



**IN THE PUBLIC SERVICE CO-ORDINATING BARGAINING COUNCIL  
HELD AT CAPE TOWN**

**CASE NO: PSCBC41-22/23**

PSA obo Seerane & 18 Others

**APPLICANTS**

and

Department of Higher Education

**FIRST RESPONDENT**

and

DPSA

**SECOND RESPONDENT**

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**ARBITRATION AWARD**

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DATE OF ARBITRATION	:	30 September 2022 and 16 January 2023
CLOSING ARGUMENTS	:	23 January 2023
DATE OF AWARD	:	03 February 2023
ARBITRATOR	:	I de Vlieger-Seynhaeve

## **1. DETAILS OF HEARING AND REPRESENTATION**

- 1.1 The matter was set down for a virtual arbitration on 30 September 2022 and on 16 January 2023 through Zoom. The applicants were represented by Mr Ntwampe from the PSA. The first respondent was represented by Mr Hugo. The second respondent was represented by Ms Sekgoele.
- 1.2 The proceedings were recorded digitally.

## **2. ISSUE TO BE DECIDED**

- 2.1 The issue is about the interpretation and /or application of Resolution 1 of 2007. The issue to be determined is whether the respondent correctly interpreted and applied section 9 of the Resolution.

## **3. SURVEY OF EVIDENCE & ARGUMENT**

- 3.1 There are 19 applicants of which two gave evidence. It was stated that the evidence is applicable *mutatis mutatis* to the other applicants as the dispute is about the payment of normal time and overtime that the applicants' performed on Sundays and public holidays.

### **Applicants' evidence**

- 3.2 Mr Seerane was the first witness and testified under oath that sections 9.1, 9.6 and 9.7 of the Resolution are applicable to the dispute. He worked overtime between February 2018 to September 2020 and the respondent has been miscalculating his payment all this time. He referred to the clock cards of some of the applicants where they worked for 12 hours but where it is indicated 8 hours. For example, on 25/12/2018 he started working at 18h00 according to the clock card but the first respondent had captured his hours of work as starting from 22h00. They were repeatedly paid less hours than the hours that they worked.
- 3.3 During cross-examination, it was put to him that he filled in the claim form. The witness denied that and stated that his superior does so. They then call him to come and sign.
- 3.4. Ms Shibambo was the second witness and testified under oath that she was not paid in full for hours worked on 17 and 25 December 2018. Although she worked for 12 hours she could only claim for 8 hours. Her supervisor had told her to sign for the 8 hours otherwise the form would not be processed and she would not be paid.

- 3.4. During cross-examination, it was put to her that she worked on 17/12, 18/12, 22/12 and 23/12. She worked 12 hours each day and the total hours she worked that week were 48 hours of which 40 hours were normal time and 8 hours overtime. The witness did not agree as she worked on a Sunday and was not paid double for those hours.

### **First respondent's evidence**

- 3.5 Mr Molefe, the Principal Security Officer, was the first witness and testified under oath that the first hour at the bottom on the clock card is used as a test and should be disregarded. The clock card of Ms Shibambo starts on 17/12/18 and the hours run from 6h10 to 18h05. This is the same for 18/12, 22/12 and 23/12. She was off on 19/12, 20/12 and 21/12. That week she worked 48 hours of which 40 hours ordinary time and 8 hours overtime. He deducted 40 hours from the 48 hours as she is supposed to work 40 hours per week. The 8 hours were paid at 2X the normal rate. The collective agreement states that they should be paid double without the option of getting time off. However, the department is paying double and is giving the applicants time-off as well.
- 3.6 During cross-examination, it was put to him that the first respondent still underpaid Ms Shibambo as she worked 12 hours on Sunday and she was only paid for 8 hours. The witness replied that because the total hours worked amounted to 48 hours, he deducted 40 hours normal time and paid 8 hours overtime.
- 3.7 Mr Fourie, the Assistant-Director, was the second witness and testified under oath that it is correct that the 40 hours need to be deducted from the 48 hours in order to determine the hours of overtime to be paid. The claim for the week 24/12/18 to 28/12/18 was incorrect as the 40 hours were only reached on 28/12/18.
- 3.8 Ms Maluleka, the Deputy Director Collective Bargaining, was the last witness and testified under oath that they have tabled a collective agreement dealing with the shifts and working hours of security officials.
- 3.9 During cross-examination, it was put to her that the collective agreement does not assist with the dispute at hand as it will not work retrospectively.

