(1) REPORTABLE : YES / NO

(2) INTEREST TO THE JUDGES : YES / NO

(3) REVISED

22/04/2021
DATE

Mangena
SIGNATURE

IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case No: JR2209/17
JR 1652/18

In the matter between:

DEPARTMENT OF CORRECTIONAL SERVICES **Applicant**

and

PUBLIC SERVICES CO-ORDINATING, BARGAINING COUNCIL **First Respondent**

COMMISSIONER M FOUCHE N.O **Second Respondent**

PSA OBO 12000 MEMBERS **Third Respondent**

Heard: 28 January 2021
Delivered: 22 April 2021

JUDGMENT

MANGENA, AJ

Introduction

[1] Before me, there are two applications to review and set aside the awards handed down by the second respondent under the auspices of the first respondent. The first award relates to *an in limine* ruling made *ex-tempore* on 7 June 2017 with the written reasons thereto given on 21 June 2017. The review application in respect of this award was instituted under case number JR 2209/17. The second review application also against the award issued by the same arbitrator relates to the merits of the dispute and was instituted under case number JR 1652/18. The protagonists in these legal tussles are the Department of Correctional Services (the Department) and Public Servants Association of South Africa (PSA), a registered trade union acting on behalf of its members. The two applications were consolidated by the order of Coetzee AJ on 19 November 2019.

[2] The history of the dispute between the parties is long and no purpose will be served by chronicling in this judgment the events which took place since the referral of the dispute to the bargaining council. What can however be said is that the delay in the finalisation of this matter is contrary to the spirit and ethos of the Labour Relations Act[1] (the LRA) which is intended to bring about the expeditious resolution of labour disputes which, by their nature, require speedy resolution. Any delay in the resolution of labour disputes undermines the primary object of the LRA. It is detrimental not only to the workers who may be without a source of income pending the resolution of the dispute but, ultimately, also to the employer who may have to re-instate workers after many years.[2] In this case the dispute has dragged since 2012 and has undoubtedly affected the morale of the officials of the Department in the performance of their duties. Morale contributes to the willingness of people to work, leads to their happiness and determines their productivity. It is regarded as a significant variable which determines the success of an organisation. When it is low, it feeds the fires of

[1] Act 66 of 1995
[2] *Toyota SA Motors (Pty) Ltd v CCMA* [2015] ZACC 557 at para 1

employee discontent, poor performance and absenteeism.[3] It would have benefited both parties if the dispute was resolved expeditiously.

Background

[3] The facts relevant for the purpose of this review are largely undisputed and common cause between the parties. PSA referred a dispute on their interpretation and application of a collective agreement to the Public Service Co-ordinating Bargaining Council for conciliation. The dispute concerned Resolution 1 of 2007 which was signed by the state as an employer party and unions on 5 July 2007. One of the objectives of the resolution was to provide for alignment of public service with the requirements of the Basic Conditions of Employment Act[4] (BCEA) and matters incidental thereto. In the summary of the facts, PSA stated that correctional services employees had worked overtime and were not compensated as per Resolution 1 of 2007, clause 9.1-9.7. Regarding the relief it sought under paragraph 5 dealing with outcome required, it was stated that all employees be remunerated in accordance with the PSCBC Resolution 1 of 2007 agreement paragraphs 9.1-9.7. Conciliation failed and the matter was arbitrated by the second respondent who handed down the awards referred to in paragraph 1 above.

Arbitration proceeding: First award

[4] In the arbitration proceedings, the Department raised a number of preliminary points for adjudication by the arbitrator. The points raised were dismissed for lack of merits and substance resulting in the Department being ordered to pay the costs. Having read the record, I am also not impressed with the manner in which the Department conducted itself in this case. It was filibustering and its attitude contributed to the lengthy delay in the finalisation of this matter.

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[3] https://repository.up.ac.za RG Matsaung: Factors influencing the Morale of Employees at Greater Tzaneen Municipality at page 20

[4] Act 75 of 1997

[5] One of the preliminary points the Department raised related to the alleged failure by PSA to provide a list of employees with their identity numbers, salary notches, positions and date of employment as well as the details of the amounts due and payable. The Department argued that the information was necessary as according to the policies the affected employees were required to exhaust the remedies including lodging of grievance. Failure to exhaust the internal remedies, so the Department argued, precluded PSA or its affected members from launching the proceedings.

