
REPORT NO. 15 OF 2009/10

REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF THE MISCALCULATION OF LEAVE DAYS OF EMPLOYEES IN THE DEPARTMENT OF WATER AND ENVIRONMENTAL AFFAIRS
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(i) The Office of the Public Protector investigated allegations pertaining to the miscalculation of leave days and payment of leave gratuity to employees in the Department of Water and Environmental Affairs, formerly the Department of Water Affairs and Forestry (Department).

(ii) The employees were not satisfied with the amount of the money paid out.

(iii) It was found that:

(a) The employees' leave days were incorrectly calculated;

(b) The miscalculation resulted in discrepancies of underpayments and overpayments to the affected employees, as a consequence the Department and the affected employees suffered prejudice; and

(c) The current system of verification of calculations and the monitoring of the capturing of data from the leave forms to the leave record cards is ineffective.

(iv) It is recommended that the Department should:

(a) Conduct an audit of leave days of all employees transferred to various municipalities in the Eastern Cape Province;

(b) Recover and/or pay any monies overpaid and/or underpaid to the Complainants as a result of the miscalculation of their leave gratuity; and
(c) Improve the existing leave days data capturing system.
REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF THE MISCALCULATION OF LEAVE DAYS OF EMPLOYEES IN THE DEPARTMENT OF WATER AND ENVIRONMENTAL AFFAIRS

1. INTRODUCTION

1.1 This report is submitted to the Chief Director: Eastern Cape Department of Water and Environmental Affairs in terms of section 162(1)(b) of the Constitution of the Republic of South Africa, 1996 (Constitution) and Section 8(1) of the Public Protector Act, 1994.

1.2 It relates to an investigation by the Office of Public Protector (OPP) into allegations of the miscalculation of leave days and payment of gratuity by the Department of Water and Environmental Affairs (Department).

2. THE COMPLAINT

2.1 Mr T W Ndibaza and 27 others (the Complainants) were employed by the Department. They approached the OPP on 6 July 2007 alleging that, on their transfer by the Department to the Buffalo City Municipality (Municipality) their leave days were miscalculated and this affected their gratuity.

2.2 The transfer was allegedly effected in terms of the agreement between the Department and the Municipality, and in accordance with the Labour Relations Act, 1995. It included transfer of service, staff and their benefits.

2.3 On transfer each Complainant was allegedly entitled to leave gratuity for accrued leave days which was calculated by the Department’s officials at the King Williams Town Regional Office (Regional Office).
2.4 It was further alleged that the Complainants were paid monies for their leave days in March 2007, and subsequently, transferred to the Municipality.

2.5 The Complainants indicated that they were not satisfied with the leave gratuity payments received, and approached the Regional Office for possible rectification of the matter, but it remains unresolved.

3. **POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR TO INVESTIGATE THE COMPLAINT**

3.1 The institution of the Public Protector was established in terms of Chapter 9 of the Constitution to strengthen constitutional democracy.

3.2 In terms of section 182 of the Constitution and section 6(4) of the Public Protector Act, 1994 the Public Protector is empowered to investigate any conduct in state affairs, or in the public administration in any sphere of government that is alleged or suspected to be improper or to result in an impropriety or prejudice, to report on that conduct and to take appropriate remedial action.

3.3 The Public Protector, therefore, has jurisdiction to investigate this matter.

4. **THE INVESTIGATION**

The investigation was conducted in terms of section 6 and 7 of the Public Protector Act, 1994 and comprised the following:

4.1 **Preliminary enquiries**
4.1.1 When contacted about the matter the Department's Chief Director, Ms M Mnukwa, responded as follows in a letter dated 10 September 2007:

“A meeting was held at the Bisho depot of Buffalo City Municipality with all affected staff on the 3 August 2007. The following matters were clearly explained:

The computation was based on the data of their leave days from the date of appointment till the last day of service with the department; and

The employees did not raise any concerns then, and it was presumed that it was understood by all. Their leave gratuities calculations have been rechecked and found to be correct.”

