



OUTCOME REPORT

Panellist/s: Paul Kirstein
Case No.: PSSS444-05/06
Date of Report: 15 November 2005

SAFETY & SECURITY SECTORAL BARGAINING COUNCIL (HELD AT PRETORIA)

CASE NUMBER: PSSS444-05/06

In the matter between:

T GREEFF

Applicant

and

SAPS

Respondent

JURISDICTIONAL RULING

1.

The applicant referred an unfair labour practice dispute and a unilateral change of terms and conditions of employment dispute to the SSSBC. In paragraph 5.2 of the dispute referral document dated 26 September 2005 the applicant summarises the facts of the dispute as follows:

"I am suffering from Major Depression and Severe Post Traumatic Stress Disorder as from 22 July 2003 and am under Treatment with Dr. Uys ever since.

I have been with the exception of some 2½ months of work, and for the last six months not receiving any salary.

I through my representatives had endless communications with the employer both verbal, telephonic and in writing.

Despite persistent communications between me and my labour Advisor and the employer they still refuse to accommodate my application for medical boarding, knowing that my illness is related to an incident at work and is categorised as an injury on duty.

I applied to be medically boarded, and to date nothing is forthcoming.

I registered a grievance and the employer did not even bother to address my grievance, instead they now want to know from me what progress was made."

In paragraph 6 of the dispute referral document the applicant requires the following outcome:

"I require to be medically boarded from service in line with the relevant prescripts of the employer relating to ill health."

"Unfair labour practices" are defined in section 186(2) of the Labour Relations Act. The definition is not an open texture of unfair labour practices. The statutory provision expressly describes the ambit of an unfair labour practice. To be successful in an action based on an alleged unfair labour practice, an employee must prove that the conduct or practice complained of falls within the terms of one of the forms expressly listed in the definition. Disputes falling outside the ambit of the definition of an unfair labour practice provided in section 186(2) of the LRA cannot be conciliated and/or arbitrated by the SSSBC.

3.

The dispute referred by the applicant relates to the respondent's failure to entertain an application to be medically boarded. The SSSBC does not have jurisdiction to entertain such a dispute. If the applicant is not satisfied with the employer's conduct in relation to the application to be medically boarded the applicant should approach the High Court or the Labour Court for a declaratory order.

4.

The main dispute of the applicant seems to be the failure of the respondent to entertain the application to be medically boarded. The applicant however also referred a unilateral change to terms and conditions of employment dispute. In the dispute referral document there is no clear indication what the unilateral change of employment conditions relates to. If the unilateral change of employment conditions relates to the respondent's failure to pay the applicant's salary the SSSBC lacks jurisdiction to entertain such a dispute. The

failure to pay remuneration cannot be regarded as a unilateral change of working conditions. Such conduct constitutes a breach of contract if there is no valid reason for such conduct. The applicant should approach a Civil Court or the Labour Court to compel the respondent to pay the outstanding remuneration. The failure to pay remuneration does not fall within the ambit of "benefit" in terms of the definition of an unfair labour practice.

5.

There is no indication that the applicant exercised the internal remedies and he failed to supply the SSSBC with a step 4 certificate. The applicant indicates that he has suffered from major depression and severe post traumatic stress disorder since July 2003. There is no indication why the applicant alleges that the dispute only arose on 22 September 2005. Even if the SSSBC had jurisdiction to entertain the applicant's dispute the abovementioned issues still need to be addressed before the SSSBC can assume jurisdiction.

6.

RULING

1. The SSSBC does not have jurisdiction to entertain the applicant's dispute.