



ARBITRATION AWARD

Case No: **PSHS196-17/18**

Commissioner: **Lillian Goredema**

Date of award: **26 October 2017**

In the matter between:

DENOSA OBO L GCELUSHE

(Applicant)

and

DEPARTMENT OF HEALTH- WESTERN CAPE

(Respondent)

DETAILS OF HEARING AND REPRESENTATION

- 1.This is an award in an arbitration heard at the Western Cape Nursing College in Heideveld on 24 October 2017.
- 2.The Applicant, Lindiwe Gcelushe, was present and represented by Sabelo Ntshanga a DENOSA official and the Respondent the Department of Health-Western Cape was represented by Musawakhe Khoza.
- 3.The proceedings were digitally recorded.

ISSUE TO BE DECIDED

4. I have to decide whether the Applicant's disciplinary hearing was for a fair reason and whether the sanction a final written warning valid for six months and suspension without a salary for three months was fair.

BACKGROUND TO THE DISPUTE

5. The Applicant was employed as a staff nurse at the Western Cape Rehabilitation Centre.
6. On 3 August 2017 she submitted a time sheet claiming that she had worked from 7.00 am to 4.00 pm whereas she had only worked to 1.00 pm. She was found guilty of submitting a false claim and was given a final written warning and was suspended for two months without a salary.
7. She alleges that the disciplinary action and sanction were unfair as she had been given permission to go and vote and she should not have been penalized for this.
8. She would like the final written warning and the suspension to be set aside.
9. The Respondent alleges that the disciplinary action and outcome against the Applicant were appropriate as she was not given permission to go and vote as she alleges.

SURVEY OF THE EVIDENCE AND ARGUMENTS

DOCUMENTARY EVIDENCE

10. The Applicant submitted a bundle of documents as evidence which were agreed as being what they purported to be marked as bundle "A" pages 1 to 28 and the Respondent's documents were marked as bundle "B" pages 1 to 27.

APPLICANT'S EVIDENCE

11. The Applicant testified under oath and stated that she is employed at the Western Cape Rehabilitation Centre as a Staff Nurse.

12. On 3 August 2016 she was on duty and was supposed to work from 7.00am to 4.00pm. This was a public holiday for Local Government elections.
13. She left her work station to go and vote at 1.00 pm and did not return to work as she only managed to vote at around 5.00 pm.
14. She had been advised by Sister Ntisana who was on duty in her ward that she was allowed to go and vote.
15. She was therefore surprised on 29 August when she was asked by the Supervisor Ms Williams to state what happened on 3 August 2016. In response to the inquiry she wrote that *“3 August I suppose to work 16h00 and I left at 13h00 and work 19h00 on the 4th. I didn’t report to Mrs. Adams the following day. So my off duties was not change on the roster. I left without permission.”*
16. Mrs. Williams had forced her to write that she left without being given permission however she knew that permission to go and vote had been given to everyone on duty on that day. She therefore felt victimized as other people on duty had gone to vote but had not been questioned.
17. She submitted a claim sheet for 3 August 2016 as evidence. She testified that generally the form was completed by the Sister in charge in the morning and then she would sign it to confirm her hours of work. Sister Adams had changed her duty from 7.00 am to 1.00 pm to 7.00 am to 4.00 pm on the roster without giving her the reason.
18. She had completed her time sheet for 3 August for 7.00 am to 4.00 pm and submitted it. She admitted that she had changed her knock off time from 1.00 pm to 4.00 pm as per the duty roster although she could not explain the reason as she had worked up to 1.00 pm.

19. She submitted a letter by Sister Adams dated 29 August 2016 in which she said she changed the Applicant's knock off time to 4.00 pm on the roster and forgot to notify Sister Saville about the change and no one told her that the Applicant had left duty at 1.00 pm on 4 August 2016 as she was not on duty on 3 August. Sister Adams was her direct Supervisor.
20. She said on 3 August the people on duty went in groups to vote the first group went at 10.30 am and the next group went at 1.00 pm.
21. On 3 August she had told Sister Ntisana that she was going to vote.
22. She said she is aware that Sister Adams was charged with authorizing her time sheet as she had not had not knocked off at 4.00 pm on 4 August.
23. She said Sister Maphongwana also went to vote but she went back to work after voting.

RESPONDENT'S EVIDENCE AND ARGUMENT

24. **Laetitia Saville** testified under oath and stated that she is the Deputy Manager of nursing at the Western Cape Rehabilitation Centre and is in charge of staffing and Human Resources issues.
Mrs. Williams is the area manager and reports to her.
25. On 2 August she had given permission to the people who would be on duty on 3 August 2016 from 7.00am to 7.00 pm to be given an hour to go and vote.
26. An anonymous letter had been received about the Applicant submitting a claim for 3 August for hours she had not worked and the form had been verified by Sister Adams. According to her records the Applicant was supposed to work until 1.00 pm.
27. She was not aware of any changes to the roster but even if the Applicant had worked until 4.pm she would not have been given permission to go and vote during working hours as she had ample time to vote after 4.00 pm as the voting stations closed at 7.00 pm.

