



PHSDSBC

PUBLIC HEALTH AND SOCIAL DEVELOPMENT
SECTORAL BARGAINING COUNCIL

ARBITRATION AWARD

Case No: **PSHS218-17/18**

Commissioner: **Lillian Goredema**

Date of Award: **19 October 2017**

In the matter between:

HORSPERSA OBO F ADRAANSE AND 3 OTHERS

(Applicants)

and

DEPARTMENT OF HEALTH- WESTERN CAPE

(Respondent)

DETAILS OF HEARING AND REPRESENTATION

1. This is an award in the matter between Francina Adriaanse, Katrina Adams, Catherine Pheiffer and Nagieda Burger (Applicants) and The Department of Health, Western Cape (Respondent). The matter was heard on 13 October 2017 at the Western Cape College of Nursing, Athlone.
2. The Applicants were represented by Reggie Daniels an official of HORSPERSA and the Respondent was represented by Ayanda Mniki, a Labour Relations Officer with the Respondent.

3.The proceedings were digitally recorded.

ISSUE TO BE DECIDED

4. I have to decide whether the Applicants' dismissal was substantively fair.

BACKGROUND TO THE DISPUTE

5. The Applicants were employed by the Respondent as Household Aids in wards at Lentegeur Hospital.

6. On 19 October 2016 the Applicants were charged with removing various food items from ward kitchens with the intention of permanently depriving the Hospital of the property.

7. A disciplinary hearing was held on 10 April 2017 and all the Applicants were found guilty of the respective offences and were dismissed on 24 April 2017.

8. The Applicants now allege that there was no substantive evidence presented at the hearing to support the charges and they would like to be reinstated to their previous positions.

9. The Respondent alleges that sufficient evidence was presented to prove the charges therefore the dismissals were fair.

SURVEY OF THE EVIDENCE AND ARGUMENTS

DOCUMENTARY EVIDENCE

10. The Respondent submitted a bundle of documents as evidence which were agreed as being what they purported to be which was marked as bundle "A" pages 1 to 39 and the Applicant submitted a bundle of documents marked as bundle "B".

RESPONDENT'S EVIDENCE

11. **Robert Thomas** testified on oath and stated that he is a security quality control officer at Lentegeur Hospital. On 20 October 2016 he compiled a report regarding the removal of items belonging to the hospital by the four applicants on 19 October 2016. The information was given to him by Mr. Moyo and Mr. Mtetwa both security officers at Lentegeur Hospital.
12. He submitted the report as evidence. The Report lists items belonging to the hospital which were found in the possession of the applicants as they were about to leave the hospital premises: Van Wyk had 1 litre of milk and Ms Adams had 4 tubs of yoghurt and one Roma butter, Ms Pheiffer 2 litres of milk, 2 loaves of bread and 2 oranges, Ms Burger one plastic with washing powder, 2 litres of milk 2 oranges, 6 bottles of Fresubin and one bag with sugar.
13. **Kunjuzwa Tukutezi** testified under oath that she is a Nursing manager at Lentegeur Hospital and Ms Adriaanse reported to her.
14. She had spoken to Ms Adriaanse who admitted taking the six bottles of Fresubin for her sick brother.
15. On numerous times she had talked to the Household Aids about not taking items belonging to the hospital without authorisation.
16. The hospital cares for psychiatric and disabled patients who rely on staff to look after them therefore the Applicants conduct broke the trust between the employer and them.
- 17.

18. She testified that if food items are removed from the wards this deprives the patients of such foods and the hospital fails to meet the requirements towards patients who are completely dependent on the hospital's staff.
19. **Bongani Shamase** testified that he is employed by Helios Security and is a site manager at Lentegeur Hospital.
20. He testified that he is familiar with the report submitted to Mr. Thomas which was admitted as evidence. Ms Adriaanse's name is not on the report because she had not provided her name at the search but her name was later established.
21. On 19 October 2016 he did a random search of the four Applicants' bags and found items on each of them as mentioned in their respective charge sheets.
22. The search was a consequence of his suspicions about the Applicants aroused by the fact that he had observed Mrs. Pfeiffer having a conversation with the other three applicants near the exit gate and they went back to the ward although they had been ready to leave.
23. He was with Mr. Mtetwa and wrote and recorded the items found in the Applicants' bags. He identified the photographs of the items from the documents submitted by the Respondent. Ms Adams was found in possession of 4 tubs of yoghurt and one slab of Romi butter; Ms Burger was found in possession of a plastic bag with washing powder, 3 litres of milk and 2 oranges; Ms Adriaanse was found in possession of six bottles of Fresubin, a packet with sugar, 2 litres of milk and 2 oranges and Ms Pfeiffer was found in possession of 2 litres of milk, 2 loaves of bread and 2 oranges.
24. The Applicants had been uncooperative so he had called Sister Nkonte who was on duty and the items were handed over to Sister Boyes.

25. It is the hospital's policy that members of staff should declare any items they have before entering the hospital premises and there are notices at every entrance about this.
26. He said the items found in the Applicants bags belonged to the Hospital as the supplier is identifiable.
27. Under cross-examination he said the photographs are of perishable items. He said he can identify all the Applicants but cannot refer to them by names.
28. When questioned about what Mr. Thomas recorded on his report about other staff who dropped items and security fetched the items he said the items belonged to Ms Adriaanse who was identified after the incident. He could not say why all the items were not included on her charge sheet as he did not draft the charge sheet.
29. **Sam Mtetwa** testified under oath and stated that on 19 October 2016 he conducted a search of the Applicants' bags and found them in possession of items belonging to the hospital as listed in their charge sheets.
30. Ms Adriaanse's name is not on Mr. Thomas's list because she did not provide her name initially but the bottles of Fresubin, 2 litres of milk, 2 oranges and a bag with sugar, the items listed on page 11 were found in her bag. He could not explain why she was charged with possession of Fresubin only and not the other items.
31. He had taken a photograph of the items which were perishable.

