

Victory for PSA members

Department of Correctional Services (DCS)

The PSA assisted a member in arbitration, who alleged an unfair labour practice against the employer for discipline short of dismissal. The arbitration concerned whether the DCS committed an unfair labour practice by disciplining the member with a two-month unpaid suspension for misconduct relating to a confiscated cellphone. The PSA presented a persuasive case by leading the member in exam in chief and cross-examining the witnesses of the DCS. The evidence showed that although the member received the cellphone after it was confiscated from an offender, she did not conduct the search and acted on her supervisor's instruction to store the item when security personnel were unavailable. The responsibility to record the incident, charge the offender, and process the evidence lay with the officer who conducted the search. The Commissioner was persuaded by the PSA and found that the member was not guilty of the charges, as she reasonably followed instructions and was not responsible for the required administrative actions. The disciplinary sanction was therefore unjustified and set aside. As a remedy, the DCS was ordered to refund the two months' deducted salary and pay one additional month's compensation.

Statistics South Africa

- The PSA successfully represented a member in an arbitration. The arbitration concerned whether Statistics South Africa committed an unfair labour practice by imposing a two-month unpaid suspension on the member for allegedly bringing a firearm into the workplace and endangering colleagues. The employer relied mainly on a complainant's testimony but failed to provide corroborating evidence. The security evidence indicated that strict access controls and metal detectors made it highly unlikely that a firearm could be brought into the building undetected, and key allegations (including an alleged admission) were not put to the applicant during cross-examination. The PSA presented a compelling case and the Commissioner found that the Department failed to prove the misconduct on a balance of probabilities, and that the applicant was not guilty. The suspension was therefore set aside as unfair. As relief, the Commissioner ordered the employer to refund two months' salary and pay one month's compensation.
- In another matter, the PSA represented a member in an arbitration concerning whether the Department committed an unfair labour practice by issuing a member with a written warning for failing to attend a scheduled arbitration without valid reason. The PSA presented a compelling case and the Commissioner found that the member was guilty of the misconduct (failed to attend after not diarising the matter). However, the sanction imposed was inconsistent when compared to a colleague who

committed similar misconduct but was not similarly sanctioned. Although the written warning had already expired, the inconsistency rendered the disciplinary action unfair. As a result, the employer was ordered by the Commissioner to pay two months' compensation.

Department of Military Veterans

The PSA assisted members who were in an arbitration concerning whether the Department committed an unfair labour practice by refusing to pay the two members for unused annual leave. Both members had applied for leave, but their applications were not approved owing to operational requirements, and their leave was not rescheduled. When they later requested payment for the unused leave, the employer refused and instructed them to take leave instead despite the leave days having already expired (forfeited). The PSA persuaded the Commissioner who found that in terms of the applicable DPSA leave directive, where leave is denied and not rescheduled, employees are entitled to payment for unused leave upon request. The employer's refusal was therefore unfair. The Department was ordered to pay the applicants for their unused leave days.

Department of Public Works and Infrastructure Development

This ruling addressed two preliminary issues in an arbitration involving members against the Department whether the PSA had *locus standi* (legal standing) to represent the members, and whether a cost order should be granted owing to a postponement. The Department argued that the PSA did not comply with statutory requirements and therefore lacked standing. The Commissioner, however, found no evidence that the PSA had been deregistered and therefore concluded that it retained the right to represent its members. Regarding costs, the Commissioner held that labour matters required a fairness-based approach and that awarding costs could discourage access to dispute resolution. As there was no sufficient basis, no cost order was made. Accordingly, both preliminary points were dismissed, and the matter was allowed to proceed to arbitration.

The members expressed gratitude for the PSA's support and successful resolution to their matters. The PSA is committed to providing strong representation in all matters.

Employees who want to join the PSA can visit the PSA's website or contact PSA Provincial Offices.

Reuben Maleka
GENERAL MANAGER