

07 September 2016

Enquiries : Sello Makinta
Tel : 012 663 7446
Fax : 012 643 1601
Email : sellom@elrc.org.za

To : SAOU obo Marais & 2 Others
Email : ankiab@saou.co.za

To : Department of Education-FS
Email : j.k.moshotle@gmail.com



elrc

EDUCATION LABOUR
RELATIONS COUNCIL

Dear Sir/ Madam

RE: Award

**CASE NAME: SAOU obo Marais & 2 Others vs Department
of Education-FS**

CASE NUMBER: PSES 801-15/16FS

I transmit herewith a copy of the Award for the above-mentioned matter for your attention and information.

The matter will now be CLOSED by the Council.

We thank you for your co-operation in this regard.

Kind Regards

GENERAL SECRETARY
Education Labour Relations Council

**OFFICE OF THE GENERAL
SECRETARY**

*All correspondence should be
addressed to:*

The General Secretary
ELRC
Private Bag X126
Centurion
0046
Gauteng
RSA

Enquiries:

Foca N.O

Tel: 012 663 7446

Fax: 012 643 1601

E-mail: cindyfoca@elrc.co.za

Website: www.elrc.org.za

Physical Address:

ELRC Building
261 West Avenue
Centurion
0046
Gauteng
RSA



**IN THE EDUCATION LABOUR RELATIONS COUNCIL
HELD IN THE FREE STATE**

Case No PSES801-15/16FS

In the matter between

SAOU obo MARAIS & 2 OTHERS

Applicants

And

DEPARTMENT OF EDUCATION – FREE STATE

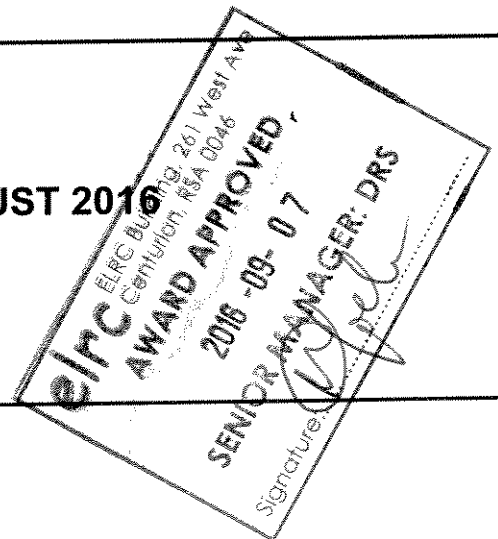
Respondent

ARBITRATOR: M NAIDOO

HEARD: 8 APRIL 2016 AND 15 AUGUST 2016

DELIVERED: 02 SEPTEMBER 2016

AWARD



Details of hearing and representation

[1] The arbitration proceedings took place on 8 April 2016 and 15 August 2016 at the offices of the respondent, Katleho Building, 106 Selborne Avenue, Bloemfontein. The proceedings of 8 April 2016 were mechanically recorded. The proceedings of 15 August 2016 were not mechanically recorded. The first applicant, Mr A Marais with persal number 13646699; the second applicant, Ms A P Marais with persal number 13646699 and the third applicant, Ms K M Tubane with persal number 13646699, were absent during the proceedings on 8 April 2016.

[2] The first and second applicants were present during the proceedings on 15 August 2016. The third applicant was absent during the proceedings on 15 August 2016. The applicants' representative, Ms A Bester, an official, assistant provincial secretary of the South African Teachers Union (SAOU), was present during the proceedings on 8 April 2016 and 15 August 2016.

[3] The respondent, the Free State Department of Education, was present during the proceedings on 8 April 2016 and 15 August 2016 and was represented by Mr P M Tladi, its acting deputy director of labour relations. The proceedings were conducted in English. No interpretation services were used.

Issues to be decided

[4] The issues to be decided in this matter are whether the applicants had qualified for special leave in terms of Section 15.3, read with section 15.5, of Chapter J of the Personnel Administrative Measures of the Employment of Educators Act of 1998 as amended ("PAM") and, if so, what appropriate remedy to award.

Background to the issues in dispute

[5] The first, second and third applicants are educators in the employ of the respondent and are stationed at Unitas Secondary School, Riebeeckstad Primary School and Malotle Primary School respectively. The first and second applicants applied for special leave in terms of section 15.3, read with section 15.5, of Chapter J of PAM for an "*urgent private matter*". The third applicant similarly applied for special leave for "*personal and professional development*". The first and second applicants took leave to attend their son's wedding while the third applicant took leave to attend her university graduation. I shall refer to the *special leave* taken by the applicants as "the leave".

[6] The respondent rejected the applicants' leave applications. They referred the dispute to the ELRC. The dispute was conciliated but remained unresolved. On 7 April 2016 the parties concluded a pre-arbitration minute. The ELRC set the dispute down to be arbitrated on 8 April 2016. During the proceedings on 8 April 2016 the parties' representatives submitted that there was no dispute on the relevant facts in the matter and that they intended settling the dispute. I issued a ruling that the parties must file closing arguments in the matter by 25 April 2016 in the event that the dispute is not settled. The parties failed to settle the dispute.

[7] On 6 May 2016 Ms Bester filed closing arguments with the ELRC. Mr Tladi failed to submit any closing arguments. Ms Bester attached several documents to her closing arguments which were new facts that were not canvassed during the proceedings on 8 April 2016. She depended on these new facts to substantiate her arguments. I directed the ELRC to reschedule the dispute for arbitration. The ELRC set the matter down for arbitration on 15 August 2016.

