



ARBITRATION AWARD

Commissioner: F.N.Bantwini

Case Number: PSHS367-11/12

Date of Award: 15 February 2012

IN THE ARBITRATION BETWEEN

Sibusiso Madikizela : APPLICANT/EMPLOYEE

AND

Department of Health-EC: RESPONDENT/EMPLOYER

Union/Applicant's Representative : Mr. Peter Hoboen
Union / Applicant's Address : 165 Pietermaritz Street
Pietermaritzburg
Telephone 033 341 9100
Fax 033 392 4610

Respondent's Representative : Mr. X. Buhlungu
Respondent's Address : Department Of Health
Private Bag X0038
Bhisho
Respondent's Telephone : 040 609 2584
Fax 040 635 1128

DETAILS OF HEARING AND REPRESENTATIONS

1. This arbitration was heard on 10 January 2012 at the offices of the Department of Health at St Patricks Hospital in Bizana. It came before the auspices of PHSDSBC in terms of Section 24 (2) 24(5) of the

Labour Relations Act 66 of 1995 (the LRA). Parties agreed to submit written arguments. No arguments were received from the respondent. Mr. Peter Hoboen, Attorney from Tomlinson Mnguni James Attorneys appeared for the applicant, Mr.Sibusiso Madikizela who was also in attendance while Mr.X. Buhlungu, appeared for the respondent, the Department of Health.

ISSUES TO BE DECIDED

2. The issues to be decided
 - Whether the applicant is entitled to be paid the remuneration he would have earned from 15 November 2010 to 15 November 2011 or not..

BACKGROUND TO THE DISPUTE

3. The applicant, Mr. Sibusiso Madikizela was employed by the respondent on 01 December 2006, holding a position of a General Worker and was based at St Patrick Hospital in Bizana. He was earning R5025, 75 per month.
4. The applicant was put on precautionary suspension on 15 April 2009 without pay. He was subsequently dismissed after a disciplinary hearing was conducted. The applicant appealed and the outcome of an appeal was given to him on 15 November 2011. The applicant referred a dispute regarding interpretation and application of collective agreement (Resolution 1 of 2003) to the PHSDSBC. When the dispute could not be resolved at conciliation level on 27 October 2011, the matter was scheduled for arbitration.

SURVEY OF EVIDENCE AND ARGUMENT

The Applicant's arguments

5. According to Mr.Hoboen 's arguments;
6. The applicant was subjected to a disciplinary hearing on 19 May 2009 after he was put on precautionary suspension on 15 April 2009. He was subsequently dismissed by the chairperson of the disciplinary

hearing. The applicant appealed and despite requests for an outcome, the respondent processed and gave a finding on 15 November 2011.

7. Subsequent to the finding of the disciplinary hearing and having lodged the appeal, after the expiry of 30 days period, the applicant tendered his services.
8. The respondent refused to accept the applicant's tender and would not allow him to resume duties. The respondent ceased remunerating the applicant from 15 November 2010. The decision of the appeal was given to the applicant on 15 November 2011.
9. The parties are bound by Resolution 1 of 2003 (Disciplinary code and Procedure) of the Public Service Co-ordinating Bargaining Council. It is a collective agreement. Paragraph 8.8 states that: "*Departments must finalize appeals within 30 days, failing which in cases where the Employee is on precautionary suspension he/she must resume duties immediately and await the outcome of the appeal while on duty*". The agreement is pre-emptory.
10. The applicant seeks remuneration he would have earned from 15 November 2010 until 15 November 2011 as a remedy.

ANALYSIS OF EVIDENCE AND ARGUMENTS

After considering the evidence presented the following is found:

11. It is common cause that the applicant was put on precautionary suspension on 15 April 2009. He was subsequently dismissed after a disciplinary hearing was conducted on 19 May 2010.
12. It is also common cause that the applicant tendered his services after the expiry of 30 days subsequent to the finding of the disciplinary hearing and having lodged his appeal. The respondent refused to accept the applicant's tender and would not allow him to resume duties.
13. It is furthermore common cause that the respondent stopped remunerating the applicant from 15 November 2010. The applicant received the decision of an appeal on 15 November 2011.
14. Parties are bound by a collective agreement (Resolution 1 of 2003) which is a disciplinary code and procedures. Paragraph 8.8 stipulates that "Departments must finalise appeals within 30 days, failing which

in cases where the employee is on precautionary suspension he/she must resume duties immediately and await the outcome of the appeal while on duty”.

15. The respondent ought to have accepted the applicant’s tender for duties after the expiry of 30 days in terms of the collective agreement. The respondent also should not have ceased remunerating the applicant as he was still an employee.

AWARD

I therefore make the following award:

16. The respondent, **the Department of Health-EC** is ordered to pay the applicant **Mr. Sibusiso Madikizela** 12 months salary being the sum of R60 309,00 calculated as $R5\ 025,75 \times 12 = R60\ 309,00$ as back pay on 15 March 2012 less any statutory deductions.



Signature

Faith Ncumisa Bantwini

PHSDSBC PANELIST