ARBITRATION AWARD

Panellist/s: **Ananthan Sanjivi Dorasamy**
Case No.: **PSHS534-11/12**
Date of Award: **17-Feb-2012**

In the ARBITRATION between:

In the ARBITRATION between:

PSA OBO NAIDOO L.

(Union / Applicant)

and

DEPARTMENT OF HEALTH: KZN

(Respondent)

Union/Applicant's representative	:	MR N SITHOLE
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Respondent's representative	:	MR T NXUMALO
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Details of hearing and representation:

1. The arbitration proceedings commenced at 10H00 on the 26 January 2012 at the Natalia Building Boardroom , Pietermaritzburg. Mr N Sithole of the PSA represented the applicant and Mr T Nxumalo an attorney represented the respondent.
2. After discussing the matter the parties agreed as follows:
   (a) The parties submitted that they did not intend to call any witnesses but that the matter may be dealt with by way of Heads of Arguments on the 7 February 2012.
   (b) The parties agreed that the following were common cause:
      (a) At the disciplinary hearing four charges were preferred against the applicant;
      (b) At the hearing the respondent withdrew charges 1,2 and 3;
      (c) The applicant pleaded guilty to the fourth charge;
      (d) The chairperson confirmed the guilty finding and allowed the parties to make submissions in mitigation and aggravation of sanction.
      (e) The chairperson imposed a sanction of dismissal;
      (f) The applicant appealed the decision and the appeal was dismissed;
   (c) The parties agreed to address the following issues:
      (a) The procedural irregularities if any;
      (b) The appropriateness of the sanction of dismissal;
      (c) What facts the parties rely on in support of their case;
      (d) Why those facts should be believed or why those facts should be accepted as the more probable version;
      (e) What relief is sought or opposed; and
      (f) What legal principles or authority they rely on in their case

SPECIAL NOTE:

The employer requested an extension for the submission of its arguments.

The arguments were received on the 9 February 2012.

The party's submissions are recorded below:

3. APPLICANT'S (EMPLOYER) SUBMISSION

1. COMMON CAUSE ISSUES

1.1 It is common cause that there was a Disciplinary Hearing which was scheduled for the 30th and 31st of March 2011 at 09h00 which proceeded at Natalia Building, South Tower, 11th Floor, Boardroom in Pietermaritzburg.

1.2 It is common cause that the Applicant in this case was represented by an official named Nkanyiso Sithole from PSA and further that the Employer, being the Department of Health, who is the Respondent in this case was represented by a firm of attorneys named Nxumalo & Partners.

1.3 It is common cause that at the Hearing the Respondent withdrew Charges 1, 2 and 3 that appeared on the Charge Sheet dated the 26th of March 2011.

1.4 It is common cause that the Employer being the Respondent, proceeded with Charge 4.

1.5 It is common cause that the Applicant, Lee-Ann Naidoo pleaded guilty to Charge 4.

1.6 It is common cause that both parties submitted their Aggravation and Mitigation Factors before a Presiding Officer.

1.7 It is common cause that Presiding Officer found Lee-Ann Naidoo guilty as charged in terms of Charge 4 of the Charge Sheet and the Presiding Officer recommended sanctions of dismissal.

1.8 It is common cause that the Applicant appealed the decision and this appeal was dismissed.

2. ISSUES TO BE ADDRESSED

2.1 The Applicant was charged in terms of Resolution 1 of 2003.

2.2 In terms of this Resolution, Clause 7.3.1(a) states that the Disciplinary Hearing must be held within 10 (Ten) working days after the notice referred to paragraph 7.1 is delivered to the Employee. It is my submission that the Employer complied with this provision and indeed the matter proceeded within a period of 10 (Ten) working days after being charged.

2.3 Further the Applicant was given an opportunity to be represented by the legal practitioner in this case, however the Applicant preferred to be represented by the Union representative.

2.4 The Application for the recusal of Mr T.E. Nxumalo who represented the Respondent herein was made and same was opposed and thereafter the Ruling was given that since there was a just cause which existed for the Employer, being the Respondent in this case to be represented by a legal practitioner, the application was granted.

3. FACTS RELIED UPON FOR THE EMPLOYER'S CASE

3.1 It is my submission that the Applicant was charged for forgery, in that she forged the signature of Ms N. R. Mthalane which appeared on a letter dated the 6th of October 2009.

