



ARBITRATION AWARD

Case Number: ***PSCBC37-24/25***

Panellist: ***William Richard Pretorius***

Date of Award: ***16 October 2025***

In the **ARBITRATION** between

PSA obo Baadjies & 6 Others

(Union / Applicant)

and

Department of Correctional Services

(Respondent)

DETAILS OF HEARING AND REPRESENTATION

1. Proceedings commenced before me on 25 July 2024 and on 16 August 2024, a directive was issued for Council to schedule the matter for arbitration to address the challenge raised by the respondent regarding the true nature of the dispute. The arbitration set for 23 September 2024 was postponed by the Council due to an injury on duty sustained by the respondent's representative, Mrs. Marilie Berry. The subsequent arbitration scheduled for 28 November 2024 was postponed *sine die*, as Mrs. Berry remained unfit for duty as confirmed by her medical practitioner. The arbitration set down for 17 July 2025 was postponed by agreement due to a bereavement in the family of Mrs. Berry.
2. The matter was finalised during the virtual arbitration held on 2 October 2025. The applicants attended and were represented by Mr. Anthony Kilian, an official from the PSA. The respondent was represented by its employee, Mrs. Marilie Berry, Deputy Director: Dispute Resolution Management. The written closing arguments of both parties were received on 9 October 2025 which is regarded as the last day of these proceedings for the purpose of issuing the award.
3. The parties submitted separate bundles of documents which were accepted on what it purported to be. The online proceedings conducted in English were recorded digitally and in writing.

ISSUES IN DISPUTE

4. The applicants' dispute concerns the interpretation and application of PSCBC Resolution 7 of 2000: "Improvements in the Conditions of Service of Public Service Employees for 2000/2001 Financial Year" (the Resolution) regarding the issue of leave for injury on duty.
5. It is the contention of the respondent that the true nature of the dispute of the applicants is one that resides under section 186(2)(a) of the Labour Relations Act 66 of 1995 as amended (the LRA) in relation to benefits which means that Council lacks the power to hear the matter.
6. I must therefore determine the true nature of the dispute and determine the matter accordingly. In this regard, I have taken into account the principles set out in the judgment of the Constitutional Court in ***Commercial Workers Union of SA v Tao Ying Metal Industries & others (2009) (2) SA 204 (CC)***.

BACKGROUND

7. The applicants, except for Mr. Voetpadt who has since retired due to ill-health, are currently employed by the respondent as Centre Based Correctional Officials at the St Albans Medium B Correctional Centre outside Qheberha (Port Elizabeth).
8. On 07 December 2022, an incident took place at the Correctional Centre which resulted in the stabbing of three of the applicants, namely, Messrs. Laport, Makuapane and Voetpadt. The other four applicants, Mesdames. Baadjies, West, Daka and Magxa were not involved in the initial attack but were traumatized in their attempt to assist their colleagues.
9. The applicants reported the matter as prescribed and were booked off from duty by their respective medical practitioners and placed on IOD leave by the respondent. On 25 October 2023 the respondent informed the applicants in writing that they were to report for duty immediately.
10. The applicants lodged grievances in this regard with the respondent which remained unresolved. The applicants subsequently referred a dispute to the Council on 25 April 2024 regarding the interpretation and/or application of the Resolution with the contention that the respondent failed to correctly interpret and apply clause 7.6(a) of said agreement in so far as it relates to their injuries on duty (IOD) leave.

SURVEY OF EVIDENCE AND ARGUMENT

11. All the applicants testified; whilst the respondent called one witness. All the witnesses testified under oath. Most of the factual matrix is common cause. What follows is a concise summary of the evidence presented.

Applicants' case

12. The three primary victims who were stabbed and as a result also suffered from post-traumatic stress disorder (PTSD) testified as follows:
 - 12.1 Mr. Clifton Laport (Laport) testified that he returned to work on 9 December 2024 after he was declared fit by his psychiatrist. He had to use normal sick leave, vacation leave and temporary incapacity leave (TIL) which has been declined to cover his absence from 26 October 2023 until he reported for duty. During cross-examination he pointed out that he was not placed in the same post after he returned as instructed by the respondent.

