

ARBITRATION AWARD

Case No: PSH643-16/17

Commissioner: T ERASMUS

Date of Award: 5 April 2017

In the matter between:

NEHAWU obo KONDLO, LP & 1 OTHER

(Union/Applicant)

and

DEPARTMENT OF HEALTH- WESTERN CAPE

(Respondent)

DETAILS OF HEARING AND REPRESENTATION

1. This matter was set down for Arbitration at the Public Health and Social Development Sectoral Bargaining Council in terms of section 191(5)(a) of the Labour Relations Act 66 of 1995 ("the LRA") and was heard at the 1st Floor Boardroom, Western Cape College of Nursing, Klipfontein Road, Athlone on 5 December 2016. The matter was postponed as a part-heard matter to 27 and 28 March 2017. The Applicants appeared in their personal capacity, as the union representative is no longer involved in the matter, whilst the Respondent was represented by Mr M Ngqame, Labour Relations Officer at Respondent.

ISSUE TO BE DECIDED

2. I must decide whether the Applicants' dismissals were both procedurally and substantively unfair.

APPLICANT'S OPENING STATEMENT

3. Applicants aver that their dismissals were procedurally unfair as the Applicants' matter was prejudged before they were called into a disciplinary hearing. The paramedics were robbed from their ambulance. Pictures of them were brought forward. Their dismissal was substantively unfair as Applicants were not on the scene on the night in question on 13 May 2016. It was impossible for the Applicants to have assaulted or hijacked Dlamini of his cell phone or to drive to the fire station in a red Astra as averred by Respondent. The Applicants will prove that the Respondent failed to discharge the onus of proof of guilt during the disciplinary hearing. The Respondent's witnesses gave contradictory evidence and Applicants are not guilty of the charges levelled against them.

RESPONDENT'S OPENING STATEMENT

4. Two ambulance practitioners responded to a call on 13 May 2016. They were standing at site C fire station at Landsdowne Road. The one ambulance practitioner was inside the ambulance dealing with the patient, whilst the other was standing outside. When the two Applicants appeared, one of the Applicants went for Dlamini and assaulted him and robbed him of his cell phone, whilst the other Applicant climbed into the ambulance and drove away with the ambulance.
5. Their dismissal is an appropriate sanction and the witnesses will place the Applicants at the scene of the crime.

RESPONDENT'S CASE

6. **CHRISTOFFEL THOBELA DLAMINI testified in support of Respondent's case (hereinafter referred to as "Dlamini")**
7. Dlamini testified that he was employed by Respondent in the capacity as an emergency care officer. He is responsible for treating and transporting of patients.
8. I note that the witness requested permission to sit closer to me, as he was sitting in reasonable close proximity to the Applicants whilst testifying. The witness is soft spoken and seemed fearful.

9. Dlamini testified that they received a call about a gunshot wound at the Landsdowne fire station. They found the patient inside the fire station and took him to ambulance. After treating the patient he went to the driver's seat, he was about to leave, at which point the patient's escort asked his partner if they could quickly fetch money for the patient to be paid at his discharge at hospital, which they allowed. He then stepped out of the ambulance to catch some fresh air, at which point his eye caught sight of a red Opel Astra parked car, facing their direction, approximately 50 metres or more away. One of the passengers was looking under the hood of the car and he thought they had problems with the car. Then the two men started walking in his direction. He was watching them as he thought they were going to ask him something or just walk past. As Dlamini stood there they stopped in front of him and at which point Dlamini pointed out the Second Applicant, identifying Mr Fuma. Dlamini was busy putting his phone in his pocket and Fuma stood in front of Dlamini and said "*Give me the phone*" whereafter he grabbed Dlamini's phone.
10. They struggled as he did not want to give his phone to Fuma. As he was moving backwards, he fell on his back. He saw from the corner of his left eye that the other gentleman had a knife in his hand, at which point he allowed Fuma to take his cellular phone.
11. Dlamini testified that Stemper from the fire department came out and started shouting. The guy with the knife jumped into the ambulance and drove away with his colleague and the patient. Dlamini does not know who the person is. Stemper and Dlamini returned to the office and tried to phone their base, but before they could phone the department, his partner came back with the ambulance. He jumped into the ambulance and on their way to the police station his colleague informed him that the guy driving the ambulance was Mr Kondlo, who she knew. They then met their supervisors at the police station and a case of hijacking and robbery was opened.
12. The police escorted them to Kondlo's house to see if he was there and if his car was there. He did not know what kind of car Kondlo drove, the last time he saw him he drove a white car. They parked in front of the gate, but the car was not there. They then went to Khayelitsha ambulance station where they are based whereafter they went home. The next day he took his car to the car wash and whilst he was busy, Sergeant Pungo phoned him and asked him whether he is available. The police then picked him up at the car wash to identify the Applicants at the police station. He could identify Fuma who took his phone.

