



ARBITRATION AWARD

Panellist/s: Leslie Martin
Case No.: PSHS307-10/11
Date of Award: 30-May-2011

In the ARBITRATION between:

N.E.H.A.W.U. ON BEHALF OF K. TOKWE
(Union / Applicant)

and

DEPARTMENT OF HEALTH – WESTERN CAPE
(Respondent)

DETAILS OF HEARING AND REPRESENTATION

1. The arbitration took place at the offices of the Department of Health, 4 Dorp Street Cape Town on 11 May 2011. The applicant, Ms. Khululwa Ethel Tokwe (Tokwe), was represented by Mr. B. Davis, an official with NEHAWU. The respondent, The Department of Health (the respondent), was represented by Mr. R. Collop, an assistant director in labour relations and Mr. W. Breuningeer, the labour relations officer emergency medical services (EMS).

ISSUE TO BE DECIDED

2. Was the dismissal of Tokwe fair?

BACKGROUND TO THE ISSUE

3. Tokwe worked for the respondent from February 2008 until 16 July 2010 when she was dismissed. At the time of her dismissal she was an Emergency care practitioner grade 2 and earned R88,278.00 (eighty eight thousand two hundred and seventy eight rand) p.a.

4. Tokwe was dismissed after her involvement in a motor vehicle collision. She was charged with gross negligence in that she had driven an ambulance through an intersection without exercising due caution.

SURVEY OF EVIDENCE AND ARGUMENT

5. The parties each handed a bundle of documents into evidence. No objections were registered by either party.
6. It was common cause that at the time of the collision Tokwe was responding to an emergency call. The parties also agreed that the dismissal was procedurally fair.
7. Trevor Eric Leybrandt (Leybrandt), the Sub district manager at the Ambulance service Mitchells Plein known as the Southern division, testified under oath for the respondent. Tokwe testified under oath on her own behalf.

THE EVIDENCE FOR THE RESPONDENT:

8. Tokwe had not stopped the ambulance in accordance with the respondent's rules pertaining to the driving of the ambulance during an emergency.
9. The rules state that upon arriving at a controlled intersection with the traffic lights showing red or amber, the vehicle must be brought to a complete standstill. Before proceeding, the driver must ensure that all traffic has come to a halt thereby giving the emergency vehicle the right of way.
10. The cautionary measures to be adopted was to drive in accordance with the road traffic ordinance when on route to an emergency.
11. All staff were familiar with the standard operating procedures. Leybrandt confirm that not every employee had been given a copy of the Standard Operating Procedures(SOP) booklet. He was however surprised to hear that Tokwe did not have a copy thereof as it contains the rules of conduct in the workplace.
12. Tokwe had explained in her accident report that she had entered the intersection when the traffic lights were amber.
13. The damage to the ambulance was so severe that the ambulance had to be scrapped. The value of the ambulance is R350,000.00 (three hundred and fifty thousand rand).
14. Although it is a SOP that the ambulance crew must navigate the quickest and safest route, they are still governed by the ordinary rules of the road. When attending a "priority 1" call they may exceed the speed limit.
15. They are however not permitted to proceed through an intersection even with lights and sirens activated, if the intersection is controlled by traffic lights and which are not in their favour.

THE EVIDENCE FOR THE APPLICANT:

16. Tokwe had activated the lights and siren of her ambulance. When in the intersection she heard a bang on the right-hand side of the ambulance and then the ambulance overturned.
17. Tokwe was not sure that she was travelling at a speed of 77 kph at the time of the impact as indicated by the vehicle tracker report.
18. At the time of the collision she had not seen the vehicle that had driven into the side of the ambulance. This was despite her having done her observations and having exercised caution.
19. The traffic lights had changed to amber while the ambulance was already in the intersection.
20. The training regarding how to react in an emergency that Tokwe had received did not include the adherence to rules of the road.
21. The speed that Tokwe was travelling at at the time of the collision was fair in the circumstances of attending to a priority 1 call.
22. Tokwe knows that she should slow down when coming to traffic lights.

ANALYSIS OF EVIDENCE AND ARGUMENT

23. It is clear from the evidence presented at this arbitration that the fundamental rule governing the driver of an ambulance is the adherence to the ordinary rules of the road. The evidence does however show that the speed limit may be exceeded in circumstances of a priority 1 call. At the time of the collision Tokwe was on a priority 1 call.
24. The evidence shows further that notwithstanding the fact of a priority 1 call the rules that prevail at a controlled intersection are that the ambulance must stop if the traffic lights were red or amber and then proceed with caution after the driver had established that it was safe to do so.
25. The further testimony of Tokwe is then that the traffic lights changed to amber only when the ambulance was already in the intersection. Her accident report shows however that the traffic lights were amber when the ambulance was approaching the traffic lights.
26. The respondent had clearly considered its rules and had concluded that Tokwe had indeed breached the rule in that she had failed to stop at an amber or red traffic light and to ensure that it was then safe to proceed.
27. I am in agreement with the respondent that Tokwe's report is to the effect that the traffic lights were amber when she entered the controlled intersection.
28. In the circumstances it would be easy for Tokwe to adjust her testimony and to then state that the ambulance was already in the intersection when the traffic lights changed to amber.

29. Although there were certain witnesses viz. the driver of the other vehicle (P. Mullagee) involved in the collision and one, Mr. A. Minaar, whose written statement suggests that the traffic lights were in fact red for the ambulance, who did not testify at the arbitration their written statements are at least to the effect that the traffic lights were not green for the ambulance.
30. All in all, and with minimum value placed on the evidence of Mullagee and Minaar I find on a balance of probabilities that Tokwe did enter the controlled intersection in breach of the aforesaid SOP of the respondent's and the ordinary rules of the road.
31. Furthermore, although Tokwe's version is that she had not received the SOP booklet, from her own testimony it is clear that she does understand the rules. Her testimony in fact was never that she did not understand the SOPs. Even Tokwe's testimony that she knows that she must slow down when entering a controlled intersection cannot be accepted as the evidence through the vehicle tracker report shows clearly that the collision occurred at the speed of 70km/hr which speed the ambulance had been travelling continuously at for approximately 5 minutes. This too would render her driving at the moment of collision reckless. This is particularly so given the fact that the collision occurred at a controlled intersection in a residential area.
32. Tokwe had clearly been reckless in the manner that she had driven the ambulance. This negligence had resulted in substantial financial loss to the respondent.
33. Having considered all the evidence presented at this arbitration I find that the dismissal of Tokwe was fair both procedurally and substantively.

Award:

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

COMMISSIONER: L. MARTIN



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