



PHSDSBC

PUBLIC HEALTH AND SOCIAL DEVELOPMENT
SECTORAL BARGAINING COUNCIL

ARBITRATION AWARD

Case No: **PSHS815-16/17**

Commissioner: **Lungile Matshaka**

Date of award: **29 May 2017**

In the matter between:

PSA obo 2258 members

Applicant

And

National Department of Health

Respondent

DETAILS OF THE HEARING AND REPRESENTATION

1. The matter was set down for arbitration hearing on 02 May 2017 in terms of section 24(2) [24(5)] of the Labour Relations Act (LRA), No. 66 of 1995, as amended, at the offices of the National Department of Health in Pretoria. Ms J van der Merwe, PSA trade union official, represented its members (2258), while Mr T Tau, Deputy Director: Labour Relations, represented the Respondent.
2. The proceedings had to be adjourned on the 3rd April 2017 because of the non-availability of the Respondent's witness. The parties requested and were enabled to submit closing arguments by 17 May 2017. Both complied.
3. The proceedings were digitally recorded and parties gave evidence under oath.

ISSUE TO BE DECIDED

4. I am required to decide whether or not:-

- (i) It is reasonable and / or justifiable for the Applicant to demand the Respondent, as the employer, to either improve on or at least maintain its current policy provisions regarding benefits / payments of costs associated with the transfer of an employee in the public interest, within or between departments within the public service;
- (ii) The Respondent's position, as contained in its revised policy, is reasonable and meets the labour law standards of fairness, consistency, and equity; and
- (iii) Affordability can and should outweigh the said labour standards and principles.

BACKGROUND TO THE ISSUE

5. The Applicant, in its opening statement, started off by highlighting the following:

5.1 Section XV of PSCBC (Public Service Co-ordinating Bargaining Council) Resolution 3 of 1999 (pages 1-7 of its bundle (A)) provides that an employer shall generally meet, within reason, the actual resettlement costs incurred by an employee as a result of official duties or termination of service or death;

5.2 It further indicates that an executing authority (Director General or Minister) shall establish and where appropriate negotiate written policies on resettlement, including amongst others:

5.2.1 limits on expenditure;

5.2.2 maximum periods of compensation;

5.2.3 restrictions on the quantity and kind of personal effects covered; and

5.2.4 costs of property transfer.

6. Based on the above the Respondent on 12 September 2014 introduced a Resettlement Policy and Guidelines in the National Chamber of the PHSDSBC (Public Health & Social Development Sectoral Bargaining) for negotiation (pages 8-22 A Bundle). The negotiation process unfolded under the auspices of the National Chamber. On 29 October 2015 the PSA submitted its demands on the policy (pages 23-39). The Applicant reiterated its position on 31 March 2016 in an email and as per the notes on the draft collective agreement (pages 40 – 68). The Respondent tried to obtain a revised mandate on PSA's demands but eventually on 20 September 2016 indicated that it could not manage to obtain a revised mandate after which PSA then indicated that parties had deadlocked as they could not reach agreement on several key aspects.

7. The matter was then referred to the PHSDSBC and following a conciliation process on 12 January 2017 it remained unresolved. A certificate of non-resolution was issued.

8. It is important to note that since the Respondent is an essential service, the matter cannot be resolved through industrial action and is subject to compulsory arbitration hence the matter is before this forum today.
9. The Applicant made the point that the public service, although consisting of numerous different departments and provincial administrations, is one employer. This position is supported by the provisions of sections 7 & 8 of the Public Service Act, 1994 and section 40(1) of the Constitution which states that in the Republic, government is constituted as national, provincial and local spheres of government which are distinctive, interdependent and interrelated.
10. Therefore salary structures and conditions of service within the public service are therefore determined centrally under the auspices of the PSCBC (Public Service Co-ordinating Bargaining Council).
11. The Applicant further makes the point that it is generally accepted that employees in the public service enjoy the right to transverse mobility between the various employers (departments and provincial administrations) without loss of benefits, salary or undue prejudice. To ensure that this remains the case an employer although entitled to determine its own policies, as in this case, can never do so without taking cognisance of what transpires in the rest of the public service to ensure that its policies remain broadly aligned and comply with labour law principles of fairness, consistency and equity.
12. In the above regard the Applicant maintains that the Respondent's policy is not reasonable or aligned to the rest of the public service and employees who are transferred to and are appointed in the National Department of Health (NDoH) as well as employees within the NDoH who are relocated/resettled because of a transfer within the Department from one headquarter or workplace to another for any reason other than at own request, will be prejudiced should the proposed policy be implemented as is.
13. Further, in support of its position the Applicant has obtained the following three (3) policies:
 - 13.1 Department of Mineral Resources;
 - 13.2 Department of Cooperative Governance; and
 - 13.3 Department of Social Development.