- 12.2 Mr. Samfrin Voetpadt (Voetpadt) testified that he was never declared fit to return to work and was placed on ill-health retirement effective from 1 June 2025. During cross-examination he confirmed that he opted for ill-health retirement.
- 12.3 Mr. Onkabetse Makuapane (Makuapane) testified that he returned to work on 25 February 2025 despite not being declared fit by his medical practitioners. During cross-examination he confirmed that he was placed in a different post following his return as instructed by the respondent.
13. The four secondary victims who suffered in essence from PTSD testified as follows:
- 13.1 Mrs. Duranda Baadjies (Baadjies) testified that she returned to work on 21 January 2025 after she was declared fit by her medical practitioners. She had to use normal sick leave, vacation leave and TIL which was declined to cover for her absence as from 26 October 2023. During cross-examination she indicated that she was allocated different duties after her return to work as instructed by the respondent.
- 13.2 Mrs. Antolene West (West) testified that she returned to work on 7 January 2025, because the respondent started to deduct leave without pay from her salary as a result of declined TIL. She was never declared fit for duty by her medical practitioners. During cross-examination she said she was forced to return to work and was allocated different duties.
- 13.3 Mrs. Nokuzola Daka (Daka) testified that she returned to work on 24 January 2024, despite not being declared fit to do so by her medical practitioners. During cross-examination she pointed out that she opted to go back to where she worked prior to the incident.
- 13.4 Mrs. Mandisa Magxa (Magxa) testified that she returned to work early March 2024 after she had to utilize available sick leave and vacation leave days to cover her absence from 26 October 2023. She was never declared fit to return to work by her medical practitioners. During cross-examination she submitted that she was forced to return and is currently placed in the same position as at the time of the incident.

Respondent's case

14. Mr. Heinrich Smith (Smith), the HR Manager leave administration, testified that section 22 of COIDA affords the Area Commissioner the power to cancel IOD leave if an investigation determines that there was negligence on the side of the employee. He further stated that the investigation showed that the applicants failed to comply with Standard Operation Procedures in

relation to safety equipment and therefore they were given letters to return to work and cancelling of their IOD leaves. During cross-examination he confirmed that the medical practitioners determine when employees are fit to return to work. He conceded that the Resolution and COIDA deal with two different issues, namely IOD leave and compensation respectively. He conceded that the word “shall” in clause 7.6(a) of the Resolution has the same meaning as ‘no discretion’ and that there were no other requirements for an employee to qualify.

Closing arguments in summary

15. Both parties submitted comprehensive written closing arguments which I do not intend to repeat other than to indicate that the relevant arguments have been taken into account and are apparent from the analysis hereunder.

ANALYSIS OF EVIDENCE AND ARGUMENT

16. In ***South African Maritime Safety Authority v McKenzie 2010 (3) SA 601 (SCA) (McKenzie)***, the Court held:

“Once more, as in other cases that have become before this court, the plea, as far as it purports to raise a jurisdictional challenge, is misdirected. As the Constitutional Court has reiterated in *Gcaba v Minister of Safety & Security and Others*, the question in such cases is whether the court has jurisdiction over the pleaded claim, and not whether it has jurisdiction over some other claim that has not been pleaded, but could possibly arise from the same facts.”
17. In the case before me, the applicants formulated their dispute as one concerning the interpretation and application of PSCBC Resolution 7 of 2000. I am satisfied for the reasons hereunder that the true nature of the dispute, is one which the PSCBC has jurisdiction to determine.
18. In ***PSA obo De Bruyn v Minister of Safety and Security and Another (JA91/09) [2012] ZALAC 14 (De Bruyn)***, the Court held *inter alia* that ‘where an employee, such as De Bruyn, is dissatisfied with a decision by the employer with regard to the issue of leave of absence, his remedy lies in the provisions of the resolution.’
19. The principles in ***De Bruyn*** are relevant and applicable in the dispute before me. The dispute of the applicants concerns the decision of the respondent to cancel prior approved IOD leave. The right the applicants seek to enforce derived from the Resolution read with various pieces of legislation and policy directives which deals with the granting of IOD leave. In this regard, the parties are in disagreement regarding the interpretation and application of clause 7.6(a) of the Resolution.

