



ARBITRATION AWARD

Panellist/s: Saleem Seedat
Case No.: PSSS262-03/04
Date of Award: 4-Jun-2004

IN THE SAFETY AND SECURITY SECTORAL BARGAINING COUNCIL HELD
AT PRETORIA

CASE NO: PSSS262-03/04

In the con-arb hearing between:

SENIOR SUPERINTENDENT H O HILL

Applicant

and

SOUTH AFRICAN POLICE SERVICE

Respondent

ARBITRATION AWARD

1. THE PARTIES

The Applicant, Senior Superintendent H O Hill, was represented at the con-arb hearing by a union official, Mr Badenhorst. The Respondent, South African Police Service, was represented by Senior Superintendent van Rensburg.

N.B. The referral to the Bargaining Council in the present matter was two days late. The Respondent does not oppose the Applicant's condonation application and condonation is accordingly granted.²

2. THE ISSUES

The sole issue to be determined is whether the Applicant is entitled to an acting allowance for having acted as the Head: Internal Audit (National Evaluation Service).

3. COMMON CAUSE FACTS

The parties were ad idem that:

3.1 agreement number 2/2002 concerning acting allowances was properly concluded in the Safety and Security Sectoral Bargaining Council on or about 1 March 2002 (vide "A 1" and "A2");

3.2 the Applicant was appointed as the Acting Head: Internal Audit (hereinafter referred to as "the acting position") on or about 26 August 2002 (vide "A9");

3.3 an affidavit by Divisional Commissioner Alberts (vide "B26" to "B29") contends, inter alia, that:

3.3.1 the Applicant was appointed to the acting position on a temporary basis;

3.3.2 on 2 September 2002 Director Liebenberg was appointed, in writing, to the acting position;

3.3.3 the Applicant's appointment to the acting position aforementioned was verbally rescinded upon the appointment of Director Liebenberg;

3.3.4 Director Liebenberg remained in the acting position from 2 September 2002 until his permanent appointment during June 2003.

N.B. The Applicant did not challenge the correctness of the contents of the abovementioned annexure.

4. ANALYSIS OF EVIDENCE

The "agreement on acting allowances", agreement number 2/2002 (hereinafter referred to as "the collective agreement") is an agreement which was concluded in the Safety and Security Sectoral Bargaining Council. The parties to the collective agreement were the South African Police Union, Police and the Prisons Civil Rights Union and the Respondent. Section 213 of the Labour Relations Act, 1995 ("the Act") defines a collective agreement as :

"A written agreement concerning terms and conditions of employment or any other matter of mutual interest concluded by one or more registered trade unions, on the one hand and, on the other hand -

(a) one or more employers;

(b) one or more registered employers' organisations; or

(c) one or more employers and one or more registered employers' organisations. "

The collective agreement in casu is thus clearly a collective agreement and the dispute concerning its interpretation or application may be referred to the Bargaining Council for arbitration in terms of the provisions of section 24(5) of the Act. In addition, paragraph 13 of the collective agreement provides that if there is a dispute concerning "the interpretation or application of this agreement, any party may refer the matter to the Council for resolution in terms of the dispute resolution procedure of the Council"

Paragraph 1 of the collective agreement states:

An employee appointed in writing by any assistant commissioner at provincial or national level or higher rank or any area commissioner (here-after the appointing authority) shall be paid an acting allowance to act in a vacant post provided that:

1. 1 the post is a vacant and funded post; and

1.2 the acting period is longer than six weeks."

In terms of paragraph 4 of the collective agreement, an employee is entitled to be compensated if the acting period is "uninterrupted for longer than six weeks",

It is plain from a reading of the collective agreement that an entitlement, to an acting allowance is conditional on, inter alia, the employee concerned filling the acting post for an uninterrupted period exceeding six weeks. Having regard to the common cause facts, it is clear that the Applicant only filled the acting position for 8 days. It follows that the condition aforementioned has not been satisfied and the Applicant is, accordingly, not entitled to an acting allowance.

5. AWARD

I, therefore, resolve the dispute by finding that the collective agreement in casu (agreement number 2/2002) does not give the Applicant any right to be paid an acting allowance for having filled the position of Acting Head: Internal Audit from 26 August 2002 to 2 September 2002.

TIMOTHY BOYCED
SSSBC Arbitrator
Chambers
SANDTON
26 May 2004