



PHSDSBC

PUBLIC HEALTH AND SOCIAL DEVELOPMENT
SECTORAL BARGAINING COUNCIL

ARBITRATION AWARD

CASE NO: PSHS1036-17/18

PANELIST: John Mashika

DATE: 12 April 2018

In the matter between:

PSA obo MAKHOATI, L.M.

APPLICANT

and

DEPARTMENT OF HEALTH- FREE STATE

RESPONDENT

Details of the parties and representation

1. The matter was scheduled for an arbitration process on 20 March 2018 at the respondent's offices in Bloemfontein. It was referred in terms of section 191(5) (a) of the Labour Relations Act 66 of 1995 (the Act).
2. The applicant in this matter is Ms. L.M Makhoati. She appeared in person in these proceedings and was represented by Mr. A.J.W Greef, a union official of the Public Servants Association of South Africa (PSA)
3. The respondent is the Provincial Department of Health in the Free State Province. They were represented by Mr. M.H Supi, their Labour Relations Officer.

4. The matter was dealt with on papers.

Issues to be decided

5. I must decide whether the dismissal of the applicant was substantively fair in terms of section 188 188(1)(a)(i) of the Act. In the main; that which I need to make a determination on is whether the dismissal sanction was appropriate herein.
6. In the event I find in the applicant's favour; I am required to order that she be retrospectively reinstated in the position she held before the dismissal.

Background to the dispute

7. The applicant was employed as a Staff Nurse on 19 March 2012. She was dismissed on 12 July 2014 after a disciplinary hearing was held against her for acts of alleged misconduct. Her dismissal was confirmed on appeal on 25 July 2017.
8. The respondent is a Provincial Department responsible for public health and related services in the Free State Province. It contends that it dismissed the applicant for: 1) failing to do monitoring of vital signs (temperature, pulse, respiration, nappy changing and preparation of feeds) on 14 babies at 16h00 on Thursday January 9, 2014 while working in Neonatal High Care Unit; 2) You allegedly, knowingly came to work in Neonatal High Care Unit on the morning of January 10, 2014 under the influence of alcohol; 3) Brought the name of the Hospital and profession into disrepute and 4) breached her conditions of employment.
9. At the start of the process both parties indicated that they will not be leading any oral evidence as most of the issues were of common cause. This approach was informed by the fact that the applicant had pleaded guilty to all four (4) charges preferred on her.
10. The parties' submissions were mailed to the Council as agreed with the parties on 27 March 2018 but they were only mailed to me on 4 April 2018 due to the absence on duty of the Case Management Officer.

11. The respondent submitted bundles documents consisting of the charge sheet, minutes of the internal hearing, appeal decision, final written warning issued on 28 November 2013 and Resolution 1 of 2003 (on sanctions).

Survey of submissions and argument

Respondent's submissions

13. They argued that the actions of the applicant were serious and the dismissal sanction was arrived at after a consideration was given to the final written warning that was issued to her on 28 November 2013. The applicant was responsible for babies at the Neonatal High Care unit and had used alcohol while coming to work. The relationship they had with the applicant had deteriorated to an extent that reinstatement is not an option.

Applicant's submissions

14. Not much was submitted by the applicant save that the dismissal sanction was harsh. She argued that a fine, demotion or suspension will have been a proper sanction under the circumstances as she has rehabilitated herself. She acknowledges that she was wrong and regrets her actions. This will not have happened had she been moved to other wards without children.

Analysis of evidence and argument

15. In considering the fairness of the sanction meted out to the applicant; I had regard to the following paragraph from the Constitutional Court in *Sidumo and another v Rustenburg Platinum Mines Ltd & Others* (2007) 28 ILJ 2405 (CC):

"In approaching the dismissal dispute impartially a commissioner will take into account the totality of circumstances. He or she will necessarily take into account the importance of the rule that had been breached. The commissioner must of course consider the reason the employer imposed the sanction of dismissal, as he or she must take into

account the basis of the employee's challenge to the dismissal. There are other factors that will require consideration. For example, the harm caused by the employee's conduct, whether additional training and instruction may result in the employee not repeating the misconduct, the effect of dismissal on the employee and his or her long-service record. This is not an exhaustive list."

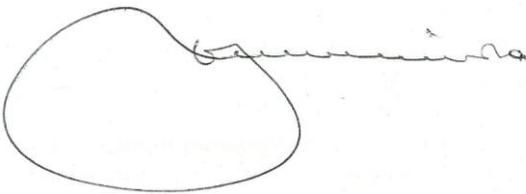
16. The charges preferred on the applicant are serious especially given her position as a Nurse. She was employed as a care giver and had babies in a high care unit to take care of. The first charge seeks to suggest that she failed to monitor vital signs of these babies. This is gross negligence and bodes on undermining her professional responsibilities and the duty of care the hospital has on its patients. To compound matters the applicant reported for duty under the influence of alcohol the following day on 10 January 2014. She pleaded guilty to all the four (4) charges preferred on her but there seem not to be a reason to doubt the correctness of the decision the respondent took to dismiss her.
17. I accept that an employee pleading guilty is to an extent showing remorse; but that which is unacceptable in this case is the fact that after committing a serious misconduct on 9 January 2014; she continued to commit a more serious one the following day. Under any circumstances it is wrong to come to work under the influence of alcohol; but in an instance where a person under the influence of alcohol is tasked to care for others, especially 'fragile' babies it is unacceptable.
18. The respondent argued that a dismissal sanction was also informed by a final written warning that was issued to the applicant on 28 November 2013. Though this warning was for absenteeism; that which it indicates is that the applicant has a propensity to misconduct herself. I agree with the respondent that the relationship they had with her has broken down. The applicant may have turned a new leaf as she alleges; but at the time of her dismissal the respondent had no reason to trust her.
19. Having considered the facts before me and that which the court held in the above *Sidumo* case; I certainly do not see how the sanction meted out to the applicant can be construed as being harsh. Any of the first two charges preferred on her could have led to her dismissal.

20. It is therefore my considered view that the dismissal sanction meted out to the applicant was an appropriate sanction and as a result her dismissal was substantively fair.

Award

21. The dismissal of the applicant, LM Makhoati by the respondent, the Department of Health- Free State was substantively fair.

22. This application is dismissed.

A handwritten signature in black ink, appearing to read 'John Mashika', is written over a large, faint, circular stamp or watermark.

JOHN MASHIKA
PHSDSBC PANELIST