20. In ***North East Cape Forests v SA Agricultural Plantation and Allied Workers Union and Others, (1997) 18 ILJ 971 (LAC)*** it was held that a collective agreement is unlike other ordinary contracts and that the primary objects of the Act are better served by an approach that is practical to the interpretation and application of such agreements. This, it was stated, was better suited to promote the “effective, fair and speedy resolution of labour disputes”. In ***NEHAWU v Department of Social Services and Population Development [2005] 11 BALR 1140 (PSCBC)***, it was further acknowledged that a collective agreement is a written memorandum which is meant to reflect the terms and conditions to which parties have agreed at the time that they concluded the agreement. The courts and arbitrators must therefore strive to give effect to that intention. Thus, the Courts frequently apply the “parole evidence” rule – that is when interpreting collective agreements, evidence outside the written agreement itself is not generally permissible when the words of the memorandum are clear.
21. The common law principles relating to interpretation of contracts have always been deemed applicable to disputes pertaining to interpretation and/or application of collective agreements. Therefore, the key to interpretation of a contract is in the first instance to ascertain the intention of the parties from the words which they used to express their agreement, taken in their ordinary meaning and read in the context of the instrument as a whole. Secondly, if the words of the contract are unclear or ambiguous, the circumstances in which the agreement was entered into can be referred to as a guide to the true intention of the parties. Thirdly, evidence regarding the parties’ intention is admissible only when the words of the instrument, read in their context, do not yield an indication of the parties’ intention. Fourthly, where the contract is silent on a term which one of the parties contends should be implied into the contract, the test is whether, at the time that they were negotiating their agreement, the parties considered the terms so obvious that it was not necessary to record it expressly.
22. Clause 7.6(a) of the Resolution provides that:
- a) *Employees who, as a result of their work, suffer occupational injuries or contracts occupational diseases, shall be granted occupational injuries and disease leave for the duration of the period they cannot work. [my emphasis]*
 - b) *If an employee suffers a work-related injury as a result of an accident involving a third party, the employer may grant her or him occupational injury and disease leave provided that the employee:*
 - i) *brings a claim for compensation against the third party; and*

- ii) *undertakes to use compensation (in terms of the Compensation for Occupational Injuries and Diseases Act of 1993) receive to recompense as far as possible for the costs arising from the accident.*
 - c) *The employer shall be obliged to take reasonable steps to assist an employee to claim compensation according to (b) above.*
- 23. Clause 19 of the *Determination and Directive on Leave of Absence in the Public Service (Leave Determination)* provides that:
 - 19.1 *An employee who, as a result of his/her work, suffers an occupational injury or contracts an occupational disease, shall be granted occupational and disease leave for the duration of the period they cannot work.*
 - 19.2 *If an employee suffers a work-related injury as a result of an accident involving a third party, the Head of Department shall grant him or her occupational injury leave provided that the employee:*
 - 19.2.1. *brings a claim for compensation against the third party; and*
 - 19.2.2. *undertakes to use compensation (in terms of the Compensation for Occupational Injuries and Diseases Act of 1993) received to recompense as far as possible for the cost arising from the accident.*
 - 19.3 *The Head of Department shall take reasonable steps to assist an employee to claim compensation according to 19.2 above.*
 - 19.4 *When an employee is injured on duty or contracted an occupational disease the employer must pay the employee's medical expenses in terms of the provisions of the Compensation on Occupational and Injury and Disease Act. The employer may, depending on the circumstances, recover certain expenses in the event where a third party was involved in the accident. Please refer to the guide: "Application of the Compensation for Occupational Injuries and Diseases Act (COIDA) In the Workplace: A Guide for Government Departments" for further details.*
- 24. Clause 8 of the *Policy and Procedure on Incapacity Leave and Ill-health Retirement (PILIR)* provides as follows:
 - 8.1. *Injury on duty cases should strictly be dealt with in terms of the processes determined in the COIDA and should not be dealt with through the PILIR process.*
 - 8.2. *The absences of these employees are to be covered by Leave for Occupational Injuries and Diseases provided for in the Leave Determination.*
- 25. Section 24 of the Basic Conditions of Employment Act, 75 of 1997 as amended (the BCEA) provides that:

Application to occupational accidents or diseases

Sections 22 and 23¹ do not apply to an inability to work caused by an accident or occupational disease as defined in the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993), or the Occupational Diseases in Mines and Works Act, 1973 (Act No. 78 of 1973). except in respect of any period during which no compensation is payable in terms of those Acts.

