RULING ON: - POINT IN LEMINE

Case No. PSSS939

In the matter between: -

A. Palmer

Applicant

And

South African Police Services

Respondent

DETAILS OF HEARINGS AND REPRESENTATION

[1] This case about promotion was scheduled for 25 June 2002 at the Mount Road Police Station in Port Elizabeth/Advocate De Witt represented the respondent. The applicant was not in attendance neither was his representative. However, upon inquiry it was established that Mr. Tombe the applicant's representative had informed the SSSBC that he would not be available to attend to the case on this date, as he would be in Johannesburg. The case could therefore not proceed and Advocate De Witt submitted heads of argument raising a poinit in limine. The case was accordingly postponed pending my ruling on the point in limine.

BACKGROUND ON THE ISSUE

The applicant alleges he was due for promotion on 24 August 1995. When he was not promoted, he registered a grievance with the Council relating to his promotion on 21 November 2000.

SURVEY AND ANALYSIS OF SUBMISSIONS'

[3] On 24 June 2002 Adv. De Witt for the respondent submitted a statement in which he raised a point in limine arguing that the Council has no jurisdiction to deal with the applicant's case as it was referred outside of its jurisdiction.

He stated that die applicant alleged that he was due for promotion on 24 August 1995, in this regard his grievance emanated before 27 September 1995 which was the date the South African Police Service Grievance Regulations were promulgated. Furthermore, an agreement of the Safety and Security Sectoral Bargaining Council entered into between the Unions and the Employer

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stipulates that any grievance which has its origin before 27 September 1995, had to be registered on or before 10 August 1999, He submitted that if a grievance was not registered on or before 10 August 1999 it could not be dealt with by the SSSBC The applicant's grievance was registered on 21 November 2000 which was after the period allocated in terms of the agreement in this respect it was outside of jurisdiction of the Bargaining Council

- [4] The applicant's representative Mr. Tombe did not contest the points raised however he referred to the status of the previous hearing where the matter was briefly raised -and postponed pending the availability of the witnesses.
- [5] From the applicant's response, I get the impression that the point in. limine is not contested and that the issues raised in it are common cause between the parties. I agree that on 11 February 2002 the parties did between themselves agree not to raise issues of a jurisdictional nature. I have however to point out that at the time, the matter was not dealt with such detail as it has now been by specific reference to the SAPS G Regulations and the SSSBC Agreement.
- [6] Having considered all the above it is my view that parties have to respect agreements reached between them and must be held to those agreements. It is inappropriate for parties to agree between themselves to deviate from rules of procedure, set down guidelines or any form of agreements reached through a process of negotiation. If this were to be allowed it would undermine the binding nature of agreements reached in good faith.

Parties to agreements are expected to be custodians of those agreements and jealously guard against breach deliberate or otherwise of any of the binding principles contained in their agreement. Consent of parties to deviations from agreements, will only serve to promote opportunistic tendencies and set bad precedents that parties will have difficulty to remedy in the future. The overriding principle to attempts to deviate from agreements whether by mutual consent is their binding nature. Only if an agreement provides for such deviation can parties deviate from its agreed principles or clauses.

RULING

The point in limine is upheld. SSSBC has no jurisdiction to deal with this case.

EDWIN A. MAEPA

ARBITRATOR

DATE: 29 July 2002