



ARBITRATION AWARD

COMMISSIONER: JANINE CARELSE

CASE NO: PSHS143-17/18

DATE OF AWARD: 23 JULY 2017

In the matter between:

HOSPERSA obo CHRISTINA REGINA VAN WYK

APPLICANT

and

DEPARTMENT OF HEALTH- WESTERN CAPE

RESPONDENT

DETAILS OF HEARING AND REPRESENTATION

1. The Arbitration hearing took place on 14 July 2017 at The Western Cape Nursing College in Cape Town in terms of Section 191(5)(a)(i) of the Labour Relations Act 66 of 1995, as amended, (“the Act”). The proceedings were digitally and manually recorded.
2. The applicant, Ms Christine Regina Van Wyk, was present and represented by Mr Mr Moses Maleswene (Mr Maleswene), whilst the respondent, Department of Health- Western Cape, was represented by its Labour Relations Officer, Mr Ayanda Mniki (Mr Mniki).
3. The respondent handed in a bundle of documents, whilst the applicant did not.

4. The proceedings were manually and digitally recorded and the matter proceeded in English. Mr Mandilakne Mbohi, the interpreter, interpreted from English to Afrikaans and vice versa.
5. Mr Frank Travers, a HOSPERSA shop steward, attended as an observer.

ISSUES TO BE DECIDED

6. I have to decide whether the applicant's dismissal was substantively and procedurally fair. If I find that the applicant's dismissal was substantively and procedurally unfair, I must decide what the appropriate remedy will be for such unfair dismissal.

BACKGROUND TO THE DISPUTE

7. The applicant was employed by the respondent as a housekeeper at its Lentegeur Hospital in Mitchell's Plain and commenced employment with the respondent on 1 February 1987. The applicant was dismissed on 13 April 2017 for allegedly committing an act of misconduct as contained in Annexure A of the Disciplinary Code and Procedures for the Public Service Resolution 1 of 2003, as amended, in that on 19 October 2016 she removed and/or found in possession of state property, namely, one litre of Maties low fat milk with the intention of permanently depriving the rightful owner of the said property.
8. The applicant was found guilty at the disciplinary hearing and subsequently dismissed. The applicant earned a gross monthly salary of R11 108,45 at the date of her dismissal. She challenges only the substantive fairness of her dismissal and not the procedural fairness thereof.
9. The applicant wants to be reinstated with retrospective effect.

SUMMARY OF EVIDENCE AND ARGUMENT

THE RESPONDENT'S REPRESENTATIVES EVIDENCE AND ARGUMENT

10. Mr Bongani Godfrey Shamase (Mr Shamase) testified for the respondent and stated that he is the site manager for the security at Lentegeur Hospital. On 19 October 2017 he was on duty at Lentegeur Hospital and at about 15:30 pm he performed a random search at gate 3. At about 16:00 pm on that day the applicant exited the gate and he requested to do a search and he asked her to empty the contents of her bag. He then noticed that she had in her possession one litre of fresh milk. It was Maties low fat milk. He then asked her whether she had purchased the milk and whether she had proof and she then stated that she had received it from a sister in the ward and he requested her to give him the sister's name because he needed to verify whether the milk belonged to the applicant. If it was the respondent's milk then the applicant was supposed to declare it.

11. He averred that the respondent had purchased its milk from a unique supplier in Stellenbosch and that the local supermarket did not supply that milk. He stated that he strongly believed that the milk belonged to the respondent because the applicant did not have a slip to prove that she had purchased it, nor did she give him the name of the sister who had allegedly given her the milk. He further testified that he was with the other security officer, namely, Nombona, but stated that he had personally conducted the search on the applicant. He then informed the applicant that he had a strong suspicion that the milk belonged to the respondent and requested her name tag in order to link the milk with the applicant but the applicant refused and walked away, out of the gate.

12. He stated that he handed the milk over to the matron, sister Boois and sister Cupido. He was referred to page 12 on the respondent's bundle of documents which is a report that was compiled by Mr Thomas, a senior officer, wherein Mr Thomas had reported what had happened on the day of the incident. The report shows the number of people that were caught with the respondent's items in their possession and it shows that the applicant was in possession of one litre of milk. He was further referred to page 13 of

the respondent's bundle which was a picture of all of the items that were confiscated and he stated that the milk that was found in the applicant's possession had been part of the milk that was confiscated. He testified that there was no other milk found in the applicant's possession. He stated that the applicant had left the premises alone on that day.