14. In terms of relief that the Applicant seeks, I will apply my mind in my analysis of the evidence hereunder in the context of what has come to light.

SURVEY OF EVIDENCE AND ARGUMENTS

The Applicant's evidence

The Applicant's first witness, Annerie Schoombee, testified to the effect that:

15. She holds the position of a Deputy Director HR Manager within the Department of Social Development ("DSD"). Her duties entail attending to recruitment and selection for HR Administration. She was part of a team that drafted and finalized the Department's Relocation Policy. She pointed out that the cut-off distance is now 70 km. She further stated that the Department is mainly based in Pretoria and have satellite offices in Cape Town and Durban.
16. She further testified that the personal effects of a transferred employee may be stored at state expense for a maximum period of two months.
17. In relation to an interim accommodation the Department's Policy was to the effect that in terms of **clause 7.3** *"if an employee and his or her immediate family members are forced to seek interim accommodation, DSD will pay for the interim accommodation for a period of two (2) months, extendable with a further month to a maximum of three months, subject to substantive motivation and concurrence of the Chief Financial Officer."*
18. She has noted that the Respondent in the present case only covers transfer duty with regards to the transfer fees. On the other hand the DSD in addition covers the following:
- i) *Registration of the title deed (Deed of transfer);*
 - ii) *Deeds office's fees (Title Deed);*
 - iii) *Registration of mortgage, as well as the Deeds office fees;*
 - iv) *Inspection fees;*
 - v) *Attorney's fee(s) (including stamp duty, postal and other administrative costs and vat.*
19. Ms Schoonbee concluded her testimony by reflecting on DSD's **clause 13** of the Policy entitled: ***Privileges on Termination of Service and upon Death***. Of significance she highlighted (clause 13.2)

the fact that *"in case of an employee recruited in South Africa, the employer will pay for relocation within South Africa."*

20. She further pointed out that *"in case of an employee recruited from abroad, the employer will pay for relocation at the employee's place of origin."*
21. In cross-examination she confirmed that her department's Head Office is located in Pretoria where she also based. The staff compliment was about 700 by 2010 and currently consists of about 874 employees excluding contract workers.
22. She further confirmed that she was part of the team that handled the policy draft in the policy forum. This was then followed by presentation made to management chaired by the Director General ("DG") of the Department. It was taken to chamber after which it was presented to DG for his approval and duly effected by his signature.
23. She conceded that each department has its own special needs. She further confirmed that in terms of Resolution 3 of 1999 under Departmental policy an executing authority shall establish and where appropriate negotiate written policies on resettlement.
24. She further conceded out that without the Financial Officers being part of the process, the policy could not have been approved. She further conceded that each department has its own specific needs. However, she made the point that no department can go outside the legislative framework i.e. Resolution 3 of 1999. She further stated that in all the DSD's policies the delegation authority lies with the DG who signs all the policies.
25. In relation to storage (clause 7.3) she confirmed that the personal effects of a transferred employee may be stored at state expense for a **maximum period of two (2) months.** DSD will pay for the storage and the redelivery of the personal effects.
26. She noted that Respondent in the present case is adamant for one (1) month interim accommodation and one (1) month storage.
27. The second witness, Abisai Samma Mogopodi, confirmed his position as Labour Relations Officer in the employment of PSA and is attached to the Component of the Collective Bargaining Council. His role

relates to policies and in respect of the COPTA (Cooperative Governance Department) he was the Chief Negotiator for the PSA.

