



## DEFAULT AWARD

Case No: PSCB473 18/19

Date: 02 October 2019

Panellist: Vuyiso Ngcengeni

In the matter between

**PSA obo Mdunge N**

**Applicant**

**And**

**Department of Health – KZN**

**1<sup>st</sup> Respondent**

**Department Public Service and Administration**

**2<sup>nd</sup> Respondent**

**Applicant representative: Mbusi Shibe**

Telephone: 033 382 7600/ 079 301 8479

Email: [mbusi.shibe@psaftss.co.za](mailto:mbusi.shibe@psaftss.co.za)

**1<sup>st</sup> Respondent Rep: Absent**

Telephone: 031 240 5380

Email: [dumisani.gabela@kznhealth.gov.za](mailto:dumisani.gabela@kznhealth.gov.za)

**2<sup>nd</sup> Respondent Rep: Ms Claudia Sekgoele**

Telephone: 012 336 1024 / 084 586 7969

Email: [claudia.sekgoele@dpsa.gov](mailto:claudia.sekgoele@dpsa.gov)

### **DETAILS OF HEARING AND REPRESENTATION**

1. This is an award in the arbitration between the Applicant and the 1<sup>st</sup> and the 2<sup>nd</sup> Respondents.
2. The arbitration was held on 1<sup>st</sup> of October 2019 at the Department of Health premises in Durban, KZN under the auspices of the Public Service Co-ordinating Bargaining Council ("the Council") in terms of section 24 (4) 24 (5) of the Labour Relations Act, No 66 of 1995 as amended ("the Act").
3. The Applicant was present in the hearing and he was represented by Mr Mbusi Shibe from PSA, and the 1<sup>st</sup> Respondent was absent, whilst the 2<sup>nd</sup> Respondent was represented by Ms Claudia Sekgoele. I decided to continue with the arbitration, after I satisfied myself that the 1<sup>st</sup> Respondent was notified of the hearing, in terms of section 138 (5)(b)(i).
4. The Applicant submitted one bundle of documents made of 41 pages. The bundle consists amongst others of – referral documents, grievance, overtime claim forms, duty roster and HRM Circular 105 of 2011.
5. Evidence was presented by the Applicant's representative and I recorded it electronically.

### **ISSUE TO BE DECIDED**

6. I have to determine whether the 1<sup>st</sup> Respondent failed to correctly interpret and apply the Resolution when it failed to pay the Applicant overtime of 80 hours amounting to R 20 025.24.
7. The Applicant wants to be paid the said amount of overtime.

### **BACKGROUND TO THE ISSUE**

8. The Employee is employed as a Diagnostic Radiographer and is stationed in Kwa-Mashu Health Centre, Durban. He has been employed since 01 March 2003.
9. The dispute is about the interpretation and application of a collective agreement – Resolution 1 of 2007 ("the Resolution"), with specific reference to clause 9.1.
10. The dispute is about alleged non-payment of overtime worked by the Applicant.
11. The dispute arose 13 June 2018 following his grievance to which there was no response. He then referred the matter to the Council on 28 August 2018.
12. A certificate of non-resolution was issued on 09 November 2018 and thereafter, the Applicant referred the matter for arbitration 09 December 2018.

### **Applicant's case**

The Applicant's representative made the presentation below on behalf of the Applicant –

13. The Applicant's working hours are from 08h30 to 16h30, Monday to Friday.
14. From March to May 2018, there was a demand for his services at work and he was required to work overtime on some of the weekends and public holidays.
15. He had filled in the necessary forms for approval and they were signed by his Supervisor, Ms Londiwe Buthelezi (pages 12 – 15).
16. His salary was R 255 381.00 per annum since 01 April 2018, and was R 238 674.00 up to 31 March 2018.
17. On pages 16-23 are the timesheets, which is proof that he worked overtime and was approved by Ms Buthelezi.
18. In terms of clause 9.1 of the Resolution, *"Overtime on a Sunday or public holiday shall be 2 x basic salary of the employee, without the option of granting time-off. All other overtime shall be 1.5 x basic salary of the employee, without the option of granting time-off. This provision excludes employees on commuted overtime."*
19. The above mentioned clause is further emphasised by the 1<sup>st</sup> Respondent's HRM Circular on page 41.
20. It is our submission that the Applicant qualifies to be remunerated for the overtime worked, for which the total is R 20 025.84.

### **ANALYSIS OF EVIDENCE AND ARGUMENTS**

21. Based on the issues stated as factual background to this dispute and the bundle handed in by the Applicant which consists of the details stated, the Applicant's representative has clearly presented what appears to be authentic documents of the overtime worked by the Applicant.
22. The documents therefore appear to be plausible and authentic.
23. The Applicant representative mentioned that to date, the Applicant is still owed the said amount of overtime and that non-payment thereof amounts to incorrect interpretation and or application of the Resolution.
24. Given the fact that the 1<sup>st</sup> Respondent was not present in the hearing, I do not have its version as the basis of its refusal or failure to pay the Applicant the said overtime amount in terms of the Resolution.
25. The 2<sup>nd</sup> Respondent, although it was represented, did not want to submit a version as it was not ready to do so.

26. In the circumstances, I have only the Applicant's version and it makes it clear that the 1<sup>st</sup> Respondent has failed to correctly interpret and or apply the Resolution when it failed to remunerate the Applicant with the amount of R 20 025.84. The Resolution does not allow an option of a time-off and that simply means, the Applicant should be paid the said amount.

#### **AWARD**

27. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents have failed to interpret and apply the Resolution correctly when they failed to pay the Applicant the overtime he duly worked.
28. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents are ordered to pay the Applicant the amount of **R 20 025.84**.
29. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents are further ordered to pay the said amount by no later than 31 October 2019.



Panelist

Vuyiso Ngcengeni