



ARBITRATION AWARD

Commissioner: **Retief Olivier**

Case No.: **PSCBC565-19/20**

Date of Award: **5 October 2020**

In the ARBITRATION between:

PSA obo B L Venter

(Union / Applicant)

and

Department of Health – Mpumalanga

(Respondent)

Applicant representative:

Union/Applicant's address

Mr Van der Walt - PSA _____

P O Box 282 _____

Sonheuwel _____

1206 _____

Telephone: 013 741 7500 _____

Telefax: _____

Email: flip.vdwalt@psa.co.za _____

Respondent:

Respondent's representative:

Department of Health – Mpumalanga _____

Mr Reckson Khoza _____

Government Boulevard _____

Nespruit, 1200 _____

Telephone: 013 766 3749 _____

Telefax: 051 408 1993 _____

Email: recksonk@mpuhealth.gov.za _____

PARTICULARS OF PROCEEDINGS AND REPRESENTATION

1. The arbitration was heard via Zoom on 2 October 2020. The applicant Ms Venter was represented by Mr Flip Van der Walt from the PSA. Mr Reckson Khoza, representative for the respondent, the Department of Health – Mpumalanga, was not in attendance on the Zoom link, but engaged telephonically.

THE ISSUE IN DISPUTE

2. I must decide whether the respondent is in breach of Resolution 14 of 2002 i.e. the interpretation or application of a collective agreement as contained in Sections 24(2) and 24(5) of the LRA and more specifically in respect of the grievance rules in the Public Service, Annexure A, Part C “The grievance must be dealt with by all the applicable levels (including the executing authority) within a period of 30 days, unless extended by agreement with the aggrieved parties.

THE BACKGROUND TO THE DISPUTE

3. The applicant representative Mr Van der Walt indicated the applicant Ms Venter had submitted a grievance to the respondent on 14 June 2020. The grievance was not immediately acknowledged and a follow up email was forwarded to the respondent on 7 August 2020, and it was acknowledged by the respondent on 8 August 2020. There has been no formal outcome provided regarding the grievance submitted. The applicant then referred the matter to the PSCBC on July 2019. There has still been no response to the grievance submitted.

SUMMARY OF EVIDENCE AND ARGUMENT

Applicant's version:

4. The applicant submitted that a grievance was submitted as noted. It was related to a grievance regarding the applicant being harassed and intimidated by an official in the

Department. A meeting had been held with the applicant, but there has been no formal outcome to the grievance and the harassment is continuing.

Respondent's version:

5. Although the respondent representative Mr Khoza was not involved in the zoom hearing, he was contacted telephonically as the applicant representative had indicate that Mr Khoza was unavailable due being involved in a disciplinary hearing. When he was contacted he indicated the employer had set up a meeting with the applicant. He however acknowledged that no outcome had been submitted to the applicant.

ANALYSIS OF THE EVIDENCE AND ARGUMENT

6. The issue in dispute is whether the respondent is in breach of PSCBC Resolution 14 of 2002 relating to the grievance rules in the Public Service, as noted, in particular referring to Annexure A, Part C:
"The grievance must be dealt with by all the applicable levels (including the executing authority) within a period of 30 days, unless extended by agreement with the aggrieved parties."
7. It is noted and not refuted that the applicant's grievance had not been dealt with within 30 days as required, and up to the date of the arbitration hearing the respondent had not submitted a formal outcome to the applicant. Compliance with a Collective Agreement is not a discretionary matter, and whatever the reason for the significant delay is, does not change the fact that the respondent employer does not comply with the Collective Agreement. The respondent had not complied with the time frames and has not submitted an outcome to the applicant.
8. I find that the Respondent has not complied with the said Collective Agreement.

AWARD

9. The respondent is in breach of Resolution 14 of 2002. I therefore order the following:

- 9.1 That the Respondent provides an outcome to the applicant, with full reasons for the specified outcome.
- 9.2 That the Respondent provide such outcome to the applicant by not later than 14 days from the date of the issuing of this award to the parties.

A handwritten signature in black ink, appearing to read 'Retief Olivier', is written over a light grey rectangular background.

Arbitrator: Retief Olivier