13. Under cross examination he stated that he is the site manager since 2008 and he conducted the search at gate 3. He stated further that they were two people who conducted the search at the gate. He denied that he was sitting in the car and stated that he does drive the car but that on the day of the incident he was standing at the end of the gate and conducting the search. He cannot conduct the search if he is sitting in the car. He contended that there is a guard room at the end of the gate and that the gate where he conducted the search operates periodically. He stated that the pedestrian gate, as it is called, opens between 05:30 am to 08:00 am and between 15:30 pm to 19:30 pm. There is no permanent officer who is stationed at the gate. He had worked a day shift on the day of the incident between 06:00 am and 18:00 pm. He averred that his responsibility did not end when his shift ended and he continues to work as a consultant. On the day of the incident he had started working a night shift because he had to hand over an incident. Mr Mthethwa took over the night shift on the day of the incident and he stated that he is not referred to as "Moyo". He testified that he can identify the milk on the picture shown on page 12 of the respondent's bundle and that the applicant had taken one of the milk that is identified in the picture.

14. He stated further that Maties milk was confiscated from the applicant and this milk is supplied to Lentegeur Hospital. He averred that he cannot comment on another witness but stated that the applicant was found in possession of Maties milk. When a person enters the premises and they have in their possession an item that resembles a government item then they must declare it so that a sticker can be put on it in order for the security to identify that it is not the respondent's property when they exit the premises. The same principle would apply when a person enters with a different item that does not resemble government property, in other words, all items must be declared. Mr Thomas is his deputy and his duties include compiling reports of items that were found in a person's possession and handed over.

15. He stated that he was not asked to write a statement and he was only requested to present oral evidence of what happened on the day of the incident. He was also not required to do a report. He averred that the contents of what was found in whose possession was given to Mr Thomas. The report does not state what had happened to the person in whose possession the respondent's property was found. He indicated that the reason why he is present to testify is because he had searched the applicant on the day of the incident and he had witnessed the incident. The report that was compiled by Mr Thomas simply indicated what was found and in whose possession it was found. He stated that his evidence is first hand evidence. He normally works day shift and only works as a consultant at night shift. He was on duty on the day of the incident. The picture of the items that were confiscated were compiled by sister Boois.
16. He further stated that the applicant failed to co-operate and simply walked out of the gate. He averred that at that stage he could not treat the applicant as if she is a criminal because it was merely an allegation that the item confiscated from her belonged to the respondent and it was not proven that she had misappropriated it. He knew that the applicant had worked there. He stated that he cannot comment on the document that was compiled by Mr Thomas and that a picture was taken of the items that were confiscated and handed over.
17. Under re-examination he stated that he always respected the applicant because the applicant reminds him of his mother. He contended that he has no reason to lie and that he has nothing against the applicant. There were no stickers found on any of the items in the applicant's possession and she could further not produce a slip. The applicant did not disclose the name of the sister who had allegedly given her the milk.
18. Mr Luqmaan Abrahams (Mr Abrahams) testified for the respondent and stated that he works for Fedics, the respondent's client. He is employed as a dietician and draws up the menus for the patients and the specific dietary requirements and specifications. He ensures that the food gets delivered to the wards and there after his duty ends. He stated that there are two sections of wards. One ward consists of patients who are intellectually challenged and the other ward consists of patients who are partially

intellectually challenged. The mentally disabled people are a vulnerable group of people and they need to be taken care of. He averred that the personnel are responsible to ensure that the patients eat the food. He stated that each patient should receive 400 ml of milk per day and that milk is sent to the wards on a daily basis. Milk is delivered to the wards and should last between 09:00 am to 09:00 am the following day and no milk should be left over. In some cases there are a few millilitres left over.

19. He further stated that there is a help desk line and if anything is not delivered to the wards then a call or complaint is logged. Milk has a nutritional value and it adds to the amount of energy levels of a patient. If a patient does not receive it then they do not receive what is prescribed for their diet. A lack of milk can also prolong a patient's condition and some medications can give a patient more energy than the patient needs. It is unacceptable for a person to take things from wards that are meant for patients and their recovery because that would mean that they are putting the patients last.

20. Under cross examination he stated that pro vitas and yogurts are given on a daily basis to the patients. The menus are issued on a three week cycle and seven menus are given. He contended that the ward would complain if there is a shortage of any food and that no call was logged on 19 October 2016 to complain of a shortage. He stated that there was not an over-supply of milk on that day either. Before stock leaves their premises, it is checked to ensure that it is just enough for the wards.

