



ARBITRATION AWARD

Panelist/s: A.N MAFA
Case No: PSHS219-11/12
Date of Award: 20 September 2013

In the ARBITRATION between:

Nehawu obo Mokwena Matsobane Hendrick
(Union / Applicant)

And

Department of Health and Social Development-GP
(Respondent)

Union/Applicant's representative: Mr. M. Mokwena
Union/Applicant's address: 17th Floor, Marble Tower
Johannesburg
2000

Respondent's representative: Mr. M. Mkhali
Respondent's address: Department of Health and Social Development-Gauteng
2 Collinder Road
Diepkloof
2146

1. DETAILS OF HEARING AND REPRESENTATION

This matter was set down for arbitration on the 05 March, 08 May, 13 and 27 June 2013, at Gauteng Department of Health, Bank of Lisbon Building. Initially applicant was represented by his union; Nehawu and he later decide to proceed on his own.

On the other hand, the respondent was represented by Mr. M Mkhalihi. At all material times the proceedings were digitally recorded and detailed written notes were also taken which forms part of the record.

2. PRELIMINARY ISSUES

None.

3. ISSUE TO BE DECIDED

Whether the presiding officer did apply his mind or not.

Whether the suspension of the applicant was procedurally and substantively fair or not.

4. BACKGROUND TO THE ISSUE

It is common cause that a water bottle broke while used by the applicant.

The applicant wrote a report to management regarding the broken bottle.

The water bottle was bought for R456.00.

5. SURVEY OF EVIDENCE AND ARGUMENT

The essence of the Applicant case is as follows:-

Godfrey Msiza was the 1st Witness:

He is employed at Head Office, Department of Health pathology services. He is employed as Senior State Account for about 5 years. He is familiar with page 6 of bundle "C" being a Petty Cash policy. According to him any item can be purchased by petty cash as long as it is less than R2 000.00 in value.

He confirmed that original invoices or cash slip must be attached and copies are not allowed as they have to be sent to GSCC. He confirmed further that no quotation is necessary to purchase a particular item and one has to approach the supplier of choice.

The process is different to that of 3 quotations where one has to look for a cheaper price. According to him the process is that one has to write a memo and the supervisor has to approve with a petty cash application form as per page 1 of bundle "C". In fact the supervisor only signs authorizing the memorandum and the CEO is the one who approves.

At facility level the facility manager approves cash and the memo, but at Head Office the applicant, head of finance and CEO. It will then, after the approval when it is taken to finance or to

petty cash custodian to give out money and within 48 hours the change and receipt must be submitted to the petty cash custodian. In other words if the original receipt is not there the GSCC will be informed that it is invalid. Certified copies are also allowed if the supplier saw it. According to him for a document to be classified as an invoice it must have an invoice number, letter head, address of supplier, description of the item, amount, VAT, dates and bank details sometimes, contact details etc. When referred to the bundle 3 he was not sure what the document was and not sure if it is an invoice.

He testified that page 3 of bundle "C" is not an original invoice but a quotation. He testified further that petty cash transactions cannot be sourced through quotations. He confirmed page 4 of bundle "A" to be a quotation. When referred to page 5 Bundle "C" he testified that according to him the document is an invoice because it has an invoice number. He was however not sure what page 8 bundle "A" represents as there was no invoice number on the document. He testified that page 5 of bundle "C" has a rubber stamp with banking details but page 8 of bundle "A" there are no banking details and if one has a copy the supplier can be contacted to send the original.

He testified that the memo submitted specifies exactly what needs to be purchased. Once the memo gets to the head of finance and CEO they check and verify if the item bought falls within permissible items that can be purchased through petty cash and the value of the item. According to him if the original document cannot be located the head of finance must conduct an investigation. In conclusion he indicated that documents as per page 8 of bundle "A" cannot be used for petty cash transactions.