28. In highlighting the COPTA's **Resettlement Expenditure Policy** he made reference to clause 1 on *Purpose* which states the following:

- *"To compensate an employee for reasonable expenditure actually and necessarily incurred, who, in the interest of the State, is transferred, appointed, or utilised at a place other than his or her headquarters due to certain service requirements (secondment), or termination of service or death."*

29. He also made reference to **clause 5.2.2(g) (ii)** that states that *"the personal effects and households goods of an employee may be stored for a maximum period of two months. The monthly amount a contractor charges for storing the personal effects and household goods of an employee should also be taken into account when tenders are compared."*

30. **Clause 5.2.3 (a)** further states that *"the personal effects and household goods of a transferred employee may, in exceptional cases, be stored at the Department's expense either at her/his old place of work, or at his/her new place of work... The storage of personal effects and household goods for a period exceeding the limit of two calendar months is therefore not a standard transfer benefit, but is intended only as an aid when an employee encounters problem at her/his new place of work in obtaining accommodation that meets her/his family's needs."*

31. Going further, **clause 5.3.1 (a)** under **Interim Accommodation** it is stated that *"the reasonable actual expenses spent out of necessity in renting furnished accommodation at her/his new place of work for a maximum period of one calendar month. This provision is applicable only to interdepartmental transfers and promotions."*

32. Mr Mopogodi further made reference to **clause 5.3.1 (e)** which says that *" An additional one month extension for interim accommodation will only be granted when both a motivation and documentary proof that accommodation has been sought and not found, is provided to the Executive Manager: Human Capital Management."*

33. In concluding his testimony Mr Mopogodi, under ***Privileges on Termination of Service or Death***, clause 7.1 (a) mentioned that *"The expenses provided for in items 3.2 and 3.3 of the Collective Agreement which arise from an existing place of residence where the employee or his/her immediate family wishes to settle after her/his retirement or death will be paid by the Department on the relevant terms and conditions as set out in this policy."*
34. Under the item 7.1(b) it is pointed out that *"In respect of employees recruited in South Africa, and for employees recruited from abroad the Department will pay for resettlement within South Africa, and for employees recruited from abroad the Department will pay for resettlement at the employee's place of origin."*
35. He made mention of the fact that Privileges on the transfer of an employee include travelling and subsistence expenses incurred by an employee and members of his / her immediate family.
36. In cross-examination he confirmed that the policy in terms of 7.1(a) is prescriptive and aligned with the Resolution in terms of reasonableness and fairness. He conceded that in terms of interim accommodation the agreed period was as a result of negotiation and consultation between the concerned parties. In the same breath he conceded that another Department could come to different conclusion. Mr Mopogodi added that was why the parties are before this forum because they have deadlocked. He further affirmed that the Applicant employees would not agree to one (1) month limit with regarding to storage and accommodation.
37. The third witness, Andrei Eagar, confirmed his involvement as a PSA Chair branch in the in giving birth to a Policy on Resettlement Expenditure in the Department of Mineral and Resources ("DMR"). He also represents his branch as a representative in the Bargaining Chamber.
38. He pointed out that he was involved in the initial negotiation and consultation document in the Department which was distributed among the members for their input. At the conclusion of the process just prior to its adoption, they got a mandate from their members and the finalisation thereof gave to its birth.
39. With regards to travelling and subsistence the employer will pay expenses of an employee and/or his/her household with the termination of service or death and in the case of an employee recruited outside South Africa for resettlement from the employee's place of origin.