21. Under re-examination he stated that the site manager will let them know that the items were confiscated and hand it over to the respondent. No calls are logged when items are confiscated and they are approached directly. He averred that only the people in the ward would know if they were experiencing a shortage if no call was logged. It would mean that the patients in the ward would not receive milk and the person is not concerned about the patient's welfare.

22. He averred that if a call is logged to indicate a shortage then they will still issue extra milk and investigate it afterwards. Milk is issued daily and gets broken up between breakfast, snack, lunch, snack, supper and a late serving of tea and coffee. The

respondent introduced new documentary evidence that did not form part of the bundle, but that Mr Maleswene asked them to produce. It was a daily issue sheet for 18 October 2016. This daily issue sheet indicated that the ward in which the applicant had worked received 11 litres of milk on that day. He stated that Maties milk is given to the patients because of the respondent's financial constraints. Every daily issue of milk should last until the following day at 09:00am.

23. Under cross examination of this document, he stated that he cannot say whether all of the milk that was issued on that day was consumed by the patients. Milk was issued daily and therefore it was issued on 19 October 2016. Bread, milk, yogurts and provitas are also issued daily. He cannot say that all of the milk that was issued had been consumed and there were no calls logged.

24. The applicant testified under oath and stated that on 19 October 2016 she left the ward at 18:00 pm in the evening because the patients eat at 17:00 pm. She went to the small gate and the security called her to the guard house and searched her. One of the security was sitting in the car and the other security was sitting in the guard house. She had a box of Shoprite long life milk in her possession and she informed him that he can see that it did not belong to the respondent, but he then told her to leave. She stated that they kept the milk behind. She then stayed at home the following two days and when she returned the weekend there was no matron on duty and she was off for another two days thereafter. When she returned to work on Wednesday the matron told her that she had received an email that she was caught with milk. She stated that she informed the matron that the milk that was found in her possession was not the hospital milk, but that it had been hers. She then approached the union and explained her case to them and further steps were taken.

25. She averred that she received a letter that she is being charged for misappropriating milk and she had to appear. She is aware of the contents of the menu, as she signs it off. She contended that milk is used for tea and coffee in the morning, at 10:00 am, 15:00 pm and for a late night snack. She stated that the ward had kept at least two to three litres of milk for the next morning for porridge and tea. On 18 October 2016 there were four litres of milk that was left over to use for porridge, tea and coffee. There were no shortages of milk on 19 October 2016 and neither had there been an over-supply

of milk issued on that day. No calls had been logged on that day either. She had received the correct amount of milk on 19 October 2016, that is, 11 litres of milk in total.

26. She testified that she receives the stock and she informs the sister whether she has received too much or too little stock. If she is not present to receive the stock then the person who sits opposite her will receive the stock. On 19 October 2016 she went to Shoprite during her lunch time and she purchased a few items there and amongst the items that she had purchased, she bought milk. She used the main gate to enter and none of the securities had stopped her to search her bag. There were many security officers at the gate. She was not asked any questions and no stickers were pasted on any of the items that she had purchased from Shoprite. The securities never look in their shopping bags upon entering the hospital's premises and simply allow everybody to pass and go through. The securities only proceeded to put stickers on big items, such as 5 litres of jik, dishwasher and toilet paper.

27. She stated further that Mr Shamase did not search her, as he was sitting in a vehicle that stood at a distance from the gate where she had been searched. She was searched by another security officer. She stated that Mapela was at the gate, but she does not know his real name. She averred that Mr Shamase was lying when he said that he searched her because he was sitting in the vehicle until she had left the premises. She denies being asked for her name tag. She stated that the ward where she had worked was directly opposite the gate she had exited and that anyone would be able to see her walk from the ward to the main gate.

28. She contended that she was not asked to take a photo of anything because after the security confiscated her milk she was requested to leave and she is not sure where her milk was taken to. She did not see sister Boois because she starts working at 19:00 and she had left at 18:00. She averred that every patient gets what is required and it all depends on how the milk in the ward is managed and she ensures that four litres of milk remain for the following day. There will be a shortage of milk if she fails to spare four litres of milk for the next day. She stated that no staff member was allowed

to take of the milk home. If milk has expired then she will explain this to the sister who will log a call and the milk will be replaced. The staff is not allowed to even take away expired milk.

