



# ARBITRATION AWARD

IN THE PUBLIC HEALTH AND SOCIAL DEVELOPMENT SECTORAL  
BARGAINING COUNCIL HELD AT HOOPSTAD

COMMISSIONER: CINDY LEE DICKENS  
CASE NO. : PSHS 32-11/12  
DATE OF AWARD: 11 June 2012

In the Arbitration between:

DENOSA obo METSING ABEL MOKOENA

APPLICANT

and

DEPARTMENT OF HEALTH: FREE STATE

RESPONDENT

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ARBITRATION AWARD

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1. **DETAILS OF HEARING AND REPRESENTATION:**

- 1.1 An Arbitration hearing was scheduled for the 11<sup>th</sup> of January 2012 at the Mohau Hospital, Hoopstad. Due to time constraints the matter could not be concluded. The parties agreed to proceed with the matter on the 6<sup>th</sup> of March 2012.
- 1.2 On the 6<sup>th</sup> of March 2012 the matter could again not be concluded because there were material witnesses from the Respondent and Applicant who were booked off sick and could not attend the hearing. The parties agreed to proceed with the matter on the 23<sup>rd</sup> of May 2012.

1.3 The Applicant was represented by Me. Fransman-Hendricks of Denosa. The Respondent, Department of Health: Free State, was represented by Mr. Molokoane, Senior Employment Relations Officer.

1.4 The parties requested to file Written Closing Arguments before or on the 30<sup>th</sup> of May 2012.

## **2. ISSUE TO BE DECIDED:**

2.1 The Applicant has referred an unfair labour practice dispute to the Bargaining Council relating to unfair suspension and disciplinary action. The Applicant was issued with a Final Written Warning and was suspended without pay for 2 (TWO) months. The Commissioner must determine whether the Applicant made himself guilty of the misconduct and whether the appropriate sanction was imposed.

## **3. BACKGROUND TO THE ISSUE:**

3.1 The Applicant is employed by the Respondent Department as an Infection Control Coordinator at Mohau Hospital in Hoopstad.

3.2 The Applicant was charged with 5 (FIVE) charges and was found guilty of charges 1.1, 1.2 and 1.5. He received a Final Written Warning and 2 (TWO) months' suspension without pay.

3.3 The Applicant was found guilty of the following misconduct:

### **"Charge 1**

*1.1 That you are allegedly guilty of misconduct in terms of the Disciplinary Code and Procedure in that on 08<sup>th</sup> July 2009, you physically assaulted a fellow employee, Registered Nurse C Maphakisa while on duty in Mohau Hospital.*

*1.2 That you are allegedly guilty of misconduct, gross insubordination, in terms of the Disciplinary Code and Procedure in that you intentionally and wrongfully entered inscription "not for retreatment" on the prescription chart of the*

*patient Me. Julia Mxabaniso, openly undermining the authority of Dr. F Mukuna and failing to carry lawful instruction to administer prescribed tuberculosis treatment of the patient on the 05<sup>th</sup> August 2009.*

*1.5 That you are allegedly guilty of misconduct in terms of the Disciplinary Code and Procedure in that on the 17<sup>th</sup> July 2009 you displayed disrespect and insolent behaviour towards Registered Nurse Me. Dikoko during transfer of the patient Me. Josephine Phara to Thusanong Hospital.”*

3.4 The Applicant appealed against the sanction, but the appeal was unsuccessful.

3.5 It is common cause that the Final Written Warning expired on the 11<sup>th</sup> of July 2011. The Applicant is claiming payment of the 2 (TWO) months' suspension without pay, being February and March 2011.

#### **4. SURVEY OF EVIDENCE AND ARGUMENT:**

##### **4.1 SUBMISSIONS BY THE RESPONDENT PARTY:**

4.1.1 I wish to state from the outset, that not all evidence presented will be summarized hereunder. Only a summary of the evidence is contained hereunder.