4.2 Documentary evidence

4.2.1 The Complainants' leave record cards and leave forms were obtained from the Department and Municipality. The number of leave days taken as reflected on the leave forms did not correspond with entries in the leave record cards.

4.3 Meeting with the Department’s official and Complainants

4.3.1 A meeting was facilitated between the Department’s Human Resources official, Ms C Gqomfa and some of the Complainants. The Complainants and Ms Gqomfa verified and confirmed leave days taken.
4.3.2 The table below reflects the outcome of the meeting with regards to the calculation of the leave gratuity:

<table>
<thead>
<tr>
<th>Name of Complainant</th>
<th>Persal number</th>
<th>Outcome of investigation</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Poni, L</td>
<td>16783336</td>
<td>Overpaid</td>
<td>R29 860.56</td>
</tr>
<tr>
<td>Sam, D</td>
<td>16783701</td>
<td>Overpaid</td>
<td>R25 491.65</td>
</tr>
<tr>
<td>Nguyen, P. B.</td>
<td>16781744</td>
<td>Underpaid</td>
<td>R359.95</td>
</tr>
<tr>
<td>Wali, T. C.</td>
<td>16777743</td>
<td>Underpaid</td>
<td>R397.42</td>
</tr>
<tr>
<td>Nqambule, P. E</td>
<td>16782500</td>
<td>Correct</td>
<td>-</td>
</tr>
<tr>
<td>Ndibaza, T. L.</td>
<td>16781325</td>
<td>Correct</td>
<td>-</td>
</tr>
</tbody>
</table>

4.4 Correspondence with the Department

4.4.1 The Department conceded that there had been a miscalculation of the Complainants' leave gratuity. It undertook to recover any overpayments and pay all the Complainants who were underpaid.

4.4.2 The Department reported that its Human Resources staff attended a refresher training course relating to, amongst other things, management of leave records in May 2008.

4.5 Consideration of policies relating to the complaint

4.5.1 The White Paper on Batho Pele Principles

4.5.1.1 The principles call for a change in systems, procedures, attitudes and behaviour of the public service for the benefit of internal and external customers.
4.5.1.2 The relevant principles from the 8 Batho Pele Principles are the following:

**Ensuring courtesy**

"It requires service providers to empathise with the citizens and treat them with as much consideration and respect, as they would like for themselves."

**Redress**

"This principle emphasises a need to identify quickly and accurately when services are falling below the promised standard and to have procedures in place to remedy the situation."

If the standard of services is not as promised, people should be given an apology, an explanation, and effective remedy. When complaints are made they must be dealt with properly.

5. **OBSERVATIONS AND FINDINGS**

5.1 The Department conceded that the Complainants’ leave days were incorrectly calculated. The miscalculation resulted in the discrepancies of underpayments and overpayments.

5.2 The current system of verification of calculations, and the monitoring of the capturing of data from the leave forms to the leave record cards is ineffective.

5.3 The Complainants suffered prejudice as a result of the miscalculation.

5.4 The Department undertook to recover any overpayments and re-imburse the employees who had been underpaid as a result of the miscalculation.
6. **RECOMMENDATIONS**

In terms of section 182(1)(b) and (c) of the Constitution and section 6(4)(c)(ii) of the Public Protector Act, 1994, it is recommended that the Department should:

- **6.1** Conduct an audit of leave days of all employees transferred to various municipalities in the Eastern Cape Province;

- **6.2** Recover and/or pay any monies overpaid and/or underpaid to the Complainants as a result of the miscalculation of their leave gratuity; and

- **6.3** Improve the existing leave days data capturing system.

7. **CONCLUSION**

The OPP will monitor the implementation of the recommendations referred to in paragraph 6 quarterly.

ADV M L MUSHWANA  
PUBLIC PROTECTOR OF THE  
REPUBLIC OF SOUTH AFRICA  
DATE: 8/09/09

Assisted by: Mrs N Xhegwana, Investigator: Eastern Cape Office