



# ARBITRATION AWARD

Commissioner: **Michael Howitz**  
Case No.: **PSCBC161-19/20**  
Date of Award: **7 February 2020**

In the ARBITRATION between:

**PSA obo Mr T. Joseph Lefifi, G.V. Montshing and I. Molete** (Union / Applicant)

and

**Department of Correctional Services – North West** (Respondent)

**Union/Applicant's representative:** Mr. Abram Moribe - Union Official of POPCRU.

**Respondent's representative:** Ms Marilie Berry – From DCS.

### **Details of hearing and representation**

1. This award follows the arbitration that took place on 22 January 2020, at the Rooigrond Correctional Services Prison in Mafikeng. The applicants, Mr T. Joseph Lefifi, G.V. Montshing and I. Molete were represented by their union official Abram Moribe of PSA. The respondent, Department of Correctional Services – Rooigrond Prison, was represented by Ms. Marilie Berry who is from the head of the Department of Correctional Services (DCS).
2. The hearing concerned a dispute relating to PSCBC Resolution 1 of 2007 (Res1/07) which is to be arbitrated in terms of the Labour Relations Act 66 of 1995, section 24(2), [24 (5)] - Collective Agreement – interpretation or application.

### **Issues to be decided**

3. The issue to be decided is to interpret the PSCBC Resolution 1 of 2007 (Res1/07) and make a ruling as to whether the respondent had correctly applied the contents of clauses 1.8, 1.9 as well as 9.6 of this resolution. These clauses make reference to the overtime scale of payments for work, worked by shift workers as per the Basic Conditions Act 1997 (BCEA/97). Clause 1.8 states that the purpose of this resolution is *“to provide for the alignment of the public service with the requirements of the Basic Conditions of Employment Act, 1997 and matter here related hereto”*. Clause 1.9 allows conditions *“to provide for processes to review certain existing terms and conditions of employment”*
4. The relevant section that I am to study and make a ruling about would be relating to Annexure A of PSCBC Resolution 1 of 2007 as per clauses 1.8, 1.9 as well as 9.6. PSCBC Resolution 1 of 2007 as per clause 9.6 read with clauses 1.8 and 1.9 which is in accordance with the BCEA.

### **Background to the dispute**

5. According to my knowledge and understanding the three applicants are employed, as nurses, by the respondent and are working at the Rooigrond Correctional Services Prison in Mafikeng. I have made the assumption that they perform their duties here because this was the where this arbitration hearing process had been conducted.
6. The applicants believe that the respondent has purposefully and knowingly not being complying with the resolution 1 of 2007 and the BCEA. The alleged refusals of the overtime payments in question are being challenged by the applicants. The applicants are seeking for the respondent to comply with PSCBC

Resolution 1 of 2007 as per clause 9.6 read with clauses 1.8 and 1.9 which is in accordance with the BCEA. Clause 9.6 states *“Payment rate for an employee who ordinarily works on a Sunday: the rate of payment for an employee in the Public Services who ordinarily works on Sunday shall be paid 1.5 x of their basic salary”*.

6. The applicants are seeking this award to spell out the correct interpretation of this resolution and also make a ruling that will order the respondent to comply accordingly by paying out the payments for the overtime being claimed. The overtime being claimed is not in contention as both parties agree that the overtime that is being claimed had in fact been worked by these three applicants.
7. The respondent acknowledges that the applicants had worked their shifts correctly and in accordance with the rosters that they had been provided with. The fact of the matter in this instance the respondent has a bone-fide reason for not paying the applicants for the overtime they had worked. The respondent contends that the Overtime Policy for the Correctional Services states in essence in clause 7.1.6 *“Overtime payment shall not exceed 30% of an official’s monthly basic salary. Any deviation in this regard shall be obtained from the Delegated Authority prior to the performance of such Overtime duties”*.
8. It is the respondent’s prayer that this dispute be dismissed because it the resolution has been interpreted and applied correctly.

#### **Survey of the evidence and argument**

9. The provisions of S138 LRA 66/95, as amended, enjoin me to issue the arbitration award with brief reasons. I intend in this award to focus only on the issues that I perceive to be pertinent to the issues that were disputed by the parties.

#### **Applicant’s version**

10. The applicants’ argument is summarized in the background of this award. Their heads of argument, evidence in their case study documents and their closing arguments have been studied and are available on record.

### **Respondent's version**

11. The respondent's argument is also summarized in the background of this award. Their heads of argument, evidence in their case study documents and their closing arguments have been studied and are available on record.

