



PHSDSBC

PUBLIC HEALTH AND SOCIAL DEVELOPMENT
SECTORAL BARGAINING COUNCIL

ARBITRATION AWARD

CASE NO: PSHS335-17/18

PANELIST: John Mashika

DATE OF AWARD: 17 October 2017

In the matter between:

PSA obo MOHONO, S.E

APPLICANT

and

DEPARTMENT OF HEALTH – FREE STATE

RESPONDENT

Details of the parties and representation

1. The matter was scheduled for an arbitration process on 10 October 2017 at the Bophelo House in Bloemfontein. It was referred in terms of section 191(1) of the Labour Relations Act 66 of 1995 (the LRA) relating to an alleged unfair dismissal.
2. The applicant in this matter is Mr. Sebiti Ezekiel Mohono. He appeared in person in these proceedings and was represented by Mr. M Matlhale of the Public Servants Association of South Africa (PSA).
3. The respondent is the Department of Health-Free State. It was represented by Mr. M Nhlapo of its Employee Relations Office.

4. The proceedings were digitally and manually recorded.

Issues to be decided

5. I must decide whether the dismissal of the applicant was substantively fair in terms of section 188 (1) (a) (i) of the LRA.

Background to the dispute

6. The applicant was employed on 1 October 2001 as a Station Manager – Emergency Medical Services Wesselsbron and Bothaville. He earned a yearly salary of R235 000.00 (two hundred and thirty five thousand rand). He was dismissed on 14 June 2017.

7. The respondent is a Provincial Department responsible for public health and related services in the Free State Province. They contend to have dismissed the applicant for allegedly contravening the Standard Operating Procedures for EMS personnel (Medical Support Services Circular 3 of 2012, page 10) when he failed to avail log sheets and trip authorities for trips taken by himself and failing to account to effective, efficient use of state vehicle under his supervision. This related to events of the financial year 2014/2015.

8. Three charges were preferred on him but charges 1 and 2 were combined and charge 3 was withdrawn. The applicant pleaded guilty to the charge in the disciplinary hearing that was held on 28 July 2015.

9. It is also common cause that the hearing sanction was rendered on 29 October 2015 but issued to the applicant in January 2016. He appealed the sanction and only received the appeal authority's decision on 14 June 2017. At all times after an intention to discipline was issued to him on 10 April 2015; he was on duty and rendering services as the Station Manager.

10. He is herein challenging the harshness of the dismissal sanction.

11. A bundle of document was submitted by the respondent and referred to as bundle A. It mainly consisted of the charge sheet, Presiding Officer's findings and sanction report, aggravating and mitigating factors submitted in the disciplinary hearing.

Survey of evidence and argument

Applicant's Evidence: Sebiti Ezekiel Mohono

12. He testified under oath that during the disciplinary hearing charges 1 and 2 were combined into one charge and charge 3 was withdrawn. He had pleaded guilty to the charge as it is correct that he was signing 'blank' trip authorizations to assist his subordinates to perform their duties. He is responsible for two areas that are about 72 kilometers apart. He does not have shift leaders in each of the two shifts in both areas. Because he works from 07h00 to 16h00; he will fill in a trip authorization so that employees coming in for their shifts can use the vehicles.

13. It was a norm in the EMS to sign blank trip authorizations due to staff shortages. He was forced to sign trip sheets in places where shift leaders would have signed.

14. In cross examination he stated that he pleaded guilty and was aware of the plea he entered. He had hoped for a lesser sanction. He is aware of the Transport Manual and also that he cannot sign blank trip authorizations. He however could not be in two places at the same time at the start of each shift.

Respondent's Evidence: Siphon Sydney Towa

15. He testified under oath that he is the District Manager at the respondent's EMS Control Centre and part of his duties is being responsible for fleet management. He was appointed as the Initiator in the applicant's disciplinary hearing. The charges preferred on the applicant were about the utilization of state property and completion of documents

for such utilization. The applicant had the responsibility to ensure sound administration in his position and failed to carry out these duties. He had Officers reporting under him and had to be exemplary to them. The dismissal sanction was appropriate under the circumstances.

16. In cross examination he stated that he was aware of staff shortages in the applicant area of work. The applicant had a cellphone allowance and in the event trip sheets needed to be signed he could have made arrangements with other Station Managers to change or sign the trip sheets.

17. In clarification he stated that the Standard Operating Procedures does allow for the undertaking of trips without authorization. In the event this occurs; authorization he can be sought within 24 hours of undertaking the trip.

Analysis of submissions and argument

18. It is only fair to state that at the start of the process parties sort to only present written arguments to show that the dismissal was fair or not. This was refused on the basis that submissions would not have enabled me to understand why the applicant is aggrieved with the dismissal and why the respondent is contend that they came to a fair and appropriate decision.

19. I mention this because I am still not convinced that evidence presented by the respondent was sufficient to justify the dismissal sanction; especially in view of the fact that the person who was called to justify the decision was not the person who came to such a decision; and was not, at least, from the Human Resources office to give rational behind the decision in terms of prior practices in handling similar transgressions and what their policies provides.

