



PHSDSBC

PUBLIC HEALTH AND SOCIAL DEVELOPMENT
SECTORAL BARGAINING COUNCIL

ARBITRATION AWARD

Case No: PSHS1348-16/17

Commissioner: Lillian Goredema

Date of award: 12 June 2017

In the matter between:

PSA OBO CRAIG DE BEER

(Union/Applicant)

and

DEPARTMENT OF HEALTH- WESTERN CAPE

(Respondent)

DETAILS OF HEARING AND REPRESENTATION

1. This is an ARBITRATION AWARD in the matter between Craig De Beer (the Applicant) who was present at the arbitration represented by a PSA official, Angelo Fisher and The Department of Health Western Cape (the Respondent) was represented By Andile Mniki employed in the Labour Relations Department of the Respondent.
2. The Arbitration took place on 8 June 2017 at the Western Cape College of Nursing in Athlone.
3. The proceedings were digitally recorded.

ISSUES TO BE DETERMINED

4. I have to determine whether the final written warning issued to the Applicant on 9 January 2017 was issued in fair circumstances.

BACKGROUND TO THE DISPUTE

5. The Applicant was employed as a Forensic Pathology Officer based at Hermanus Provincial Hospital from 4 August 2015.
6. During the period extending from 15 October 2015 to 2 November 2015 and from 9 November 2015 to 22 November 2015 the Applicant was absent from duty without advising the employer of his absence and the reason.
7. He was discharged from service in terms of Section 17(3) (a) on 4 December 2015.
8. After making representations against discharge he was issued with a final written warning.
9. He alleges that the warning was issued unfairly without affording him an opportunity to present his case as the absence from duty was a result of an injury on duty.
10. He would like to be issued with a verbal warning.

DOCUMENTARY EVIDENCE

11. The Applicant submitted a bundle of documents marked pages 1 to 36 to be admitted as evidence and I marked it Bundle A and the Respondent submitted a bundle marked B pages 1 to 16 and I marked it bundle B.

SURVEY OF ARGUMENTS

APPLICANT'S EVIDENCE AND ARGUMENT

12. The Applicant testified under oath and stated that after he received a letter of discharge from service on 4 December 2015 and he had made written representations against the discharge.

13. In his representations he stated that on 27 September 2015 during the process of hoisting a deceased onto a vehicle, the hoisting cable snapped and the body had fell out of the body bag onto the ground in the presence of relatives and neighbors.
14. He injured his back whilst attempting to stop the body from falling. He eventually placed the body in the vehicle's side compartment and closed the door with the broken hoist cable.
15. He was booked off sick for the back injury for two weeks from 1 October 2015 to 14 October 2015.
16. During his time at home he began having flash backs of the incident and was not himself and could not get himself to go to the Hermanus Provincial Hospital for review on 15 October and could not call his supervisor Mr. Such to advise him of his reason for his absence from work until 3 November 2015.
17. On 3 November 2015 he went back to work but he was not feeling well and could not bear to work in the dissecting area and did not speak to anyone about his experiences because talking to his supervisor was not an option as he is concerned with progressive discipline rather than staff wellness and ICAS members of staff have no idea of the duties of a Pathological Officer. He never talked to anyone at work about his experiences.
18. He went to see Dr. Parker who booked him off from 3 November 2015 to 9 November 2015 for depression.
19. From 10 November 2015 to 23 November 2015 he stayed at home and only went to the Doctor on 24 November 2015.
20. He was admitted to Tjigger Wellness Centre for post- traumatic stress disorder and he was discharged on 16 December 2015.
21. On 27 November his life partner advised Mr. Such that he was admitted to the wellness Centre.
22. He submitted Doctors' certificates for the periods that he had been booked off sick.

23. On 9 January 2017 he received a letter advising him that he had been reinstated but that he would still be subject to misconduct and disciplinary action.
24. He was issued with a final written for continuous absence although this is a dismissable offence.
25. The period 14 October 2015 to 2 November, and 10 November to 22 November were considered to be unauthorised leave.
26. He appealed against the warning because he had not been given an opportunity to make oral representations as he had been absent because of an injury from duty.
27. His appeal against the warning was dismissed.
28. He confirmed that in terms of the Rules he is responsible for communicating absences to the employer.
29. In answer to questions during cross-examination he said that he had not been himself during the time he was absent from duty and at one stage after 14 October 2015 he was not sure that he wanted to continue with working
30. He admitted being given an opportunity to make representations but he wanted to make oral representations about the policy regarding issues affecting him as an employee and others working as Pathological Officers.
31. He said his injury had been communicated to the employer and he feels nothing was done about it.

RESPONDENT'S SUBMISSIONS

32. Mr. Mniki submitted that since most of the issues were not being challenged he would not call any witnesses but together with Mr. Fisher he was given an opportunity to make closing arguments.

ANALYSIS OF EVIDENCE

33. In coming to a decision in this matter, I have taken the documentary evidence submitted by both parties which was not disputed, the evidence by the Applicant and the closing arguments by both representatives.

34. The Applicant admits that he had not communicated the reason for his absence from 15 October 2015 to 2 November 2015 a period of 17 days and he had not also communicated the reason for his absence to his employer from 10 November 2015 to 23 November 2015 a period of 14 days.

35. The Applicant admitted that he was aware of the work place rule to communicate any absence with his employer and in his written representations he acknowledges that he failed to follow the procedure of personally notifying his supervisor of his absence and was thus on unauthorised leave.

36. The Applicant wants me to substitute his final written warning with a verbal warning because he was not given an opportunity to make oral representations before the final written warning was issued.

37. In evaluating the procedure adopted by the Respondent before issuing the final written warning I have taken into account that there is no procedure cast in stone that there should be oral representations before an employer makes a determination of any sanction and all that is required is that an employee must be given a right to be heard before determination.

38. I find that the Applicant had been given an opportunity to make extensive representations against his discharge. It is a result of the representations that he was reinstated. At that stage the Applicant had been advised that he would still be subject to disciplinary action.

39. I cannot find any fault with the Respondent's action of issuing a final written warning as the representations he had made against the discharge were applicable to the conduct of staying away from work and this was stated in the final written warning.

40. The Respondent explained the reasons for issuing a written warning that the Applicant's conduct of staying away from work without communicating was serious misconduct and is ordinarily a dismissable offence and that the final written warning is to be taken as part of a corrective measure as the trust relationship was volatile but the Respondent would assist the Applicant in every way to correct this behavior.
41. When asked what else he wanted to add to his written representations his response was that he wanted the Respondent to consider putting in place a policy to deal with issues affecting the Pathology Officers.
42. I find that these submissions would not detract from the fact that he had acknowledged his culpability of not communicating his absence. Further the period that he submitted Doctor's certificates after his discharge was condoned and he was not dismissed because of the submissions he had made against discharge.
43. I also find that the issue was never whether the Applicant injured his back duty on duty but whether he communicated his depressive episodes induced by the incident of 27 September 2015. He did not.
44. Substituting the sanction with a verbal warning would water down the seriousness of the misconduct.
45. The Applicant failed to show how he was prejudiced by not making oral submissions. I find that the final written warning issued to the Applicant is appropriate as the Applicant was not punished for being sick but for not communicating his illness to his superiors as required by the Rules.

AWARD

46. The procedure adopted in issuing the Applicant with a final written warning was fair. Accordingly, his alleged unfair labour practice dispute is dismissed.



Lillian Goredema
PHSDSBC Panelist

