



PHSDSBC

PUBLIC HEALTH AND SOCIAL DEVELOPMENT
SECTORAL BARGAINING COUNCIL

ARBITRATION AWARD

Panelist: **Minette van der Merwe**

Case No: **PSHS 17- 17/18**

Date of award: **11 August 2017**

In the matter between:

PSA obo J D Venter

(Union/ Applicant)

and

Department of Health- Free State

(Respondent)

DETAILS OF HEARING AND REPRESENTATION:

- [1] The arbitration was held on **27 July 2017** at the Respondent's offices in Bloemfontein (Bophelo House).
- [2] The Applicant was present and represented by Mr Clement Fandie, an Official from the Public Servants Association (PSA). The Respondent was presented and represented by Mr Lucky Mapena, a Senior Labour Relations Officer from the provincial office of the Respondent.
- [3] No interpretation was required. The proceedings were not recorded as no evidence was led.

BACKGROUND TO THE DISPUTE:

- [4] The matter was scheduled for Arbitration in terms of section 186(2)(a) of the Labour Relations Act (Act 66/1995) (hereinafter referred to as “the LRA”), related to an alleged unfair labour practice in respect of benefits.
- [5] The following was agreed by parties:
- [5.1] The parties agreed to argue the merits of the dispute on heads of arguments only, as no witnesses were going to be called to testify and no oral evidence were going to be led.
- [5.2] The Applicant would submit heads of arguments no later than 31 July 2017.
- [5.3] The Respondent would submit heads of arguments in reply no later than 04 August 2017.
- [5.4] The Applicant may supplement its heads of arguments by no later than 09 August 2017, which it elected not to file.
- [5.5] Heads of arguments had to be submitted via e-mail to myself as well as the Bargaining Council.
- [6] Parties complied with the agreement as per paragraph [5] above.

ISSUE TO BE DECIDED:

- [7] I was called upon to determine the following:
- [7.1] Whether the Applicant was entitled to a stand-by allowance in terms of Resolution 3 of 1999.
- [8] As remedy, the Applicant sought to be paid all stand-by allowance in dispute for the following periods:
- (a) 01/04/2016 – 30/04/2016
 - (b) 01/06/2016 – 30/06/2016
 - (c) 01/08/2016 – 31/08/2016
 - (d) 01/09/2016 – 30/09/2016

SURVEY OF EVIDENCE AND ARGUMENTS:

Heads of arguments from Applicant:

NOTE: This is a verbatim reflection of the heads of arguments received:

[9]

[9.1] *“The Applicant had been required to be available for work outside his normal working hours in other words, required to work on standby.*

[9.2] *The applicant had been on standby for 30 day for the period 01/04/2016 to 30/06/2016 at a rate of R61,10 per day which amounts to R1 833,00 (kindly see page 2 3rd block of the attached annexure for easy reference)*

[9.3] *The applicant also had been on standby for another 30 days for the period 01/06/2016 to 30/06/2016 at a rate of R61.10 per day amounting to R1 833.00 (see page 5 of the attached annexure for easy ref)*

[9.4] *And also on the 01/08/2016 to 31/08/2016 at a rate of R61.10 per day amounting to R2 025.85 (kindly see page 8 of the attached annexure)*

[9.5] *The applicant further worked on standby for the period 01/09/2016 – 30/09/2016 at the rate of R65.35 to the amount of R1 960,50 (see page 9 of the attached annexure please)*

[9.6] *The respondent did not pay standby allowance as per the attached claims and opted to pay only 14 days instead of 30day claimed with valid reason. The Respondent is required by law to pay standby allowance to the applicant and failing to do so it amounts to unfair conduct on its part. Commissioner this obligation arises as a result of Resolution 3 of 1999 clause VIII Stand allowance which state as follows:*

VIII. Standby allowance

“1. if the employer requires an employee to be available for the performance of duty outside her/her normal working hours, the employer shall pay standby allowance.”

[9.7] The applicant’s manager/supervisor had required the applicant to be on standby and as such confirmed the worked done by the applicant while on standby for the above mentioned periods.”

Heads of arguments from the Respondent:

NOTE: An e-mail as received by the Respondent with the following:

[10] “It is the respondent submission that, the Institution has initiated the process to finalize the matter, as the Respondent representative I was given an indication that the submission is on route to request approval to pay the outstanding amounts, in as far as the claims are concerned.”

ANALYSIS OF EVIDENCE AND ARGUMENT:

[11] The Resolution in question, Resolution 3 of 1999, is a PSCBC Resolution.

[12] Clause 11 (a) states that for the purpose of resolution and the agreement “council” means the Public Service Co-ordinating Bargaining Council (PSCBC).

[13] Clause 8 of the same Resolution states that if there is any dispute pertaining to the interpretation and/or application of said Resolution, any party may refer a dispute to the Council for resolution.

[14] It then follows that the PHSDSBC does not have the necessary jurisdiction to determine this dispute. The appropriate forum is the PSCBC.

AWARD:

[15] The PHSDSBC lacks the necessary jurisdiction to determine this dispute. The appropriate forum is the PSCBC.

[16] The matter is thus dismissed for a lack of jurisdiction.

[17] I make no order as to cost.

Signature:

A handwritten signature in black ink, appearing to read 'M. Merwe', is displayed on a light green rectangular background.

Panelist: **Minette van der Merwe**