



IN THE PUBLIC SERVICE CO-ORDINATING BARGAINING COUNCIL

Case No: PSCBC369-22/23

Date of award: 4 December 2023

Panellist: C. Randall

In the matter between

PSA OBO LENAKE

Applicant

and

DEPARTMENT OF CORRECTIONAL SERVICES

Respondent

ARBITRATION AWARD

DETAILS OF HEARING AND REPRESENTATION

1. The arbitration was scheduled for 22 November 2023 by way of a virtual meeting using the Zoom platform. Both parties attended the video conferencing proceedings.
2. Henry Hall, an official from the trade union PSA, represented the Applicant, Shadreck Lenake. Marilie Berry, an employee of the Respondent, represented the Respondent in the proceedings.
3. The proceedings were electronically recorded.

ISSUE TO BE DECIDED

4. This dispute concerns the application of Clause 9 of PSCBC Resolution 1 of 2007 (1 of 2007).
5. I am called upon to determine whether the Respondent incorrectly applied the said resolution in relation to the facts presented before me in these proceedings.

BACKGROUND TO THE DISPUTE

6. Parties, on record, confirmed that the following facts was common cause between them –
 - The Applicant was part of a group of employees who performed overtime duties on 23 March 2022;
 - The overtime duties were performed on request of the Respondent;
 - The other employees who worked overtime on that day were paid.

SURVEY OF EVIDENCE AND ARGUMENT

Applicant's submissions

7. Hall testified that, based on the facts that are common cause between the parties, the Applicant should also have been paid for the 8 hours of overtime worked on the day in question.

Respondents submissions

8. None.

ANALYSIS OF EVIDENCE AND ARGUMENT

9. Section 138(9) of the Labour Relations Act 66 of 1995 as amended (LRA) allows commissioners to make any appropriate arbitration award, including, but not limited, to an award –
 - (a) that gives effect to any collective agreement
 - (b) that gives effect to the provisions and primary objects of the LRA
 - (c) that includes, or is in the form of, a declaratory order.
10. The onus in disputes of this nature rests with the Applicant.
11. The agreement relates to the fact of the dispute in that clause 9 thereof deals with the payment and calculation of overtime.
12. Based on the facts, the Respondent applied the agreement incorrectly when it failed to pay the Applicant.
13. In terms of the relevant provisions of the LRA and in line with my reasoning above, I deem it appropriate to make the following award -

AWARD

14. The Respondent was in breach of Clause 9 of PSCBC Resolution 1 of 2007.
15. The Applicant is entitled to overtime pay and the Respondent is hereby directed to pay the Applicant accordingly.
16. There is no order as to costs.



CLARENCE RANDALL
ARBITRATOR
