



# ARBITRATION AWARD

Panellist/s: Lungile Matshaka  
Case No.: PSHS255-10/11  
Date of Award: 3-May-2011

In the ARBITRATION between:

PSA obo Dlamini M R

Applicant

And

Department of Health – Kwazulu Natal

Respondent

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## ARBITRATION AWARD

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### DETAILS OF HEARING AND REPRESENTATION

1. The matter was set for arbitration hearing at the King Edward Hospital's VIP Lounge Boardroom in Durban on 17 March 2011. It took place under the auspices of the Public Health & Social Development Sectoral Bargaining Council. Mr M Gede, an attorney from Phungula Attorneys, represented the Applicant, while Ms N A Gumede, Assistant Manager

from Labour Relations Unit of the Department, represented the Respondent. The proceedings were mechanically recorded and witnesses gave evidence under oath.

### **ISSUE TO BE DECIDED**

2. I am required to determine whether the dismissal of the Applicant was substantively and procedurally fair, if not, to determine an appropriate remedy.

### **BACKGROUND TO THE ISSUE**

3. The Applicant was employed on 1 October 1990 and at the time of the dismissal held the position of Assistant Manager – Human Resources at the salary level 9 earning R175 000-00 per annum. The Applicant is alleged to have been involved in corrupt activities in that he accepted a bribe of R2 000-00 from a certain Mrs Sindi Ngwenya. The money is allegedly to have been paid in 4 instalments of R500-00 per month from the end of April 2007.
4. Following a disciplinary hearing the Applicant was dismissed on 30 June 2010. The Applicant denies the allegation levelled against him. He is contesting only the substantive fairness of his dismissal. As relief he is seeking re-instatement and / or compensation.
5. On the other hand the Respondent maintains that following an allegation of bribery that the Applicant faced in a disciplinary hearing and being found guilty, his services were terminated with immediate effect.

### **SURVEY OF THE EVIDENCE AND ARGUMENTS**

#### ***The Respondent's evidence***

6. The Respondent's witness, Ms Sindi Monica Ngwenya, testified as follows:

- a. She confirms working at King Edward Hospital employed as a Clinical Orderly. She applied for a position of a ward clerk after seeing an advert round about January 2007. She met the Applicant who in turn helped them to lodge in the application forms. He particularly advised her that another post was in the pipeline. If she is interested she should apply and again complete the Z83 form and forward the same. They then exchanged telephone numbers for purposes of keeping in touch with one another once an advert is put up in the notice board. After a month the Applicant phoned her to come and apply for a Clinical Orderly's post. Not long thereafter she was called for an interview. Subsequent to that she informed the Applicant that the interview was good. The latter undertook to speak to somebody on her behalf. The Applicant phoned later and asked her to pay a sum R2 000-00. She in turn informed him that she did not have the said amount. She had to agree that the same would be paid in instalments once she started working. Indeed she commenced working in March 2007. She only started paying the first instalment of R500-00 in April.
  - b. She used to put the money in a brown folder and handed the same to the Applicant. After that everything went on smooth until an investigator visited her at work around June 2009. To her surprise he knew everything regarding how she was employed.
  - c. She immediately made contact with the Applicant and advised him accordingly. She further confirmed that she did not know the Applicant until when she had to apply for a job when they first met on the hospital premises.
7. In cross-examination Ms Ngwenya denied that she ever met the Applicant in 2006. She further denied that there was any romantic relationship between the Applicant and herself. All that she knew was that the Applicant had the reputation of sleeping with newly appointed female employees. Further, following her interview consisting 10 panel members, she was confident that she had done well. But because she did not know anybody at the

hospital she was willing to pay R2 000-00. She appreciated that the Applicant was willing to accept the first instalment payment of R500-00 with effect from April. She further confirmed that her husband knew about this matter right from the beginning. The other person who knew about it was a lady who used to work together with her.

### ***The Applicant's evidence***

8. The Applicant in his own testimony testified as follows:
9. He has worked for the Respondent for a period of 20 years. His last position was that of an Assistant Manager. He was in charge of HR Practices and was reporting to the HR Manager. He knows Ms Ngwenya prior to her employment at Mathma Gandhi towards the end of 2006. They were romantically involved and shared intimate details of their personal lives respectively.
  - a. It was at that time that he became aware of her husband's problems whilst working for Toyota. As they were having relationship he used to tell her whenever there were vacancies. He further assisted Ms Ngwenya with her CV. When she applied for her present position he was no longer in contact with her any longer. He never had any influence over her appointment. After he became aware of her employment the relationship did not last long. Ms Ngwenya did not accept the break-up.
  - b. The Applicant testified that he used to take her out and gave her preferential treatment.
10. In cross-examination the Applicant insisted that he was assisting a fellow worker. He denied ever accepting money or having a protection order served him.