40. Further, the expenditure of storage of personal effects as well as inclusive insurance cover thereof may be paid from State funds for a period of three (3) months. Should circumstances necessitate a longer period, an application must be submitted beforehand in which case the Department may grant approval for an additional one (1) month.
41. Further, if an employee and her or his immediate family must unavoidably rent interim furnished accommodation at the old and/or new city the employer may meet reasonably actual costs. It must be further noted that an interim accommodation expenses incurred by an employee and/or his/her household in respect of rented furnished accommodation are only for a maximum period of 1 month with no extension.
42. With regards to fees on accommodation the policy states that the employer may meet the reasonable actual transfer fees if the employee purchases a dwelling or a building site and the erection of a dwelling thereon, at a new city.
43. Further, the expenses applicable in this regard have reference to the conveyance costs of the property and may include transport cost, incidental costs and transfer dues, cancellation fees for mortgage bond (not outstanding balance) transport delivery monies, postage fees, sundry and attorney's costs.
44. In cross-examination Mr Eagar also conceded that an executive authority shall establish and where appropriate negotiate written policies on resettlement in accordance with section XV of the PSCBC Resolution 3 of 1999.

The Respondent's evidence

The Respondent's witness, Ms Tshegofatso Moepi ("Moepi"), testified to the effect:

45. She holds the position of a Deputy Director within the Respondent's HR Management Development heading the Sub-Directorate: HR Planning and Policy. Her duties briefly entail overseeing the development and amendment of policy. She is involved in the drafting of policies, consultation and internal approval, monitoring as well as implementation of the policy.

46. She pointed out that they were having challenges with the current policy of the Respondent. After the drafting of the internal document, it was supported by Chief Directorate and sent through to the senior management, through the DG's office and then to the Council Chamber.
47. Moepi acknowledged the dispute pertaining to the Resettlement Policy which is before this forum at this moment. She listed the following issues that has confronted the Respondent:-
- Reasonable cost of transfer fees in relation to property mortgage costs;
 - Period of interim accommodation;
 - Resettlement of an employee who leaves the Respondent's employ within a year after the period of resettlement; and
 - Upon retirement settlement of employee at the place of origin
48. She further highlighted one of the major challenges i.e. an employee staying in a hotel without making any concerted effort of looking for an accommodation. It is also an indisputable fact that departmental policies are different or applied differently.
49. In cross-examination Moepi was unable to give definite figure in terms of appointments made in 2013, 2014 & 2015 in the Department.

ANALYSIS OF THE EVIDENCE AND ARGUMENTS

50. As a point of departure, this is interest arbitration in pursuance of a dispute lodged by PSA obo 2258 members who are employees of the Respondent, i.e. the National Department of Health. The dispute relates to Resettlement Policy and Guidelines of the Respondent.
51. Firstly, as already spelt out, I have taken note of the fact that in relation to the "Definition of Resettlement" the Applicant prefers that it be enshrined to mean "*the movement/relocation of an employee from his /her place of origin in **one magisterial district** to a new accommodation closer to the new place of work **in another magisterial district**" instead of just "...beyond **100km**..."*
52. This makes sense as the distances between districts are always influence by a number of factors. Certainly distance factor cannot just be the only deciding factor. On this basis the magisterial district /jurisdiction factor adds fairness in terms of boundaries.

53. With regards to transfer fees the Respondent points out that it “shall pay **reasonable actual transfer fees** if the employee purchases a new dwelling at the new place of work.” In this regard I have noted that according to the Respondent’s in-house legal opinion transfer fees only refers to transfer duty payable to the South African Revenue Services.
54. On the other hand the Applicant makes the point that “transfer fees are only one aspect of the costs in the purchase of a house.” It is the Applicant’s submission that “the employer’s offer in this regard is unfair and unreasonable and should be extended to include all other related and unavoidable costs that the employee cannot circumvent when buying a house.”
55. Interestingly, the Respondent relies on its own in-house legal opinion dated 03 October 2014. On the other hand the DSD in addition to transfer fees covers the following already highlighted in the Applicant’s evidence (paragraph 18):
- vi) Registration of the title deed (Deed of transfer);
 - vii) Deeds office’s fees (Title Deed);
 - viii) Registration of mortgage, as well as the Deeds office fees;
 - ix) Inspection fees;
 - x) Attorney’s fee(s) (including stamp duty, postal and other administrative costs and vat.
56. I therefore certainly agree and endorse the Applicant’s assertion that the Respondent’s offer is unfair and unreasonable.
57. If other Departments do accommodate all transfer costs as highlighted by the Applicant, and again, if one has to accept that in the final analysis public service is one employer, it is only fair that all its employees in general are treated in the same manner even more so that these are actual resettlement costs incurred as a result of official duties or termination of service or death.
58. The Applicant prefers that the **storage of household and personal effects be limited to two months with a possible extension of one month...** instead of the Respondent’s preference of just being “...**limited to one calendar month**”.
59. In the above regard I have COPTA’s Resettlement Expenditure Policy in **clause 5.2.2(g) (ii)** states that “the personal effects and households goods of an employee may be stored for a maximum period of

