

SAFETY AND SECURITY SECTORAL BARGAINING COUNCIL

Case Number PSSS 221

In the matter between

M RAATS

("the Applicant")

and

SOUTH AFRICAN POLICE SERVICE

("the Respondent")

ARBITRATION AWARD

DETAILS OF HEARING AND REPRESENTATION

This matter was set down for arbitration in terms of the Labour Relations Act, 1996 (the Act) on 10 April 2001 at the Mount Road Police Station, Port Elizabeth. The applicant is Sgt M Raats and the respondent is the South African Police Service. The applicant was represented by Mr. L Naude, an official of South African Police Union. The respondent was represented by Adv A de Witt.

At the start of the hearing Mr. De Witt raised a preliminary point regarding jurisdiction. After hearing argument from both parties, I indicated that I would hold over my decision, but, in order to save time and costs, I would nonetheless proceed with the hearing.

At that stage the parties indicated that there might be a prospect of a successful settlement. I therefore suspended the arbitration hearing and proceeded to conciliate the matter. An agreement was reached in principle, subject to Head Office approval.

The outcome of that hearing was as follows:

1. The matter was postponed sine die in order to seek settlement of the issue.
2. The parties had to inform me of the outcome of the Head Office decision by facsimile, signed by both parties, on or before 4 May 2001.
3. If Head Office did not approve the agreement, then the parties could submit to me further written submissions regarding the preliminary point by 11 May 2001. Copies of any submissions made had to be sent to the other party, who could respond by 18 May 2001.

I happened to conciliate another matter where Mr De Witt and Mr Naude were present. They informed me orally that Head Office did not approve the proposed settlement and that I would have to arbitrate the issue. The fact that I was informed orally is not material, for I was able to ascertain that both parties were of the same mind as to the outcome of the process.

The deadline for submissions has now passed. I received none and I must now decide the preliminary point. At the outset I must point out that I do not have as much information before me as I would have liked. I can therefore only decide the matter on the issues raised at the

hearing, with scant documentation to support the arguments. I also do not have any evidence upon which substantive issues can be decided. My conclusions are to be based solely upon the referral document, background facts which are common cause and the parties' arguments.

Mr. De Witt argued that the Bargaining Council had no jurisdiction because the issue does not fall within the categories of unfair labour practice which item 7 (2) of Schedule 7 envisages. It was an issue concerning the applicant's salary, which did not fall within the ambit of that item, and so I do not have jurisdiction to hear the matter.

Mr Naude argued that this was not a salary issue, but one of "translation"; in other words, the translation from a civilian doing clerical work to being a member of the Police Service. This process was governed by the PAS, which is a collective agreement. He also argued that the PAS regulates persons' career paths and that this case in fact involved a career move. The applicant was no longer restricted to salary level 6, but because of the change, she could now move to salary level 15. Accordingly, he argued, the matter fell within the ambit of item 7 (2) (b).

The document referring the dispute summarises the facts as follows:

"On 98/06/01 the member was appointed in SAPS. She did not receive the higher salary offer which was made before 1 June but a lower second offer which was made after the first of June."

The desired outcome is stated as follows:

"That the first salary offer be recognized as the correct offer on which her salary must be based."

In my view, this dispute is a contractual one involving the correct salary level at which the applicant was to have been appointed. While it is true that she moved from a civilian post to becoming a permanent member of the Service, and that it involved a career move from which she benefited, this does not mean that the failure to pay her at a salary originally agreed upon (as alleged) can be classed as conduct relating to promotion, demotion or training.

Having heard the background issues during the conciliation phase, I have some sympathy for the applicant's situation. Nonetheless, I must find that the facts of her case do not fall within the ambit of item 2 of Schedule 7 and accordingly, that I do not have jurisdiction to hear the matter.

I therefore dismiss the matter for lack of jurisdiction.



J R MIDGLEY

21 May 2001