

IN THE SAFETY & SECURITY SECTORAL BARGAINING COUNCIL

CASE NO: PSSS 972

In the matter between:

BOHLOLO

Applicant

and

SOUTH AFRICAN POLICE SERVICE

Respondent

RULING

1. This matter was set down as con-arb for 25 February 2002.
2. At the start of conciliation, the respondent's representative raised two points in *limine viz*
 - The dispute declared does not fall within the ambit of residual unfair labour practice (i.e. benefits) as defined in schedule 7 of the *Labour Relations Act 66 of 1995 ("the Act")*.
 - The Department of Public Works, and not the South African Police Service (SAPS) should be the respondent:

BACKGROUND

3. The applicant was appointed in the post of Deputy Provincial Commissioner, Gauteng and transferred to Gauteng at state cost with effect from 01 February 2001.

4. At the time of his transfer, there was no official housing available to obtain a house for him and as a result the respondent tried to obtain a house for him through a lease agreement. The applicant was in the meantime accommodated in a hotel at a state expense.
5. When a house was found, the owner of the house, due to his knowledge of bureaucratic red tape of the state departments refused to enter into a lease agreement with the state. Instead, the lease agreement was entered into between the owner and the applicant.
6. The policy of the state when entering into a lease agreement is that the Department of Public Works enters into the lease agreement on behalf of any state department with the lessor.
7. It is the applicant's contention that he entered into a lease agreement under a bona fide belief that it would be ratified by the Department of Public Works, and this created a legitimate expectation.

THE DISPUTE

8. The applicant had to pay R1189, 30 as a deposit before he could be allowed to take occupation of the house.
9. The applicant states that any reasonable person would have done what he did i.e. pay the deposit and claims a refund.
10. in the applicant's view,
"there is no legal basis why I should not be reimbursed; the so called unauthorised conduct can be ratified and on the basis of the doctrine of

legitimate expectation.. .At is my submission ...that the case of the respondent be dismiss (ed) ".

"A BENEFIT"

11. In my view, the applicant's claim does not fall within the definition of unfair labour practice for the following reasons: -

- The applicant's case centres around the breach of promise by the state organs to refund him. This is surely a breach of contract.
- In terms of clause 17 of the lease agreement, the lessee is liable for the costs of the lease.
- To the extent that there was another agreement between the applicant and the respondent that he would be reimbursed that would fall under a civil action.

12. Hi my view, the claim by the applicant was an attempt to create a new right. Creation of a new right results in a mutual interest dispute. Since one employee cannot go on strike, the applicant can find recourse in the civil court e.g. small claims court or the magistrate court.

13. It follows that the ruling on the second point in *limine* has become academic.

ORDER

14. In the premises I make the following order:

- The SSSBC lacks jurisdiction to entertain the dispute.
- It is up to the applicant to pursue the civil action route if that is still his wish.

DATED AND SIGNED IN **JOHANNESBURG** ON 15 APRIL 2002

Per: RUSSELL MOLETSANE (PANELIST)