



# ARBITRATION AWARD

Commissioner: **KM Moodley**

Case No: **PSHS1310-16/17**

Date of Award: **30 July 2017**

In the matter between:

MCM Ndaba

**Applicant**

and

Department of Health- Kwazulu Natal

**Respondent**

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## **DETAILS OF THE HEARING AND REPRESENTATION**

1. The Arbitration commenced on 23 June 2017 and was concluded on 18 July 2017, at the boardroom, Madadeni Hospital, Newcastle.
2. The Applicant was represented by attorney MM Dlamini of KM Chetty attorneys.
3. The Respondent, Department of Health- Kwazulu Natal was represented by its official, SB Msane.
4. The proceedings were mechanically recorded and all witnesses testified under oath.
5. I am satisfied that the parties have been correctly cited and that the PHSDSBC has jurisdiction to hear this matter.
6. No Points In Limine were raised by either of the parties.
7. The Respondent tabled a bundle of documents, i.e. Bundle A which was introduced and accepted as evidence by both parties.
8. The Applicant did not tender any bundles of documents.
9. No objection was raised to Commissioner Moodley presiding over the Arbitration.

### **ISSUE TO BE DECIDED**

10. The issue to be decided is whether the dismissal of the Applicant, substantively, was unfair, and if so what the remedy should be.
11. Applicant sought reinstatement to his previous post, with retrospective effect and with full back pay.
12. The Respondent disputed that the dismissal of the Applicant was substantively unfair and sought to have this matter dismissed.

### **COMMON CAUSE ISSUES**

13. The common cause issues are:

1) The procedure that the Applicant should follow in the receipting of monies is as follows:

- A patient comes to the hospital with a Carrier Card.
- The card is then matched with the patient file.
- The patient is positively identified by the cashier.
- The patient pays R20, 00 to the cashier.
- The cashier inserts the card into the cash register and the payment gets printed onto the card.
- The cashier issues a receipt for R20, 00 to the patient.

2) The procedural fairness of the dismissal was not in dispute.

### **ISSUES IN DISPUTE:**

14. The Applicant did or did not commit fraud.

### **BACKGROUND TO THE DISPUTE:**

15. Applicant was appointed by Respondent as an Administration Clerk at the Newcastle Hospital in October 2002, and at the time of his dismissal, the Applicant was earning a salary of R11, 500, 00 per month.

16. On 3 March 2016, the Applicant was charged with misconduct as follows:

Charge 1.

*“On the 23<sup>rd</sup> of March 2015 at Madadeni Provincial Hospital, at about 08h25, you committed fraud in that you gave a wrong receipt to the wrong patient with the intention to have the amount for yourself”*

17. The Applicant appeared before a disciplinary inquiry and pleaded not guilty to charge 1 as per the charge sheet. He was found guilty and subsequently dismissed on 8 September 2016.
18. The Applicant believed that his dismissal was substantively unfair. The Respondent was of the view that the dismissal was not unfair.
19. Applicant then referred a dispute to the Bargaining Council.

## **SURVEY OF EVIDENCE AND ARGUMENTS**

### **RESPONDENT**

#### **WITNESS 1: BVW Jele:**

20. Jele, a Finance Clerk with 31 years experience in the Patient Administration section of Newcastle Hospital, testified that he was the supervisor of the Applicant at the time of his dismissal.
21. On 23 March 2015, he was on duty at the outpatient department doing spot checks, when he came across a patient, Sithole Bongumusa, with a wrong receipt issued to him.
22. Upon comparing Sithole's receipt with the patient's file Jele discovered that the receipt did not correspond with the patient number (OP number) on the file. The OP number of Sithole was 14482/15 whilst the receipt held by him was referenced 1803.
23. Sithole positively identified the Applicant as the cashier who had issued the wrong receipt to him.
24. Jele together with Sithole and supervisor Ngcobo, then confronted the Applicant with this finding but '*...he had no explanation...*' for this discrepancy.
25. Jele then outlined the approved procedure that should have been followed by the Applicant, and as agreed to under 'common cause' above.
26. He testified that the Applicant had not inserted the patient's card into the system therefore the system did not record this transaction and '*...that this was not an honest mistake*'.  
  
*"From all of this I concluded that the Applicant did this intentionally and that it was not a mistake."*
27. Jele pointed out that the Applicant "...was fully aware of the approved procedure" as regular in-service training is done for all clerks. He emphasised that the importance of the clerks strictly complying with the approved procedure is to

“...close the gaps and to prevent revenue drop...” In addition, this was also an important control measure as the Respondent could lose substantial revenue if such control measures were not in place.

