



ARBITRATION AWARD

Panellist/s: Lufuno Lawrence Ramabulana
Case No.: PSHS251-10/11
Date of Award: 10-Dec-2010

In the matter between:

Ntloedibe TR
(Applicant)

and

Department of Health: Gauteng
(Respondent)

Union/Applicant's Representative

SELF

Applicant's address

None

Tell: None

Fax: 086 654 2600

Respondent's representative

D Radebe

Respondent's address

P/BAG X 848

Pretoria

0001

Tell 011 355 3183

Fax 011 355 3358

DETAILS OF THE HEARING AND REPRESENTATION

- 1 This arbitration was heard on the 06th December 2010 at the Employers' premises in the Tshwane district Hospital. The Applicant was present at the arbitration and he was presented his case. The respondent was represented by D Radebe in his capacity as an employee with the respondent.

ISSUES TO BE DECIDED

- 2 Whether or not the employer committed an unfair dismissal when they terminated the employment of the applicant. Accordingly applicant was employed on a fixed term contract to render cleaning work until December 2010.
- 3 Applicant's employment was terminated when it was alleged he insubordinate, absenting himself from work station without permission and rendering poor work.
- 4 On the 02th June 2010, applicant was given a written warning however the warning was replaced with termination of service on the 03 June 2010 hence the referral to bargaining council of unfair dismissal.

BACKGORUND TO THE DISPUTE

- 5 It is common cause that applicant is employed as a cleaner for the period until 31 December 2010 at a salary of R2000, 00 and this contract was terminated on the 03 June 2010.
- 6 It is common cause applicant was not subjected to any disciplinary hearing before the termination of his employment, the employer reasoned the contract between the parties is wide enough to cover for these kind of dismissals.

THE APPLICANT'S VERSION

- 7 The applicant submitted various documents amongst them the salary confirmation, he also submitted he does not know the reason for his dismissal. He recalls being given a warning on the 02/06/2010 and on the 03/06/2010 he got a letter of dismissal.
- 8 He disputes ever being absent or committing the offences he is alleged to have committed by the respondent.

SUBMISSIONS BY THE RESPONDENT

- 9 The respondent informed the arbitration applicant was in terms of the agreement between the parties and the contract of service that binds the parties.
- 10 Applicant was called to explain and when he failed to show remorse, they decided to terminate his contract.
- 11 Tshepo Gugushe also testified for the respondent, he informed the arbitration they had problems with applicant with his cleaning and the area he cleaned. After they deliberated on the issues the management team decided to terminate his services.

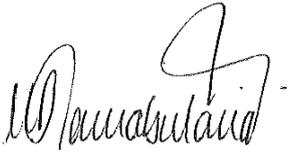
ANALYSIS OF EVIDENCE AND FINDINGS

- 12 The dispute the dismissal of the applicant for reasons related to misconduct as referred to herein and in the letter of dismissal issued to the applicant effective from the 03/06/2010. It is not in dispute applicant was employed for the period until December 2010 in terms contract between the parties and earning a salary of R2000, 00.
- 13 From the evidence presented it does not appear applicant was subjected to any disciplinary hearing nor was he informed of the allegations against him and made to account to the allegations of misconduct, the respondent bases their actions on the contract signed between the parties. The contract according the respondent makes provisions for unilateral termination without invoking disciplinary processes.
- 14 I respectfully disagree the respondent has the authority do dismiss employees without providing them the opportunity to answer to allegations of misconduct or informing them of the allegations and providing an opportunity to answer to such allegations.
- 15 Clause 6 of the conditions of service refers to the Departmental conditions of service as applicable to the applicants and by reference these to me also refers to the disciplinary processes as may be applicable to other employees of the department. I find as a result that the department erred in not affording the applicant the opportunity to answer to allegations of misconduct.
- 16 As the contract between the parties was for the period until December 2010 and no indications were made by the parties the contract will be extended beyond this period and applicant having made no case of expecting an extension, a just and an equitable award will be an award in compensation for the period of dismissal until the end of the contract being December 2010.

AWARD

- 17 The dismissal of the applicant (TR Ntloedibe) is found to be unfair on both procedural and substantive grounds.
- 18 The respondent (Department of Health: Gauteng Province) is ordered to pay the applicant compensation for the period that was remaining on his contract July 2010 to December 2010 being an amount of R6000, 00 (R2000 X 6 = R6000)
- 19 The amount must be paid to applicant within a period of 21 days from the date parties receive the award
- 20 I make no order on costs.

Done and dated at Pretoria on this the 10th Day of December 2010.



Lufuno Ramabulana

Panellist: PHSDSBC