13. He could not hear what Stemper was shouting. He felt scared and terrified after the incident, he did not expect something like that. Although he knows Kondla, he did not identify him on the day.

THE FOLLOWING ENSUED FROM CROSS-EXAMINATION:

14. He saw a red car approximately 50 to 100 metres away from them. The incident took place at approximately 22:57. Although it was dark, the street lights were on, therefore he could see them. Between 2 to 4 people stepped out of the car, but definitely not less than 2. He could not see the vehicle's registration number. Fuma took his phone and ran away when Kondlo drove away with the ambulance. He could not see in which direction Fuma went. He did not bother to ascertain the position of the red car at this stage, he was too terrified. Perhaps he could have run after them, but there was nothing he could do. The red car only caught his eye, because it was parked facing the oncoming traffic. He worked with Kondlo at the Pinelands station, but he left Pinelands in 2008. They worked together and they were friends, although he did not recognize Kondlo on the night in question. He was most surprised when he heard that Kondlo was involved in the robbery. He does not know Fuma, as he has never met him before. He confirmed that Fuma was the person who robbed him from his cellular phone. He grabbed him by the collar of his leatherjacket. He was standing so close to him and he also recognised him at the police station. He denies that it took him long to recognise Fuma. It did not take him more than 3 minutes to recognise him. It was put to Dlamini that Fuma was not at the scene, so it could not have been Fuma. Dlamini maintains that as Fuma stood in front of him, he looked straight into his eyes and he was terrified after the incident. It was put to Dlamini that he had an interest in the criminal case, since he was robbed of his cellular phone. It was denied by Dlamini. It was put to Dlamini that the Applicants were acquitted in the criminal case on 18 October 2016 due to a lack of evidence. The Applicants version was that Dlamini mistakenly thought that Fuma robbed him of his cellular phone on 13 May 2016, whilst it was not Fuma, hence he was acquitted, as he was not on the scene of the accident. Dlamini responded that he has no knowledge of the details of the criminal case.
15. Dlamini confirmed that when he went to Kondlo's house he could not find the car and left. It was put to Dlamini that he was looking for Kondlo's car with the police. Dlamini responded that they were looking for Kondlo and his car. Another lady, Candice, that works there, stated that he was staying at Khwezi, but they were not aware that he actually stayed at Greenpoint. As far as he knew, Kondlo drove a white kadett. Dlamini was questioned on whether he was assaulted when he was struggling with the Second Applicant. He replied that he had bruises on his elbows, because he fell.

16. Dlamini confirmed that he went to Khwezi with the police after they established that Kondlo does not live in Greenpoint. They drove around Khwezi and spotted the red car. They did not enter the house as the police said it was in order and they left. It was put to Dlamini that it was not the same red car he saw at the scene of the crime. Dlamini said that Stemper was shouting, but he told them to stop what they were saying. The second guy with the knife was trying to scare him. It seems the guy with the knife's interest was in the ambulance. Stemper and Dlamini phoned the base and asked them to change the radio channel to theirs, so that they could quickly get through to their radio. Khanyisa Mgayane in the control room phoned Kondlo to establish his whereabouts and she established that Kondlo was at home. It was put to Dlamini that when the Applicants heard that the police was looking for them, they did not run away, they availed themselves. Dlamini conceded that Sergeant Punga informed him accordingly.

