was unfair. Whilst his evidence was based on the fact that he had been granted study leave for the mid-year examinations by the Premier's department in previous years, he failed to prove that these examinations, for which applications for study leave were declined, were final in terms of paragraph 10.1.2 of the Leave Policy.

28. He also did not refute evidence that these courses were full year courses with the final examination being written in November. Although Mr. Appels took issue with the fact that the registration document submitted by Mrs. October was for 2019, this did not take the applicant's case any further, as he did not dispute that all the courses in 2019 were full year courses. Whilst the University may have referred to the evaluation process during May as examinations, this did not necessarily prove that these were final examinations.

29. The applicant also failed to challenge the evidence by Mrs. October that the Premier's department admitted that they had granted him and others study leave in error.

30. Consequently, I find that the applicant's application for study leave during the middle of 2019 was justified and in compliance with the special leave policy.

AWARD

31. The applicant was not entitled to the study leave benefit and refusal of granting it by the Respondent was fair.

32. The Applicant's application is therefore dismissed.



Lillian Goredema