



In the

GENERAL PUBLIC SERVICE SECTORAL BARGAINING COUNCIL

Held in Nelspruit

Date: 06 July 2021

CASE NO: GPBC 889/2020

In the matter between

PSA obo MW Manganyi

Applicant

And

Department of Correctional Services

Respondent

Rescission Ruling

DETAILS OF HEARING AND REPRESENTATION

- [1] The arbitration into the above-mentioned matter was referred to GPSSBC for arbitration in terms of section 186(2)(a) of the LRA as amended. The arbitration was set down before me on the 3rd of November 2020 in Nelspruit.
- [2] The Applicant was represented by Mr Flip van der Walt from PSA and the Respondent was represented by Mr Rhulani Shope. Parties submitted document bundles and I marked them as follows: Bundle A for the Applicant bundle and bundle R for the Respondent. Rpoceedings were manually and digitally recorded.

PRELIMINARY ISSUES

- [3] The Respondent raised a *point in limine* for the Commissioner to rule whether the Council have the jurisdiction to arbitrate this matter as the housing allocation is not a benefit but a work arrangement for guards/security personnel on duty.



- [4] The Applicant argued that the housing does constitute benefit as per the explanation of the benefit by the Apollo case where benefit is explained as:
- ““Benefit” in terms of the LRA means existing advantages or privileges to which an employee is entitled *ex contractu* or *ex lege* or granted in terms of a policy or practice subject to the employer’s discretion”¹**
- [5] The Respondent drew our attention to Bundle A page 16 clause 4.1 where it says **“The utilisation of official housing is not a service benefit and must not be seen as that”²** read along with clause 5.1 of the policy in page 35 of Bundle A which states that **“In terms of regulation 31 of the Correctional Services Regulations, the provision of official or alternative accommodation to official is a work facility not a service benefit”³**. And upon hearing and exercising my discretion I ruled that the Council lacks jurisdiction to hear the matter as the policy is clear that housing it is not a benefit.

RESCISSION APPLICATION

- [6] The Applicant applied for the rescission of this ruling with an affidavit citing the reasons for the rescission being that:
1. The policy that the Respondent draws inference to is not an official policy as it was a temporary measure to address the issue pertaining allocation of houses.
 2. Despite the policy being utilised says the houses are only made available to security personnel and, if any vacant house is available and no security personnel needing an accommodation that house will be made available to DCS personnel through its accommodation committee.
 3. The Respondent didn’t apply the policy consistently to its personnel and/or even followed the fair procedures in allocating the houses to the employees.

¹ Para 1 of the judgement in Apollo Tyres South Africa (Pty) Ltd v Commission for Conciliation Mediation and Arbitration and Others (DA1/11) [2013] ZALAC 3

² Clause 4.1 of the Housing Policy

³ Clause 5.1 of the Housing Policy on Page 35 of Bundle A



RESCISION RULING

- [7] Having considered the reasons cited by the Applicant and with the fact that the Respondent didn't oppose the Application with counter-statements it will be difficult for me to arrive at a sound and fair decision in this matter without a full arbitration hearing.
- [8] In light of the above deliberations the following ruling is made:
1. The rescission sought by the Applicant that the Council has jurisdiction to arbitrate this matter is granted.
 2. The previous ruling that Council lacks jurisdiction to arbitrate this matter is rescinded.
 3. The Council is ordered to schedule the matter for new arbitration hearing.

Sivuyile Tshingana



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GPSSBC Arbitrator