3.2 On top of that she again produced a fraudulent letter dated the 12th of June 2001 whereupon she stated that there was a person named Ms M. Moodley who was employed as the Office Manager at the office of Dr M.L.B Simelane who is the Area General Manager 3.

3.3 Upon the investigation, it transpired that there was no person who was once employed at this office by this name therefore the reasonable inference that could be drawn is that this letter was again a fraudulent document in that it was produced under the false pretence that it was signed by an Office Manager of the Integrated Public Service Delivery in KZN Department of Health, that is the office of the General Manager Area 3, Dr Simelane.

3.4 I enclose herewith a copy of a letter dated the 28th of April 2009 as well as a copy of a letter dated the 6th of October 2009 which is purported to have been signed by Ms M. Moodley and Ms N.R. Mthalane, respectively.

3.5 It is a sound principle in Labour Law that prior a sanction is given of any misconduct, he who alleges that there was a misconduct committed must be able to prove four pillars of the test of misconduct, that;-

3.5.1 there was law;

3.5.2 the Employee who has committed misconduct was aware of that law;

3.5.3 there was breach to that law; and

3.5.4 that law is consistently applied.

3.6 I would like to look at the issue of consistency.

3.7 It is my submission that in all cases where issues of forgery and fraud within the Department, the appropriate sanction that is normally given for these offences is that of dismissal.

4. THE APPROPRIATENESS OF A SANCTION

4.1 The sanction of dismissal is appropriate in this case in that during the Hearing it was argued that on mitigation, that the issue of trust is the fundamental issue in the person of Lee-Ann Naidoo occupying her position and employed at the Senior Office with the Department, being the office of the General Manager Area 3.

4.2 Trust issue in this case has been eroded and the trust relationship that can never be mended.

4.3 In the Case of **ELECTRICAL AND APPLIED WORKERS TRADE UNION vs THE PRODUCTION CASTING COMPANY (PTY) LTD (1988) ILJ 702 (IC) AT 708G,** the Court proposed this test:- *if the employer is of the bona fide view that as a result of the employee's conduct, which has come to his attention and which he has investigated to such an extent that would exclude any ground that he the employer has acted arbitrarily, the relationship between him and the employee has become intolerable for commercial and public interest reasons, he will be entitled to dismiss the employee.*

4.4 We therefore argue that the dismissal was appropriate, in that the trust relationship was irretrievably broken down between the parties.

4.5 Further, the propensity of the Applicant in committing this offence can never be disregarded. The Applicant produced 2 (Two) documents which are annexed hereto, both these documents are fraudulent in that the one dated 6 October 2009 was never signed by Ms N.R. Mthalane but her signature was forged.

4.6 The second document dated 28 April 2009 was done by Ms M. Moodley. This Ms M. Moodley has never worked in the office of the General Manager.

This therefore means that the Employee had a clear and obvious direct intention to commit this offence.
We therefore pray that the dismissal decision to be upheld.

4 RESPONDENT'S (EMPLOYEE) SUBMISSION

1. The Applicant is contesting dismissal for allegation that appears on page 2 to 4 of Bundle B submitted at the arbitration.
2. The Applicant is contesting her dismissal on basis of both procedural and substantive fairness.
3. Under procedural fairness, the Applicant is contesting timeousness of the discipline, double jeopardy, utilization of legal practitioners at the disciplinary enquiry, not being advised of her right to appeal.
4. Under substantive fairness, the Applicant is challenging the severity of the sanction and argues that dismissal as a sanction was not appropriate hence unfair.
5. The Applicant feels that her discipline was inimical to the provisions of PSCBC Resolution 1 of 2003 in that clause 2 of the said document which is the peremptory collective agreement between parties in the Public Service which was aimed at regulating issues of discipline.
6. The Applicant avers that in terms of the said agreement it was procedurally unfair to institute disciplinary mechanisms against her after 17 months since the commission of misconduct when in fact the Employer had been aware of the alleged transgression by at least 28th of January 2010 and this is evident from the first charge sheet that was proffered against the applicant and the first enquiry in which Mr. R Mchunu presided over and Mr. T. Madlala prosecuted on behalf of the Department had been sanctioned and abandoned with its evidence that was in favour of the employee, such was done without giving applicant reasons thereof . Therefore the Applicant submits that neither the first nor second enquiry was prompt peremptorily encapsulated in Clause 2.2 of PSCBC Resolution 1 of 2003
7. The Applicant submits that the conduct of the Employer to abandon and not nullify the initial disciplinary enquiry which dealt with similar charges as reflected in Bundle A was unfair on her and unprocedural. The Applicant submits that the second enquiry therefore had no locus standi in disciplining her in light of the initial disciplinary enquiry which remained part heard, intact and subjudice until the time of her dismissal.

