

SAFETY & SECURITY SECTORAL BARGAINING COUNCIL

SSSBC

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POINT IN LIMINE **RULING**

Arbitrator: Adv P H Kirstein
Case Number: PSSS 936
Date of award: March 2002

In the matter between:

SOUTH AFRICAN POLICE UNION

Applicant

And

SOUTH AFRICAN POLICE SERVICE

Respondent

Applicant's representative:

FM DU TOIT

Applicant's address:

227 LYNWOOD ROAD
BROOKLYN
PRETORIA

Tel: (012) 362 4251/5

Fax: (012) 362 4256

Respondent's representative:

DIRECTOR B ODENDAAL
SAPS LEGAL DEPARTMENT
SOUTHERN LIFE BUILDING
233 PRETORIUS STREET
PRETORIA
TEL: (012) 339 1769
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DETAILS OF HEARING AND REPRESENTATION:

The conciliation/arbitration was set down on 25 February 2002 at the Respondent's Legal Department in Pretoria. The Applicant was represented by Ms FM du Toit, a legal advisor in the employment of the Applicant. The Respondent was represented by Director D Odendaal, a legal advisor in the employment of the Respondent. The parties indicated there is no possibility that the matter can be settled and requested to proceed with the points *in limine* raised by the Respondent.

ISSUE IN DISPUTE:

The Applicant contends that the National Commissioner's decision dated the July 1998, whereby the promotion dates of members who qualified between the period 1 August 1996 to 1 April 1998 has been shifted, constitutes a residual unfair labour practice relating to promotion.

BACKGROUND AND EVIDENCE:

Both parties submitted heads of argument. It was agreed that if oral evidence is needed to clarify an issue in dispute, the parties will be given the opportunity to call such witnesses.

The Respondent raised the point *in limine* that the SSSBC does not have jurisdiction to entertain the dispute. The basis of the point *in limine* is:

- > The dispute is based on the National Commissioner's letter dated the 24th July 1998. The dispute was declared on 15 October 2001.

- > The SSSBC received jurisdiction to arbitrate disputes on 17 August 1999. It is the Respondent's contention that the dispute should have been dealt with in terms of the South African Police Service Act 68 of 1995.

Alternatively

- > The Applicant (and/or its members) are barred from obtaining relief due to the substantial delay in referring the dispute. It is the Respondent's contention that the Applicant had sufficient opportunity to raise the dispute and specifically referred to the negotiations that led to the signing of Agreements 8/1999 and 11/2001.

It is the Applicant's contention having regard to Agreement 11/2001, that the dispute was declared within the prescribed period. It was further indicated that the Applicant at no stage waived the right to declare a dispute regarding the deferment of the promotion dates of members who qualified for promotion between 1 August 1996 until 1 April 1998. It is further contended by the Applicant that a new cause of action arose on the basis of section 9 (1) and Section 23 (1) of the Constitution of the Republic of South Africa.

ANALYSIS:

The Respondent's representative indicated that the dispute was referred by the Applicant in its own name and not on behalf of members. It was submitted that such referral renders the Agreements 9/1999 and 11/2001 irrelevant to the dispute. It was, however, conceded and correctly so, that the referral is a matter of semantics and that the Applicant indeed indicated that the matter involves thousands of SAPS members. It is therefore accepted that the Applicant acted on behalf of its members in referring the dispute. It has also been correctly indicated that no matter what route was followed by

the Applicant, it would have resulted in an arbitration process. It must also be indicated that the Respondent informed the Applicant as per letter dated 15 October 2001, that the dispute must be handled at the SSSBC.

In the arbitration award under case number PSSS 537 (RM Clarke v SAPS) Arbitrator F Brandt referred to a number of cases regarding to the date when a dispute arose. It is generally accepted that there must at least be a positive rejection by an employer of a demand by an employee before the dispute arose. It seems to be common cause that prior to 2 October 2001. The Applicant did not raise the issue of deferment of the promotion dates regarding the relevant group. The letter dated 15 October 2001 is an indication that the Respondent accepted that a dispute arose At the conciliation meeting on 13 December 2001. The Respondent confirmed that the demand of the Applicant will not be met. It must therefore be accepted that the dispute arose. at the earliest on 15 October 2001. The dispute therefore, was correctly referred in terms of the SSSBC constitution. In such circumstances it must be accepted that the SSSBC has jurisdiction to arbitrate the dispute.

The alternative point *in limine* raised by the Respondent, i.e. that the Applicant and/or it's members are barred from obtaining relief due to the substantial delay in referring the dispute is not a point that can be decided on a preliminary basis. Once the arbitration has been concluded and it has been decided that a residual unfair labour practice was committed an arbitrator must grant a remedy on "*reasonable terms*". Once the parties had the opportunity to present their case on the merits it must decided on the basis of equity having regard inter alia to a period of delay whether a remedy should be granted.

The basis of the dispute is the letter dated 24 July 1998. It should to be regarded as the cause of action although not the date of dispute. The contention that a new cause of action arose on or about 20 August 2001 is not accepted. It is debatable whether the Respondent made itself guilty of inconsistency in concluding Agreement 11/2001

where the Applicant was party to such agreement. It has correctly been pointed out by the Respondent's representative that the constitutional grounds referred to by the Applicant's representative as the basis for the new cause of action, existed at the time when the original cause of action, i.e. the letter dated 24 July 1998, became known.

AWARD:

1. The point *in limine* is dismissed. The SSSBC does have jurisdiction to arbitrate the dispute.

2. No order as to costs.

SIGNED AT PRETORIA THIS DAY OF 12th DAY OF MARCH 2002.


P H KIRSTEIN
Arbitrator.