



GENERAL PUBLIC SERVICE
SECTOR BARGAINING COUNCIL



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ARBITRATION AWARD

Panellist/s: Seretse Masete
Case No.: GPBC1740/2024
Date of Award: 28/05/2025

In the ARBITRATION between:

PSA obo BJ Hlungwani and 1 other

(Union / Applicant)

And

Limpopo Department of Education

(Respondent)

Union/Applicant's representative: Kate Mamabolo (PSA official)

Union/Applicant's address:

Tell no:

Cell:

Respondent's representative: Portia Modipa

Respondent's address:

Telephone:

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1. The matter was held on 15 April 2025 at the employer's premises in Elim.
2. The Applicants, Billy Jerry Hlungwani (1st employee) and Siyeriwa Christopher Chauke (2nd employee), were represented by Kate Mamabolo, a union official from PSA ,and the respondent, Limpopo Department of Education (**employer**) was represented by Portia Modipa.
3. The matter was held in English, interpreted into Xitsonga by Khensani Mogotsi and digitally voice recorded.

Issues to be decided

4. I have to decide whether or not the conduct of the employer by failing to pay night duty allowance to the two employees constituted unfair labour practice against them.
5. I further must determine the appropriate remedy should I find that the conduct of the employer was substantively and or procedurally unfair and therefore constituted an unfair labour practice.

Background to the dispute

6. The 1st employee was employed on 02/02/2018 as a house father at Rivoni school for the blind. The 2nd employee was employed in January 2021 as a house father as well at the same school.
7. The employer failed to pay the 1st employee night duty allowance (amount not known during the process), from his date of appointment to September 2023, and the 2nd employee was also not paid up to December 2023 and the total amount owed to him was not known as well during the process.
8. They challenged the conduct of the employer and wanted to be paid their night duty allowance.
9. The employer agreed that the two employees did work for night duty but they did not apply for approval to work that night duty.

Narrowing of issues

10. The two employees were employed at Rivonia special school (School for the blind) as house fathers.
11. No expert witnesses will be called by either party.
12. No jurisdictional point will be raised.
13. The applicant party will start.

14. No loco inspection necessary.
15. The employee party will prove that the employee worked night duty and the claims were submitted to the principal.
16. The employer will prove that the applicants did not apply to work for night duty during that period.
17. The employer called 1 witness and submitted one bundle of documents marked R and only the 1st employee testified as a sole witness and submitted one bundle of documents marked E. The 2nd employee agreed with all the testimony tendered by the 1st employee.

Survey of evidence by the employee

The 1st witness, Billy Jerry Hlungwane testified under oath as follows;

18. He and his colleague worked for night duty, but the employer failed to pay them. After seeing that their request to be paid the night duty allowance was not considered, they went to the union. There was a grievance lodged on 10 March 2024, see page 10 of bundle E. That was the first grievance and the 2nd one was at page 23 of bundle R. Both grievances were not responded to. He and his colleague were once called for a meeting as per the attendance register on page 21 of bundle R. The letter on page 12 of bundle E, indicated, that house fathers could not leave the learners without a house father. The submission by the principal for the employees to work night duty was on page 18 of bundle E. The night duty record was written on that night duty register. He denied that they failed to applied to work a night duty. The night duty registers were on page 19 to page 59 of bundle E. They kept working even if they were not paid. He would be given only one day-off duty per year without any leave. His nightshift would start at 6h00 and they were to knock off at 7h30, but they would be denied to leave at that time and told to leave at 9h00. The appointment letter for his colleague, the 2nd employee, was on page 60 of bundle E. The claims of the 2nd employee start on page 69 of bundle E. Their understanding was that the principal was submitting the claims to her superiors. He prayed for all his night duty money to be paid to him and his colleague. The problem was that there was no knocking off time though they were happy to perform their duties.
19. The 2023 grievance was not there in the documents but he believed the principal would know because he gave it to him. He agreed that the claims started in 2019. Because of a lack of knowledge, he did not know whether he was supposed to receive the night duty allowance or not until he was alerted by other employees from Tshilidzini special school. It was put to him that the reason for other employees from Tshilidzini to be paid was because they applied to work night-shift. It was put to him that the letter on page 34 of bundle R, showed that he did apply to do night shift in

August 2024 and the other letter on page 32 of bundle R showed that he was withdrawing from working night duty because he was not paid for it. He agreed and added that he resorted to work according to the terms in the contract. His contract was indicating that he was working from 7h30 to 16h00. His name did not appear on page 14 of the of bundle because by then, he resorted to go back and work straight shift. It was put to him that after he applied he started working night shift and submission for his payment was made, see page 28 of bundle R. He answered that it was not his responsibility to make submissions to the higher office but he submitted his claims to the principal.