8. The Applicant submits that the composition of the second enquiry and the unilateral and high degree of high handedness in issuing her with a charge sheet almost similar to the initial one amounts to double jeopardy and gross unfairness and violation of a principle of not being tried twice for a same offense and was done so with bad intensions and ulterior motives.
9. The Applicant solely believes that convening a second enquiry was not called for as the nature of the misconduct was similar hence the same evidence in this two enquiries was used against her the only difference is that the two enquiries would not have come to a similar outcome.
10. The Applicant believes that the Chair Person of the second enquiry erred in holding that he had requisite authority to continue with the enquiry when he refused an application that her case be remitted back before the second enquiry. The Applicant believes that no reasonable person would have made that decision.
11. The Applicant also contends that the Chair Person erred into ruling that the utilization of Legal Practitioners by the Employer was permissible and accepting that case laws cited by the Employer Rep dictated such. This ruling can be attributed to the fact that in the first place the Chair Person was not the correct one to decide on the issue of utilization of Legal Assistance as he too was a legal Practitioner that was also precluded by the code, secondly he would not have been objective since if he ruled in our favour of the point in limine raised by the Applicant that would mean that he too would have had to step down and that would mean loss of income for him on all future cases he had been allocated to preside over as he has been Presiding in different misconduct cases in the same Department, such would mean loss of revenue for his legal practice. The Chair Persons greed for money was a great impediment of his judgment and his sense of fairness and objectivity
12. The Applicant has a reasonable belief that the Respondent paid someone to get rid of her thereby attaching a price on her career and that is tantamount to commercializing discipline and such conduct is procedurally unfair and unethical.
13. The case law cited at the disciplinary enquiry in response to a point in lime taken by the representative of the Applicant are distinguishable from the case of the Applicant in that in those instances it was the Employee that required legal representation owing to issues of legalities that the enquiry had presented to the Employees, hence in those cases an application for utilization of legal representation had been brought before the Chairperson, who was appropriate to entertain it and had entertained it, secondly in those cases the Courts have held that an application for legal representation has to be made before the Chair Person, in casu no application to that effect was aver made before the Chair Person until it was raised and argued by the Representative as a point in limine and it was dealt with as an argument and not as an application brought by the Applicant and not the Respondent.
14. It is against this background that from the proper conspectus of the **Khula enterprise, Mahumani,**

Majola and Lekabe cases and or judgments that It is glaringly clear that it was not the intension of the Judiciary to promote wholesale departure from collective agreements which assume the contractual status between parties as PSCBC Resolution 1 of 2003 was repealing PSCBC Resolution 2 of 1999 which contained ambiguous clauses which easily made discipline susceptible to abuse and manipulation so on it is on that note that parties deemed fit to put more regulative mechanisms on disciplinary matters by amending Resolution 2 of 1999 by resolution 1 of 2003 and the conduct of the employer in casu is inimical to the principles that underpin discipline as enshrined in resolution 1 of 2003. Whilst the Courts have left the decision of utilization of legal assistance to the discretion of the Chair Person it follows that any discretion should be exercised with fairness.