4.1.2 The following witnesses were called to testify on behalf of the Respondent:

- Agnes Mohlabakoe
- Amelia Letlhoname Snyer
- Motlagomang Eliza Dikoko

4.1.3.1 **Me. Mohlabakoe** testified that she is a Senior Nursing Assistant. She testified that on the 8<sup>th</sup> of July 2009, when she arrived at work, she read the notice board where the Applicant had written regarding the linen, where after she left.

4.1.3.2 She held that she saw Me. Maphakisa and the Applicant have a discussion but could not hear what they said. While she was at the nursing station, she saw Me. Maphakisa leave the office and she was followed by the Applicant. She held that the Applicant approached the nursing station, grabbed Me. Maphakisa by the shoulder and turned her around. She held that she could see that the

Applicant was emotional when he turned her around. Me. Maphakisa did not do anything. The Applicant then pointed his finger at Me. Maphakisa and told her that she is taking advantage of him. She stated that at that time Sister Magota came from Casualties and called her for a report. She stated that she then left and did not see anything further.

- 4.1.3.3 Under cross-examination she testified that when the incident took place she was at the nursing station with 3 (THREE) other ladies. She stated that she remembers that Me. Maphakisa had a coat on that evening and that the Applicant grabbed her on the coat and not on the shoulder.
- 4.1.3.4 She stated that when the Applicant pointed at Me. Maphakisa she did not see any physical touching on her chin or forehead. She confirmed that Me. Maphakisa did not fall. She stated that she did not see that Me. Maphakisa was assaulted whilst on duty.
- 4.1.4.1 **Me. Snyer** testified to charge 1.3, a charge that the Applicant was found not guilty of.
- 4.1.4.2 Under cross-examination she testified that she is employed as the Nursing Service Manager and confirmed that the Applicant is employed as the Infection Control Coordinator.
- 4.1.4.3 She testified that the purpose of having an Infection Control Coordinator in a hospital was to curb the spread of infections to other patients and the community. She held that it is the duty of the Infection Control Coordinator to inform the staff if they are not dealing with the linen in the correct manner. She stated that it was not necessary for the Applicant to put a notice on the board, he could have called a staff meeting.
- 4.1.4.4 She confirmed that she was not present on the 8<sup>th</sup> of July 2009 when the alleged assault of Me. Maphakisa took place.

- 4.1.4.5 Me. Snyder testified that when a patient is being transferred, the doctor completes the green referral letter. The professional nurse will phone the midwife to advise them that there is a patient on the way.
- 4.1.4.6 She testified that the accompanying nurse can not be held responsible for anything that the patient should have been given in the ward. She held that when the patient enters the main entrance of the receiving hospital, the accompanying nurse is no longer responsible as the new hospital assumes responsibility.
- 4.1.5.1 **Me. Dikoko** testified that she is employed at Thusanong Hospital Odendaalsrus, and that she is employed as the Occupational Health Nurse Coordinator.
- 4.1.5.2 She testified that on the 17<sup>th</sup> of July 2009 the Applicant transported a patient to Thusanong Hospital. On arrival she was working in the maternity ward. The Applicant advised her that he is in a hurry as they have a problem with the ambulance. She stated that he did not give her enough report so she asked him for a full report. She told the Applicant that he must give her a full report and leave the ambulance. She stated that the Applicant was rude as he clicked his tongue at her. The Applicant told her that he was not the one who was treating the patient, he was only requested to accompany the patient whilst being transported.
- 4.1.5.3 She testified that when a patient is being transported, the accompanying nurse should have record or reference to the notes.
- 4.1.5.4 Me. Dikoko testified that she told the Applicant that he need not worry about the ambulance, but it is the patient that he should be worried about.
- 4.1.5.5 She held that she phoned the hospital from where the patient was transferred and told them that in future, if they send a patient, they should send someone who knows about the patient. She held that the Applicant could not tell her whether the patient had received Nevirapine or not.

4.1.5.6 Me. Dikoko testified under cross-examination that the Applicant did not give her a full report about the patient and he could not tell her whether Nevirapine had been given or not. She held that it was not clear from the file whether it had been given or not. She stated that she then phoned the transferring hospital to establish whether the medication had been given or not. She held that she had a problem with the Applicant as he failed to have enough information about the patient and he did not know whether the medication had been given or not.