THE FOLLOWING ENSUED FROM RE-EXAMINATION:

17. It was put to Dlamini that the two Applicants were acquitted in court. Dlamini was challenged on whether he knew the difference between acquittal and provisional withdrawal and whether he heard that the Applicants were acquitted or that the case was withdrawn. Dlamini responded he only heard that the case was withdrawn.
18. Dlamini confirmed that he sustained bruises when he was moving backwards and fell, as he was struggling with the guy trying to take his phone and another waving a knife. He would not have fallen to the floor if they were not there, he identified Fuma. Stemper witnessed the situation and the other person who jumped into the ambulance. Khanyisa who worked in the control room is related to Kondlo, but he does not know her. His partner reported the incident. He is unaware whether Khanyisa was sitting on the board, but she was in the control room.
19. **CHARMAINE NONPUNGA testified on behalf of Respondent (hereinafter referred to as "Nonpunga")**
20. Nonpunga testified that they were working nightshift on 13 May 2016 around 23:10 at site C fire station when they received a call of a gunshot wound. They found the patient at the fire station. Her

partner, Dlamini was driving the ambulance. He stepped outside and as he was taking some time to leave, she looked through the window and noticed two gentlemen fighting with Dlamini. She was too scared to step outside and tried to reach for the radio. One of the guys got into the ambulance and drove off. She did not reach the radio, because he got into the vehicle. She panicked a lot and was afraid, as she did not understand what was going on. She then asked the gentleman what was going on, but he did not answer her. She recognised the gentleman. He drove the ambulance to the informal section and got out. She managed to jump from the back to the front of the ambulance and locked the door, grabbed the radio and contacted the control station. She managed to drive back to the fire station to find out how her partner was. She recognised Kondlo, but did not call him by his name, because he had a knife in his hand and she did not know what to expect. She could point out the Applicant, Patrick Kondlo, as the person who drove the ambulance.

21. She then found her partner and Stemper and they went to police station together. They asked another ambulance to take over the patient. She was extremely shocked, afraid and surprised and also panicked after the incident. Nonpunga and her partner, Dlamini were referred to ICAS by Respondent. She was put off work for about 3 months, due to the incident and she is currently still doing the same work.

THE FOLLOWING ENSUED FROM CROSS-EXAMINATION:

22. Nonpunga saw the two guys attacking her partner, he was on the ground. Two gentlemen were fighting with him, it was during the night. The minute Dlamini was on the floor she could pick up that he was being attacked. They were beating and kicking him. The minute she saw that she jumped on the radio, as she realised her partner was in danger. There was no time for her to continue watching what was going on, as she had to report the matter immediately. It was put to Nonpunga that her evidence contradicted that of Dlamini's as he just said that he fell as he was moving backwards, he did not say that he was kicked or being beaten and that she was therefore not telling the truth. Nonpunga explained that it is very difficult for her to explain exactly what happened, as she was inside the vehicle, looking at the mirror. She did not pay attention to the car standing in the road and she did not see the attackers coming from the vehicle either.
23. Both Kondlo and Fuma were working for the department emergency services at the time. Kondlo was a paramedic and he was the person hijacking the ambulance. You need authority to drive an

ambulance, even if you are employed by the department. Nonpunga was challenged on what could have been gained by hijacking the ambulance. She replied that only Kondlo could answer to this, as she also wondered what his motive was behind the incident. Nonpunga conceded that the incident took place in site C which is a high risk area, where a lot of robberies take place. They were not wearing any masks. Nonpunga was challenged why Kondlo would rob the ambulance without wearing a mask, if he knew that people would easily recognize him. She was unable to answer to this. She also wondered why he robbed an ambulance at knife point. Nonpunga was challenged why she did not jump out of the vehicle. She responded that the vehicle was already idling. He put it in first gear and started driving away. There was no way that she was going to jump out of a moving vehicle. She did not jump out of the vehicle earlier, because she did not know what was going to happen. She did not recognize the second guy, she only recognized Kondlo. She has known Fuma for about 5 years. She did not recognize the guys when she looked in the mirror. She only recognized Kondlo once he got into the ambulance. She was shocked and surprised and asked him what was going on.

24. Nonpunga confirmed that she and her partner went to the police station, whereafter the police went to look for Kondlo in Greenpoint and Khwezi, but they did not go into the house. It was not her task to go into the house to check if Kondlo was inside the house, but the police's duty. They did not go to a specific house in Khwezi, they just heard he was at his girlfriend's house. It was put to Nonpunga that it was not Kondlo who stepped into the ambulance, because he did not have anything to gain by robbing the ambulance. Nonpunga responded that she saw Kondlo driving the ambulance on the night of the incident. She did not see the second gentleman. She is aware that the matter was also criminally reported, although she is not aware of the outcome.

25. It was placed on record that the criminal charges against the Applicants were withdrawn on 18 October 2016. She is not aware of the outcome of the criminal case, as she was on special leave from her job for three months, due to the incident. She had to take leave and attend counselling sessions. She has never been booked off for long periods before this incident. She is not aware whether Dlamini was also put on special leave.