15. The notion that the Applicant was afforded the same right of utilization of legal representation is both ultra vires and malafide as in the first instance the legal representation could not have been a right to parties since the code expressly precluded it, secondly the employee would have had no financial muscle to bear it since it comes at a cost that the respondent was not prepared to bear.
16. The Chair person also erred in accepting that the Courts have said that the collective agreement is a mere guideline as the LRA in terms of section 24 promotes the primacy of collective agreement so if a collective agreement prohibits and or restricts a certain conduct just like how it did with legal representation of parties in a disciplinary hearing, therefore an adjudicator should be aware of particular factors which parties to a collective agreement consider to be important to the industry or sector underpin the collective agreement and in any event common law has dictated that once a party appends a signature on a document in terms of the caveat subscripto principle such binds the parties to that document therefore a collective agreement PSCBC Resolution 1 of 2003 could not be a guideline as it contains bona fide signatures of Employer and employee representatives in regulating discipline matter. Hence the principles of the said agreement clear indicate what parties had intended when they concluded such agreement.
17. It was therefore not the intention of the Judicial to undermine the provisions of the LRA henceforth the courts have never done that in their decisions neither expressly nor tacitly but it is the Respondents mischievous actions to quote these decisions out of context in order to promote their arbitrary actions of travestying employees' rights thereby using the best Attorneys to bend the rules.
18. The sanction imposed on the employee was not an appropriate one hence no reasonable decision maker could impose such sanction, had the initial enquiry sanctioned the employee, it would not arrive at dismissal as a sanction as the actions of the employee had no prejudice on the Department in that the contents of the letter were factual hence the Employee would have received the latter from HR or any Senior Official anyway hence she did not achieve any illegal gain by Authoring the letter.
19. The Employee had no bad intensions with her behaviour as she only wanted to assure the lending Institution that she would be able to finance here debt, the Employee was just expediting the

process of compliance with the security measure of the lending Institution by not going to HR and get a proper letter.

20. It is common cause that the Employee pleaded guilty at the disciplinary enquiry however it is clear from the mitigating arguments which appear on page 17, paragraph 4 of bundle B that the Employee was not pleading guilty to fraud and or forgery but was pleading guilty to the fact that she authored the letter or at worst forgery and she did that out of remorse. The sanction of dismissal was an assault on the plea of the employee which was tendered out of remorse and honesty and preparedness to honour her actions and take responsibility for her conduct though the employee did not defraud the Respondent of any material gratification.
21. The time that had elapsed since the commission of the misconduct and the Applicant's personal circumstances as submitted in mitigation that Appears from page 17-19 of Bundle B should have mitigated enough for the case of the Applicant for any sanction short of dismissal.
22. The was no evidence place before the Chairperson that her actions broke down the trust relationship as she was never placed on any suspension pending the finalization of the investigation therefore the Respondent continued to trust her with her contractual obligations until she was dismissed by the Chair Person, therefore the learned Chair Person erred in accepting that the conduct and actions of the employee automatically broke down the trust relationship therefore dismissing the Applicant on those grounds was a miscarriage of fairness and no reasonable decision maker confronted with the meritorious aspects surrounding the Applicant's case would arrive at the same decision and neither the previous first tribunal nor any tribunal apart from that one would arrive at such decision.
23. The Applicant also contends that her actions are categorized as final written warning deserving sanctions in the Respondent' document titled "Kwazulu Natal Department of Health Guide to Sanctions in Respect of Disciplinary Action", therefore the Chairperson erred into ordering dismissal as a sanction as that is a deviation therefore such decision is inconsistent to the Respondent's own policy and it stands to be challenged, reviewed and set aside.
24. As pointed out in mitigation, the Employee at the time of her dismissal was financing two repayment loans of which she has repudiated as a result of her dismissal which meant loss of income therefore a dismissal decision imposed against her has defeated the doctrine of effectiveness since she had an administration order against repayment of one loan since she had defaulted due to the financial constraints she had.
25. The Applicant also contends that the Chairperson found it irresistible to advise the Applicant of her right to appeal his decision and finding and that alone is a procedural defect enough to believe that the Chair Person was both incompetent and biased. The applicant was only able to exercise that right due to the fact that her Representative was aufait with such right as encapsulated in PSCBC Resolution 1 of 2003 but that does not mean that if the Representative is aware of such right it then negates

the Chair Person's obligation to advise the Applicant of such right and neither it does not discharge the Chair Person from executing his role thereto.

26. The Applicant prays that in the event the Commissioner rules in her favour that she be granted any alternative relief taking into cognizance that she has not been working anywhere after her dismissal and the fact that with her race category as an Indian female the employment equity targets may not favour her when she applies for any job in any designated employment field.
27. It is the Applicant's prayer that she be reinstated or reemployed without any back pay, the LRA in terms of section 193 makes provision for reinstatement as a primary remedy that must be ordered, this is the Applicant's prayer due to the fact that such relief is reasonable and practical and implementable since the employee wishes to come back to work and her position has not been filled by way of permanent appointment but a Colleague who was on her level was just placed into the position as an interim measure, hence the circumstances surrounding her dismissal have not irretrievably broken down the trust relationship.