4.1.5.7 She denied that she was insensitive towards the Applicant when he said that he has a problem with the ambulance. She held that all she wanted to know was whether the medication had been given or not. She held that it was the duty of the Applicant to phone the hospital to establish whether the medication had been given or not.

#### 4.2 SUBMISSIONS ON BEHALF OF THE APPLICANT:

4.2.1 I wish to state from the outset, that not all evidence presented will be summarized hereunder. Only a summary of the evidence is contained hereunder.

4.2.2 The following witnesses were called to testify on behalf of the Applicant:

- Metsing Abram Mokoena
- Madibuseng Anna Moshoeshe
- Kedibone Rosie Sehlohlo
- Tite Evodia Rakhajane

4.2.3.1 **The Applicant** testified that he is a professional nurse and that he is employed at Mohau Hospital. He held that he is appointed as Infection Prevention and Control Coordinator. He held that in 2009 he was also responsible for infection control.

4.2.3.2 He testified that on the 8<sup>th</sup> of July 2009 he received a complaint from the laundry staff regarding linen that was soiled that was mixed with other linen. He wrote a note on the board to remind him to take up the issue with the night staff.

- 4.2.3.3 He held that upon the arrival of the staff, Me. Maphakisa read the note loud and said over and over: “always night staff”. He then told her that it was him who put the notice there and if she has a problem then she must address it with him. He held that Me. Maphakisa left the office still repeating the same words. He held that he went to her, and touched her on the shoulder and she turned to face him. He then pointed his finger at her and asked her not to undermine his authority. He then turned around and left. He stated that he touched her on the shoulder so that she can face him when he spoke to her. He denied that he grabbed her by the shoulder and tossed her around.
- 4.2.3.4 The Applicant held that he asked Me. Maphakisa not to undermine his authority as it was clear that she had a problem with the notice that he had placed on the board. He held that he was irritated by her attitude towards the issue at hand. He testified that Me. Maphakisa threatened him by telling him that she will make sure that he loses his job and that his children will go hungry. She also made further allegations towards him.
- 4.2.3.5 The Applicant explained at length as to why it was important to exercise infection control in a hospital.
- 4.2.3.6 The Applicant testified that in relation to Charge 1.2, the doctor wrote that the patient should be treated for TB and that her treatment was Regimen 1. He held that it was clear from the records that the patient had suffered from TB before and that she therefore had to be on Regimen 2. He confirmed that he wrote: “not for treatment”, on the card, and that he should have written Regimen 2. He held that his intention with writing this was to make a note to follow up with the doctor. His intentions were to make the doctor aware that the Regimen was incorrect, and was not to undermine the doctor.
- 4.2.3.7 The Applicant further explained in detail why it was important for the patient to be on the correct medication, as the patient could develop a resistant type of TB.
- 4.2.3.8 The Applicant held that the unfortunate part was that he did not manage to speak to the doctor afterwards as they were rotating between wards. He held that on the next shift on duty he did not discuss the problem as nobody asked him about it.

- 4.2.3.9 He held in relation to Charge 1.5, that on the 17<sup>th</sup> of July 2009 he was requested to accompany a patient to Thusanong Hospital. The patient was in labour and there were complications. He held that he had not been working in the maternity ward on that day but he was only requested to accompany the patient.
- 4.2.3.10 Late that afternoon they arrived at Thusanong Hospital. On arrival he gave report to Sister Dikoko, and he mentioned to her that he was not nursing the patient and that he was just requested to help with the transfer of the patient. She requested him to write on the file of the patient and he asked her since when is he required to do this as his work was only to hand over the patient. He mentioned to her that they have a slow puncture on the ambulance and asked her not to delay him any further. He then wrote the condition of the patient on the file as she requested and then left the hospital.
- 4.2.3.11 He held that he heard Me. Dikoko mention in the Arbitration that she requested a full report from him. He held that he does not know what a full report entails and denies that she ever asked him this. He held that he did everything that she asked him to do before he left.
- 4.2.3.12 The Applicant held that he did not know whether the patient had been given Nivrapine as he did not work in the maternity ward on the said date and it was not written in the patient's file.
- 4.2.3.13 The Applicant denied that he clicked his tongue at Me. Dikoko. He held that he would never do that to someone at the workplace.
- 4.2.3.14 He testified that when he left the workplace there was nothing between them and he left the hospital peacefully.
- 4.2.3.15 Under cross-examination he denied that he has an issue with anger. He held that he was irritated with Me. Maphakisa as she was not new to the institution and she was resistant to carry out orders especially relating to infection control.



