



ARBITRATION AWARD

Panellist/s: Joseph Mphaphuli
Case No.: PSHS110-11/12
Date of Award: 26-Feb-2012

In the ARBITRATION between:

**PUBLIC HEALTH AND SOCIAL
DEVELOPMENT SECTORAL BARGAINING
COUNCIL**

**ARBITRATION
AWARD**

PSA obo Mntambo, S.T.C
(Union/ Applicant)

And

Department of Health – Kwazulu Natal
(Respondent)

Applicant's Representative: Mrs. Hassan

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Durban
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Respondent's Representative: Mr. Zwane

Respondent's Address: Private Bag x9051
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DETAILS OF HEARING AND REPRESENTATIONS

The hearing took place at the Respondent's premises in Durban on 14 February 2012. The proceedings were conducted in terms of Section 191 of the Labour Relations Act 66/1995, as amended.

Mr. Zwane, Assistant Manager Labour Relations appeared on behalf of the Respondent. Mrs. Hassan official of PSA represented the Applicant.

The proceedings were digitally recorded.

ISSUE IN DISPUTE

Whether the Applicant was dismissed or not and the applicable remedy, if any.

BACKGROUND TO THE DISPUTE

Miss Mntambo, the Applicant commenced employment on 01 July 2002. She was employed as an enrolled nurse at a monthly rate of R 7 000.00. Her last day at work was 21 October 2010. The Applicant did not know the reason for the termination of her services.

The Applicant Party sought reinstatement in the event of a favourable.

COMMON CAUSE FACTORS

1. The Applicant was absent from duty for a period in excess of thirty calendar days.
2. The issue in dispute was whether the Applicant was given permission of absence or not.

SURVEY OF EVIDENCE AND ARGUMENT

The Applicant gave evidence in her case. She suffered from depression after her son was shot by police towards the end of September 2010. She consulted medically but was not hospitalised. She could not attend at work.

She stayed in contact with her superiors at work. Her superiors knew about her circumstances. She was booked off sick from 09 October 2010 to 28 November 2010.

Her ward sister in charge requested her to submit medical certificates. She could not do so as she was too ill and there was no one to send . Ward Sister Majosi undertook to put her on night duty as recommended by her physician.

She subsequently requested her cousin to submit her medical certificates in December 2010.

Her cousin met with Mrs. Majosi who in turn advised her cousin Zodwa to present the certificates at the H.R Department. The certificates could not be presented arising from the fact that the H.R Department was holding a Christmas party.

Miss Zodwa Shinga testified in the Applicant's case. She was a neighbour to the Applicant. She was employed as a housekeeper in a residential property.

She had knowledge that the Applicant's son was shot by police. The Applicant was affected by the incident to the extent that she was mentally disturbed. She knew that the Applicant consulted medically. The Applicant had handed her medical certificates to submit to the Respondent.

She met with Mrs. Majosi at the Respondent's premises. She proceeded to the H.R Department in the company of Mrs. Majosi. On arrival they were informed that the H.R Department was having a Christmas party. She could not hand in the medical certificates. She returned home with the medical certificates. She left the certificates at the Applicant's place of residence.

Mrs. Goqo, unit manager in the service of the Respondent gave evidence. The Applicant was her subordinate. In addition the Applicant also reported to Mrs. Mqogi.

She received a telephone call from the Applicant on 21 October 2011. The Applicant indicated to her that she would report late for duty. The Applicant did not report for duty as promised.

She had made follow up calls to the Applicant. The Applicant continued to make unfulfilled promises. She finally took up the matter with the Labour Relations Office.

She was mindful of the fact that Sister Mqogi sent the Applicant a phonogram. She recalled that someone made an attempt to hand in medical certificates on 26 November 2010. The matter was already out of her hands at the time.

She had already referred the matter to the H.R Department at the time. In the absence of the H.R Personnel she requested the designated person to return to the Department on the following Monday.

Mrs. Mqogi, unit manager and a superior to the Applicant gave evidence. Mrs. Mqogi confirmed Mrs. Goqo's testimony on all material respects. In addition Mrs. Mqogi testified that she had sent a telegram to the Applicant using the Applicant's last known address to report at the workplace. Further she warned the Applicant that her continued unaccounted for absence may cost her the job.

ANALYSIS OF EVIDENCE AND ARGUMENT

The primary dispute was about whether the Applicant's absence was with or without permission. The meaning hereof being that the Applicant did not contact her employer to advise about her preventing circumstances and that the Applicant did not furnish proof of incapacity timeously.

There was no dispute about the Applicant's failure to report for duty between 21 October 2010 and 20 November 2010 when the thirty days unaccounted absence materialised.

The Applicant only attempted to submit her medical certificates through her neighbour on 26 November 2010.

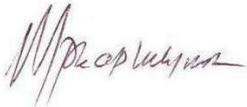
Mrs. Goqo's evidence that the Applicant had previously handed in medical certificates through her daughter was not challenged. Failure by the Applicant Party to contradict this version defeats the Applicant's version that she did not have anyone to send to submit the certificates on her behalf.

The Respondent's witnesses denied categorically that the reason for the Applicant's absence was ever communicated to them. In the absence of evidence to the contrary there appears to be no reason why the Respondent could not have invoked the provisions of Section 17 of the Public Service Act.

In the absence of a dismissal the provisions of Section 188 and Schedule 8 of the Labour Relations Act 66/1995 do not apply

AWARD

1. There was a fair reason to terminate the Applicant's services.



Joseph Mphaphuli

Signed

PHSDSBC Panelist

23 February 2012