



Arbitration Award

Panelist/s: Karen Kleinot _____
Case No.: PSCBC134-25/26 _____
Date of Award: 12 December 2025 _____

In the matter between:

PSA obo T A Motlhabane

(Union / Applicant)

and

Department of Arts and Culture, Sports & Recreation

(First Respondent)

DETAILS OF THE HEARING

1. The arbitration was heard on 4 December 2025. Mr. N Baardman, a trade union representative, represented Mr. Motlhabane. The Department of Arts and Culture was represented by Mr. Molefi. The proceedings were recorded via a digital recorder. A joint bundle was submitted and supplemented by the Departmental Overtime Policy and a screenshot of the PERSAL system reflecting proof of payment. The parties submitted closing arguments on 11 December 2025.
2. A point *in limine* was raised that, considering the remedy sought, Mr. Motlhabane had a claim at the Labour Court or the Small Claims Court, and that the Council could not direct the payment of the overtime. For this reason, it was argued that the Council lacked jurisdiction. Mr. Baardman submitted that the Council was the correct forum, as there was no mechanism at the GPSSBC that regulated averaging the maximum overtime.
3. A brief ruling was as follows: an interpretation and application dispute examines either the meaning of the words in a disputed clause or it deals with the manner in which the clause is applied and to whom it is applied, as well as the circumstances of the application. From the submissions of the parties, it is apparent that the dispute lies in terms of the application of clauses 9.1 and 9.3 of Resolution 1/2007. There is a clear

dispute as to whether overtime is due or not. The reference to policy is what informs and is used to implement the resolution. It was undisputed that there was no regulation or mechanism for averaging the maximum hours of overtime at the GPSSBC. In terms of the remedy, it is correct that the applicant can claim payment of the debt in terms of section 73A and that the remedy lies at the Labour Court or Small Claims Court. This presupposes that the overtime is due to Mr. Motlhabane and that a debt exists. Only once the existence of debt is established can the debt be claimed. In this case, there is a dispute over whether overtime is owed to Mr. Motlhabane; this relates to the application of the collective agreement, and the Council is the correct forum for such a dispute.

THE ISSUE IN DISPUTE

4. The issue in dispute is whether the Department of Arts and Culture, Sports & Recreation has correctly applied and interpreted Resolution 1/2007.

BACKGROUND TO THE DISPUTE

5. Mr. Motlhabane, an Assistant Director of Security Management, referred the claim.
6. It is common cause that Mr. Motlhabane worked during the festival on the 6 - 8 of December 2024. The overtime was claimed as follows: Friday, 6 December 2024, 7 hours, and on Sunday, 14 hours of overtime.
7. Mr. Motlhabane was paid for six hours of overtime worked. Three hours of normal overtime and three hours of Sunday overtime.
8. Mr. Motlhabane seeks the balance of the Sunday overtime of 11 hours x 2 and Friday's normal overtime of 4 hours x 1.5.

SURVEY OF THE EVIDENCE

Applicant's version

9. **Mr. Motlhabane** testified that he worked during an annual event, the Mahikeng festival. His supervisor submitted a request to the head of department outlining the need to allow Mr. Motlhabane to perform overtime in excess of normal overtime, for this event. He explained that working during the festival meant that he was there before it started to ensure all was alright, and he was the last to leave after the festival closed. He and his team were debriefed at the end of the night to ensure that any issues were reported to SAPS if necessary.

10. This was signed off by his supervisor and the head of department on 28 November 2024.
11. There was a comment attached to the approval by Mr. Mpuisang, which stated that *"The exceeded overtime may be considered as time off. Deviation may only be done by the DPSA system may not allow exceeded ..."*
12. The recommendations were that the overtime be approved and that he and his colleague, Mr Mafata, receive remuneration for overtime.
13. The Resolution does not make provision for time off instead of overtime worked. The resolution stipulates that overtime worked on a Sunday must be paid at double the basic rate without an option for time off. The resolution is as follows: *"9.1 Payment Rate for Normal Overtime. "Overtime on a Sunday or a public holiday shall be 2 x basic salary of the employee, without the option of granting time-off. All other overtime shall be 1.5 x basic salary of the employee, without the option of granting time off. This provision excludes employees on commuted overtime."*
14. Mr. Motlhabane indicated that he claimed seven hours of overtime on Friday, from 1700-0h00 normal hours. He worked the Sunday and claimed 14 hours of overtime on Sunday. He claimed from 10h00 to 00h00. He completed the attendance register, which was attached to the overtime claim, as it had to be signed by the supervisor. He agreed that he claimed less than what was reflected in the attendance register. He agreed that he waived the extra two hours that he worked on Friday, 6 December 2024. His claim for Sunday also waived 6 extra hours.
15. When he queried the overtime payment he received, he was directed to the policy. The overtime claim was dated 11 April 2025. This was the date his supervisor signed the claim; it had initially been lost, which accounted for the delay. The PERSAL document reflected six hours of normal overtime. He was never offered time off in place of the hours worked. He stated that he had been paid in the past for working this festival and had not encountered any issues.
16. Item 9.3 *"Maximum overtime hours. The mechanisms and conditions for the averaging of maximum overtime hours shall, where required, be determined in respective sectoral bargaining councils. This excludes commuted overtime."*
17. He was unaware of any mechanism or regulation instituted by the GPSSBC to calculate the averaging of maximum overtime.