[6] The arbitrator dismissed this *point in limine* on the basis that it was not raised during the pre-arbitration conference. The arbitrator was exercising her powers of ensuring that the real issue in dispute between the parties get to be addressed. Entertaining the issue at that late stage would have inevitably caused a postponement and delayed the matter further. She then, correctly so in my view, opted for an approach which was sensible in the circumstances, separation of merits from quantum. Her reason was that given the circumstances of this particular matter, she believed it would be in the interest of the parties and a very logical way to determine the interpretation of the resolution first. If it is found that the Applicant's interpretation is correct then that would be the end of the matter. The parties would have been saved from expending interminable hours to identify each of the possible 12 000 members and each individual's overtime hours and pay and thereafter lead evidence to that effect in what would only be an extremely lengthy arbitration process. This was clearly logical and sound and she cannot be faulted for adopting this approach.

[7] Unhappy with the outcome, the Department threatened to approach this Court to have the award reviewed and set aside. The time frame within which it was required to institute the review proceedings was six weeks from 05 July 2017, the date the award was brought to its attention. The review should have been lodged by no later than 16 August 2017. The Department failed to do so and only filed the review on or about 10 October 2017 without a condonation application. The condonation application was only filed on 06 November 2017. In the affidavit supporting the application the explanation provided is very

sparse and incoherent and to my mind demonstrates the lackadaisical approach the Department had adopted on this matter. On the version of the deponent, the Department had always wanted to review the award since 07 June 2017 when it was handed down ex-tempore. One would have thought that a party wishing to take a legal action to challenge a decision will act with speed and vigilance at all material times. I fail to understand how miscommunication between a junior counsel and his senior counsel can take two weeks to be picked up-still after the deadline for filing has passed. A diligent attorney would have taken steps in the week leading to 16 August 2017 and ensured that he/she talks to both client and counsel and alerted them to the looming deadline. To compound the problem, once it is realised that the deadline for filing has passed, it took the Department another month to have the application signed and issued. The explanation provided is clearly not satisfactory.

[8] The test for condonation is trite and well established. The court has a discretion which must be exercised judicially on a consideration of the facts of each case. The factors to be taken into account are mentioned in *Melane v Santam Insurance Co Ltd*[5] and have been followed in numerous cases. Where there is an ordinate delay that is not satisfactorily explained, the applicant's prospects of success are immaterial. The onus is on the applicant to satisfy the Court that condonation should be granted. To discharge the onus, the applicant must provide a detailed, satisfactory and acceptable explanation for each period of the delay. The application should be brought without delay and as soon as possible once an applicant realises that he has not complied with the rule of court. Centrerers CJ make this point in *Commission for Inland Revenue v Burger*[6] where he stated that whenever an applicant realises that he has not complied with a Rule of court he should, without delay, apply for condonation.

[9] The Department has in my view failed to provide a clear, satisfactory and reasonable explanation for the delay in bringing the condonation application. The prospects of success are in any event not good considering that the attack

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[5] 1962 (4) SA 531 (A) at. 532C–F
[6] (1956) (4) SA 446 A at para G

on the award was intended at powers of the arbitrator in so far as the management of the proceedings were concerned. The attack is unjustified and the ruling made is unassailable. For these reasons, the 2017 review application under case number JR 2209/2017 falls to be dismissed.

Arbitration proceedings: Merits.

[10] After the arbitrator dismissed the preliminary points mentioned above and refused to adjourn or postpone the proceedings pending a review, the matter proceeded on the merits. Each of the parties presented oral evidence to supplement the documentary evidence filed by the parties. PSA presented oral evidence through Chief Labour Relations Officer, Mr Janie Oosthuizen (Oosthuizen) and the Department called two witnesses, namely, Mr Chiloane (Chiloane) and Mr Khoza (Khoza), both of whom worked in the Human Resource Section of the Department.

[11] The issue at the centre of the dispute was the failure of the Department to pay its employees overtime in respect of the hours worked beyond 45 hours in a week since the implementation of the seven-day establishment shift system for centre-based correctional officials and 40 hours for those who are non-centre-based.