29. Under cross-examination she stated that she is a general assistant number 3. Her duties include ensuring that her patients eat the correct food; that her patients wash, that the kitchen is clean, that the correct food is received for the ward and finally ensuring that the laundry of the patient is in order. The food for the ward is received from Fedics, the kitchen. Mr Abrahams is aware that she is aware of how the system works because he comes to the wards on a regular basis. She is responsible for putting the milk over the porridge and in the tea and coffee. She also dishes up the food for the patients and gives them their particular meal. She admitted that the Maties milk is served to the patients and that 11 litres of milk was issued on 19 October 2016. She further admitted that she receives the milk, makes sure that it is correct and signs it off. She indicates to the sister when there is a shortage because if there is a shortage then a patient will not receive what they need to. On 19 October 2016 milk was indeed served. She stated that she did not have to put this evidence to Mr Abrahams because it was not her turn to speak.

30. She denied that she had hoped that the respondent would not be able to prove that the milk had not been received. She has been doing the same job for 30 years and she sees to the patients' welfare and she agreed that taking the patients milk is unacceptable. She stated that her witness will confirm that she had long life milk with her on the day of the incident and that the security was sitting in the car. She averred that her witness was not with her but she knew what the applicant had with her and she locked the door behind the applicant on that day. She and her witness was in the kitchen when she put her long life milk in her bag and the ward was very close to the small gate.

31. She confirmed that the security only puts a sticker on big items like five litres of jik, dishwasher or toilet paper. The purpose of the sticker is to show that the items do not belong to the hospital. If she did not declare her personal items at the gate then the security will not be able to distinguish between her and the respondent's items, but

they do not stop you at the gate upon entering. At the gate the security will simply peek into the bag, but they will not put stickers on small items. It is not her responsibility to declare her personal items but the securities responsibility to place stickers on the items. On the day of the incident she did not declare the items that she had purchased at Shoprite. The respondent does not make use of long life milk. The milk that she receives on a daily basis is just enough for the patient's porridge, tea and coffee. The sister in the ward will approach her if there is no milk in the porridge, tea and coffee. If there is a shortage or an over-supply then she reports to the sister immediately in the presence of the person who delivers the milk.

32. If she took the milk then the patient would not have enough milk for the next day for the patients. At the disciplinary she was found guilty and had no option but to apologise for taking the milk. It was her first time and she did not know what to do and her representative told her that he will make representations and it was not as if she chose not to. She stated that she offered to testify but her representative insisted that he will speak on her behalf because it was her first time. Mr Shamase was in the car when the search was conducted on her and she asked why the respondent did not bring the person who had searched her on the day of the incident.

33. Under re-examination she testified that she was never told to declare the items that she had brought onto the respondent's premises. She has never been told for the past thirty years that she has been working for the respondent, unless it was bulk items. It is the security that was required to put stickers on the items. No meeting was ever held where she was advised to put stickers on the items. The sister would become aware of any shortages of stock in the ward. After she had dished up the patients food then they will sit were they are supposed to sit in the food hall.

34. Ms Yvonne Carol Kelly (Ms Kelly) testified under oath for the respondent that she is the senior nursing auxillary and had been working for the respondent for twenty seven years. She would stand in if there is no sister that is in charge and she will attend to any emergencies. On 19 October 2016 the applicant left her ward after her duties and as she exited the premises the securities confiscated a red box of long life milk. This

is what she had heard when she returned to work a few days after the incident. On 19 October 2016 she and the applicant went to Shoprite and she purchased two boxes of long life milk, whilst the applicant purchased a one litre box of long life milk. When she had left work on that day, she had her milk in a bag and they allowed her to exit the premises. She stated that the security did not search them upon entering the premises after they had purchased the milk at Shoprite.

35. She went out often to purchase groceries and she kept the slips in her purse. The securities would never ask her for the slips because they could see that the items did not belong to the respondent. She is not aware that she was required to declare the items that she had purchased. In the morning she did not have to declare anything. She would however always keep her slips as proof of what she had purchased, but the security would just look in her bags. She stated that she and the applicant was in a car when they went to Shoprite on the day. She had mostly entered the premises with a bus and when the bus exited the premises then the securities would search the bus. The securities would not check what was bought on the slip, as they could see that the items were bought at Pick n Pay for example. They did not put stickers on any item. She was not with the applicant when they confiscated the milk from her but she had witnessed the applicant putting a box of long life milk in her bag before she left. They exited the kitchen together and she locked the door behind the applicant. The sister was present.