32. **Lugman Abrahams** testified under oath and stated that he is a Dietician employed by Fedex Food Services the company that provides Lentegeur hospital with food items. All the items found on the Applicants as depicted by the pictures belonged to the hospital.

33. He also testified on the patients' diet.

APPLICANT'S EVIDENCE AND ARGUMENT

34. **Francina Adriaanse** testified under oath and stated that on 19 October 2016 at five minutes before six in the evening Ms Burger asked her to accompany her to ward 105 to collect groceries from Ms Pfeiffer.

35. They got to the ward and found Ms Adams sitting outside the ward. Mr. Moyo and another security officer searched Ms Burger's bag and found nothing in her bag and they told her and the other three Applicants to go home.

36. She said it is not true that bottles of Fresubin were found in her bag. She denied telling Sister Tukutezi that she had taken the Fresubin for her sick brother.

37. **Nagieda Burger** testified under oath and stated that on 19 October 2016 she had been asked to collect groceries from Ms Pfeiffer. There was chicken beans and rice.

38. The security officers searched her and found the groceries and nothing else was found in her bag.

39. **Katrina Adams** testified under oath and stated that on 19 October 2016 she was with Ms Pfeiffer who gave groceries to Ms Burger.

40. The security officers had rushed to grab the bag with groceries from Ms Burger and also searched Ms Adriaanse's bag. Her bag was never searched therefore no items as listed in the charge sheet was found in her possession.

41. **Catherine Pfeiffer** testified under oath and stated that the security officer searched her bag after asking about the groceries and found nothing in her bag.

ANALYSIS OF THE EVIDENCE AND ARGUMENT

42. The Applicants deny that they were found in possession of property belonging to Lentegeur Hospital which they had removed with the intention of depriving the hospital permanently of the property and the Respondent presented evidence showing that hospital items were found in the Applicants' bags.

43. The Applicants' cases and the Respondent's case are so diametrically opposite that it is important to consider case law on the consideration of evidence in cases of such a nature.

44. In deciding the case I have taken into account what was said in the case of *Thohoyandou Spar v CCMA and Bupsaw obo Mandiwane JR 2676/13* that in such a case I have to assess the credibility of witnesses and / or the inherent probabilities of the versions presented to me and give reasons for acceptance or rejection of one version against the other.

45. The witnesses for the Respondent gave their evidence well and with no contradictions. The evidence of the security officers who conducted the search on the Applicants was corroborative of each other's evidence and they testified to what was found in each Applicant's bag.

46. However I find that the Applicants' cases, though corroborative of each other's evidence, were improbable. I also find that their evidence was not credible and was not supported by any other evidence presented to me.

47. The details of the Applicants' case were not presented to any of the Respondent's witnesses in in cross-examination and I was taken aback by the Applicants' evidence regarding groceries found by the security officers which had not been presented to the witnesses. The witnesses were only told that the Applicants would deny that items were found in their bags.
48. I find that this was the crux of the Applicants' case and the witnesses should have been asked to comment on this. I therefore find the Applicants' evidence to be improbable because this evidence was not presented to the Respondent's witnesses and I could not find any reason for the witnesses to give false evidence against the Applicants taking cognizance of the fact that photographic evidence was presented to support their evidence.
49. I therefore find the evidence by the Applicants to be improbable, firstly because the issue of groceries was not mentioned to the witnesses, secondly because the particulars of groceries were not presented to the disciplinary hearing and at arbitration. In any case no declaration had been made about groceries which have no resemblance to what was found in the bags of the Applicants.
50. It is also important to note that at both the Disciplinary hearing and arbitration the Applicants were represented and therefore it is reasonable to assume that the Applicants would have told such representatives their respective cases which the representative at the arbitration should have presented to the Respondent's witnesses. But this was not done justifying my finding above.
51. There was extensive cross-examination on the items that had not been attributed to Ms Adriaanse in Mr. Thomas' report but I accept the explanations of both Mr. Shamase and Mr. Mtetwa that she had been uncooperative during the search and they did not have her identity details when the report was made but the identity had been established at a later stage. Further both of them were not responsible for charging Ms Adriaanse with removal of only six bottles of Fresubin. I am fortified in making this finding by the fact that Mr. Thomas the author of the much maligned second page of

his report was not cross-examined as to the meaning of and implications of his report. I found no reason to disbelieve the evidence of security officers as both were steadfast as to the items found in Ms Adriaanse's bag and I find them to be credible witnesses.

52. I further find that Sister Tukutezi's evidence provided further corroboration of the evidence against Ms Adriaanse as no reason was advanced why she would give false testimony against Ms Adriaanse.

53. Consequently, I find that sufficient evidence was presented to support the charges against the Applicants.

54. I find that dismissal was appropriate because of the seriousness of the misconduct. I have taken into account evidence that taking the food items would invariably deprive the patients in a special hospital of the requisite food items. The Applicants were in a position of trust which they abused and no other sentence would be appropriate in the circumstances.

AWARD

55. I find that the Applicants' dismissal was substantively fair.

56. The Applicants' claim of unfair dismissal is hereby dismissed.

57. There is no order of costs.



Lillian Goredema

PHSDSBC Panelist