THE FOLLOWING ENSUED FROM RE-EXAMINATION:

26. Nonpunga did not jump from the ambulance as there was a patient in the back and she was looking after the patient. She could not jump from the ambulance and leave the patient alone.
27. **MARK PIETERSEN testified on behalf of Respondent (hereinafter referred to as "Pietersen")**
28. Pietersen testified that he is the district manager, Eastern District, Khayelitsha, Strand, Helderberg area which includes the areas where the Applicants worked. The job entails a high degree of trust. They have to work with injured people who can't speak for themselves. They are seen as heroes who come to help people in the community. Trust is valued at a very high level. He can no longer trust the Applicants after the incident. The trust relationship has been severely hampered. They were suspended pending the whole investigation.

THE FOLLOWING ENSUED FROM CROSS-EXAMINATION:

29. Pietersen was challenged on whether there were other cases at Respondent where people were reinstated even if there was an averment of a breach of trust. Pietersen responded that Respondent has a major problem with the safety of staff, as there are numerous attacks on ambulance staff. There is a perception that Respondent is not doing enough to protect their staff and it is extremely painful to hear that Dlamini and Nonpunga were attacked by their colleagues. Applicant's representative put it to Pietersen that he himself was dismissed at EMS. Respondent stated that the trust relationship was irrevocably broken, yet he was reinstated. Pietersen responded that these allegations are serious. The two witnesses were out there serving the community. It could have turned out terribly and it is not something that the Respondent can just brush off lightly, particularly taking the kind of work they do into consideration. The breach of the trust relationship is of considerable importance here. Pietersen was at the police station within 20 minutes of the incident. They made a decision from management's side to support the victims, especially since the work that the staff is exposed to extremely dangerous and they were very traumatized, especially Ms Nonpunga. As far as he is concerned the criminal case is still ongoing, the detective told him that they are still investigating the matter and they are still awaiting crucial evidence. The matter was temporarily withdrawn from the roll. It was put to Pietersen that it is not correct as Dlamini testified that the matter was withdrawn.

30. Pietersen testified that he got a call around 23:20 that the crew was hijacked. He can't confirm the exact time. He was informed that the incident took place at approximately 22:40. He wasn't at the scene himself, he only heard about it from the managers. He was at the police station just after 23:00. This case is regarded as a serious case, if the Applicants could attack their colleagues who have to go out there and serve the community. The amount of attacks on ambulance staff is increasing and the staff is shouting out and Respondent almost had labour unrest, as staff believes that management is not doing enough to protect them.
31. Pietersen was challenged on the police statement. Respondent then received a report from the police where they interviewed him. He could only testify on what he wrote and his understanding of what the witness has told him. Nonpunga's words were: "*Hey boetie what are you doing?*" He said to her "Be careful, he is a fellow colleague". She said she knew him, they did induction together and they worked together. He was the individual who drove the ambulance. It was put to Pietersen that his testimony is different to what the witnesses testified at the Arbitration hearing. He responded that it is his interpretation from what he got from them on the day. She also mentioned he had a knife in his hand. They positively identified Kondlo and his car, she had no doubt in her mind of Kondlo's identity, thus there is no reason to doubt that Kondlo and Fuma were the two culprits. He wrote the statement in the early hours of the morning and sent it to Dr De Vries and Taylor. Nonpunga positively identified Kondlo.

At this point the Respondent sought a postponement to call Stemper and Sergeant Pango, who were not available to testify due to the fact that Stemper was on compulsory leave and in the Transkei.

On the resumption of the hearing on 27 March 2017, neither Applicants nor their representative were present at 09:00 when the matter resumed. I noticed that there was an application for postponement by Applicants' representative on the file, which postponement was denied by the Council. I waited until 09:40, but there was no representation on behalf of the Applicants. I then continued with Mr Stemper's evidence. Mr Stemper was not available in person, but Respondent offered his evidence by telecom. Stemper then testified via telecom.

32. **MNCEDISI ISAAC STEMPER testified on behalf of Respondent (hereinafter referred to as "Stemper")**

33. Stemper testified that he was sitting in the washroom when the ambulance arrived. The ambulance was parked in front with the patient and a lady was busy treating the patient, just before 10 at night. There were two guys, the one ran away, the other one drew a knife. The lady was inside the ambulance, he phoned the police. There were two guys assaulting the ambulance guy. One drove away. He is employed by Respondent in the capacity of a fire fighter and he was able to identify the guys who assaulted the ambulance staff at a later stage at the police station.