[12] Prior to the implementation of the 7-day shift establishment, the Department had a five-day working week system where employees did not have to work on Saturdays and Sundays. In the event they were required to work on Saturday and Sunday such duties constituted overtime which the department had to pay. The costs became unaffordable and the Department was directed to find a way to keep its expenditure low. The Department developed a 7-day shift establishment system which would require employees to work over a longer period in excess of 45 hours prescribed by the BCEA in one week and less hours the following week. The total hours worked over two weeks will not exceed 90. Saturdays, Sundays and public holidays will be regarded as normal working days but Sunday and public holidays will be remunerated differently as prescribed by the Determination on working time in the public service.

[13] The implementation of the 7-day shift establishment was preceded by a wide consultation with labour and management of various centres in the country. Following the consultation, the Department and labour concluded Resolution 2 of 2009 on 24 June 2009. One of the objectives of the resolution is the introduction of 45-hour work week for the implementation of OSD and implementation of a 7-day establishment/shift system for Centre-Based Correctional Officials.

[14] Clause 13 of the Resolution deals with the introduction of the 45-hour week and 7-day establishment and provides as follows:

> "13.1 All Centre Based Correctional Officials shall be translated to the 45-hour week, with effect from 1July 2009.
> 13.2 The Department shall introduce a 7-day establishment for correctional facilities with effect from 1 July 2009.
> 13.3 The Department shall develop 7-day establishment models taking into consideration institution-specific needs."

[15] On 01 July 2009, the Department issued a circular on the implementation of the 7-day establishment: 45-hour work week aligned to GPSSBC Resolution 2 of 2009. The circular stated that from 01 July 2009 all correctional centres and community corrections will work a 45-hour work week in a roster pattern.

[16] It is this circular that caused all the problems and gave rise to the dispute between the Department and PSA, which incidentally was not a signatory to the collective agreement, Resolution 2 of 2009.

[17] PSA contends that the Department is liable for the payment of overtime, and relies on Resolution 1 of 2007, in particular clause 1.8 and 9.1 to 9.7 read with the overtime policy.

[18] Resolution 1 of 2007 has as one of its objectives to provide for the alignment of public service with the requirements of the BCEA and matters incidental thereto.

[19] Clause 9 deals with the provisions of BCEA regarding the payment rate and calculation of overtime as well as averaging of overtime and working hours.

[20] The Overtime Policy of the Department defines overtime as work performed in excess of normal working hours (45 hours or 40 hours) per week. Clause 7.14 states that payment of overtime shall be effected for work performed in excess of normal working hours (45 hours or 40 hours) where prior written approval was granted by the delegated authority. Clause 7.12 prohibits performance of overtime duties without the written prior approval of the delegated authority except in exceptional circumstances.

[21] Clause 9.3 deals with maximum overtime hours and states that the mechanism and conditions for averaging of maximum overtime hours shall, where required, be determined in the respective sectorial bargaining councils. This excludes employees on commuted overtime.

[22] Clause 9.5 deals with averaging of working hours and states that the mechanism and conditions for the averaging of working hours shall, where required, be determined in the respective sectoral bargaining councils.

[23] PSA argues that clause 9.5 of Resolution 1 of 2007 requires a conclusion of an agreement between the parties before there could be an averaging of working hours. Simply put, clause 9.5 requires an agreement to be reached between the parties before there can be an averaging of the working hours. Section 12 of the BCEA requires that averaging of working hours over a maximum of four months can only take place by way of a collective agreement. In the absence of a collective agreement averaging the working hours, all the hours worked by the officials beyond 45 hours per week constitute overtime and should be remunerated as such.

[24] The Department disputed the contention by PSA and upfront argued that the issue for consideration before the commissioner was not interpretation but payment of overtime as a result of the implementation of the 7-day shift establishment system. It denies liability for the payment of overtime and

anchored its case on Resolution 2 of 2009 read with Resolution 1 of 2007, the overtime policy as well as the circular issued by the commissioner on 01 July 2009 directing for the implementation of the 7-day shift establishment. It argued that read together and construed in proper context, the parties to the Resolution 2 of 2009, which is a collective agreement have agreed on a development of a practical shift model which will be aligned to the requirements of the BCEA.

[25] Having listened to the submissions made by the respective counsel for the parties, the arbitrator rendered an award in which she found that the department is interpreting clause 9 of PSCBC Resolution 1 of 2007 incorrectly by averaging working hours in the absence of a collective agreement that permits the averaging of working hours. She further ordered the Department to pay costs including those of counsel as a mark of displeasure in the way it conducted itself during the arbitration.

