ARBITRATION AWARD

Panellist/s: **Colin Rani**
Case No.: **PSHS305-11/12**
Date of Award: **6-Dec-2011**

In the ARBITRATION between:

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PSA obo J C Williams
(Union / Applicant)

And

Department of Health: Western Cape
(Respondent)

Union/Applicant's representative:	PSA obo J C Williams
Union/Applicant's address:	P O Box 1837
	Cape Town
	8000
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Respondent's representative:	Dept of Health - Western Cape.
Respondent's address:	P O Box 2060
	Cape Towm
	8000
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Details of hearing and representation

1. The arbitration hearing was held in the offices of the Western Cape College Nursing in Athlone on 18 November, 2011.

2. Ms. J. C. Williams, the applicant, was represented by Mr. Andre Strydom from PSA. Mr. Xolisa Nginase represented the respondent party, the Department of Health in the Western Cape. The matter was decided based on the heads of arguments from both parties.

Issues to be decided

3. Whether the dismissal of the applicant was an appropriate sanction.

Background

4. The applicant was employed by the respondent as a General Assistant at Otto Du Plessis Hospital. She was charged with removing property (NAN Baby Milk) costing R28.69 from the hospital premises that belonged to the Department of Health without permission. At the hearing, the applicant pleaded guilty on the charges against her and was given a sanction of dismissal.

5. The applicant further confirmed at the arbitration hearing that she is only challenging the harshness of the sanction and not denying her plea of guilty and admitting to removing the property of the state without permission. The respondent argued that the sanction was fair and the appropriate.

6. The applicant further confirmed on record that she was previously suspended for fraudulent misrepresentation and was given a final written warning.

Summary of evidence and arguments

7. Although I have considered all the submissions and arguments, because section 138(7) of the Labour Relations Act requires that the reasons for my decision be stated briefly, I will refer only to the submissions and arguments that I regard as necessary to substantiate my finding and the determination of the dispute.

8. The parties agreed to the admission into evidence of a bundle of documents, including the heads of arguments from both parties. Neither party disputed the validity of these documents.

The respondent's case

9. The respondent stated that when the applicant pleaded guilty to the charges against her, clearly she was aware of the rule broken or possibly could have been aware based on the fact that she had been in the service of the Department for over 21 years.

10. The respondent submitted that they take a zero-tolerance stance against officials who commit theft and have been consistent in giving dismissal sanctions in such cases. It is further submitted that the respondent does not condone theft in the workplace, and theft is taken in a serious light.

11. According to the respondent, the applicant has a propensity for transgressing. The applicant should have learnt from the previous transgression and sanction given to her. However, she continued with a similar transgression.

12. It is important to note that the approach adopted by the courts and arbitrators is that theft is evidence of loss of trust in a relationship and accordingly, a serious ground for dismissal irrespective of whose property is stolen or the value of the property.

13. In Metcash Trading Ltd t/a Metro Cash and Carry v Fobb & Another, the court stated, "Theft is theft and does not become less so because of the size of the article stolen or misappropriated". Trust is the core of an employment relationship. Dishonest conduct by an employee breaches the trust the employer places in an employee.

14. Furthermore, it should be noted that the applicant stated that when she previously committed a similar transgression, she was suspended and given a final written warning where she should have learnt her lesson.

15. The respondent's submission is that the trust in the relationship between the applicant and the respondent has been irretrievably broken down and that the applicant's dismissal was substantive fair.

16. Therefore, the respondent requests that this matter should be dismissed.

The applicant's case

17. The applicant submitted that the only point in dispute was the harshness of the sanction that was given by the respondent. The arbitrator must take into consideration the value of the product that was stolen by the applicant and also the amount of years that the applicant has been employed in the Department,

which is 21 years. On the day of the misconduct, the applicant had a clean service record. He cites the two Shoprite Checkers Ltd v CCMA & Other cases.

18. The applicant stated that the Department must be consistent when sanctions by the chairperson are given during disciplinary hearings. In this regard, she claimed that the sanction of dismissal was not the appropriate sanction. She cited Sidumo v Rustenburg Platinum Mine [2007].

19. The applicant has four children who are still staying with her, although they are 28, 24, 21 and 19 years, are all unemployed. There are also 3 grandchildren in the house that need to be fed, of whom only one gets a grant money from the state. She is the only breadwinner in the house and is also a single parent.

20. If the above facts are taken into consideration, clearly the sanction that was imposed by the chairperson of the disciplinary hearing was too hush. The applicant submits that a sanction of a final written warning is a suitable sanction for the misconduct.

Analysis of evidence and arguments

21. To determine whether the dismissal was an appropriate sanction, I am required to establish the gravity of the contravention of the rule, consistence in the application of the rule and the factors that may justify a different sanction.

22. Here, it is an established fact that the applicant was dismissed for stealing Nan baby milk costing R28.69. The respondent instituted a disciplinary action against the applicant because the department takes a zero-tolerance stance against officials for committing theft. The respondent submits that the department has been consistent in giving dismissal sanction in such cases. The applicant did not refute this. In my view, this is an indication of how serious the respondent takes this transgression.

23. The applicant submits that the value is insignificant, and the respondent must consider the 21 years of service of the applicant. The applicant further submits that at the time of committing the offence, she had a clean disciplinary record because the warning she had already expired. The respondent refuted that the applicant had a clean disciplinary record.

24. The applicant admitted on record that she was previously suspended for fraudulent misrepresentation and was given a final written warning. In my view, the fact that a prior warning has lapsed does not

mean that prior misconduct cannot be taken into account in assessing appropriate sanction for a later misconduct. Moreover, the applicant was found guilty for a similar charge of dishonesty.

25. The respondent's submission that the Department has always been consistent in the application of the rule was not refuted by the applicant. The question is what other factors could have justified a different sanction. According to the applicant, the years of service in this case being 21 (twenty-one) years should be taken into consideration.

26. In arguing for years of service as a point to be considered in mitigation of sentence, the applicant cited a case in parties cited *Shoprite Checkers (Pty) Ltd v CCMA & others* [2008] 12 BLLR 1211 (LAC). I find that the facts of cases are different. Here, the applicant had a disciplinary record for a similar offence of dishonesty.

27. Regarding the value of the item, the respondent cited a case in Metcash Trading Ltd t/a Metro Cash and Carry v Fobb & Another, where the court found "Theft is theft and does not become less so because of the size of the article stolen or misappropriated". Trust is the core of an employment relationship. Dishonest conduct by an employee breaches the trust the employer places on an employee. This judgement is very relevant in this case.

28. I, therefore, find that the dismissal of the applicant was an appropriate sanction.

Award:

29. The application is dismissed.

DONE AND SIGNED IN CAPE TOWN ON THIS 6 TH DAY OF DECEMBER 2011.

Arbitrator: Colin Rani