[my emphasis]

¹ Sections 22 and 23 refer to sick leave and proof of incapacity respectively.

26. Section 1 of COIDA defines “accident” as ‘an accident arising out of and in the course of and in the course of an employee’s employment and resulting in personal injury, illness or the death of the employee’ and ‘occupational injury’ as ‘a personal injury sustained as a result of an accident’.

27. Section 22 of the Compensation for Occupational Injuries and Diseases Act, 1993 (COIDA) provides that:

Right of employee to compensation

(1) If an employee meets with an accident resulting in his disablement or death such employee or the dependants of such employee shall, subject to the provisions of this Act, be entitled to the benefits provided for and prescribed in this Act.

(2) No periodical payments shall be made in respect of temporary total disablement or temporary partial disablement which lasts for three days or less.

(3) (a) If an accident is attributable to the serious and wilful misconduct of the employee, no compensation shall be payable in terms of this Act, unless---

(i) the accident results in serious disablement; or

(ii) the employee dies in consequence thereof leaving a dependant wholly financially dependent upon him.

(b) Notwithstanding paragraph (a) the commissioner may, and the employer individually liable or mutual association concerned, as the case may be; shall, if ordered thereto by the commissioner, pay the cost of medical aid or such portion thereof as the commissioner may determine.

(4) For the purposes of this Act an accident shall be deemed to have arisen out of and in the course of the employment of an employee notwithstanding that the employee was at the time of the accident acting contrary to any law applicable to his employment or to any order by or on behalf of his employer, or that he was acting without any order of his employer, if the employee was, in the opinion of the commissioner, so acting for the purposes of or in the interests of or in connection with the business of his employer. [my underlining]

(5) For the purposes of this Act the conveyance of an employee free of charge to or from his place of employment for the purposes of his employment by means of a vehicle driven by the employer himself or one of his employees and specially provided by his employer for the purpose of such conveyance, shall be deemed to take place in the course of such employee's employment.

28. Section 35(1) of COIDA states that:

No action shall lie by an employee or any dependant of an employee for the recovery of damages in respect of any occupational injury or disease resulting in the disablement or death of such employee against such employee’s employer, and no liability for compensation of the part of such employer shall arise save under the provisions of this Act in respect of such disablement or death.

29. It is clear from the Resolution read with the Leave Determination, PILIR, the BCEA and COIDA that IOD leave is different from all other types of leave such as sick leave and TIL in that it is not discretionary.

30. Clause 7.6(a) of the Resolution provides that:

Employees who, as a result of their work, suffer occupational injuries or contracts occupational diseases, shall be granted occupational injuries and disease leave for the duration of the period they cannot work. [my underlining]