36. If there is a shortage of stock in the ward then they would inform the operations manager and site manager. The patients received their food as they should and no patient goes without food. There was no incident where a patient in her ward went without milk because she hands out the milk. When the patients enter the dining room their food is waiting for them on the table. She averred that the patients are visible where they sit and three of the patients are kept outside because they have a habit of grabbing food. Every patient receives what they need to and there was no shortage of food on 19 October 2016. She stated further that when she had left on that day there was only one security in the guard room.

37. Under cross examination she testified that she left work on 19 October 2016 after 19:00 and there were a few people leaving at the time. She contended that the gate is

visible from where she sits with patients in the foyer. She cannot say how many people had been at the gate at the time that the applicant exited the premises on 19 October 2016. She admitted that she was not with the applicant at the gate at the time when the applicant exited the gate. She evaded further questions relating to her being with the applicant at the time of the incident and said that Mr Mniki must move on with his questioning. She stated further that she was standing in the kitchen with the applicant when the applicant put the long life milk in her bag. She admitted that she did not search the applicant's bag before the applicant left, but the applicant opened the bag in front of her to put her milk in the bag. She also stated that the applicant's bag was flat and when she and sister checked their stock there was nothing that was missing.

38. She averred that the person who sells the bulk items to the staff will usually put a sticker on the items. She evaded the question whether there was a possibility that the applicant can put less milk in the patients' porridge. The applicant puts the milk in the porridge and she cannot measure the milk in every bowl because the porridge would get cold, but she can see that there is enough milk in the bowls. She does check this. She further stated that before she leaves work they would check their stock to see if anything is missing and nothing is missing. She is aware that other people were caught in possession of milk. Under re-examination she stated that even if there is no milk, patients will still be able to chew the porridge.

ANALYSIS OF EVIDENCE AND ARGUMENT

39. Section 192(1) of the Act provides that an employee bears the onus of proving the existence of a dismissal, whilst subsection (2) requires the employer to prove the fairness thereof. In this matter the applicant's dismissal is not in dispute.

40. In determining whether the applicant's dismissal was substantively fair, the factors listed in Schedule 8 of the Act under Item 7 of the Code of Good Practise: Dismissal is taken into account.

41. Whether there had been a rule in the workplace that prohibited the misappropriation of the respondent's property and whether the applicant had been aware of the rule is

not in issue, and therefore it is not necessary for me to make a finding in respect of these factors.

42. Whether the applicant had misappropriated the respondent's property, that is, one litre of low fat Maties milk – Mr Shamase testified that he had searched the applicant on 19 October 2016 and found one litre of low fat Maties milk in her possession. He stated that this was the brand of milk that the respondent had used and that it was not supplied to the local supermarkets. Mr Abrahams testified that the respondent used this milk because of financial constraints. It is not in dispute that the respondent only stocked Maties milk and that this milk was not found at the local supermarkets. The applicant disputed that the security found one litres of Maties milk in her possession and stated that he confiscated a one litre box of Shoprite long life milk. Mr Shamase further stated that he requested the applicant to give him her name tag in order to link her with the milk but she did not co-operate and walked out of the gate. He then handed over all of the confiscated goods and a picture was taken of the goods. This picture was presented as evidence. It displayed a number of goods including several one litre sachets of Maties milk. He stated that the milk that was confiscated from the applicant had been part of the bundle of milk that was confiscated on the day. Mr Shamase was a very reliable and credible witness.

43. Ms Kelly and the applicant testified that they went to Shoprite during their lunch time on 19 October 2016 to purchase items which included the Shoprite brand long life milk. Ms Kelly stated that she saw the applicant put a one litre box of Shoprite long life milk in her bag when she left work. Ms Kelly stated further that the applicant did not take the Maties low fat milk because the applicant's bag was flat and there was no milk that was missing. She however admitted that she did not search the applicant's bag when the applicant left work. This therefore indicates that Ms Kelly could not say whether or not the applicant had the respondent's low fat Maties milk in her bag when she left work. Ms Kelly was further not with the applicant when the security confiscated the milk from her and could therefore not attest to and corroborate the applicant's version that they confiscated the one litre Shoprite long life milk. Ms Kelly was evasive when Mr Mniki asked her questions about whether she had been with the applicant when the security confiscated the milk. Ms Kelly's evasiveness to answer certain questions showed that she did not want to give answers that may incriminate the applicant. Ms

Kelly did however state that when she had purchased items from Shoprite or Pick n Pay, that the securities would see that the product did not resemble any of the products used by the respondent and would simply disregard it, without even requesting a slip for it. The applicant's version that the security confiscated the one litre long life Shoprite brand milk can therefore not be reconciled with Ms Kelly's version. Moreover, it does not make sense that the security would confiscate an item that did not resemble any of the products that the respondent had used. I find the applicant's evidence in this regard to be unreliable and unsupported.