2nd employee, Siyeriwa Christopher Chauke

20. He agreed with all that was presented by the 1st employee.

Survey of evidence by the employer

Makhari Mukondeleli Violet (Violet) testified under oath as follows;

21. She was the deputy director cooperate services for the employer. From 2018, there was no approval from the HoD to pay night duty allowance up until 2023. The employer only got approval of the 2nd employee in 2023. The 1st employee wrote a letter to stop working night shift in August 2023. The department needed to receive documents to show that they were working at the hostel. The employees worked without an approval. She did not know about the submission on page 18 of bundle E. Her office made the submission to the HoD, but they should receive a submission from the circuit before making a submission to the HoD. The approval cannot be done retrospectively. The district could not pay because there was no approval and they were not delegated. Resolution 12 of 1999 made a provision that night duty allowance should be paid. For the HoD to approve, the school and the circuit should make submission first, but such submissions were not there in the bundles. Page 32 of bundle R was not the reason for the submission to be made to the HoD. It was put to her that there was no complaint on the letter on page 14, and the employees were not claiming for 2023. It was further put to her that, it was not the employees' responsibility to make submission to the HoD. She repeated that the district waits for an approval from the school and the circuit. It was put to her that it was the principal who put them on the roster to work night shift. She did not dispute that but indicated that there was no approval. She confirmed that they had a role to support the school. She was aware they appointed house fathers and mothers and they worked night shift, but they were not forced to work night duty all the time.

Analysis of the evidence

22. The dispute before me was failure by the employer to pay night duty allowance to the two employees who were employed as house fathers at Rivoni school for the blind.
23. Undisputed issues. a) the employees were employed as house fathers. b) the employees submitted their night duty register to their principal as a claim for night duty allowance. c) the employees worked without taking annual leave. d) they were not allowed to leave the learners without house fathers. e) the employer was aware that house fathers were working night shift. f) there was no evidence that the submission made to the HoD for the other employees to be paid a night duty allowance was triggered by the submission made by the school and the circuit office respectively. Disputed issue was that the employees did not apply to work night shift.
24. The arbitration was held at the Rivoni School for the blind where the employees were stationed. The employer called in only one witness (Violet) who was a deputy director stationed at the district office to come and testify. Violet testified that she was aware that the employees were doing nightshifts. She further was aware that the school was a special school for the blind. She further testified that it was the employer's responsibility to support the school. She did not dispute the fact that the employees were not literate and might not understand the administrative procedures. Her main and only argument was that the employees needed to have applied to work night shift as per the policy. She (Violet) further testified that the employees who were paid night duty allowance were because the district office received the submission from the school which came via the circuit. This version was not corroborated as no such trail of evidence was produced. Violet herself conceded that those submissions were not available. The inference made by me on the balance of probabilities is that some employees were paid night duty allowance without having followed the said procedure as indicated by the employer. The 1st employee testified and corroborated by the second employee that they have been submitting their nightshift allowance in the form of the nightshift register to the principal since they started working. They further indicated that they did not know of the application Violet was referring to because they knew to have submitted their claims to the principal. The night duty time registers the employees testified to have submitted to the principal for claiming the allowance, were on page 19 to page 83 of bundle E.
25. The employer's witness, did not dispute that the employee worked nightshift except to say they did not apply. My take is that the employees did work night duty and that was corroborated by violet herself. It was also the employees' case that they were not informed as to what procedure should be followed in order to be paid a nightshift allowance. One of their reasons not to have

known the procedure, was that they were not literate. These two versions were not disputed by the employer, Violet in particular. The first employee, corroborated by the 2nd employee, further testified that the only way they submitted their claims, was to submit the nightshift time register to the principal. This was not disputed. They further indicated that there was no way they could not have worked nightshift because they were told that the learners could not be left without a house father. This version was not disputed and it was corroborated by the letter on page 12 of bundle E. Paragraph 2 of that letter stated that, *Receipt of your letter is acknowledged and kindly be informed that I do not have vested powers to allow you to leave the learners without a house father as the safety of the learners is our priority. My understanding on the balance of probabilities is that, the principal was referring to powers given to her by the employer, Head of Department (HoD), when she said "I do not have vested powers".* Coming back to Violet, the dictionary meaning of the word "priority" as she mentioned, is, the fact or condition of being regarded or treated as more important than others. Violet further added that one of the employer's duties was to support the school. To me, supporting the school includes supporting the teachers, the learners and everyone including the house fathers. However, I did not hear anything about training the house fathers on their work for example, explaining the policies, the resolutions and other related prescripts to them. The employees indicated that their contract showed that they were to work dayshift, but they were also made to work nightshift, which Violet corroborated. In the second instance, how does one say they prioritised the safety of the learners when Violet said, the employees had a choice not to attend to the learners in the night. She never explained who would replace them in their absence or any other measure to mitigate their safety in the absence of the house fathers. Is that prioritising their safety! on the balance of probabilities my answer is no. Instead, it was the employees who prioritised the safety of the learners because they stayed with them as per the principal's instructions. Remember the learners cannot see, they are blind, leaving them on their own, would be dangerous on the balance of probabilities. The circumstances in which the employees agreed to work nightshift were therefore valid.

