



ARBITRATION AWARD

Case Number: PSCBC101-21/22

Commissioner: Minette van der Merwe

Date of Award: 20 August 2021

In the **ARBITRATION** between

PSA obo SS Msiya and 5 others

(Union/Applicant)

And

Department of Agriculture, Forestry and Fisheries - KZN

1st Respondent

Department of Public Service and Administration "DPSA"

2nd Respondent

(Respondent)

DETAILS OF HEARING AND REPRESENTATION

1. This is the award in the matter between PSA on behalf of SS Msiya and 5 others (NV Nakani, NL Dzanibe, N Gebuza, ZM Thwethwa and KF Dikane) (the Applicants) and the Department of Agriculture, Forestry and Fisheries - KZN (the Respondent) which matter was scheduled for arbitration by digital means (Microsoft Teams) on 16 August 2021 and held under the auspices of the Public Service Coordinating Bargaining Council (PSCBC).
2. Parties were invited to proceedings with an e-mail invitation sent by myself on 12 August 2021. The 1st Respondent had failed to join proceedings, despite being duly invited.
3. Proceedings were digitally recorded and handwritten notes were kept. No interpretation was required.

ISSUE(S) TO BE DECIDED

4. The matter was referred to the PSCBC as a dispute relating to the interpretation and application of clause 4 of PSCBC Resolution 7 of 2015, and in terms of section 24 of the Labour Relations Act, 66 of 1995, as amended ("LRA").
5. I am called upon to determine whether or not the Respondent was in contravention of said Resolution, and whether the Applicant is entitled to be paid a Housing Allowance.

BACKGROUND TO THE ISSUE

6. The Applicant have filed an internal grievance, which did not resolve their issue.

SURVEY OF ARGUMENTS AND EVIDENCE

No documentary evidence was submitted.

Arguments of the Applicants

7. The Applicants, who are General Workers, have received a rental allowance. Since they became home owners, they were entitled to be paid a housing allowance, and they have submitted to the 1st Respondent their permission to occupy ("PTO") to prove that they qualified for the housing allowance.

The Respondent had agreed during the grievance meeting that the Applicants qualified, yet it was never implemented.

Arguments of the 2nd Respondent (brief summary):

8. Resolution 7 of 2015 detailed in clause 4.5 the circumstances during which Employees would qualify for housing allowance, and one of the criteria to establish entitlement is the submission of a permission to occupy ("PRO") to the 1st Respondent. In the event that the Applicants in this dispute were in possession of such PTO's, which PTO's must be in the name of the Employee of the Respondent, and have submitted it to the Respondent, they must be paid the housing allowance.

ANALYSIS OF EVIDENCE AND ARGUMENTS

9. It was held in *Tabane v PSCBC and others (LC) C27/15 (28 September 2017)* that "the purpose of section 24 of the LRA is to resolve disputes where a party to an agreement is alleged to have been in breach of the provisions of that agreement by failing to apply its terms either correctly or at all. The principles applicable to the interpretation of collective agreements are trite as restated in *Western Cape Department of Health v Van Wyk and others*¹. The legal position is that:
 - a) When interpreting a collective agreement, the arbitrator is enjoined to bear in mind that a collective agreement is not like an ordinary contract, and he/she is therefore required to consider the aim, purpose and all the terms of the agreement;
 - b) The primary objects of the LRA are better served by an approach which is practical to the interpretation 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.
 - c) A collective agreement is a written memorandum which is meant to reflect the terms and conditions to which the parties have agreed at the time that they concluded the agreement.
 - d) The courts and arbitrators must therefore strive to give effect to that intention, and when tasked with an interpretation of an agreement, must give to the words used by the parties their plain, ordinary and popular meaning if there is no ambiguity. This approach must take into account that it is not for the Courts or arbitrators to make a contract for the parties, other than the one they in fact made (*Natal Joint Municipal Pension Fund v Endumeni Municipality* [2012] 2 ALL SA 262 (SCA));
 - e) The parole evidence rule, when interpreting collective agreements is generally not permissible when the words of the memorandum are clear.

¹ *Western Cape Department of Health v Van Wyk & others* (2014) 35 ILJ 3078 (LAC) [22]

f) Collective agreements are generally concluded following upon protracted negotiations, and it is expected of the parties to those agreements to remain bound by their provisions. It therefore follows that such agreements cannot be amended unilaterally.”

10. Resolution 7 of 2015 states in clause 4.5:

”STATE FINANCING OF EMPLOYEE HOUSING

- 4.5.1 With effect from 01 July 2015, the current housing allowance shall be applied as set out below.*
- 4.5.2 The amount of housing allowance paid to eligible employees shall increase to R 1 200 (one thousand and two hundred rand) per month.*
- 4.5.3 The amount of the housing allowance shall be adjusted annually on the basis of the average Consumer Price Index (CPI) for the preceding year with the first adjustment being effective from 1 July 2017.*
- 4.5.4 All employees who are on total cost-to-employer packages shall not be eligible to receive the housing allowance, save for all other provisions and services of GEHS.*
- 4.5.5 New employees entering the public service after date of signature of this agreement and become eligible to receive housing allowance:*
 - 4.5.5.1 shall only be paid the housing allowance if they own a house and/or are repaying a home-loan for a house in which they live.*
 - 4.5.5.2 shall have the full housing allowance diverted and accumulated into the individual-linked saving facility if they don't own a house.”*

11. It was the uncontested evidence of the Applicants that they were all eligible for the housing allowance as they were in possession of permission to occupy certificates. The 2nd Respondent, as the custodian of Resolution 7 of 2015 agreed that, if the Applicants are in possession of a permission to occupy certificate or the deeds to the house that they live in, they are entitled to the R 1 200.00 monthly housing allowance.

12. My interpretation of clause 4.5 of Resolution 7 of 2015, and considering the uncontested arguments by the Applicants, is that the Respondent is in contravention of Resolution 7 of 2015, clause 4.5.

13. The 1st Respondent is ordered to comply with Resolution 7 of 2015.

AWARD

14. The Respondent, **Department of Agriculture, Forestry and Fisheries - KZN**, is hereby found to be in contravention of Resolution 7 of 2015, clause 4.5.
15. The Respondent is ordered to comply with clause 4.5 of Resolution 7 of 2015.

A handwritten signature in black ink on a light yellow rectangular background. The signature is cursive and appears to read 'M. van der Merwe'.

PSCBC Panelist: **Minette van der Merwe**