



ARBITRATION AWARD

Case Number: PSCB53-18/19
Commissioner: Kelvin Kayster
Date of Award: 11 March 2019

In the **ARBITRATION** between

PSA obo Gagiano S.

(Union/Applicant)

And

Department of Health – Northern Cape

(Respondent)

Union/Applicant's representative: Mr. H. Visagie (PSA)

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Respondents' representative: Mr. F. Kammies

Respondent's address: _____

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DETAILS OF HEARING AND REPRESENTATION:

1. The arbitration hearing in this dispute took place on 30 January 2019 in Upington.
2. The applicant is Ms. Salome Gagiano, an employee in the respondent's service. She was represented by Mr. Visagie of the PSA.
3. The respondent is the Department of Health, Northern Cape. The respondent was represented by Mr. Kammies.
4. The matter was referred to the PSCBC as a dispute related to the interpretation/application of PSCBC Resolution 1 of 2012. The applicant contends that the respondent applies the said collective agreement incorrectly in that it fails to pay to her a cash payout in respect of her improved qualifications.

BACKGROUND:

5. The parties agreed that the background of the dispute is largely common cause. They accordingly agreed to conclude a combined stated case and to make written submissions by 20 February 2019. They also submitted a combined bundle of documents, which were accepted as what it purports to be.
6. The respondent raised a jurisdictional challenge in his written submissions. As a result, the due date for the applicant's opposing submissions had to be extended to 27 February 2019, and the respondent's date for reply to 06 March 2019. I have not received any opposing submissions and reply.
7. The background of the dispute is contained in the stated case. In short, the applicant, a Speech Therapist, obtained a Baccalaureus Hons. Degree (Spraak-Taal en Gehoortherapie) in December 2009 and a Master's degree (Algemene Taalwetenskap) in December 2013 at the University of Stellenbosch. A course in speech therapy forms part of her qualifications. After obtaining her qualifications, she applied for a payment of 10% of her salary for recognition of additional (improved) qualifications, as per the clause 7 of PSCBC Resolution 1 of 2012.
8. When the issue could not be resolved, she lodged a grievance on or about 09 July 2018. The grievance was not resolved to her satisfaction. It gave rise to this dispute.

SUBMISSIONS:

Applicant's submissions:

9. The applicant argued that she obtained the qualifications on her own expenses. She submitted that the qualification is relevant to her scope of duties. She accordingly contends that she is entitled to be paid a cash bonus equal to 10% of her annual salary notch.

Respondent's point in limine and submissions on the merits of the dispute:

10. As stated, the respondent raised a jurisdictional challenge in his opposing submissions. With reference to clause 7.3 of Resolution 1/2012, the respondent submitted that it first has a duty to define the qualifications which are relevant to the employees' respective areas of work and determine the conditions or criteria applicable for recognition of such qualification. In doing so, the respondent establishes a committee of specialist employees to make this determination and recommend payments to qualifying employees. At the time of referral of this dispute, that process has not been done, and the referral is thus premature. The claimed benefit is not automatic, but is subject to determination and discretion of the respondent. Intervention of the PSCBC may result in a determination different from the rest of the public service. It is an administrative process, for which the PSCBC does not have jurisdiction to determine.
11. As for the merits of the dispute, the respondent argued that the attainment of a qualification on own expense does not automatically entitle an employee to a cash bonus. It is dependent on the determination of a committee of specialist employees whether or not the qualification is related to an employee's scope of work. Her application for payment of the bonus is currently receiving attention to determine the relevance of the qualification. The respondent argued that arbitrators should not lightly interfere with administrative processes.

ANALYSIS:

12. This dispute relates to the interpretation/application of clause 7 of PSCBC Resolution 1/2012. The applicant contends that she is entitled to be paid a cash bonus for obtaining at her own expense an improved qualification that is related to her scope of work. It is common cause that she obtained a qualification. It is further common cause that the respondent has not yet indicated whether it accepts the improved qualification to be related to her scope of work.
13. This is the basis for the respondent's first point in limine. The respondent argues that the referral of the dispute is premature, because it is still in the process of determining whether the qualification is work-related.
14. As stated, the matter was referred to the PSCBC as a dispute relating to the interpretation/application of a collective agreement. As arbitrator, my role is to interpret the relevant clauses of the collective agreement; alternatively, I have to determine whether the relevant provisions of the collective agreement have been correctly applied, and to order appropriate relief in instances whether it has not been done.
15. Clause 7.3 of Resolution 1/2012 is peremptory, and places an obligation on sectors to define the qualifications which are relevant to their respective areas of work. The applicant had been requesting

payment of this cash bonus for a considerable period of time. It is unfair of the respondent to now argue that the dispute referral was premature as it still has to establish a committee to consider whether or not the applicant's qualification is relevant. In my view the unreasonably long delay constitutes a breach of clause 7.3 of Resolution 1/2012.

16. I accordingly find that the respondent's first point in limine (relating to the alleged premature referral) is not sustainable, and stands to be dismissed. It is my view that the applicant is fully entitled to insist on a proper and fair application of the provisions of resolution 1/2012.
17. In the circumstances I deem it appropriate to direct the respondent to consider and process the applicant's request for the cash bonus within two months from the date of this award.
18. The respondent's second point in limine is based on the contention that arbitrators should not lightly interfere in administrative decisions. I fully agree that it not within the jurisdiction of the PSCBC to determine whether or not the applicant's qualification is related to her scope of work – that is an administrative determination that can only be done by the respondent itself.
19. It is however my view that this dispute referral should not require of an arbitrator to approve the application for a cash bonus, but rather to interpret the provisions of the collective agreement, and to determine whether it had been correctly applied. That is exactly the basis of my finding in paragraph 15 above.

AWARD:

20. The respondent's failure to consider and determine the applicant's request for a cash bonus in terms of Clause 7.3 of PSCBC Resolution 1 of 2012, constitutes an incorrect application the provisions of the said collective agreement.
21. The Department of Health is directed to process Ms. Gagiano's application for the cash bonus by not later than 15 May 2019.



Signature: _____

PSCBC Panelist: **Kelvin Kayster**