20. The evidence before me is that the applicant was dismissed for having signed blank trip authorizations for the utilization of state vehicles. This is very serious and may lead to abuse of state vehicles. However, there is no evidence before to suggest or even indicate abuse. The only concern the respondent indicated they have with this conduct from the applicant is that it was not in compliance with the Standard Operating Procedures.

21. This non-compliance the applicant did not deny. Hence he pleaded guilty to the charge. He justified his actions to staff shortages; a fact Mr. Towa agreed to. Much as Mr. Towa wanted me believe that the applicant should have sought the assistance of other Station Managers to attend to the trip authorizations; his argument loses sight of the fact that the applicant's actions were not intended to prejudice the respondent.
22. It was not disputed that the applicant was responsible for two areas 72 kilometers apart without shift leaders. It was also not disputed that trip authorizations must have signatures of shift leaders. To an extent that this is the case and that ambulances are in need almost every time; one will expect any prudent Manager to ensure that this need is met and satisfied at all times. Much as I hold a view that this need must not be met at the expense of good administration and proper adherence to applicable policies and prescripts; it certainly cannot at all times be left to another Manager in another area to perform this duty while the applicant is still in his position.
23. I also noted from Mr. Towa's evidence that in emergency situations a vehicle can be used without authorization and such trip will be approved after 24 hours. This will have been a better option for the applicant but the implication may still have been that most trips within the applicant's area will have been undertaken without authorization given the nature of their work and his areas of responsibility.
24. It further suffices to mention that the respondent did not dispute the applicant's contention that it was common practice to sign blank authorizations. To an extent that the respondent seemed to agree with this; I fail to understand why in correcting this behaviour the respondent resorted to the ultimate punishment of dismissal. Had I been furnished with evidence that the applicant was counseled or warned before about this behaviour; I would have held a different view.
25. This is not a case where abuse or dishonesty is alleged. It is a case where there is non-adherence and the applicant agrees to it with what I consider good reason. I have before me an employee who I am convinced is remorseful to have breached the employer's

Standard Operating Procedures. This is an employee who has been in the employ of the respondent for about 16 years; was left to proceed with his duties after charges were preferred on him since 10 April 2015; and yet; the respondent wants me believe that the employer-employee has broken down irrevocably (see Presiding Officer report page 4). This cannot be correct.

26. That which compounds matters is the fact that after the respondent had accepted that the relationship has broken down irrevocably on 29 October 2015; they only decided to communicate this to him in January 2016. Better still; after lodging an appeal, decide to only confirm the Presiding officer's decision on 14 June 2017; more than two years after preferring charges on him.
27. An employee who pleads guilty to charges preferred on him invariably shows remorse. An employee who shows remorse should be allowed to have a continued working relationship with the employer. The converse holds true (*De Beers Consolidated Mines Ltd v CCMA & Others* (2000) 21 ILJ 1051 (LAC)).
28. There is certainly no doubt in my mind that the employer- employee relationship has not broken down. Progressive discipline or instruction or training will certainly result in the applicant not repeating the same misconduct. (*Sidumo and another v Rustenburg Platinum Mines Ltd & Others* (2007) 28 ILJ 2405 (CC)).
29. It is therefore my view that the dismissal sanction was harsh and as a consequence; the dismissal was substantively unfair.

Relief

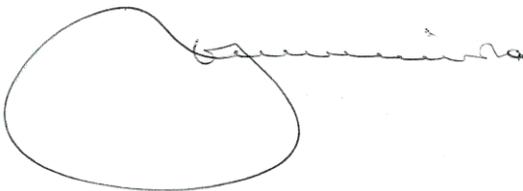
30. Section 193(1)(a) of the Act provides, amongst others, that if an arbitrator finds that a dismissal is unfair, must require the employer to reinstate the employee from any date not earlier than the date of dismissal. The applicant requested to be reinstated to the position he held before the dismissal as he believes the dismissal sanction was harsh. I believe that this is a fair request under the circumstances.

31. I however do not believe that it will be fair to order reinstatement with full back pay herein. The applicant is not blameless. Other than exposing the respondent to state vehicle abuse; he failed to adhere to Standard Operating Procedures. I agree with Mr. Towa that he should have been exemplary to his subordinates.

32. It is therefore my view that a Final Written Warning valid for 12 months will be a fair sanction. He was a senior official within the employ of the respondent and should have known better. I shall order that this warning be issued with effect from 14 June 2017; being the date the appeal authority confirmed his dismissal.

Award

33. The dismissal of the applicant, Sebithi Ezekiel Mohono by the Department of Health – Free State was substantively unfair.
34. The respondent is ordered to retrospectively reinstate the applicant to the position he held before the dismissal of 14 June 2017.
35. This reinstatement is without any back pay.
36. The respondent must issue the applicant with a Final Written Warning for the offence for which he was dismissed valid for a period provided in its disciplinary code effective from 14 June 2017.
37. The applicant must report for work on 1 November 2017.

A handwritten signature in black ink, consisting of a large, rounded initial 'J' followed by a series of connected loops and a final flourish.

JOHN MASHIKA
PHSDSBC PANELIST