two months. The monthly amount a contractor charges for storing the personal effects and household goods of an employee should also be taken into account when tenders are compared."

60. In the light of the above, it makes sense that the Respondent could as well retain its **Current Policy Provision** in the above regard i.e. 1 month with 2-3 months extension depending on case merit and DG approval.
61. The Respondent prefers that the "*Costs for interim accommodation shall be limited to a maximum of **one calendar month***", on the other hand the Applicant prefers that an "*interim accommodation be limited to **two months** with a possible extension of **one month**...*"
62. I have noted with keen interest the DSD's Policy relating to an interim accommodation in terms of **clause 7.3** provides that "*if an employee and his or her immediate family members are forced to seek interim accommodation, DSD will pay for the interim accommodation for a period of two (2) months, extendable with a further month to a maximum of three months, subject to substantive motivation and concurrence of the Chief Financial Officer.*"
63. In the above regard I have noted that the current situation only just provides for an interim accommodation. Again it is clear that Applicant is comfortable position of two months with a possible extension of one month to make three months.
64. In relation to privileges on termination of services, retirement or death the Respondent is of the view that "*after serving ten or more years' the employer will cover reasonable actual transport to the employee's district of origin, if he/she was initially resettle.*"
65. On the other hand Applicant rejects "*the introduction of a ten year service requirement for accessing benefits at retirement and linking it to an initial resettlement*". The Applicant stands by the known "*...condition of service for public servants that the Respondent will resettle an employee to a place of his/her choice on retirement.*"
66. In conclusion, I would like to refer to an article written by John Brand titled "**The potential for Interest Arbitration in South Africa**", the following is suggested and significant:

"the interest arbitrator is required to determine the dispute as it would have been determined if strike action had been permissible" and, particularly in non-final interest arbitrations, that, "the arbitrator is required to determine new rights for the parties according to standards of fairness and equity."

67. Brand goes on and states that when an interest arbitrator determines the criteria to be used the following should be taken into account:

"What the interest arbitrator is required to do is to supplement the collective bargaining process by striking a fair and equitable deal for the parties which they were unable to do for themselves. For an arbitrator's determination to be workable it needs to take serious account of type of arguments parties make to one another during the collective bargaining process....

The weight to be awarded to the particular criterion in any given case should be on the basis of the evidence tendered by the parties and the burden is on the parties to submit evidence which is both factual and material so that the arbitrator is not required to speculate."

68. On the basis of what has been placed before me, I am satisfied that I have been enabled by both parties to come to a clear decision following the direction that Brand has enunciated above.

69. I now have to particularly direct myself to what the Applicant, PSA on behalf of its members, has required me to decide on and determine.

AWARD

I make the following award:

70. It is reasonable for the Applicant to demand that the Respondent either to improve on or at least maintain its current policy provisions regarding benefits/payment of costs associated with the transfer of an employee in the public interest, within or between departments within the public service;
71. I further find that the position of the Respondent, the employer, as contained in its revised policy, is not reasonable and does not meet the labour law standards of fairness, consistency and equity; and
72. Affordability cannot and should not outweigh the said labour law standards and principles.

A handwritten signature in black ink, appearing to read 'Lungile Matshaka', with a large loop at the start and a horizontal line extending to the right.

Lungile Matshaka

PHSDSBC Panellist

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