After Stemper completed his testimony by telecom, the two Applicants arrived without their representative. They informed me that their representative told them that the matter was postponed and the he is not available, as he is involved in another matter at the CCMA. I informed the Applicants that the Council had already ruled that the postponement would not be granted and that I had to proceed with the matter. The matter then stood down for a few minutes to allow the Applicants to make a telephone call to their representative and on their return, they informed me that they elected to continue with the matter unrepresented.

APPLICANTS' CASE

34. **THEMPLE FUMA testified on behalf of Applicants (hereinafter referred to as "Fuma")**

35. Fuma testified that he was at home on 13 May 2016, which was payday. Kondlo phoned him and told him he wanted to pay him a visit at his house. Fuma informed Kondlo that he first wanted to do shopping. On his return from the shops he found Kondlo and his girlfriend at his home. They had a few glasses of wine and he asked Kondlo to take him to Strandfontein to fetch a stepladder and drop off a mattress. He waited for his wife to get home at 8 pm whereafter they left for the Strand. One of his friends came over so, it was himself, Kondlo and Kondlo's girlfriend and another guy, they went to the Strand. Kondlo didn't want to take the stepladder, as he said it would damage his car. On their return, they dropped off Kondlo's friend in Greenpoint in Khayelitsha whereafter they went to Delft, where Fuma was dropped off.

36. Fuma testified that he worked at special events in Hermanus on the Saturday morning. On his return, he was given a telephone number by his brother to phone and it turned out to be Constable Pango. Pango asked him where he was the previous evening and whether he was with Kondlo. He confirmed that he did go out with Kondlo and Pango asked him for his side of the story. He was arrested on the Sunday morning just after 10:00. He confirmed to Pango that Kondlo was at his home. He was

questioned what he knew about the armed robbery of an ambulance. He told Pango that he was not aware of it. Pango told him that they would bring fingerprints and the tracker report and CCTV footage that will show how they robbed the ambulance. The latter evidence has not been forthcoming to date. Fuma was on leave at the time.

THE FOLLOWING ENSUED FROM CROSS-EXAMINATION:

37. Fuma confirmed that Kondlo was driving a red Opel Astra to the Strand on the Friday evening. It was put to Fuma that Dlamini saw a red Opel Astra not far from the scene. Fuma responded that he is unaware whether Dlamini knows the vehicle. Fuma testified that they took the N2 when they dropped his friend off at Greenpoint. There are two ways to Greenpoint, the longest is past "sightseeing". Fuma confirmed that the road goes past the fire station. According to Fuma, the shortest route to Delft from Greenpoint is via the N2. The Respondent's representative put it to Fuma that he is not telling the truth, as there are no traffic lights as averred by Fuma. Fuma denied that they went through Khayelitsha when they dropped off Siya and they did not pass the fire station at all. He confirms that he worked together with Ms Nonpunga. He does not know Dlamini. He was challenged why Nonpunga and Dlamini would make up this story against him. He responded that Dlamini identified him at the police station after the police said: "there is the guy who robbed you." He can't understand how it is possible that Dlamini didn't see Kondlo, but he saw him. He was not in the vicinity of the fire station.
38. **PATRICK NULAMA KONDLO testified on behalf of Applicants (hereinafter referred to as "Kondlo")**
39. Kondlo testified that on 13 May 2016 just past 17:00 he went to visit Fuma in Delft. Fuma asked him to accompany him to take a mattress to the Strand. There was somewhat of confusion on their arrival in the Strand, as Fuma then requested him to bring a step ladder of approximately 4 to 5 metres back. He told Fuma that he could not take the step ladder, as it would damage his car, whereafter an argument ensued between them and they left without the stepladder.
40. It was past midnight when he received a telephone call from his colleague at the call centre, Khanya Manyza. She asked Kondlo where he was and he responded that he was in bed at home. She informed Kondlo that she is calling about the incident of robbery that happened at site C.