18. The departmental policy on overtime stipulated that the maximum overtime that could be worked was 3 hours. He was only paid for six hours.

Respondent's version

19. **Ms. Manyeneng**, the Assistant Director of Salaries for the Department of Arts and Culture in the North West, stated that she was involved in managing salaries, paying third parties, deductions, and allowances.
20. To pay an overtime claim, the claim must be accompanied by the relevant documentation, an approved submission to work overtime, the attendance register, and both the supervisor and applicant must sign the overtime claim. Her department checks whether the Head of Department signed approval for the overtime. Thereafter, the claim is processed. Once the overtime claim is processed, the audit and establish if the claim was correctly paid, that is, there is no over- or underpayment. They perform a manual calculation to check that the system has correctly calculated the overtime.
21. In this case, the overtime claim was referred after thirty days, which was late. There was communication explaining the reason it was late. The salaries office had attempted to make payment, but it was identified that HR had not created the overtime record on the system. As this had not been created overtime could not be paid. This was communicated to Mr. Motlhabane.
22. The proof of payment reflects that Mr. Motlhabane was paid for 6 hours. He was paid three hours of normal overtime and 3 hours for Sunday overtime. Sunday overtime is paid at double the basic salary of the employee.
23. The overtime policy was referred to by the CFO, who, on the submission for approval, referred to clauses 9.7 and 9.8 of the policy. Item 9.7 Maximum hours to be worked 9.7.1 The Department may not require or permit employees to work: (a) More than three hours overtime in one day, (b) More than 10 hours of overtime per week. Item 9.8 titled Overtime compensation reflects that overtime must be fully motivated for it to be paid. The estimated cost hours for each person must be calculated. The rank of the manager supervising or managing the overtime should be identified. Only those employees appearing on the submission will be compensated for overtime worked. Requests for overtime must be submitted to the delegated authority. The maximum notch for remuneration in respect of overtime duty is the entry notch of salary level 8. The monthly compensation for overtime must constitute less than 30 percent of the employee's monthly salary.
24. The overtime claim exceeded the maximum overtime stipulated in the policy. The submission sought approval for normal overtime as well as approval to exceed the normal overtime that was going to be worked.

This was signed by the CFO, who added comments referring to the overtime policy. It was clear from the submission for approval that the maximum overtime would be exceeded.

25. There is a practice within the department to offer time off in lieu of overtime worked. This is at odds with Resolution 1/2007.
26. Ms. Manyeneng agreed that Mr. Motlhabane worked overtime on Sunday and was not given time off in place of compensation for overtime. The overtime policy was in line with the DPSA policy on overtime.

SURVEY OF THE ARGUMENTS

27. Mr. Baardman argued, that the Respondent has misinterpreted and misapplied the collective agreement by (a) limiting payable overtime to three hours per day based on an internal departmental policy, (b) refusing to pay the full hours approved and worked and (c) requiring that outstanding hours be taken as time off, an option explicitly prohibited in clause 9 of the collective agreement, resolution 1/2007.
28. In terms of the evidence, the practice of taking time off instead of overtime is not grounded in the collective agreement, and the discretion exercised is not in terms of the resolution. The respondent has incorrectly capped overtime at 3 hours per day and has only paid part of the overtime. Collective agreements are binding on the parties and take precedence over internal policies.
29. Overtime is clearly specified in the resolution, as well as the fact that a Sunday must be paid at double the hourly rate. There is no cap imposed. The collective agreement must be interpreted within the context and purposively. There is nothing in the collective agreement that gives rise to the discretion to cap the overtime or to compel an employee to take time off in place of overtime. Once overtime is approved, the respondent is compelled to pay the overtime worked. The Applicant has demonstrated that the respondent has failed to apply the collective agreement and payment stands to be made to the employee; 4 x 1.5 hours that are outstanding for 6 December 2024, and 11 hours at x2 hourly rate for 8 December 2024
30. Mr. Molefi argued that there was no evidence presented that the respondent had misinterpreted or misapplied the collective agreement. The respondent's witness was unaware of the collective agreement. It was submitted that the evidence of the application of a prescript different from the collective agreement did not amount to a misinterpretation or misapplication of the collective agreement. This is so as the policy was not found to be in direct or indirect contravention of the relevant collective agreement. Therefore, it was argued that the Respondent had applied the collective agreement