## **APPLICANT**

### **WITNESS 1: MCM Ndaba (Applicant):**

28. Applicant testified that at about 08h25 on 23 March 2015, he was at work performing his duties as a cashier. He processes approximately 150 files per day

29. He outlined the procedure followed by him in the receipting of monies as follows:

It is the duty of another employee to match the patient files with the OP cards.

The cards are placed on top of the patient files and they are then given to the Applicant.

*“I then insert the patients file onto the system. Then the system opens up in order to receive payment and a receipt is printed out.”*

30. He testified that on the day in question he was the cashier who attended to patient Sithole. He had asked Sithole for his name and surname so as to identify him and to check if the correct file was in front of him. After he had done this verification. He then *“...punched the number into the system, placed the card into the system and issued him with a receipt.”*

31. He then took the R20, 00 from Sithole and put it into the cash register.

32. When Applicant was approached by Jele about the wrong receipt he told Jele that he had done nothing wrong. At no stage whatsoever was he told that he was ‘short’ on the cash register.

33. He pointed out that as he processes approximately 150 files per day it is possible that a wrong card was put onto the file as someone else was responsible for the matching of the files with the cards.

## **ANALYSIS OF EVIDENCE AND ARGUMENT**

34. I found Jele to be a credible and reliable witness. He presented his evidence in a clear, concise and systematic manner.

35. He pointed out the importance of cashiers strictly following the approved procedures when receipting monies on behalf of the Respondent, i.e. to

“...close the gaps and to prevent revenue drop...”

36. Jele also pointed out that this was an important control measure as the Respondent could lose substantial revenue if this procedure was not strictly followed.
37. It therefore follows that any breach of this procedure must of necessity be viewed in a very serious light.
38. He testified that “... *this was not an honest mistake*” and that ‘...*the Applicant did this intentionally.*”
39. The Applicant on the other hand was not a credible witness.
40. There was an approved procedure (the rule) to be followed by cashiers in the receipting of monies and the Applicant was fully aware of the procedure (the rule). This was not in dispute.
41. The procedure (the rule) was also a reasonable one, and the Applicant had received in- service training from the Respondent on this procedure.
42. The Applicant did not deny that he had issued patient Sithole (OP number 14482/15) with a receipt bearing the wrong reference OP1803. (I.e. he broke the rule).
43. He simply argued that it was an honest mistake and that he had accepted responsibility for the error. He reasoned that he could have inserted the wrong card into the machine.
44. However, he failed to explain where the receipt with reference OP1803 came from. One would have expected the Applicant, after being confronted by Jele on the day of the incident, to have investigated, and to have offered a suitable explanation as to how Sithole came to be in possession of a receipt for OP1808 instead of OP14482/15. No evidence was led to show that he did so. This is a cause for concern.
45. Jele further testified that the reason why the payment from Sithole did not appear on the system was that the OP card for Sithole was not inserted into the system. Therefore, this was an intentional act and not an honest mistake. The Applicant had therefore committed an act of gross misconduct.
46. As I am faced with two conflicting versions I am required to decide his matter on a balance of probabilities.
47. As I have found Jele to be a credible and reliable witness, I find on a balance of probabilities, that the version put to me by the Respondent is more probable than the version put to me by the Applicant.

48. I therefore find the Applicant guilty of the charge levelled against him, and I propose to rule accordingly.

49. After considering the mitigating and aggravating factors in this matter, I find that the Respondent argued, successfully in my view, that dismissal is an appropriate sanction in this instance. Jele pointed out that the procedure was in place to 'close the gaps' and to prevent 'revenue drop' as the Respondent could lose substantial revenue if this procedure was not strictly complied with.

50. Jele also pointed out that the trust relationship between him, as the supervisor, and the Applicant had broken down completely.

*"The whole department has lost trust in the Applicant. I've lost trust in him."*

51. I found no reason to dispute this evidence of Jele.

52. In view of the seriousness of the charge levelled against the Applicant, and the complete breakdown of the trust relationship between the Applicant and the Respondent, I find that dismissal is an appropriate sanction, notwithstanding the Applicant's clean disciplinary record, and I intend to rule accordingly.

53. The procedural fairness of the dismissal was not in dispute.

### **CONCLUSION:**

54. I find that the dismissal of the Applicant, procedurally and substantively, was not unfair and I make the following award:

### **AWARD**

55. I find that the dismissal of the Applicant, MCM Ndaba, procedurally and substantively, is not unfair.

56. This application is dismissed

57. I make no order as to costs.



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COMMISSIONER: KM MOODLEY