During cross examination the witness confirmed that he is at level 8 and his duties include budget, income, partly petty cash, assets and payments. He confirmed further that there was nothing wrong if the checking by finance head or CEO is done after the transaction is complete as it is informed by the policy. It was further his contention that it is not necessary to obtain a quotation before purchasing if one knows the price and as such there was nothing wrong as well for applicant to source a quotation before purchasing. It was further his testimony that if indeed suppliers were told by applicant to inflate prices the matter had to be investigated.

The witness also confirmed that applicant's prices were not reasonable in comparison to other suppliers and could not dispute the possibility of one inflating prices. Further more it was his testimony that the purpose of the Petty Cash Advance Claim form is for accounting, capturing and authorization. He also disputed a document on page 8 of bundle "A" as being a quotation and/or invoice and contended that it must have been verified with the supplier as to what it reflects. The witness could also not attest on what basis the transaction went through using the same document without being returned by GSCC.

Matsobane Hendrick Mokwena (Applicant) was the 2nd Witness

He is employed by Gauteng Department of Health at Forensic Pathology Services in Diepkloof currently. In 2008/2010 he was stationed at Sebokeng Forensic Pathology Services and transferred in February 2010 to Diepkloof.

From 2010 he was stationed at Head Office and moved to Diepkloof around September 2010. He has been with the Forensic Pathology Department for 6 years. He is employed as a procurement clerk and it has been the case even when he was still in Sebokeng. His duties are amongst others, administration, provision of goods and services, liaise with end user and supplier, procure on behalf of Department for the entity he is serving, handle supplier query as well as and/or queries from treasury, issue and replenish stock to the end user.

He confirmed a charge sheet as relating to the charges of misconduct that took place while he was stationed at Sebokeng. According to him Mr Denner was his manager at Sebokeng and prior to

investigations his relationship with his managers was not healthy. The misconduct relates to a water bottle that he broke himself and it was around December 2009.

Around November 2009 there were complaints he lodged against Mr Denner to his Director. He reported the incident of loss of water cooler bottle through a letter and at the time Mr Denner was on leave. When he came back from leave he instructed him to call Ingwe and seek a quotation for the water cooler bottle as confirmed by par 2.1 of bundle "B". He obliged and obtained the quotation. As a buyer he has a database but on this one he was instructed to use a specific supplier. The very same day on 13 January 2010 after calling Ingwe, a quotation was faxed from Ingwe.

Upon receiving the quote he handed it over to Mr Denner. While he was still standing at Mr Denner's office Mr Denner told him that because the amount is less petty cash money can be used and in the process he called Mr Strobel to arrange the amount, because the transaction was far less than R 2000.00 hence Mr Denner said they must use petty cash.

The trip authority was also done on the same day. He testified that he filled the petty cash form on the same day i.e. 13 January 2010 and the form as per page 6 was not filled by him and the signature on the form is not his. He testified that he signed for the R456.00 and trip authority is also dated 13 January 2010 and used the state vehicle to collect the water bottle.

He testified further that a trip authority form is not part of the bundle despite requesting it together with the original petty cash form. According to him he called Mr. Goolam to inform him that he was on his way to collect a bottle at Ingwe and they arrived at the same time. He testified that the invoice he was made to sign is similar to the one on page 5 of bundle "C"

He was shocked when shown a document on page 8 of bundle 'A' as he was not sure if it was a quotation or invoice as it did not have an invoice number and as such it did not comply with the standard invoice format. He could also not explain why Ingwe had different types of invoicing. He also referred to a preliminary report of the Labour Relations Officer originating from Mr. Denner approaching the LRO informing him that applicant inflated water bottle price.

Under cross examination the applicant testified that as a buyer he would write a formal request for quotation or call the suppliers for a quotation in liaising with them. It was his testimony that in this matter he called the supplier G&I Suppliers cc T/A Ingwe Safety and Engineering as instructed by his facility manager. He testified that he called Mr. Goolam and requested a quotation for water bottle and was given an amount of R 456.00 as reflected on page 3 of bundle "A". He then proceeded to write a report before knowing the price and receiving the quotation. He further disputed the fact that a water bottle may cost around R 193.00 and that he inflated the price when it was put to him that Mr. Goolam will be called to testify on the issue. He further insisted that he is the one who collected the water bottle but not Mr Strubbel and never saw him driving a car during his stay in Sebokeng.