ANALYSIS OF THE EVIDENCE AND ARGUMENT

31. The issue is an interpretation and application of resolution 1/2007. An interpretation and application dispute examines the words used and meanings attributed to the words, as well as whether the clause applies to a person or a group of people. The test has been set out as per **National Joint Municipal Pension Fund v Endumeni Municipality 2012 (4) SA 593 (SCA)** the court held that *“Interpretation is the process of attributing meaning to the words used in a document, be it legislation or some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed, and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of all these factors. The process is objective and not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusiness like results or undermines the apparent purpose of the document. The inevitable point of departure is the language of the provision itself, read in context and having regard to the purpose of the provision and the background to the preparation and production of the document”*.
32. Clause 9, which is headed as follows:” *Basic Conditions of Employment Act (BCEA) 1997, 9.1 Payment Rate for Normal Overtime. Overtime, on a Sunday or public holiday shall be 2 x basic salary of the employee, without the option of granting time off. All other overtime shall be 1.5 x basic salary of the employee, without the option of granting time-off. This provision excludes employees on commuted overtime.* “
33. Overtime, as defined in the Basic Conditions of Employment Act, is as follows: *“overtime ‘means that an employee works during a day or a week in excess of ordinary hours of work.”* There is no dispute that Mr. Mothlabane worked on the dates as per the attendance register and the claim.
34. There is nothing in the resolution that caps the amount of overtime that can be worked by an individual. It is common cause that approval for working overtime was obtained.
35. The Resolution must be read with, The Public Service Regulations of 2016 indicate the following in regulation 49:
“49 Overtime, (1) An executive authority shall compensate and employee, other than a member of the sms, for overtime work if-

(a) the department has an approved written policy on overtime;

(b) the executive authority has provided written authorization in advance for the work; and
(c) the monthly compensation for overtime constitutes less than 30% of the employees monthly salary; or the limitation determined by the Minister, whichever is the lesser.

(2) An overtime policy contemplated in subregulation (1) shall be established by the executive authority in accordance with applicable collective agreements, which shall determine-

(a) categories of employees that may not receive compensation for overtime due to the nature of their duties;

(b) the circumstances under which overtime work for an individual employee may be authorized.

(c) how much overtime an employee may work in a given period.

(d) how authorization for overtime is recorded

(e) other control measures which are necessary “

36. The departmental policy is in line with Regulation 49. In this instance, approval for normal overtime was sought as well as overtime exceeding normal overtime. This was granted as per the documentary evidence. The approval was subject to the overtime policy items 9.7 and 9.8 as per the annotation made by the CEO. The overtime was thus capped at 3 hours per day and 10 hours per week. Mr. Motlhabane's claim exceeded this overtime. Considering the policy that caps overtime per day at three hours and 10 hours per week, he was paid for six hours, three hours on Friday, and three hours on Sunday.

37. Although the regulations specify the structure for the policy, the policy must comply materially with the resolution. The policy is not in line with the resolution in that it does not limit overtime and prescribes how overtime is to be paid at x2 for Sunday work and x1.5 for normal overtime. Even though the regulation provides that the policy can determine how much overtime can be worked by an individual, this must be in line with the Resolution. There is no cap; the only limit in terms of the regulation is that it must be less than 30% of the employee's monthly salary. There was no evidence that the overtime claim exceeded 30% of Mr. Motlhabane's monthly salary. Moreover, the time off option described by Ms. Manyeneng is not contemplated in the Resolution. If, as per the annotations, overtime was limited to 6 hours, this ought to have been conveyed to Mr. Motlhabane; it was not. Further, the evidence was that Mr. Motlhabane's presence was needed, and the respondent was aware of such, as it had authorized such work in the past. Given the contradiction between the policy and the resolution, the resolution, as the collective agreement, takes primacy.

38. Consequently, I find that the Respondent has not complied with the resolution.

Remedy

39. The claim for overtime has been established as Mr Motlhabane worked the overtime. This was approved and does not equate to more than 30% of his monthly salary. The Department of Arts & Culture, Sports and

Recreation is directed to pay the overtime of 4 hours x 1.5 for 6 December 2024, and 11 hours x 2 for 8 December 2024 to Mr. Motlhabane.

AWARD

40. The Respondent has not complied with Resolution 1 of 2007.

41. The Department of Arts & Culture, Sports and Recreation is directed to pay the overtime of 4 hours x1.5 for 6 December 2024, and 11 hours x 2 for 8 December 2024 to Mr. Motlhabane.



Signature:

Panelist/s: Karen Kleinot