[26] Dissatisfied with the award, the Department instituted the review proceedings under case number JR1652/18 to have the award dated 26 July 2018 reviewed and set aside. PSA opposes the application and predictably seeks to have the award confirmed.

[27] The Department raised several grounds of review and some of them relates to the ruling issued in 2017 regarding the jurisdiction of PSCBC to adjudicate the matter as well as the preliminary points raised on failure by PSA members to either submit a list or lodge a grievance. I have already dealt with these issues in the preceding paragraphs. I will now confine myself to the grounds relevant to the 2018 award.

[28] The grounds of review relied upon to have the award reviewed are namely that the arbitrator committed an irregularity and misconducted herself in the interpretation of clause 9.5 of the PSCBC Resolution 1 of 2007. It is averred that she exceeded her powers by admitting inadmissible evidence and failed to have due regard to the totality of the evidence before her when she made her finding or conclusions. Consequently, the award is irrational in that there is no rational objective basis justifying the connection between the decision and the

information which was before the arbitrator. The award is consequently unreasonable.

[29] The test for review is trite and was stated in *Quest Flexible Staffing Solutions (Pty) Ltd (a division of ADCORP Fulfilment Services (Pty) Ltd) v Lebogate*[7], as follows: -

> "[12] The test that the Labour Court is required to apply in a review of an arbitrator's award is this: "Is the decision reached by the commissioner one that a reasonable decision-maker could not reach? "Our courts have repeatedly stated that in order to maintain the distinction between review and appeal, an award of an arbitrator will only be set aside if both the reasons and the result are unreasonable. In determining whether the result of an arbitrator's award is unreasonable, the Labour Court must broadly evaluate the merits of the dispute and consider whether, if the arbitrator's reasoning is found to be unreasonable, the result is, nevertheless, capable of justification for reasons other than those given by the arbitrator. The result will, however, be unreasonable if it is entirely disconnected with the evidence, unsupported by any evidence and involves speculation by the arbitrator.
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> [13] An award will no doubt be considered to be reasonable when there is a material connection between the evidence and the result, or put differently, when the results is reasonably supported by some evidence. Unreasonableness is, thus, the threshold for interference with an arbitrator's award on review"

[30] In *Ekurhuleni Metropolitan Municipality v SAMWU and Others*[8], the court stated that the test is concerned with outcomes, not the process by which the outcomes are achieved. Only when the outcome is one which no reasonable arbitrator, with the material that was at hand, could produce, is an award liable to be set aside. The frailties of an arbitrator's reasoning, or inattention to mentioning every facet of relevance, or clumsiness in articulation are unimportant, unless they are causally connected to an unfair outcome.

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[7] [2015] 2 BLLR 105 (LAC)
[8] (2018) 39 ILJ 546 (LAC) para 18

Evaluation

[31] The arbitrator was required to determine the real issue to be decided. The award reveals that she identified the issue for determination to be whether the Department is applying the provisions of Resolution 1 of 2007 correctly. To answer this question, she was required to establish the relevant facts and give due consideration to the evidence tendered by the respective parties.

[32] In *CUSA v Tao Ying Industries and Others*[9], the constitutional court said: -

> "A commissioner must, as the LRA requires, "deal with the substantial merits of the dispute". This can only be done by ascertaining the real dispute between the parties. In deciding what the real dispute between the parties is, a commissioner is not necessarily bound by what the legal representatives say the dispute is. The labels that parties attach to a dispute cannot change its underlying nature. A commissioner is required to take all the facts into consideration including the description of the nature of the dispute, the outcome requested by the union and the evidence presented during the arbitration. What must be borne in mind is that there is no provision for pleadings in the arbitration process which helps to define disputes in civil litigation. Indeed, the material that a commissioner will have prior to a hearing will consist of standard forms which record the nature of the dispute and the desired outcome. The informal nature of the arbitration process permits a commissioner to determine what the real dispute between the parties is on a consideration of all the facts. The dispute between the parties may only emerge once all the evidence is in".

[33] At the outset of the proceedings, the Department indicated to the arbitrator that there is no dispute regarding the interpretation and application of the collective agreement. The Department considered itself bound by the provisions of Resolution 1 of 2007 and applies its provisions correctly in the payment of overtime. The issue in dispute, as per the Department, was payment of overtime which the employees represented by PSA allege it is owed to them since the implementation of the 7-day shift establishment.

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[9] (2008) 29 ILJ 2461 (CC).