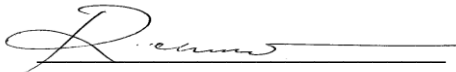
31. The word “shall” within the context of clause 7.6(a) describes an action that must be obeyed (peremptory); whilst the wording ‘for the duration of the period they cannot work’ means the period as defined by the medical practitioner as to when the employee is fit to return to work, considering that IOD leave is not indefinite as argued by the respondent as the applicants may be subjected to a second medical opinion determined by the respondent. The evidence of the applicants has shown that they were not medically fit to resume duties at the time of the instruction of the respondent to report for duty – 26 October 2023.
32. The Resolution does not define “occupational injuries” or “occupational diseases”. COIDA defines “occupational injuries” as ‘a personal injury sustained as a result of an accident’ and “occupational diseases” as ‘any disease mentioned in the first part of Schedule 3 arising out of and contracted in the course of an employee’s employment’ In terms of COIDA “accident” means ‘an accident arising out of and in the course of an employee’s employment and resulting in a personal injury’.
33. Clause 7.6(a) of the Resolution read with clause 19 of the Leave Determination mirrors the intent of section 22(1) of COIDA, which grants a right to benefits where an injury or disease arises “in the course and scope of employment.”
34. Whilst the Resolution and COIDA are the two sides of the same coin, they are distinct in terms of their intention and purpose. In this regard, clause 7.6(a) of the Resolution on the one hand makes it peremptory for the employer to grant IOD leave once an employment related injury or disease has been reported; while the Compensation Commissioner on the other hand determines whether such injury is compensable under COIDA. Once the Compensation Commissioner has decided in terms of section 22 of COIDA that the IOD leave is not compensable, the respondent may convert such leave granted as unpaid, considering section 22 of COIDA read together with sections 47 and 49 of COIDA.
35. There is no procedure in the Resolution or Leave Determination or COIDA which states that the respondent must ask the Compensation Commissioner first whether an accident will qualify to approve IOD leave as argued by the respondent.
36. It is uncontested that the extent and duration of IOD leave is determined by the medical reports from the affected employees, considering that the employer has the right to subject the employees to a second medical opinion.

37. There is no support in the Resolution or Leave Determination for the contention that an employee is expected to utilize sick leave, annual leave or TIL whilst waiting for the decision of the Compensation Commissioner in terms of section 22 of COIDA.
38. The respondent's comparison of TIL vis-à-vis IOD is unconvincing as the granting of IOD leave is peremptory whilst TIL depends on the discretion of the employer.
39. The respondent's reliance on section 22(3) of COIDA to justify its decision to cancel the IOD leave of the applicants is not sustainable when read together with section 22(4), considering that section 22 deals with the 'right of an employee to compensation', not the right to IOD leave. The latter is peremptory. The Area Commissioner's powers related to the management of leave as argued by the respondent cannot supersede the provisions of the collective agreement, considering that the Resolution does not provide for the cancellation of IOD leave nor does the plain reading of section 22(3) afford the respondent the power to cancel such leave.
40. Procedurally, the respondent should have referred its internal investigation report to the Compensation Commissioner to make a decision in terms of section 22(4) of COIDA. At the same time the respondent should have subjected the applicants to a disciplinary hearing. Moreover, the respondent had the right to subject the applicants to a second medical opinion to determine their fitness to report for duty in order to satisfy clause 7.6(a) of the Resolution insofar as 'the duration of the period they cannot work' is concerned. This was not done, despite the respondent's obligation to assist the applicants in finalising their claims in terms of COIDA.
41. The respondent's reference to the judgment in ***Mabija v Department of Justice and Constitutional Development [2014] ZALCJHB 118 (Mabija)*** is distinguishable from this dispute in that it concerned a claim for damages in terms of section 35 of COIDA. Similarly, the matter in ***POPCRU obo Joseph Sifuba v Commissioner of the South African Police Services and Others (R 137/2003) [2008] ZALC 162***, dealt with the issue of prescription pending a review application of an arbitration award.
42. In light of all the above reasons, the respondent's decision to cancel the IOD leave of the applicants post 25 October 2023, in the absence of medical reports which declared the applicants fit for duty, falls outside the meaning of clause 7.6(a). I thus find that the Respondent did not correctly interpret and apply the provisions of the Resolution, in particular clause 7.6(a).

43. Turning to the relief, I find that the leave of absence of the applicants as from 26 October 2023 should be converted to IOD leave within the meaning of clause 7.6(a) of the Resolution read with section 22 of COIDA and section 24 of the BCEA. The conversion of the aforesaid leave must be finalised and implemented within 30 calendar days of the parties' being notified of this award.
44. Accordingly, I make the following award and order:

AWARD

45. The Council has jurisdiction to determine the dispute of the applicants regarding the interpretation and application of PSCBC Resolution 7 of 2000 which was referred in terms of section 24 of the LRA.
46. The respondent did not correctly interpret and apply clause 7.6(a) PSCBC Resolution 7 of 2000.
47. The respondent is ordered to convert the leave of absence of the applicants to IOD leave as provided for in paragraph 41 above.



WILLIAM RICHARD PRETORIUS

PSCBC PANELLIST