28. The Commissioner is reminded of a ratio decidendi enunciated in the cases

REASONABLE DECISION MAKER

Sidumo and Another v Rustenburg Platinum Mines Ltd and Others (CCT 85/06) [2007] ZACC 22; [2007] 12 BLLR 1097 (CC); 2008 (2) SA 24 (CC) ; (2007) 28 ILJ 2405 (CC) (5 October 2007) Which has been used as a landmark judgment and precedent in dismissal matters and decision making processes

TRUST RELATIONSHIP

Edcon V Pillener NO and Others (2009) 30 ILJ 2642 SCA

DELAYED PROSECUTION

Riekert v Commission for Conciliation Mediation and Arbitration and Others (JR686/03) [2005] ZALC 90 (28 September 2005)

PRIMACY OF COLLECTIVE AGREEMENTS

Lloyd v Commission for Conciliation Mediation and Arbitration and Others (J4656/99) [2001] ZALC 92 (20 June 2001)

Lekabe v Minister Department of Justice and Constitutional Development (J1092/08) [2009] ZALC 18 (5 February 2009)

MEC Department of Finance, Economic Affairs and Tourism: Northern Province v Mahumani (478/03) [2004] ZASCA 133; [2005] 2 All SA 479 (SCA) (30 November 2004)

Khula Enterprise Finance Limited v Madinane and Others (JR 660/02) [2004] ZALC 10 (13 February 2004)

29. The Applicant holds an honest belief that the case of the respondent doesn't find its way in procedural and substantive fairness and submits that since the Respondent bears onus to prove fairness of any dismissal, the respondent has failed to discharge that burden of proof in terms of section 192(2) of the LRA.

30. Wherefore the Representative of the Applicant relies on the facts and argument mentioned supra as well as her Bundles A and B in pursuit of her case and submits that they should be believed and accepted as probable as they are substantiated and have been and can be tested hence are in line with precedents and principles gleaned as stated above in terms of law around this subject.

5. SURVEY OF EVIDENCE AND ARGUMENT

31. The applicant was dismissed on the 13 September 2011 and seeks a finding that her dismissal was unfair. The respondent challenges the contention and seeks a decision that the dismissal be found to be fair and that the matter be dismissed.

6. ANALYSIS OF EVIDENCE AND ARGUMENT

32. This matter was cited as an unfair dismissal dispute in terms of Section 191of the LRA and the issue to be decided was whether the dismissal of the applicant was procedurally and substantively fair.

7. THE ALLEGATION THAT THE APPLICANT'S DISMISSAL WAS PROCEDURALLY UNFAIR

33. I have taken cognizance of the decision in **Sweeney/ Transcash [2000] 6 BALR 712 (CCMA)** where the commissioner held that arbitration hearings constitutes a rehearing *de novo* on the merits. The award must accordingly be based on evidence led at the arbitration, not on the record of the disciplinary hearing. Further an arbitration is a new hearing which means that the evidence concerning the reason for the dismissal is heard afresh before the arbitrator. The arbitrator must determine whether the dismissal is fair in the light of the evidence admitted at the arbitration. The arbitrator is not merely reviewing the evidence considered by the employer when it decided to

dismiss, to determine whether the employer acted fairly. This does not prevent the arbitrator from referring to any enquiry record in so far as it is admitted as evidence in the arbitration.

34. The Code of Good Practice: Dismissal promotes progressive discipline, it distinguishes between single acts of misconduct that may justify the sanction of dismissal and those that may do so cumulatively. The Code identifies gross dishonesty, wilful damage to property, endangering the safety of others, assault and gross insubordination as examples of what may constitute serious misconduct that may justify dismissal as a result of a single contravention.

35. In this matter it is clear from the documents submitted by the respondent and the evidence tendered that the following may be reasonably gleaned. The applicant was given a notice to attend a disciplinary hearing, attended the hearing, was found guilty and received her letter of dismissal. She challenges the procedural and substantive aspects of the dismissal.