44. It is common cause that the applicant had received 11 litres of Maties low fat milk on 19 October 2016. The applicant confirmed that she was the one who received the milk and managed the quantity of milk that is placed in the patients' porridge, tea and coffee on a daily basis. The applicant testified that she was responsible to ensure that there was sufficient milk for the next day for the patients' porridge, tea and coffee until 09:00 am the following day and that this depended on how she managed the milk the day before. Mr Abrahams testified that each patient should get 400ml of milk on a daily basis. Ms Kelly testified that she was not in a position to measure how much millilitres of milk each patient had received, because by the time that she is done measuring, the porridge would be cold. Ms Kelly was evasive when Mr Mniki questioned her about the possibility that the applicant could put less milk in the patients' porridge. In view of the above mentioned evidence, I find that there was indeed a possibility that the applicant could have given the patients less than their daily requirement of 400ml of milk.

45. To sum up: the applicant's evidence that her one litre Shoprite long life milk was confiscated was not supported by any corroborating evidence. Ms Kelly did not search her bag and could not testify with certainty that the applicant did not have the Maties milk in her possession. Ms Kelly was neither with the applicant when the applicant was searched at the gate. To this end, the applicant's version is not probable, in that her own witness, Ms Kelly, testified that upon exiting, the security would check her bag to see if an item resembled an item that the respondent had used and if it did not, then they would not even request a slip for the item. Ms Kelly's version in this regard therefore supported the respondent's case. The question therefore arises why the security would confiscate the applicant's box of Shoprite long life milk when it clearly

is not a product that the respondent had used at the hospital. What is more, the applicant was responsible for receiving and managing the quantity of milk used in the ward. The applicant's position therefore created an opportunity for her to be able to use less milk in the patient's porridge, tea and coffee and keep milk behind, since Ms Kelly confirmed that she did not go around measuring the quantity of milk that was given to the patients. In light of the above-mentioned evidence, I find that the respondent has succeeded in showing, on a balance of probabilities that the applicant had been guilty of misappropriating one litre of Maties low fat milk that belonged to the respondent.

46. I find that dismissal is the appropriate sanction in the circumstances for the following reasons:

47. Mr Abrahams, the dietician, testified that milk has a nutritional value and it adds to the amount of energy levels of a patient. If a patient does not receive it then they do not receive what is prescribed for their diet. A lack of milk can also prolong a patient's condition. He further testified that it is unacceptable for a person to take things from wards that are meant for patients and their recovery because that would mean that they are putting the patients last. It is clear from Mr Abrahams' testimony that a lack of milk has adverse effects on the health of the patients and that the applicant's conduct has put the welfare of the patients last.

48. The applicant showed no remorse and continued to deny that she misappropriated the respondent's property. When Mr Mniki asked her why she had apologised for taking the respondent's property when she was requested to do mitigation of her sanction at the disciplinary hearing, she stated that she was not familiar with the process, as it had been her first time. Notwithstanding the aforesaid, the applicant maintained that she did not misappropriate the respondent's property. It is therefore clear that the applicant cannot be rehabilitated and that progressive discipline would not be appropriate.

49. In *Continental Oil Mills (Pty) Ltd v Singh NO & others (JR 2152/2010) [2013] ZALCJHB 30* at paragraph, the Labour Court held that "Theft is so pernicious that it would annihilate the sustainability of the employment relationship".

50. I find that the considerations mentioned above far outweigh the applicant's length of service and clean disciplinary record.

51. In view of the aforesaid, I find that the respondent has succeeded in proving, on a balance of probabilities, that the applicant's dismissal had been substantively fair.

52. The applicant did not challenge the procedural fairness of her dismissal.

AWARD

The applicant's dismissal was substantively and procedurally fair.

The application for arbitration is dismissed.

COMMISSIONER

.....

Janine Carelse