



**PHSDSBC**

PUBLIC HEALTH AND SOCIAL DEVELOPMENT  
SECTORAL BARGAINING COUNCIL

# ARBITRATION AWARD

Panelist: **Dumisani Sonamzi**

Case no: **PSHS16-12/13**

Date of award: **11 August 2014**

In the **ARBITRATION** between:

**Sama obo Dr R.H.Mphatheni**  
**Employee**

and

**Department of Health- Eastern Cape**  
**Employer**

Employee's representative:

**Mr Simon Buthelezi (SAMA)**

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Employer's representative:

**Mr Z.Luwaca ( Labour Relations Officer)**

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**Bhisho**

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## **1. Details of Hearing and representation**

- 1.1. This is an award in the arbitration between Dr Rose Honjiswa Mphatheni, the employee and Department of Health- Eastern Cape, the employer.
- 1.2. The arbitration hearing was held under the auspices of the Public Health and Social Development Sectoral Bargaining Council (“PHSDBC”) in terms of section 186 (2)(a) of the Labour Relations Act, as amended (“the LRA”) and the award is issued in terms of section 138(7) of the LRA.
- 1.3. The arbitration hearing took place on 06 August 2014 at the district offices of Chris Hani Department of Health, Queenstown, Eastern Cape Province.
- 1.4. The employee was present and was represented by Mr Simon Buthelezi, a union official of SAMA.
- 1.5. The employer was represented by Mr Z.Luwaca, Labour Relations Officer.
- 1.6. The process was mechanically recorded and the proceedings were conducted in english.

## **2. Issues to be decided**

- 2.1. The dispute is whether or not the employee’s dismissal was substantively and procedurally unfair. In regard to the substantive fairness of her dismissal the issue was whether the employee did not stick to the rules and off duty roster for medical officers at Indwe Hospital.
- 2.2. In regard to procedural fairness, the issue was whether the employee was given an opportunity to state her case in response to the allegations.

## **3. Background to the Issue**

- 3.1. On 22 December 2011 the employee was scheduled to attend patients at Indwe Hospital

as per the roster. She failed to report for duty as a result a 5 year old boy who was bleeding profusely could not be attended to.

- 3.2. On the same day Mrs Kitty Labuschagne wrote a letter to the district office recommending that the employee's month to month contract should not be renewed. There was no formal disciplinary inquiry held to afford her an opportunity to state her side of the story.
- 3.3. The employee filed a dispute of unfair dismissal with the bargaining council challenging both the substantive and procedural fairness of her dismissal. She prayed for compensation as an appropriate remedy in the circumstances.

#### **4. Survey of evidence and argument**

##### **Employee's evidence and argument**

- 4.1. Mrs Catherine Johanna Labuschagne testified under oath that she was a retired official of the Department of Health. On 22 December 2011 she was employed by the Dept. of Health as a Middle Hospital Manager stationed at Indwe Hospital, Eastern Cape.
- 4.2. On 22 December 2011 she was on duty at Indwe Hospital when a young boy was admitted at the hospital. He was bleeding profusely and needed urgent medical intervention. The applicant was on call and was the responsible medical officer to attend to the patients on that day.
- 4.2. She phoned the applicant at about 08:00 am requesting her to urgently come to the hospital to attend to the boy's condition. However she informed her that she could not come because her mother was dying and she could not leave her. She then phoned one Dr Xhoma who was willing to help and he treated the boy. In terms of the standing rules, the applicant was supposed to have arranged for an alternative doctor to come and stand in for her.
- 4.4. At about 5pm one Dr Mphatheni, apparently her relative came to the hospital, ostensibly at the request of the employee to come and stand in for her. She told the said Dr Mphatheni that she had already requested Dr Xhoma to attend to patients for the rest of the day.
- 4.4. On the same day, she reported the matter to the District Office, particularly one Mrs Kizza who told her to write a memo and explain what had happened and what should be done. She

recommended that the applicant's month to month contract should not be renewed for January 2012. She was due to retire on 31 December 2011 and she never came to work again.

- 4.5. Neziswa Milter Ngada was the second witness for the employer. She testified that on 03 January 2012 she met with the applicant at Indwe Hospital. She received a call from the district offices in particular one Mrs Nyoka who instructed her to bring to the employee's attention the contents of the memo written by the first witness and that her services were no longer needed at the hospital.

## **5. Employer's evidence and argument**

- 5.1. Dr Honjiswa Rose Mphatheni was the applicant. She testified that she was employed on a month to month basis by the department of health stationed at Indwe Hospital earning an amount of R 556 398.00 and R46 366.50 per month. She testified under oath and confirmed what transpired on the day in question. However, the employer did not follow a fair procedure in terminating her contract. She referred to Clause 3 of her contract wherein it was stated that, clause 3.2 thereof "subject to the provisions of the Act and the Labour Relations Act of 1995, either party may, after consultation and agreement, terminate the contract before the expiry of an original term of office or an extended term of office, by giving to the other party one month's notice of termination, which notice shall be given in writing". The employer did not give her the notice nor did it hold a disciplinary enquiry to test the validity of the allegations contained in the memo. She prayed for compensation.

## **6. Analysis of evidence and argument**

- 6.1. I am required to determine whether or not the applicant's dismissal was substantively and procedurally unfair.

### **6.2. Substantive Fairness**

- 6.2.1. The substantive issue was whether the employer had a fair reason to terminate the applicant's contract. In particular I am required to determine whether the employee did not stick to rules and off duty roster for medical officers resulting in non-attendance of a five year old patient. The employer contended that the actions of the applicant amounted to misconduct. The applicant

did not refute the allegations except to place a bare denial. Her excuse that her mother was dying was never canvassed during the hearing I accordingly find it not to be a valid excuse.

6.2.2. I therefore find that the conduct of the applicant to refuse to come to the aid of a seriously ill boy was a serious misconduct that warranted dismissal. The fact that the applicant asked her relative to stand in for her was not a valid excuse. I say so because Dr Mphatheni only reported at the hospital at about 5 pm long after the boy was admitted and attended to by Dr Xhoma. The employee did not make any prior arrangements to find a doctor to stand in for her. The first witness had to ask Dr Xhoma to come and help the young boy and other patients. Accordingly the respondent successfully proved that it had a fair reason to terminate the applicant's contract.

## **7. Procedural Fairness**

The employer admitted that it did not follow the provisions of the contract in so far as termination of the contract is concerned nor did it call the applicant to attend the disciplinary enquiry to state her side of the story. It would therefore amount to pure academic exercise to traverse this issue further. I therefore find that the termination of the applicant's contract was procedural unfair.

## **8. Relief**

The applicant prayed for compensation and indicated that she was no longer willing to serve the Indwe Hospital. The employer only flouted the procedural aspect relating to the employee's dismissal. The conduct of the employee was serious and amounted to serious dereliction of her duties which could have led to the department of health being sued if the boy had died from the illness. There was however no evidence led as to what eventually happened to the boy. It is however my view that having considered these factors, payment of compensation equivalent to two months would be a just and fair compensation under the circumstances.

I therefore make the following award:

**AWARD**

9. The employer, Department of Health Eastern Cape is ordered to pay Dr Honjiswa Rose Mphatheni, the employee, the sum of R92 733.00.
10. The payment referred to in paragraph 9 is to be effected on or before 26 September 2014.
11. I make no order of costs.

  
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Dumisani Senamzi (Commissioner)