It was his further testimony that in dealing with petty cash an estimate of the amount requested is made and the advance payment will be given to the official and after purchasing an invoice is required. According to him documents reflected in the bundle are not acceptable because GDH has its own standards.

He further contended that in his view the amount of R456.00 was fair and reasonable as he had only one quotation even though he requested other quotations afterwards after receiving a complaint.

The Essence of Respondent's Case is as follows:-

Pieter Andries Denner was the 1st and only witness called. He testified as follows:

He is employed as Assistant Director, Forensic Pathology in Sebokeng. He started working for Department of Health since 2006 and was previously employed by SAPS. By virtue of his appointment he is a Facility Manager and his duties include making sure that the facility run smoothly. According to him he signs a lot of documents everyday and acknowledged signing a loss management form after the water bottle was broken. He requested applicant to purchase a new water bottle because the water cooler was not broken. He testified that he asked applicant to look for quotations and did not dictate to request it from a specific company.

According to him he learned through applicant while on leave that there was a broken bottle. He was aware of the quotations sought that includes the one of R456.00 and requested that others be sought as the aforesaid quotation was high. The quotation he was able to secure was less as he personally called Ingwe. When he asked Goolam why there was difference in the quotations he was told that applicant asked him to inflate the prices so that they can share profit. According to him Mr. Strubbel collected the bottle from Ingwe and also brought an invoice. He further testified that the invoice was sent to GSSC for replenishment because they received the replenishment money. They created a purchase order and after delivery Ingwe prepared an invoice and purchase order is not required where petty cash is used. He testified that Mr. Strubbel was the driver of the car which collected the water bottle and not sure if Mr. Goolam gave applicant money.

During cross examination he denied ever instructing applicant to purchase the water bottle from Ingwe despite the report of the Labour Relations Officer states otherwise. He could also not remember applicant informing him of the incident. He confirmed that applicant gave him a quotation on the 13 January 2010 and that on the 19 January 2010 applicant applied for petty cash and he gave him. He contended that he became suspicious after collecting the bottle and approached Mr. Goolam on the 20 January 2010 and denied ever forcing Mr. Goolam to implicate him. He could however not dispute that the applicant's signature could have been forged. He testified that the only reason why he proceeded with the deal was because the information was still allegations at the time. He was however not suspicious on the second transaction as he was not involved.

ANALYSIS OF EVIDENCE AND ARGUMENTS

In arriving at my findings I have taken into account the closing arguments submitted by both parties. I must state from the onset that applicant was found guilty for gross dishonesty in that he had allegedly approached a service provider Ingwe and requested the company to inflate the price of the replacement of a broken water bottle with the sole aim of sharing the money gained as such with the alternative charge of theft, bribe or fraud.

The evidence presented throughout the entire arbitration proceedings was hearsay in nature in that the very same service provider referred to in the charges proffered against the applicant did not testify during the arbitration proceedings. The witness called by the respondent could not attest to the communication between applicant and the service provider. The evidence of the service provider in my view was crucial to sustain the charges against the applicant.

The applicant on the other hand denies ever committing misconduct as alleged by the respondent. His testimony refutes the hearsay evidence presented by the respondent. I cannot therefore under the circumstance find any exceptional reasons why I should put any weight on the hearsay evidence of the respondent.

FINDINGS

Consequently, I find that the applicant's version, on a balance of probabilities, outweighs that of the respondent and proceed to render the following award;

AWARD

1. The two months suspension without pay of the applicant Matsobane Hendrick Mokoena is substantively unfair.
2. The respondent is ordered to pay applicant an amount equal to two months' salary calculated at his rate of income as at the date of his suspension.
3. The respondent is further ordered to comply with paragraph 2 above on or before 31 October 2013.
4. I make no order as to costs.

DATED AT PRETORIA ON 20 SEPTEMBER 2013.

Signature: 
Commissioner: Abraham Nthako
Sector: Health