



# ARBITRATION AWARD

Panellist/s: Leslie Martin  
Case No.: PSHS207-10/11  
Date of Award: 26-Apr-2011

In the ARBITRATION between:

N.U.P.S.A.W. on behalf of L. Hleli  
(Union / Applicant)

and

Department of Health- Western Cape  
(Respondent)

## **DETAILS OF HEARING AND REPRESENTATION**

The arbitration took place at the offices of the Department of Health, 4 Dorp Street Cape Town on 6 April 2011. The applicant, Mr. Hleli (Hleli), was represented by Mr. W.S. Nojekwa, the National Committee Secretary of NUPSAW. The respondent, the Department of Health Western Cape, was represented by Mr. R. Collop, its assistant director.

Written closing arguments in this matter were submitted on 8 April 2011. The date for the submission of the award is Friday 22 April 2011.

## **ISSUE TO BE DECIDED**

Was the dismissal of Hleli fair?

## **BACKGROUND TO THE ISSUE:**

Hleli worked for the respondent from 7 January 1997. His services terminated on 22 June 2010 when he was dismissed on charges of impoliteness and insubordination. At the time of his dismissal Hleli was a Senior Administrative Clerk and earned R87,978.00 (eighty seven thousand nine hundred and seventy eight rand) per annum.

## **SURVEY OF EVIDENCE AND ARGUMENT**

A common bundle of documents was handed into evidence and no objections to any documents were recorded.

Leno Mashady Ndayi (Ndayi), a receptionist in the out-patients department at J.G.F Jooste hospital, Gwendoline Janine van der Westhuizen (van der Westhuzen), a manager and Danie Vermeulen (Vermeulen), a supervisor, testified under oath for the respondent.

Hleli testified under oath on his own behalf.

### **THE EVIDENCE:**

On 14 December 2009 Ndayi had instructed Hleli that he was to work with her in out-patients. This was as a consequence of arrangements having to be made when the workplace was short of two employees who were away on training.

Hleli however took his lunch-box and said he was leaving and that he would be handing in a doctor's certificate even though he was not sick that day.

Ndayi, who at the time was acting as supervisor, had had a good working relationship with Hleli and, besides this incident, and had never before had a problem with him.

On 18 December 2009 Hleli had also taken leave to return to work on 6 January 2010. The respondent contends this was unauthorized leave while Hleli contends his leave was authorized by Ndayi.

Hleli did not return to work on 6 January 2010 but instead sent Ndayi an sms stating that he was still travelling as the bus had broken down and that he would return to work on Monday 11 January.

At that time Ndayi was also on leave as she had been since 4 January and from which she returned on 25 January.

Van der Westhuizen had written Hleli a letter on 21 December 2009 advising him that he was absent from work without authorization and that he should return to work immediately. The letter also advises that he would not be paid for the days absent.

This letter van der Westhuizen had written as a consequence of Ndayi's informing her that Hleli was absent from work without permission and that he had not contacted the respondent regarding when he would return to work.

Hleli denied that he had received the letter as he was already on leave at the time and in the Eastern Cape.

The procedure an employee was to follow when absent was to telephone one's supervisor, or in the supervisor's unavailability, a colleague, with the explanation. All staff were aware of this.

Vermeulen had also informed all the staff regarding the rules of communication with the respondent by staff who were absent. The rule was simply not to use sms but to telephone in.

He had in fact personally interacted with Hleli in this regard but Hleli would nevertheless still resort to using the sms.

Hleli denied that he had been informed of these rules or that he had attended a meeting where they were explained.

According to van der Westhuizen Ndayi could recommend that an employee go on annual leave as she was aware of the operational circumstances on the floor. She was however not able to authorize leave. That remained within the domain of van der Westhuizen.

Regarding the authorization of Hleli's annual leave he understood that Ndayi signs a leave form only as a recommendation that an employee may go on leave but that she does not herself authorize the leave.

The further testimony of van der Westhuizen and Vermeulen was that they had on 26 March attempted to serve on Hleli the notice to attend a disciplinary hearing but that Hleli refused to accept the notice and covered his ears with his hands when they tried to verbally tell him what it was. Hleli then walked out of his office. Hleli denied that he was in his office at the time and that van der Westhuizen and Vermeulen had served the notice to attend a disciplinary hearing on him. Hleli's version was that he was notified telephonically on 12 April to attend his disciplinary hearing.

Van der Westhuizen had also tried on 11 January 2010 to serve Hleli the audi alteram partem form regarding his absenteeism. On that occasion he had also refused to sign the document and also covered his ears so as not to hear what she was saying to him and walked out. Hleli however denied this, stating that he had accepted the document but had not signed for it.

She had also generally found Hleli to be abrupt and disrespectful to authority when interacting with him.

### **ANALYSIS OF EVIDENCE AND ARGUMENT**

The evidence, both oral and documentary presented at this arbitration, shows what can only be described as a continuous battle between Hleli and his superiors at the workplace.

The evidence shows numerous incidents of Hleli's refusal to obey lawful instructions and a failure to participate in the disciplinary system of the respondent. This is manifested particularly in his act of closing his ears when addressed by his superiors in relation to matters concerning his discipline. In this regard I have no reason to doubt the testimony of van der Westhuizen and Vermeulen. There is no reason other than a bland denial on the part of Hleli as to why Vermeulen and van der Westhuizen would want to level these allegations against him without good cause. In fact much of the testimony of the witnesses of the respondent went unchallenged by Hleli, thereby denying those witnesses an opportunity to respond to his version.

A further example of Hleli's thumbing his nose at the disciplinary procedures in place at the respondent's is Hleli's disregard for the instructions given him regarding his communication of his absence from the workplace. I have no reason to doubt that the employees at the respondent's are aware of the manner in which such communication must be effected. It must be borne in mind that until there is proof of a valid reason for absence from the workplace the employer's condonation thereof would be an indulgence until such proof is provided. It goes without saying that in the event of acceptable evidence ultimately not being furnished by the absent employee such employee remains subject to being disciplined in respect of that absence.

While it is clear from the evidence before me that Hleli had acted in an insolent and insubordinate manner it is also clear that Hleli has not shown any remorse in respect of his conduct.

Notwithstanding the fact that Hleli had been in the employ of the respondent for 13 years the fact that his conduct demonstrates the disposition of an employee unlikely to reform, it would be inappropriate to expect the respondent to continue a relationship with him.

Hleli's conduct has made the employment relationship intolerable for the respondent.

Regarding the fact that the disciplinary hearing was held in the absence of Hleli, there is sufficient evidence before me from which to conclude that the respondent had in fact made sufficient attempt to have Hleli attend at the disciplinary hearing. Firstly, as stated above, van der Westhuizen and Vermeulen had attempted to serve the notice to attend the disciplinary hearing on Hleli but that he had, through his conduct, refused to accept it. Secondly the evidence shows that even on the day of the disciplinary hearing attempts were made by the disciplinary chairperson and Vermeulen to secure Hleli's attendance at the disciplinary hearing but that he had rejected such attempts.

Having thus considered all the evidence presented at this arbitration I find the dismissal of Hleli to have been fair both procedurally and substantively.

### **AWARD**

This application for relief in terms of the provisions of the Labour Relations Act 66 of 1995 as amended is dismissed.

**COMMISSIONER: L. MARTIN**



Panellist/s: **Leslie Martin**  
Sector: **Public Health & Social Development**