



PHSDSBC

PUBLIC HEALTH AND SOCIAL DEVELOPMENT
SECTORAL BARGAINING COUNCIL

ARBITRATION AWARD

Case No: PSHS1261-16/17

Panellist: Thando Ndlebe

Date of Award: 18 June 2017

In the matter between:

NEHAWU obo MOTAMPANE, MMOLAWA ALFRED

APPLICANT

and

DEPARTMENT OF HEALTH- FREE STATE

RESPONDENT

DETAILS OF HEARING AND REPRESENTATION

1. The matter was sat down before me as an arbitration process on 30 May 2017 and 08 June 2017 in Bloemfontein. The Applicant, Mr. Mmolawa Alfred Motampane, was present and was represented by Mr. Khuzane Mjwayi, an official of the National Education, Health and Allied Workers Union, (Nehawu).
2. The Respondent was represented by Mr. Simon Mbovu Nhlapho, its Labour Relations Officer.
3. The Respondent submitted a bundle of documents and same was admitted and marked as **Respondent's Bundle "A"**.

ISSUES TO BE DECIDED

4. I am required to determine whether or not the Applicant was unfairly dismissed by the Respondent. The Applicant did not challenge the procedural fairness of his dismissal. In so far as substantive fairness was concerned, the Applicant only challenged the appropriateness of the sanction of dismissal.

BACKGROUND TO THE DISPUTE

5. The Applicant was appointed by the Respondent in November 2006 and held the position of Tradesman Aid at the time of his dismissal on 1 February 2017. The Applicant was earning a basic monthly salary of R9213.25 at the time of his dismissal. The Applicant was dismissed by the Respondent for misconduct relating to fraud.
6. The Applicant's trade union referred the dispute to the Council as it believed that the sanction of dismissal was too harsh as the Applicant admitted to the charge that was levelled against him.

SUMMARY OF EVIDENCE AND ARGUMENTS

THE APPLICANT'S CASE

Mr. Mmolawa Alfred Motampane

7. He made a mistake when he used the Respondent's property for his personal use without authority to do so. He used the Respondent's petrol card for his personal use and financially benefitted from his actions. He used the Respondent's petrol card as his mother was sick and he had problems commuting to work. On 11 July 2015, he made a formal statement wherein he admitted to using the Respondent's petrol card for personal use. He was influenced to commit the misconduct by another employee who has since resigned from the Respondent.
8. He had a clean disciplinary record before his dismissal and the Respondent was therefore too harsh in dismissing him. He is willing to be issued with a sanction that would result in him being expected to work for the Respondent for a specific period without compensation. He is remorseful of his fraudulent actions.

9. Under cross-examination, Mr. Motampane responded as follows:

10. He understood the seriousness of the offence that he was dismissed for by the Respondent. He was dismissed by the Respondent for fraud. The sanction that is appropriate is a suspension without pay for any period that the Respondent would deem fit. Dismissal is an appropriate sanction for an employee charged with misconduct relating to fraud. In the event the Respondent would replace the sanction of dismissal with that of suspension without pay, it would be sending out a bad example to its staff.

THE RESPONDENT'S CASE

Mr. Simon Mbovu Nhlapho

11. The Applicant was found guilty by the Respondent for serious misconduct for misusing the employer's petrol card on or about 10 July 2015. The sanction of dismissal that was issued by the Respondent against the Applicant was appropriate.

12. Under cross-examination, Mr. Nhlapho responded as follows:

13. In as much the Applicant was found guilty for a first offence, fraud is a serious form of misconduct. The Applicant was supposed to have been aware of the consequences of his actions when he fraudulently used the Respondent's petrol card. In the event the Respondent would consider a different sanction in relation to the Applicant's misconduct it would be a wrong message to its employees.

ANALYSIS OF EVIDENCE AND ARGUMENTS

14. In my analysis, I have considered the evidence and submissions from both parties.

15. It was common cause between the parties that the Applicant was dismissed for fraud in that he used the Respondent's petrol card for personal use. The Applicant's

contention was the Council should impose a sanction of suspension without pay instead of confirming dismissal. The Respondent submitted during the arbitration proceedings that the sanction of dismissal was appropriate as the Applicant was found guilty of using its petrol card for personal use on or about 10 July 2015.

16. Fraud is a form of misconduct that goes to the trust relationship between the employer and the employee. Trust is therefore the substratum of the employee-employer relationship. Employees are expected to conduct themselves in an honest manner in the performance of their actions for the benefit of their employers. It can therefore be inferred from the above that the Respondent dismissed the Applicant as he could not be trusted any longer. It is my view that the fact that the Applicant admitted to the charge of fraud on 11 July 2015 cannot be viewed as nullifying his fraudulent actions. I also note that the Applicant had a clean record at the time of his dismissal. But I tend to agree with the Respondent when it submitted that the sanction of dismissal was appropriate in the circumstances relating to the Applicant's misconduct. In the matter of *Cecil Nurse (Pty) Limited v Busakwe NO & Others* [2015] 28 (LC) it was held that "when assessing conduct of an Employee that is dishonest in nature, the long-established rule applied in the Labour and Labour Appeal Court, i.e. that the presence of dishonesty tilts the scales to an extent that even the strongest mitigating factors, such as long service and a clean record, against the sanction of dismissal in cases of dishonesty, must prevail". Therefore, the fact that the Applicant had a clean disciplinary record and a service of approximately eleven years cannot justify the Council to tamper with the sanction that was imposed by the Respondent. Moreover, in the event the Council were to find in favour of the Applicant it would be opening a flood gate for cases where dismissed employees who had admitted to committing fraud would be expected to receive sanctions less of dismissals. I therefore find that the sanction of dismissal that was issued by the Respondent against the Applicant was appropriate.

AWARD

14. The dismissal of the Applicant was substantively fair.

15. The Applicant's referral is hereby dismissed.

A handwritten signature in black ink, appearing to read 'NDLEBE', enclosed within a thin black rectangular border.

PANNELIST: THANDO NDLEBE