[8] During the proceedings on 15 August 2016 the parties agreed, in principle, to settle the matter. I assisted in drafting the settlement proposal in respect of which with both parties' representatives participated. The content of the settlement proposal was by consensus. The applicants signed the settlement proposal. Mr Tladi stated that he agrees with the settlement proposal, but needs the consent of the respondent's Superintendent General: Education ("the SG: E").

[9] On 31 August 2016 Mr Tladi faxed me a copy of a report in which, he also explained to me by telephone that, the SG: E had, on 25 August 2016, provided the necessary consent for the proposal to be accepted. Neither the SG: E, nor Mr Tladi, signed the settlement offer in acceptance. Mr Tladi asserted that I should issue an award to give effect to the submissions made by both parties' representatives in the matter.

Summary of the evidence and arguments

[10] The following was, amongst other things, set out in the proposal drafted on 15 of April 2016:

1. The first and second applicants had applied for the leave which they took on 18 and 21 September 2015, while the third applicant had applied for the leave which she took on 5 February 2014.
2. The respondent was invited to approve the leave applications and to back-pay the applicants their respective deductions for having initially rejected them.
3. The back-payments proposed were:
 - 3.1 First applicant – R6 780.01;
 - 3.2 Second applicant – R3 619.35; and,
 - 3.3 Third applicant – R780.88.

Analysis of evidence and arguments

[11] Section 15.3, read with section 15.5 of Chapter J of PAM states:

- 15.3 "An institution-based educator may, during a scheduled working period, be granted special leave to attend to: an urgent private matter, the nature of which is such that it warrants such an educator's absence from work"
- 15.5 "The number of leave days taken in terms of sub-paragraphs 15.1 to 15.3 shall, in respect of an institution-based educator, not exceed 12 working days in an annual leave cycle"

[12] There are no factual or legal disputes on the material issues relating to this matter. I find no reason why I should not make a finding that the applicants had indeed qualified for special leave as contemplated in section 15.3, read with section 15.5, of Chapter J of PAM.

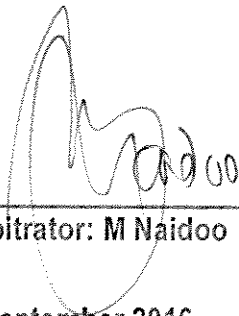
AWARD

[13] The respondent, the Free State Department of Education, is liable to the first applicant, Mr A Marais, in the amount of R6 780.01, for special leave which he applied for and took on 18 and 21 September 2015 in terms of section 15.3, read with section 15.5, of Chapter J of the Personnel Administrative Measures of the Employment of Educators Act of 1998 as amended ("PAM").

[14] The respondent is liable to the second applicant, Ms A P Marais, in the amount of R3 619.35, for special leave which she applied for and took on 18 and 21 September 2015 in terms of section 15.3, read with section 15.5, of Chapter J of PAM.

[15] The respondent is liable to the third applicant, Ms K M Tubane, in the amount of R780.88, for special leave which she applied for and took on 5 February 2014 in terms of section 15.3, read with section 15.5, of Chapter J of PAM.

[16] The respondent is ordered to make these payments to the applicants by 20 September 2016.



Arbitrator: M Naidoo

2 September 2016



CERTIFICATE OF PERUSAL



Name of Panelist who submitted award:

Case Number: PSES 801 - 15 | 16 | FS

To be completed by arbitrator		To be completed by Case Manager	
Date arbitration completed		CMA's Name	
Date heads of argument filed (if any)		Date award due	
Date extension granted to (if any)		Date award submitted	
14 days expires on		Award submitted within 14 days	
Date award filed with CCMA		How many days late	
Award lodged with 14 days		Date award sent for perusal	

Tick appropriate box hereunder

Enforceability of award: To be checked by arbitrator and CSC (delegate)		
Checked by Arbitrator	Requirements for checking & vetting by both the arbitrating commissioner & person approving the award	Confirmed by GS
	<ul style="list-style-type: none"> The award has the ELRC cover sheet and is signed and dated and a certificate of outcome is on file. 	✓
	<ul style="list-style-type: none"> Parties are correctly/fully cited in the final order and on the cover sheet. (First names & surname(s), T/A, CC or (PTY) LTD, addresses and contact details) 	✓
	<ul style="list-style-type: none"> If reinstatement, the retrospective date of reinstatement is clear. Arrear wages is dealt with and is correctly calculated from date of reinstatement to date of last arbitration hearing. Date on which the applicant must return to work is specified. 	✓
	<ul style="list-style-type: none"> Compensation, wages, leave pay, etc is correctly calculated in terms of LRA and/or BCEA and one TOTAL amount due per applicant is reflected. The date by which the employer must make payment is specified. The award deals with non-attendance of parties, if applicable. 	✓
	<ul style="list-style-type: none"> In default awards, the commissioner verified the employer's address and notice was sent to the employer's correct address 	✓

Notes: This award may be sent out without any changes A few editorial suggestions - with track changes

Process award			Correct errors & Process			Correct & return for perusal		
G	S	P	G	S	P	G	S	P
✓						✓		

PAT J A

for General Secretary

Signature

Date

2/9/2016