28. She said Sister Adams was penalized for not verifying the Applicant's hours on duty on 3 August 2016 and was given a sanction of suspension for 3 months and a final written warning.
29. She said the Applicant was considered to be a shift worker and she had received a report that the Applicant and Nurse Zibini had worked until 1.00 pm on 3 August as per the duty roster in her office.
30. **Gcina Maphongwana** testified under affirmation and stated that he is a nursing assistant at the Western Cape Rehabilitation Centre and was on duty with the Applicant on 3 August 2016.
31. He worked from 7.00 am to 7.00 pm on the day and was given permission to go and vote by Sister Ntisana and he left at 12.40 and came back at about 2.30 pm. The Applicant had left as she was working until 1.00 pm.
32. **Vuyiswa Ntisana** testified under affirmation and stated that she was in charge of the ward where the Applicant was on duty on 3 August 2016. The Applicant worked from 7.00 am to 1.00 pm on the day.
33. There was no need to give the Applicant permission to go and vote during working hours as she knocked off at 1.00 pm and only people working from 7.00 am to 7.00 pm were given permission to go and vote for an hour during working hours.
34. She said that she noticed that the Applicant's working hours for 3 August had been changed by Sister Adams from knock off time at 1.00 pm to 4.00 pm on the claim form without consulting her as the person in charge.

ANALYSIS OF THE EVIDENCE AND ARGUMENT

35. The Applicant admitted that on 3 August 2016 she worked from 7.00 am to 1.00 pm which is the time she went to vote but she did not return to work as she finished voting

around 5.00 pm. She claimed payment for working hours 7.00 am to 4.00 pm as she had been given permission to go and vote during working hours.

36. The evidence by all Respondent's witnesses is that the Applicant worked from 7.00 am to 1.00 pm even though the Applicant testified that she was booked to work until 4.00 pm. I agree with Mr. Khoza that the evidence was corroborative, credible and probable.
37. There was no challenge to Sister Saville's evidence that permission to vote was only given to people working from 7.00 am to 7.00 pm. Mr. Ntshanga submitted that the message about who would be allowed to go and vote was confusing I find it improbable that the Applicant was the only one confused as every employee understood the message that only shift workers on duty from 7.00 am to 7.00 pm would be given an hour to go on vote. I accept Sister Saville's evidence on the permission as being reasonable as the Applicant and any other member of staff knocking off at 1.00 pm had ample time to vote after work as voting stations closed at 7.00 pm.
38. Further I accept Sister Ntisana's evidence that she was in charge of the ward in which the Applicant worked on 3 August and that the Applicant worked up to 1.00 pm therefore there was no need for her to give the Applicant permission to go and vote.
39. Although the duty roster submitted by the Applicant shows that she was supposed to work until 4.00 pm it is common cause that the roster had been amended by Sister Adams who was found guilty of verifying and submitting the Applicant's false claim form on the hours she worked on 3 August. I find it probable that the amendment of the roster done by Sister Adams was done after the submission in an effort to support her case which was a consequence of the anonymous e- mail.
40. This finding is supported by the evidence by the Applicant that she also amended her time sheet and failing to explain why she did so as the time sheet is completed in the morning and the fact that Sister Adams had not advised Sister Saville about the amendment. In any case Sister Adams' letter states that she was not aware that the

Applicant had worked until 1.00 pm. This does not support the Applicant's claim that she had permission to go and vote at 1.00 pm. Further my finding about the improbability of the Applicant's case regarding the amended form is supported by Sister Ntisana's evidence that the claim form was changed by Sister Adams without her knowledge and this evidence was not challenged.

41. I find that the Applicant's story is improbable because even Sister Adams's letter says she did not check with the Applicant what time she knocked off not that she had been given permission to vote.

42. I further reject the Applicant's evidence that she was forced to add that she left without permission is improbable on the note she wrote on the day she was interviewed by the Supervisor because Sister Adams was not at work on 3 August and no reason is proffered why the Applicant did not state that permission had been given to her by Sister Ntisana the reason she did not say so was because she had worked until 1.00 pm without anyone's permission to go and vote as she had knocked off duty.

43. Consequently, I find that the disciplinary action against the Applicant was fair and I cannot find fault with the sanction which I think errs on the side of leniency as the misconduct involves dishonesty.

AWARD

44. The disciplinary action and sanction against the Applicant is fair and did not constitute an unfair labour practice.

45. The applicant's claim is hereby dismissed.



Lillian Goredema

PHSDSBC Panelist