36. In terms of the guidance provided in the Avril Elizabeth Home for the Mentally Handicapped v CCMA as per A van Niekerk AJ the following is of importance:

Where there is no established procedure in the work place (in this case there is a workplace procedure) the standard required is the one referred to in the Code. This requires no more than the following:

(a) The conduct of an investigation;

(b) Notification to the employee of any allegations that may flow from that investigation; and

(c) An opportunity, within a reasonable time, to prepare a response to the employer's allegations with the assistance of a trade union representative or fellow employee; and

(d) Communication of the decision taken including the reason for the dismissal; and

(e) A reminder of rights to refer a dispute to the CCMA or to a bargaining council or to dispute resolution procedures established in terms of a collective agreement.

37. In deciding whether a procedure was fair commissioners should not adopt an overly technical approach and should bear in mind that the purpose of the recommended procedure is to provide an opportunity for dialogue and reflection regarding whether a fair reason for dismissal or some other sanction exists.

38. As a consequence of the above I do not believe that the employer had miss-conducted itself in respect of the procedural aspect of the dismissal. Therefore I determine that the procedural aspect of the dismissal to be fair.

8. THE ALLEGATIONS AGAINST THE APPLICANT:

39. The employer preferred four charges against the applicant but withdrew the first three charges and the fourth charge read as follows:

On the 6th October 2009, on a letter marked attention Maravedi Financial Solution, confirming

appointment in favour of yourself, you committed fraud and/or forgery by appending Miss N.R.Mathonsi's signature on a letter she has no knowledge of and she denies signing.

The applicant pleaded guilty and the presiding officer found her guilty of the offence.

40. The question arises whether the above mentioned infractions/ misconduct are such that it warrants dismissal.
41. The applicant was in a position that allowed her access to documents used by the employer to corroborate employee's details, information and other information to benefit the employee in the various application they make amongst others applications for medical aid, housing loans, personal loans, children's study applications etc. The entities requesting information accepts the information provided as being the true status of the information supplied. Dishonest or fraudulent information is a huge problems presently with the advent of cloning of credit cards, driver's licence, academic qualifications ect. The prospective entity requesting the information is at the risk of being misled by the information provided. A serious problem is the falsification of medical qualification and the ramification of such misrepresentation is grave.
42. The applicant was in a position that would have led her to easily manipulate the system because she had access to the necessary documentation and with her years of experience ought to have realised the consequences of her actions irrespective of her desperation.
43. The employer had placed a burden of trust on the applicant and it did not expect her to abuse that trust. There were procedures in place and the applicant due to her years of experience should have known the rules and procedures. There rules and procedures were common sense rules, legitimate for the proper conduct of the employer's administration and in perpetrating a breach of the rule in respect of being supplied with information required by a service entity the applicant cannot cry unfair action by the employer. In any event she pleaded guilty to the breach of the rule.
44. As a consequence thereof I am inclined to prefer the version of the respondent over that of the applicant that she had to exercise a greater degree of diligence and resorted to action other than that which she did as it would have had the effect of undermining the duty of the employer to provide honest and procedurally correct information to entities that rely on accurate information being provided by an employer.
45. As a consequence of the above it is established that the applicant had been correctly found guilty of the charge.

The Code of Good Practice guides on fair reasons for dismissals

Dismissals for Misconduct

Generally, it is not appropriate to dismiss an employee for first

offence, except if the misconduct is serious and of such gravity that it makes a continued employment relationship intolerable. Example of serious misconduct, subject to the rule that each case should be judged on its merits, are gross dishonesty or wilful damage to the property of the employer, wilful endangering of the safety of others, physical assault on the employer, a fellow employee, client or customer and gross insubordination.

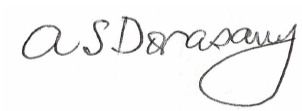
THE APPROPRIATENESS OF THE SANCTION

46. In respect of the reason for the dismissal, this is best left to the discretion of the respondent and in this case, it was justified in taking action against the applicant because her improper conduct was not acceptable given the fact the information required was for a monetary transaction and accessing funds from a service provider that relies on correct information being provided by the employer.
47. I determine that the sanction imposed by the respondent to be appropriate and find no reason to interfere with the sanction of dismissal.
48. Therefore I find that the reason for the dismissal was fair.

9. AWARD

49. I find that the applicants' dismissal was procedurally and substantively fair.
50. The dismissal is confirmed.
51. The applicant's application is dismissed and he is not entitled to any relief.
52. No order for costs is made.
53. This file should be closed.

DONE AND SIGNED IN DURBAN ON THIS 17 DAY OF FEBRUARY 2012.



Arbitrator: Anand Dorasamy