[34] The arbitrator rejected the argument by the Department on some reasons that are very difficult to establish from the award. She held that the PSA has a choice on a cause of action and in this regard has chosen the manner in which a collective agreement concluded in the PSCBC Resolution 1 of 2007 is interpreted and applied by the Department. The allegation is that clause 9 of PSCBC Resolution 1 of 2007 is not interpreted and applied wrongly. As a result, the respondent owes members of the applicant overtime money.

[35] In concluding that the Department owes the employees overtime money by not applying Resolution 1 of 2007 correctly, the arbitrator has accepted that the dispute between the parties relates to overtime as contended by the Department. And if the issue was about overtime, the PSCBC did not have jurisdiction to deal with the matter. The issue regarding overtime is provided for in clause 17 of the GPSSBC Resolution 2 of 2009.

[36] Clause 17 of the GPSSBC Resolution 2 of 2009 reads as follows: -

> "OVERTIME
>
> Overtime will be compensated in terms of PSCBC Resolution 1/2007 beyond 45 hours for those who are centre –based and beyond 40 hours for those who are non-centre based".

The clause acknowledges that parties to the PSCBC had agreed on the method of calculation and rate of payment of overtime worked beyond 45 hours in a week. Standing alone Resolution 1 of 2007 concluded in the PSCBC cannot be a source of a claim for overtime for officials employed by the Department. Accordingly, the finding by the arbitrator that clause 9.5 of Resolution 1 of 2007 constitute a cause of action as chosen by PSA is clearly wrong. A claim for overtime can only be founded on Resolution 2/2009 concluded under GPSSBC.

[37] In *HOSPERSA obo Tshambi v Department of Health, Kwazulu Natal*[10], the Labour Appeal Court rejected the approach by the arbitrator and stated that the invocation of section 24 and the bland acceptance of that characterisation by the arbitrator were plainly wrong. The arbitrator is required to determine the true dispute between the parties and make an objective finding about what is the dispute to be determined. What is a "dispute" per se, and how one is to recognise it, demands scrutiny. Logically, a dispute requires, at minimum, a difference of opinion about a question. 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.

[38] In my view the arbitrator failed to appreciate the true nature of the dispute between the parties and assumed jurisdiction on an issue that fell outside of her purview. There was clearly no dispute on the interpretation and application of the collective agreement. The real issue was about payment of overtime.

[39] The arbitrator has concluded that the Department owes its centre-based correctional officers overtime by averaging working hours in the absence of a collective agreement that permits the averaging of working hours. The basis for the conclusion is that section 12 of the BCEA requires a collective agreement to be concluded for the averaging of hours. This conclusion is also not supported by the facts.

[40] The Department correctly argued that the arbitrator disregarded material evidence submitted to her in evidence and arrived at an unreasonable decision. The basis upon which the Department contends is that Resolution 2 of 2009, it being a collective agreement, incorporates the agreement between employer and labour for the averaging of working hours. There is merits in this contention.

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[10] [2016] 7 BLLR 649 (LAC); (2016) 37 (ILJ) 1839 (LAC) (24 March 2016)

[41] Resolution 2 of 2009 cannot be ignored in the determination of the issues arising out of Resolution 1 of 2007. The two documents need to be read together with circular 7.1.1 as well as overtime policy in order to ascertain whether the Department is indeed giving effect to clause 4 of Resolution 1 of 2007 which deals with new salary scales including benefits and allowances. One of the objectives of Resolution 2/2009 is the introduction of 45-hours work week for the implementation of OSD and the implementation of a 7-day establishment/shift system for centre-based correctional officials. Clause 13.3 empowered the Department to develop 7-day shift establishment models taking into consideration institution-specific needs. The employees agreed to this. In this regard, the record states as follows:

"Ms Cassim: Yes, and you said that the shift system in the face of what I put to you, is an unfair system and that the employee is being disadvantaged, prejudiced?

Mr Oosthuizen: Madam commissioner, in terms of the shift system, if you exceed 45 hours per any given week, you need to be compensated overtime.

Ms Cassim: And what about the 26, where you are only working less than 45, what should happen there, because the employee is benefiting there now, he is not working 45 hours, he is working less than 45 hours plus he is getting four days off, what should happen about that, the employee must keep quiet and sit with it and say, well, I am benefiting, the Department is losing four days. I am not working four days. I am working only 26 hours the next day?

