



# ARBITRATION AWARD

Panelist : F.N.Bantwini

Case Number: PSHS 482-10/11

Date of Award: 11 July 2011

IN THE ARBITRATION BETWEEN

NEHAWU obo Jacob S:

APPLICANT

AND

Department of Health-EC

RESPONDENT

Union/Applicant's Representative : Ms. N. Mafanya  
Union / Applicant's Address : PO Box 1911  
Kokstad  
4700

Telephone : 039 727 3093  
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Respondent's Representative : Mr.M.V. Bungane

Respondent's Address : Private Bag X 0038  
Bhisho  
5606

Respondent's Telephone : 040 608 1918

### DETAILS OF HEARING AND REPRESENTATIONS

1. This arbitration was heard on 20 June 2010 in the offices of the respondent at Madzikane- KaZulu Hospital in Mount Frere. It came before the PHSDSBC in terms of Section 191 (1) 191 5 (a) read with Section 186 (2) (b) of the Labour Relations Act 66 of 1995 (the LRA). Miss N. Mafanya, an official from NEHAWU appeared for the applicant, Mr. S. Jacob who was also in attendance while Mr.M.V. Bungane appeared for the respondent, the Department of Health.

### ISSUE TO BE DECIDED

2. The issue to be decided is whether the applicant's suspension by the respondent was fair or not.

### BACKGROUND TO THE DISPUTE

3. The applicant referred a dispute to the PHSDSBC through his union regarding his suspension by the respondent. He is currently employed by the respondent as an Administration Clerk. When the dispute could not be resolved at conciliation level, the union referred the matter for arbitration.

### SURVEY OF EVIDENCE AND ARGUMENT

4. According to Ms. Mafanya's opening statement, the applicant was unfairly suspended on 21 September 2010. The suspension was unfair because the respondent did not conduct a disciplinary hearing before the applicant was suspended. The applicant seeks upliftment of the applicant's suspension with immediate effect as a remedy.
5. The applicant, **Mr. Sibusiso Jacob** testified under oath as follows:
6. He started working for the respondent on 02 February 2010. On 21 September 2010 he was served with a suspension letter and there was no disciplinary hearing that was conducted before he was suspended. On 01 November 2010 he was given a charge sheet indicating that a disciplinary hearing will be heard on 18

November 2010. After the expiry of 60 days, the suspension was never reviewed. The remedy sought by the applicant is upliftment of the suspension.

7. The respondent did not cross examine the applicant and did not lead evidence save to indicate that the outcome of the applicant's disciplinary hearing will be communicated on the following day (21 June 2011).
8. In closing **Ms. Mafanya** argued as follows:
9. The respondent has failed to review the applicants suspension despite the promise made in paragraph 3 of page 2 of the bundle. The applicant was treated unfairly and the suspension should have been uplifted. The respondent did not afford the applicant an opportunity to a disciplinary hearing although the suspension was on precautionary measures. The applicant was suspended for participating in a legal national strike action of public service employees.

### **ANALYSIS OF EVIDENCE AND ARGUMENTS**

10. It is common cause that the applicant referred a dispute to the PHSDSBC for allegations of unfair labour practice which emanated from his precautionary suspension by the respondent on 21 September 2010.
11. It is the applicant's case that the applicant's suspension was never reviewed after 60 days and no disciplinary was conducted prior his suspension.
12. Paragraph 3 of the applicant's letter of precautionary suspension reads; "You are therefore hereby suspended in terms of paragraph 7.2 of Resolution 1 of 2003 (as amended). Your suspension will be with full emoluments and will become effective immediately upon receipt hereof. The suspension will be reviewed as soon as charges have been formulated against you, if any, or at expiry of sixty (60) days"
13. Clause 7.2 of the respondent's disciplinary code (Resolution 2 of 2003) provides that the employer must hold a disciplinary hearing within a month if the employee is suspended as a precautionary measure.
14. It is undisputed evidence that the respondent failed to conduct the disciplinary hearing within a month and the applicant's suspension was never reviewed within 60 days as indicated in his letter dated 21 September 2010.
15. Based on undisputed evidence before me it is clear that the respondent failed to adhere to its disciplinary code of conduct (Resolution 2 of 2003) and this rendered the applicant's suspension procedural and substantively unfair.

**AWARD**

**16. I therefore make the following award:**

16.1 I find that the applicant's suspension was procedurally and substantively unfair.

16.2 I order the respondent, the **Department of Health-EC** to uplift the precautionary

16.3 suspension issued to the applicant, **Mr. Sibusiso Jacob**.

16.4 The applicant is to tender his services to the respondent on 18 July 2011.



**Signature .....**  
**Faith Ncumisa Bantwini**  
**PHSDSBC PANELIST**