



## ARBITRATION AWARD

Commissioner: **Michael Howitz**  
Case No.: **PSCBC197-20/21**  
Date of Award: **7 May 2021**

In the ARBITRATION between:

**PSA obo Mr. M. J. Moshupa & 6 Others** (Union / Applicant)

And

**Department of Home Affairs - Pretoria** (Respondent)

**Union/Applicant's representative:** Mr. Abram Moribe – Union Official of PSA.

**Respondent's representative:** Ms P. Mabala – L.R. Manager for DOH and Ms Claudia Sekgoele & Ms Evelyn Sehoana for DPSA

### **Details of hearing and representation**

1. This award follows the arbitration that took place on 29 April 2021 over virtual hearing through Zoom video facility. The applicants, M.J. Moshupa and 6 others were represented by their union official Mr Abram Maribe of PSA. The first respondent, Department of Health - KZN was represented by Mr. P. Mabala who is from the labour relations department. The second respondent, DPSA, was represented by Ms. Claudia Sekgoele & Ms. Evelyn Sehoana. It was agreed that the parties would use the applicant's bundle for this matter.
2. The hearing concerned a dispute relating to PSCBC Resolution 1 of 2007 (Res1/07) Clause 9.1 and 9.2 which is to be arbitrated in terms of the Labour Relations Act 66 of 1995, section 24(2), [24 (5)] - Collective Agreement – interpretation or application.

### **Issues to be decided**

3. The issue to be decided is to interpret the PSCBC Resolution 1 of 2007 (Res1/07) Clauses 9.1, 9.2 and to make a ruling as to whether the respondent had correctly applied the contents of this clause in the matter of the applicant's case and if not, what the remedy should be.

### **Background to the dispute**

4. The applicants contend that they were instructed and thereby authorized to work overtime for a certain period. The applicants did as instructed by their supervisor/team leader and came to work during the times, as per a letter that had been issued to them. The applicants were only paid for certain days and not for the other nine hours that they had worked.
5. It was common cause that the applicants had worked these nine hours that they were claiming for. The respondent had an issue with this situation because it was not accepted that the applicants actually needed to be at work for those nine hours for which they are now claiming for. The rules and expectation was that employees only come to work after hours if there is actually work that needed to be done. The respondent was of the view that in this instance the applicants had come to the workplace even though there was no work for them to do. The respondent was not prepared to pay employees to just come to the workplace and do nothing.

6. The applicants contend that they were following instructions from their team leader that they should report to work and therefore they should be paid for those outstanding hours that they had worked. The respondent does not believe that the applicants have a right to be paid if there was no work to do.

### **Survey of the evidence and argument**

7. The provisions of S138 LRA 66/95, as amended, enjoin me to issue the arbitration award with brief reasons. I intend in this award to focus only on the issues that I perceive to be pertinent to the issues that were disputed by the parties.

### **Applicant's version**

8. The applicants' argument is summarized in the background of this award. They were instructed to work overtime and they did. They believe that the resolution states that they should be paid if they are authorised to work.

### **Respondent's version**

9. The respondent's argument is also summarized in the background of this award. The respondent believes that the applicants were not supposed to work so when they did come to work there was nothing for them to do.

### **Analysis of the evidence and argument**

10. The two parties to this dispute had different aspects to rely on when they argued their case. The applicant party relied on the facts that are in the PSCBC Resolution 1 of 2007 clauses 9.1 and 9.2 as well as the Basic Conditions of Employment Act 75 of 1995. The applicants contend that they were instructed to report to work and they did. The respondent did not disagree that the applicants had worked together with their supervisor. The only fact that was disputed was that the applicants did not really have to come for duty because there was no work to do.
11. On a balance of probability I am persuaded that the applicants had been authorised to work on those days and therefore the respondent should have paid them for the outstanding nine hours. PSCBC Resolution 1 of 2007 Clause 9.1 and 9.2 together with the BCEA states that employees who have worked overtime should be paid. The respondent had therefore not complied with the

resolution and should be ordered to pay the outstanding nine hours of overtime that they had worked.

**Award**

12. I find that the respondent had not correctly interpreted and complied with PSCBC Resolution 1 of 2007 in this instance.
13. The respondent, Department of Home Affairs, is ordered to pay to each of the applicants in this matter the nine hours overtime pay.
14. The respondent is ordered to do payment as per (13) by 30 May 2021.



THE PANELLIST

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**MICHAEL L. HOWITZ**  
**PSCBC: Panellist**