### **ANALYSIS OF THE SUBMISSIONS**

11. Section 188(1) of the Labour Relations Act, No. 66 of 1995 stipulates two requirements for a fair dismissal for misconduct. In the first instance, it requires that the dismissal must

be substantively fair. It does this by requiring that there must be a reason for dismissal namely, misconduct, and that the reason must be fair. In the second instance, the section requires that a dismissal for misconduct must be procedurally fair. In the present case only substantive fairness is being contested.

12. Turning to the present case the Respondent avers that the Applicant did not know Ms Ngwenya before she applied for a post at Mahatma Gandhi Hospital in January 2007. She had no reason to implicate the Applicant. As a married woman she did not have an affair with the Applicant.
13. The Respondent further submits that the Applicant did receive a bribe from the Applicant because she intimidated her after he was dismissed. It is further submitted that the Applicant was in management position responsible for recruitment; he then abused his power by exploiting desperate needy people. The Respondent further points out that the Applicant was successful in the interview for her current post out of her own effort, but the Applicant created an impression that he assisted her in being offered the post. That Ms Ngwenya is implicated because she ended their relationship is without basis and is a fallacy. Further, the Applicant's argument that there was no need for him to go to the notice board cannot stand because as an official responsible for posts he has to ensure that everything is in order. It was just a mere con-incidence that the Applicant met Ms Ngwenya.
14. On the other hand the Applicant submits that on a balance of probabilities based on the evidence presented he was romantically involved with Ms Ngwenya prior to her being offered employment at the hospital. The Applicant concedes that he informed her of job opportunity and assisted her to fill in the necessary forms. He submits that their relationship continued after her appointment with her benefiting financially and also receiving preferential treatment as the Applicant was holding a senior position. The Applicant submits that the Applicant was not happy about the sudden termination of the relationship. As a way of revenge, she fabricated the bribery story and told the same to a friend knowing clearly that the said friend is related to one on the investigators investigating corrupt activities at

the Hospital. It is further argued that she knew that the friend would tell her uncle which led to the investigations and the Applicant's dismissal.

**15.** In essence the crux of the Applicant's case is that he was framed or implicated in this case because he ended the romantic relationship with Ms Ngwenya. This is attributed to rumours that went around in the institution. It is further argued that the relationship that started prior Ms Ngwenya's employment continued as the latter was benefitting financially and she was also receiving preferential treatment at work. I have noted the argument that the said relationship only ended once rumours began to surface.

**16.** On the other hand the Respondent relies on the fact that there was never any relation between the Applicant and Ms Ngwenya. Their first meeting at the notice board happened by chance. The Applicant offered to advise Ms Ngwenya of next vacancy in the pipeline as the one advertised at the time was for internal applicants. In that regard they exchanged telephone numbers. A kind of relationship, and certainly not romantic, came into existence. This led to Ms Ngwenya being able to apply for a post as a Clinic Orderly and called for an interview. It makes sense to accept that Ms Ngwenya called the Applicant after the interview because although she felt that she did well in the interview, she also felt that she might not get the post because she did not know anybody. It in this regard that the Applicant offered to take her case further and speak to somebody that he knew. Soon thereafter the Applicant came back and made her aware that she needed to pay a sum of R2 000-00. The arrangement agreed upon was for the Applicant to pay the said amount in instalment of 4 (four) months.

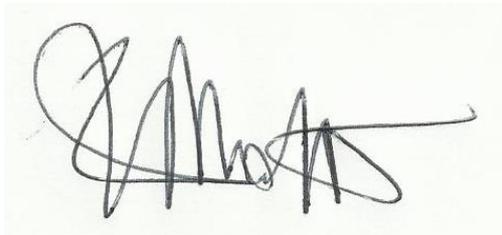
**17.** I am not inclined to accept that there was ever a romantic relationship between the Applicant and Ms Ngwenya either before and or after her employment at the Hospital. No evidence came to the fore that demonstrated that Ms Ngwenya benefited financially from that relationship, or regarding preferential treatment that she received from the Applicant. This also goes for the so-called rumours that led to termination of the relationship. It further does not make sense that Ms Glena, as married woman, would go to the extent of

fabricating a bribery story. Indeed she was desperate and looking for a job, but in this instance, in my considered view, her desperation caused her to be a victim of circumstances.

18. In the light the above exposition, I can therefore only come to the conclusion that the Respondent's version of events makes sense and sounds more probable as compared to that of the Applicant's. I therefore cannot find fault with the sanction imposed on the Applicant.

## **AWARD**

19. I therefore find that the dismissal of the Applicant, M. R. Dlamini, was substantively fair.

A handwritten signature in black ink on a light green background. The signature is stylized and appears to read 'Lungile Matshaka'.

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Lungile Matshaka

**PHSDSBC Panellist**