- 4.2.3.16 He testified that the normal practice when someone makes a mistake regarding medication is to discuss the issue with them. He held that in this case he could not discuss the issue of the medication with the doctor as he was not there. He further confirmed that he did not call the doctor either. He held that he did not have the time to call the doctor.
- 4.2.4.1 **Me. Moshoeshoe** testified that she was working at Mohau Hospital in the Laundry Department. She is currently working in the ward. She stated that they had a problem with the sorting of the linen, they reported this to the Sister in the wards. These they also showed to the Applicant who is in charge of infection control.
- 4.2.5.1 **Me. Sehloho** testified that she is employed at Mohau Hospital as a Cleaner. She confirmed that she was on duty on the 8<sup>th</sup> of July 2009. She held that when she reported on duty she was in the station. She could hear the voices of the Applicant and Me. Maphakisa, but she could not hear what they said. She then saw Me. Maphakisa come out of the office and stand in the passage. The Applicant then came out of the office and tapped Me. Maphakisa on the shoulder, and Me. Maphakisa turned to look at the Applicant. The Applicant then pointed his finger at Me. Maphakisa and asked her if she was talking to him. The Applicant returned to the office and Me. Maphakisa followed him. She then left and did not see anything further.
- 4.2.5.2 Under cross-examination she held that she could see nothing wrong when the Applicant approached Me. Maphakisa. She stated that he was “not even in a high mood”. She held that the Applicant was not angry and he did not toss Me. Maphakisa around.
- 4.2.6.1 **Me. Rakhajane** testified that she has been a professional nurse since 1976. She confirmed that she has dealt with many referrals of patients over the years.
- 4.2.6.2 She testified that when a patient is transferred, the accompanying nurse gives them a report on the patient, the observations are done and the accompanying nurse leaves. The report entails giving the patient’s name, the problems that the patient is having and the observations. The accompanying nurse then leaves the

patient and returns to the transferring hospital by ambulance. She held that if the accompanying nurse can not give her all the detail then she will contact the transferring hospital to get all the details.

- 4.2.6.3 She held that she will not take offence if the transferring nurse tells her that they have a problem with the ambulance as she knows that they must travel back in the ambulance.

## **5. ANALYSIS OF EVIDENCE AND ARGUMENT:**

- 5.1 The Applicant has referred a dispute in terms of Section 186 (2) (b), which Section reads as follows:

*“(2) Unfair labour practice means any unfair act or omission that arises between an employer and an employee involving –*

*(a) ...;*

*(b) the unfair suspension of an employee or any other unfair disciplinary action short of dismissal in respect of an employee;...”*

- 5.2 It is common cause that the Applicant was issued with a Final Written Warning which Warning expired on the 11<sup>th</sup> of July 2011. It is further common cause that the Warning was destroyed in the presence of the parties. Due to the fact that the Warning is no longer valid I will not deal with it at all.

- 5.3 The next aspect which I am required to deal with is whether the Applicant made himself guilty of the misconduct as set out in Charges 1.1, 1.2 and 1.5 of the charge sheet. I will deal with each of these charges separately.

### **5.4 Ad Charge 1.1:**

- 5.4.1 This charge deals with whether the Applicant assaulted Me. Maphakisa on the 8<sup>th</sup> of July 2009. Me. Mohlabakoe testified on behalf of the Respondent that she was present when the incident took place. She held that she saw when the Applicant

took Me. Maphakisa by die coat and turned her around. She testified that she did not see Me. Maphakisa being assaulted on the day.