Mr Oosthuizen: Madam commissioner, as I have already indicated to you, that is the shift system the employer has implemented, the employees complied to work that shift system. It is not for me to decide what the employer have (sic) to do.

Ms Cassim: And you accepted that clause 13 was a negotiated clause between unions and the Department or state Department, and it is binding, so therefore the Department must, it shall, it is peremptory, it is obliged

to, they have established the seven-day establishment and do it in accordance with particular institution needs, that we have agreed on, not so?

Mr Oosthuizen: That is correct madam commissioner."

[42] The undisputed evidence on record shows that the implementation of 7-day shift establishment was proceeded by a wide consultation with regions and labour. There was a general *consensus* that in order for the Department to deal with the mischief of over-expenditure related to overtime there is a need to restructure the working hours. Following the extensive consultation between employer and labour regarding the hours of work, the parties concluded a collective agreement in the form of Resolution 2 of 2009. The signatory to the agreement were fully aware that the shift model proposed would require officials to work on average of 90 hours over a two week period and will of necessity require them to work longer hours in one week and shorter hours the other week. For this agreement to constitute compliance with section 12 of the BCEA, I do not think that it is necessary to have a specific clause that deals with averaging of hours. The averaging of hours is implicit in it and therefore sufficient for purpose of compliance with section 12. To argue otherwise, is to be disingenuous and opportunistic more especially when it has been found that Resolution 1 of 2007 cannot be interpreted without reference to Resolution 2 of 2009.

[43] In *Western Cape Department of Health v MEC Van Wyk and Others*[11] the Court authoritatively laid the approach to the interpretation of a collective agreement as follows:

> "In interpreting the collective agreement the arbitrator is required to consider the aim, purpose and all the terms of the collective agreement. Furthermore, the arbitrator is enjoined to bear in mind that a collective agreement is not like an ordinary contract. Since the arbitrator derives his/her powers from the Act he/she must at all times take into account the primary objects of the Act. The primary objects of the Act are better served by an approach that is practical to

[11] [2014] 35 ILJ 3078 (LAC)

the interpretation and application of such agreements, namely, to promote the effective, fair and speedy resolution of labour disputes. In addition, it is expected of the arbitrator to adopt an interpretation and application that is fair to the parties".

[44] On the facts of this case, the arbitrator failed to take into account that the conclusion of Resolution 2/2009 was aimed at introducing the seven-day shift establishment for the purpose of aligning it with the BCEA as required by Resolution 1 of 2007. In doing so the parties were alive to the fact that the Department of Correctional Services has a unique working environment which need to be catered for. To avoid labour unrest, a Ministerial task team was formed to find better ways to address the unique issues in the Department. Evidence was led that labour was part of the task team and visited regions to explain the 7-day shift establishment. The purpose of this wide consultation was to avoid labour unrest which is one of the primary purpose of the LRA. Once an agreement was reached, the commissioner issued a circular for implementation and significantly stated that *"after protracted and complex engagements with the DPSA and labour, an agreement has been signed between the state as Employer and labour organisations on the OSD for correctional officials"*. OSD deals with improvement in salaries and other conditions of service including working hours and payments of overtime. Any interpretation that fails to take into account the consultation and subsequent collective agreement signed to give effect to Resolution 1 2007 is incorrect. Therefore, the failure by the arbitrator to take into account the provisions of Resolution 2/2009 in the determination of whether there has been compliance with the BCEA led her to arrive at a conclusion which no reasonable decision maker could reach. The award falls to be reviewed.

Costs

[45] In terms of the provisions of section 162(1) of the LRA, the court has a discretion on the issue of costs. PSA is a recognised union in the Department and continues to participate in its affairs for the benefit of its members. There is

therefore an ongoing relationship between the parties. I therefore exercise my discretion by making no order as to costs.

[46] The following order is made:

Order

1. The review under case number JR2209/2017 is dismissed.
2. The award in JR1652/ 2018 made by the second respondent in case number PSCB 130-12-13 under the auspices of the first respondent is reviewed and set aside.
3. There is no order as to costs in both cases.

M. I. Mangena
Acting Judge of Labour Court of South Africa

Appearances:

For the Applicant	: Adv. M.S Mphahlele SC with D.E Sigwavhulimu
Instructed by	: The State Attorneys, Pretoria
For the third Respondent	: Adv. Malan
Instructed by	: Bowman Gilfillan Attorneys