



# ARBITRATION AWARD

Panellist/s: L.Martin  
Case No.: PSHS274-11/12  
Date of Award: 9-Dec-2011

**In the arbitration between:**

**H.O.S.P.E.R.S.A. on behalf of S. Els**

(Union / Applicant)

and

**Department of Health- Western Cape**

(Respondent)

## **DETAILS OF HEARING AND REPRESENTATION**

1. The arbitration took place at the Western Cape College of Nursing in Klipfontein Road ,Athlone. The applicant Mr. Siegfried Els (Els), was represented by Mr. R. Daniels(Daniels), an official of H.O.S.P.E.R.S.A.. The respondent, the Department of Health, Western Cape (the respondent), was represented by advocate F. Rodrigues(Rodrigues), its deputy director of labour relations and Mr. D. Arnold(Arnold), a labour relations officer. The respondent's closing arguments were received on the 8<sup>th</sup> November 2011.

## **SSUE TO BE DECIDED**

2. Was Els dismissed and, if so, was the dismissal fair?

## **BACKGROUND TO THE ISSUE**

3. Els worked for the respondent as a learner basic pharmacist assistant. He earned an income of R84,320,00 (eighty four thousand three hundred and twenty rand) per annum when his services terminated. The respondent denies that it had dismissed Els.

## **SURVEY OF EVIDENCE AND ARGUMENT**

4. Each party handed a bundle of documents into evidence. No objections to documents were recorded by either party. For ease of reference the applicant's bundle is Marked "A" and the respondent's "R".
5. The letter at page 49"R" is in dispute between the parties.
6. Els testified under oath on his own behalf.

7. Deon Abrahams (Abrahams), a senior administration officer at Tygerberg Hospital (the hospital) and Priscilla Mita Petersen (Petersen), an assistant director and head of human resources testified under oath for the respondent.

THE EVIDENCE FOR THE APPLICANT:

8. On 20 July 2010 Els reported to the director, Dr. Bidelo(Bidelo) that he was flying in from Johannesburg vaccines for treating an outbreak of Hepatitis at Valkenberg hospital.
9. Dr. Bidelo told Els that he was drunk. Els first laughed at this but when he realized that Bidelo was serious and as they were on hospital premises he suggested a blood test be done to determine whether or not he was drunk.
10. Bidelo however said that that would not be necessary.
11. Thereafter Petersen handed Els the letter at page 15R suspending him for 2 months. Els immediately wrote on the letter that if he were suspended he would want his full pay as the whole thing was absurd.
12. On 22 August 2010 Els appeared at a disciplinary hearing and was consequently issued with a final written warning.
13. Immediately thereafter Bidelo handed Els notice of the termination of his contract of employment on 31 October 2010.
14. Els had written on the final written warning that he did not accept it and that he wanted to appeal this sanction.
15. The evidence for the respondent:
16. Abrahams was the investigating officer in the matter and had drafted the notice to attend a disciplinary hearing, the outcome of which was the sanction of a final written warning. Els was charged with being under the influence of alcohol while on duty on 20 July 2010.
17. He was also not aware of any subsequent disciplinary hearing.
18. There was no further disciplinary sanction imposed on Els as a consequence of any disciplinary action taken against him.
19. Els' employment with the respondent had come to a conclusion when his fixed term contract ended on 31 October 2010.
20. No blood samples were taken from Els during the disciplinary process where Els was given the final written warning.
21. The notice of termination of employment dated 22 September 2010 at page 55A shows that Els had been dismissed for breaching the respondent's rules pertaining to the abuse of alcohol which placed the respondent in a position where it was unable to renew his contract of employment which expired on 31 October 2010.
22. Petersen had drafted the letter the purpose of which was to inform Els that his contract would expire in the next month.

23. This notice of termination of Els' contract was drafted before he was given the final written warning so could not have been possible to serve both on Els on the same day.
24. While the letter of termination of employment is dated 22 September 2010 it is signed 22 October 2010.
25. It was not normal practice to state reasons for termination of the fixed term contract of employment other than that the contract was coming to its conclusion.
26. The reference to the breach of the respondent's policy regarding alcohol abuse as contained in the letter of termination of employment need not necessarily refer to the incident for which Els had been given a final written warning.
27. There were previous incidents of alcohol abuse by Els as is evidenced on page 18A. This is an internal memo drafted by Bidelo in terms of which Els is referred to counseling.

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

28. It is clear from the evidence presented at this arbitration that Els had been employed on a fixed term contract of employment at the time his employment relationship with the respondent terminated.
29. The evidence shows that during the employment relationship between the parties that there had been issues with Els regarding alcohol abuse.
30. The relationship had therefore clearly not been free of serious issues.
31. In circumstances then where there has been serious breach of rules within the workplace by an employee on a fixed term contract such breach or even the bona fide perception thereof by the employer, such employer can terminate the employment relationship for such reason but rely on the termination of the fixed term contract of employment through the effluxion of time to achieve such end.
32. In this matter the letter of termination of employment can clearly be interpreted to read that the respondent relies on the termination of the contract of employment on 31 October 2010 to bring to an end the employment relationship. This the respondent is legitimately entitled to do.
33. This is further bolstered by the testimony of Petersen that such was her intention. I have however not relied on the testimony of Petersen in this regard as the termination letter is sufficiently clear standing on its own for me to arrive at the above conclusion.
34. In conclusion and having considered all the evidence presented at this arbitration it is clear that the employment relationship had come to an end through the effluxion of time when the contract of employment expired on 31 October 2010. There has accordingly not been any dismissal of Els by the respondent.
35. Els has also raised in his written heads the argument that he had a legitimate expectation that his contract would be renewed.
36. While the evidence shows that Els has referred a dispute of unfair dismissal for misconduct and not that of a legitimate expectation of a renewal of a fixed term contract, I am of the view that within the context of Els' disciplinary record as set out above he could not have had a legitimate expectation

that his contract would be renewed. A poor disciplinary record flies in the face of any legitimate expectation of such renewal of a fixed term contract.

**AWARD:**

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

**COMMISSIONER: L. MARTIN**

A handwritten signature in black ink, appearing to read 'Leslie Martin', written in a cursive style.

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