#### 4. ANALYSIS OF EVIDENCE AND ARGUMENT

- 4.1 I have considered all the evidence and argument, but because the LRA requires brief reasons (s 138(7)), I have only referred to the evidence and argument necessary to substantiate my findings and decision.
- 4.2 **Resolution 1 of 2007** confirms in section 9.1 the rate at which overtime should be paid. Section 9.1 states: *Payment rate for normal overtime: Overtime on a Sunday or public holiday shall be 2X 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.* Section 9.3 states that *the mechanisms and conditions for the wavering of maximum overtime hours shall, where required, be determined in the respective sectoral bargaining councils.* Section 9.6 and 9.7: *Payment rate for an employee who ordinarily works on a Sunday shall be 1,5 X basic salary. The payment rate for an employee who ordinarily works on a public holiday: payment rate shall be 2 X basic salary.*
- 4.3 This is confirmed by *The Determination and Directive on Working Time in the Public Service* regulates working hours in Part III and states that if an employee works an ordinary shift on a Sunday, the employee must be paid 1,5X the basic salary. If an employee ordinarily works on a Public Holiday, the employee must be paid 2x his basic salary. Part IV regulates the overtime pay and includes a specific calculation for overtime worked on a Sunday or Public Holiday as opposed to the calculation for normal overtime. This is all in line with the Basic Conditions of Employment Act (Act 75 of 1997).
- 4.4 It was common cause that the applicants work 40 hours per week and that they work in shifts. Reference was further made to the Department's overtime policy. However, the first respondent stated that this policy was not being implemented and that a new collective agreement is in the making that will address this situation.
- 4.5 The applicants stated in their closing arguments that they do not ordinarily work on a Sunday and therefore they should be paid double for work performed on Sundays. They also need to be paid double for work performed on Public Holidays.
- 4.6 The first respondent stated in his closing arguments that overtime is only paid once the 40 hours have been worked. They further granted time-off.
- 4.7 The parties did not make a distinction between Sunday work, overtime work and overtime on a Sunday, but we need to do so for a proper understanding of the dispute. Overtime means

work in excess of the hours of work per day/week/month that an employee has been contracted to perform. The applicants are contracted to work 40 hours per week so therefore overtime kicks in from the moment they have worked the 40 hours. It is therefore correct for the first respondent to only pay out overtime for every hour worked over and above 40 hours per week. However, in the event that the overtime falls on a Sunday, the payment will depend on whether the employee ordinarily works on a Sunday or not. In the latter case, payment is 2X normal wage; in the former case, it is 1,5 X normal wage.

- 4.8 However, when employees work on a Sunday, they are also entitled to payment of 1,5 X their normal salary (if the employee ordinarily works on a Sunday) or 2X their normal salary (if the employee usually won't work on a Sunday). When employees work on a Public Holiday, they are entitled to 2X their ordinary salary.
- 4.9 This means that even if the 40 hours have not been reached and the overtime payment has not been triggered yet, the employee needs to be paid 2X or 1,5X for every hour worked on a Sunday (1,5X or 2X) or a Public Holiday (2X). The first respondent therefore did not apply the provisions of the Resolution correctly when it did not pay the correct remuneration for work performed on a Sunday or a Public Holiday.
- 4.10 The first respondent further stated that they have granted time-off instead so the employees have benefitted twice. I beg to differ. When reference is made to time-off it means that the employee is paid for being away from work. The applicants are working in shifts and therefore there is time in between shifts. This does not qualify as paid time-off as they are only paid for the hours that they are on duty and are not remunerated for the hours that they are off-duty.
- 4.11 The payments in terms of overtime were done correctly, however, the payments for work performed on a Sunday and a Public Holiday were incorrect. The exact number of these unpaid hours was not submitted.

## **5. AWARD**

- 5.1 The first respondent breached the Resolution when it did not pay the applicants 1,5 X and 2X their salary when they were working ordinary time on a Sunday and Public Holiday (for the period February 2018 to September 2020) in line with section 9 of Resolution 1 of 2007;
- 5.2 The first respondent needs to pay the outstanding monies due to the applicants on or before 31 March 2023;

5.3 I reserve the right to determine the correct amount that needs to be paid, if there is a dispute about this;

5.4 There is no order as to costs.

**Signed at Cape Town on this 3 February 2023**

A handwritten signature in black ink, consisting of a large, stylized 'D' followed by a vertical line and a small flourish at the bottom.

**I De Vlieger-Seynhaeve**  
**PSCBC Panelist**