26. The 1st employee added on what was contained in the mentioned letter on paragraph 25 above by stating that they (employees) were not even allowed to take annual leave because the children would be left alone. They were only allowed to take leave to attend to family matters. The employer did not challenge this version by the employees except to say nightshift was not compulsory and that the employees had a choice. Although it is correct to say nightshift is not compulsory, at least at the school, I do not contextually agree with that statement by the employer's witness (Violet) on the balance of probabilities, because the employees were given instructions not to leave the children and the children were blind. I have already indicated that

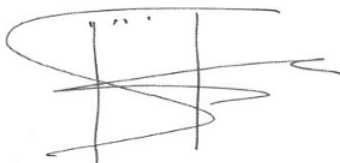
the employer did not challenge the fact that the employees were not literate. The employees therefore could not on the balance of probabilities have a knowledge of lawful and unlawful instructions, hence they continued working nightshifts even without taking annual leaves as per the instruction of the principal.

27. The issue of the 1st employee saying he was withdrawing from working nightshift and that his colleague applied and got paid in 2023, does not assist because that does not remove the fact that they performed night duties. The 1st employee testified that he was alerted by one employee in Tshilidzini that they were receiving nightshift allowance. He further testified that he then started submitting his application in 2019 to the principal. That was the time he conceded that his claims should start from 2019. It was then, that he started to protest and indicated his intention to withdraw from working nightshift because of failure by the employer to pay them.
28. The employees kept on implicating the principal that they were submitting their claims to her. Procedurally and on the balance of probabilities, they were correct to submit their claims to the principal because she was the accounting officer and manager of the school. It was the principal who was supposed to guide them on how to apply. The employer did not challenge that version by the employees. Violet also did not produce any example of application form or proforma during the arbitration showing how application to work nightshift was done. This made me on the balance of probabilities to agree that the employees did submit their claims. The arbitration took place at the very same school the employees were stationed. On arrival at the school, I was welcomed by the principal. Surprisingly the principal was not called to come and testify. On the balance of probabilities, I do not have any reason not to believe the testimony of the employees that they submitted their claims to the principal because it was not disputed.
29. The employees did not know the amount owed to them at the time of arbitration. I advised their representative to make calculations with them and include the amount in their closing arguments. I further requested her to copy the employer with same before the submission of the closing arguments. The 1st employee was indicated to be owed as follows: **2018 = R7,649-36, 2019 = R18,315-96, 2020 = R9,209-98, 2021 = R8,103-83, 2022 = R16,777-17, 2023 = R7,293-30**. The total amount owed to the 1st employee would be **R67,349-60**. However, the 1st employee during his testimony indicated that his claim should start in 2019. As a result, the 2018 amount should be subtracted from the total amount. The Grand total therefore owed to the 1st employee should be **R59,700-24 (R67,349-60 – R7,649-36)**.
- The 2nd employee was owed as follows: **2021 = R10,631-61, 2022 = R12,349-85** . The 2nd employee was therefore owed a total amount of **R22,981-46**. For the unpacked calculations and the night duty rates, see the attached.

30. Prescription. The Constitutional court in ***FAWU obo Gaushubelwe vs Pieman Pantry (Pty)Ltd, case no CCT236/16,*** held that prescription Act does apply in the LRA referral of disputes. The court in that case held that the LRA and the prescription Act both, seek to achieve objectives that are compatible with each other – the efficient and timely resolution of disputes within a specified time frame. The debt against the employees had therefore not prescribed. Prescription commences to run as soon as the debt is due. If the debtor wilfully prevents the creditor from coming to know of the existence of the debt, prescription shall not commence to run until the creditor becomes aware of the existence of the debt. In casu, both parties were aware of the debt because the employee kept on making submission to the principal. Prescription was therefore interrupted by the continuous submission of the claims by the employees to the principal.

Award

31. The employer committed an unfair labour practice when failing to pay the 1st and the 2nd employee a night duty allowance.
32. The employer is ordered to pay the 1st employee an amount of **R67,349-60** and the 2nd employee an amount of **R22,981-46**.
33. The money in paragraph 32 above must be paid to the two employees on or before 30 June 2025 failing which the interests obtaining then shall accrue.
21. No order on costs



Seretse Masete

Date 28/05/2025

GPSSBC Panellist