5.4.2 Me. Sehloho testified on behalf of the Applicant that she was present when the confrontation took place on the 8<sup>th</sup> of July 2009. She held that the Applicant did not assault Me. Maphakisa. She held that he only tapped her on her shoulder and she turned around.

5.4.3 The Applicant denied ever having assaulted Me. Maphakisa. He held that he merely touched her on her shoulder to get her attention and for her to turn around so that he could speak to her.

5.4.4 There is no evidence before me to the effect that the Applicant assaulted Me. Maphakisa. It is the version of Me. Mohlabakoe that the Applicant grabbed Me. Maphakisa by the coat and turned her around. In my opinion this does not even amount to an assault. I therefore can not find the Applicant guilty of this charge.

## **5.5 Ad Charge 1.2:**

5.5.1 No evidence was submitted by the Respondent's witnesses in relation to this charge. Evidence was led at length relating to charge 1.3, but the Applicant was found not guilty of this charge.

5.5.2 On the Applicant's version, I am satisfied that the Applicant did make himself guilty of intentionally and wrongfully entering the inscription "not for treatment" on the prescription chart of Me. Mxabaniso. He failed to discuss the changes on the prescription chart with the doctor. He compromised the patient's condition by failing to point out to the doctor that the incorrect Regimen had been prescribed. I do not find it sufficient on his side to merely say that he did not have time to discuss this with the doctor. It is incorrect and can lead to dangerous situations where a nurse changes the prescription and fails to discuss this with the doctor. I am satisfied that the Applicant did make himself guilty of the latter part of the charge.

## **5.6 Ad Charge 1.5:**

5.6.1 Having considered the evidence before me, I am satisfied that there was an exchange of words between the Applicant and Me. Dikoko. It is undisputed that the Applicant did not treat the patient who he accompanied during her transfer to Odendaalsrus. It is common cause that the Applicant was unable to give her all the information requested, and I am satisfied that he was not in a position to do so as he never treated the patient.

5.6.2 It is further common cause that the Applicant had a problem with the ambulance as the wheel was busy going flat and they still had to travel back home.

5.6.3 On the evidence of Me. Dikoko and the Applicant I can deduce that Me. Dikoko was insensitive to the situation in which the Applicant found himself and that she was disrespectful towards him as well. Me. Dikoko held that the Applicant was rude as he could not give her all the information she needed and he clicked his tongue at her. I have dealt with the aspect of the furnishing of information herein above. The Applicant denies having clicked his tongue at Me. Dikoko and she alleges that he did do same.

5.6.4 I can not find, on the evidence before me, and under the given circumstances, that the Applicant displayed disrespect or insolent behaviour toward Me. Dikoko. I therefore find the Applicant not guilty of this charge.

5.7 As far as the remedy which is requested is concerned, I must find that the suspension was unfair as far as it relates to Charges 1.1 and 1.5. I do however find that the suspension was fair as far as it relates to Charge 1.2. I find that 2 (TWO) months' suspension is fair as the transgression was of a serious nature.

## **5.8 PROCEDURAL FAIRNESS:**

5.8.1 Whilst narrowing the issues in dispute, the Applicant indicated that the following procedural aspects were being placed in dispute:

- That the Chairperson was biased;
- That the Appeal was not handled objectively.

5.8.2 No evidence was led by either party as to these procedural aspects. Neither of the parties addressed me on these aspects in their Closing Arguments. It must follow that I can not find any procedural defects in this regard.

**6. AWARD:**

6.1 I find that the suspension as far as it relates to Charges 1.1 and 1.5 was unfair. I do however find that the 2 (TWO) months' suspension in relation to Charge 1.2 was fair.

6.2 I find no procedural defects on the side of the Respondent.

6.3 No order as to costs is made.

**SIGNED AT BLOEMFONTEIN ON THIS 11<sup>th</sup> DAY OF JUNE 2012**



**SENIOR COMMISSIONER**

**C L DICKENS**

**PHSDSBC**