### **Analysis of the evidence and argument**

12. The two parties to this dispute had different aspects to rely on when they argued their case. The applicant party relied on the facts that are in the PSCBC Resolution 1 of 2007 clauses 1.8, 1.9 and 9.1, 9.2, and 9.3. The applicants' argument and claim was totally in accordance with Res1/07. Clause 9 of this resolution deals with the Basic Conditions of Employment Act (BCEA) of 1997.
13. The respondent revealed and highlighted that management were obliged to comply with the Overtime Policy for the Correctional Services departments. The policy is there as a guideline to prevent employees from abusing the overtime facility. When employees work excessive overtime when such is not authorized it becomes a problem for the department. The overtime of each employee needs to be managed so that this type of abuse does not occur. This is why the respondent believes that it had acted correctly when it complied with the Policy Principles for overtime as per clauses 7.1.2, 7.1.3 and 7.1.6.
14. I have studied the heads of arguments from both parties and I am persuaded that the respondent had indirectly permitted and therefore given permission to the three applicants to work the extra overtime. When the respondent booked the applicants on official rosters to work, they had done so legitimately as an instruction. The instruction to work as per the roster was reasonable, lawful and both known and understood by the applicants. The applicants had never refused or challenged the rosters that told them that they must work the overtime.
15. The fact that the applicants had worked their shifts as rostered, they have a legitimate claim for the payment of the overtime that they had worked irrespective of whether the overtime went over the 30% overtime limit as per the Overtime Policy for Correctional Services.
16. The respondent had technically conformed to the Overtime Policy in that management had complied with the 30% limit on overtime in this instance. However the policy does make provision for a deviation to the 30% overtime limit if permission is granted to work the overtime. By issuing the

official work rosters, management had given the applicants permission to work the overtime through an instruction to work overtime.

17. This dispute is not really a test against the interpretation and application of the Resolution 1 of 2007. The respondent has interpreted this resolution correctly in that the applicants are being paid their normal overtime at the correct rate. The only issue here is the fact that the respondent was refusing to pay out for the overtime worked because of what the Overtime policy was permitting. The real issue in dispute is whether the respondent was correct in the interpretation and application of the Overtime Policy for the Correctional Services.
18. The Overtime Policy for the Correctional Services states in clause 7.1.6 *"Overtime payment shall not exceed 30% of an official's monthly basic salary. Any deviation in this regard shall be obtained from the Delegated Authority prior to the performance of such Overtime duties"*. Prior to this this same policy states in clause 7.1.2 *"No overtime duties may be performed without written prior approval from the Delegated Authority **except in exceptional circumstances**"*.
19. Clause 7.1.2 speaks as a guideline to the employer and then to employees who work overtime to take note that they should not think that they can report for work if not rostered and expect to be paid overtime. To my understanding when an employee is officially rostered to work a shift, the employee sees such as an instruction to work. If the employee fails to report for his shift such an employee runs the risk of facing disciplinary action and could even be dismissed.
20. It would not be unreasonable to state that the employee who is officially rostered to work must comply with the instruction. I am persuaded that such a situation can be deemed an *"exceptional circumstance"* coming from an employer. The manager is fully aware where employees need to be dispatched and what official rosters to give out. An official roster comes from a management plan that ensures that there are enough employees to do the work. All work is urgent otherwise the employees would not be instructed to report for duty in order that the work gets done.
21. Any contract of employment dictates that an employee is there to do work and the respondent is expected to remunerate for work performed by an employee who has been told to work. The applicants had conformed to their set down official roster and now the respondent must conform to what is required by law from them.
22. The respondent has been following and interpreting clause 7.1.3 which explains that before overtime will be allocated consideration must be given only in exceptional circumstances and with written



permission by the manager. The respondent contends that no specific written instructions were given to any of the applicants that would officially authorize them to work overtime that would allow a payment of overtime over the 30% overtime limit.

23. I am persuaded that the mere fact that the three applicants were officially rostered for duty allows their circumstances to fall within this interpretation. If the respondent had erred in officially rostering the applicants when they had already worked the limited amount of overtime equal to the maximum 30% of their wages, the applicants cannot be held liable or lose out for this error. The applicants had been officially rostered to work those shifts and they had conformed to these official rosters, therefore have a right by law to be paid for the hours worked.
24. I am therefore persuaded on a fair balance of probability that the respondent should pay out for the hours worked and that are being claimed. The respondent has the documents of claims for those hours worked and how much each applicant should be paid. The respondent must be ordered to pay out for the overtime worked.
25. The respondent has partly conformed correctly with the interpretation and application of PSCBC Resolution 1 of 2007 clause 9 regarding what should be paid for overtime. The only issue that was in dispute was whether it was fair and just to withhold the payments for the excessive overtime worked when the applicants had in fact been officially rostered to do so. Clause 9 of the resolution states that if overtime has been worked, then overtime must be paid in accordance with the BCEA.
26. The respondent was not correct when the decision was made to withhold the payments for the hours worked. The Overtime policy stipulates that the overtime claim amounts may not be more than 30% of their wages. It further states that written permission must be given prior to the employee working this excessive overtime. The fact that the respondent had drawn up official rosters and issued such to the applicants meant that they were obliged to work in accordance to this requirement and therefore should be paid for the hours worked. The official roster is a written instruction telling employees that they must work accordingly.

### **Award**

27. I find that the respondent had incorrectly interpreted and had not complied with PSCBC Resolution 1 of 2007 in this instance.

28. The respondent, Rooigrond Correctional Services Prison in Mafikeng, is ordered to pay out for the overtime that the applicants, Mr T. Joseph Lefifi, G.V. Montshing and I. Molete, are claiming as per the claims that they had submitted.
29. The respondent is ordered to make payments into each applicant's bank account on 31 March 2020.



THE PANELLIST

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**MICHAEL L. HOWITZ**  
**PSCBC: Panellist**