41. Their colleagues, Dlamini and Nonpunga, reported that they were being robbed and Kondlo told her that he was at home. He asked Khanya to telephone Pietersen at the Khayelitsha office, so that he could go there, because he was accused of robbing the ambulance. Mr Neft at the Khayelitsha ambulance station - she informed them that she spoke to him over the phone and that he is prepared to come in. She told him that they were not prepared to speak to him on that night when she phoned him back. Kondlo stayed at his house until the next morning. At 12:00 the next day he went shopping at the Promenade when he received a call from Mr Van Zyl, another officer and he asked him to come to the Mitchell's Plain office. He asked him "Do you know why I am calling you?" He responded that he assumed it is about the incident he is accused of. Van Zyl informed him that the police was looking for him. Kondlo responded that he has no idea why the police was looking for him, but he was prepared to report to the police. He was told that a case was instituted against him in Stikland. He then went to site B police station in Khayelitsha where he was locked up in the cells and he was taken to court on the Monday. The case was postponed for 3 months at first and was postponed on a second occasion until 18 July 2016. The case was taken off the roll as the police did not have enough evidence, they are still waiting for the police to bring evidence.

THE FOLLOWING ENSUED FROM CROSS-EXAMINATION:

42. Kondlo stated that they stopped on the N2 to drop off Siya as they were coming from the Strand, as it is near Greenpoint. It was put to Kondlo that his colleague testified that they stopped in Greenpoint. He was challenged whether the N2 and Greenpoint are close to each other. He denies that he ever went into Greenpoint. He was driving the car, therefore his version is correct. He dropped off Siya around 20:30. Reference was made to pages 35 and 36 of the bundle. When they called him at work, they said it happened at 9:30. According to Kondlo he was far away from the fire station when he dropped off Siya. As per Fuma's affidavit on page 35:

"We drop Siya at ± 22:30 then we drove to my place to drop me 22:43. Then I went to sleep with my wife. I did not do anything wrong am waiting the court date to show am not guilty."

43. Kondlo's affidavit was on page 36:

"On May 13 at around ± 21:00 I was in Delft at Fuma's house. He had asked me to accompany him to go drop off a mattress in Strand. We left his house at around ± 19:45 and we arrived in Strand past 20:00. We then went drinking around Strand. We then drove back at around ± 22:00. We went

to drop Siya at ± 22:30. Then I drove to Fuma's house. I dropped him at around ± 22:45; then I drove home to sleep it was around ± 23:00 when I got home. At around ± 23:30 but not sure we received a call from Khanyisa the person I was sleeping with woke me up saying Khanyisa wants to talk to me. It was Khanyisa from control room (dispatcher). She asked me where I was. I told him we are sleeping. She then told me that there's a ambulance that was robbed and the ambulance crew says its me, saying I'm the accused person. I told her to call eastern division and ask the officer if must I come to the sector or must I report to the nearest police station, since the crew that was robbed is accusing me. Later on she called me and said the officer on duty said they not interested in what I have to say or see me and I must not report to the SAP. I must wait for the police to come and arrest me where I stay. I'm innocent, I'm waiting for outcome of the court to prove that I'm innocent. I'm on leave from 16 May – 1 July."

44. It was put to Kondlo that the incident that he was accused of happened the same time in the area where he was around 22:15. According to Kondlo he was far away from the fire station at the time and there were not a lot of cars. He is driving a red Opel Astra. It was put to Kondlo that on the night of the incident the red Opel Astra was seen in the vicinity of the fire station. Kondlo responded that there are a lot of red Opel Astras and that the number plates were never mentioned. Kondlo stated that both Dlamini and Nonpunga know him. It was put to Kondlo that Fuma testified that Dlamini does not know Kondlo's red Opel Astra. He responded that Fuma could not possibly know as he does not stay with him. It is his car and he is not married to his colleague. It was put to him that even Dlamini said that he doesn't know Kondlo's car and that the last time he saw him, he was driving a white Golf. He responded that he never drove the car and they were working on the same shift. Kondlo was challenged that if he was in Greenpoint, what the distance was from the fire station. He responded that it was about 10 minutes from where they were to the fire station.

RESPONDENT'S CLOSING ARGUMENT

45. Respondent called two witnesses who testified and identified Kondlo and Fuma as the people involved in the incident. Dlamini does not know Kondlo's car, yet on the 19th he identified the red Opel Astra. The fire station and Greenpoint are not far apart. The fire station is in Landsdowne Road, site C, Khayelitsha as per page 26. At the time of the incident the Applicants were in the same area as the fire station. There is no doubt that the Respondent's witnesses' evidence could be

doubted. Nonpunga even suffered post-traumatic stress after the incident and they positively identified the Applicants. The Applicants' statements conflicted each other. It clearly indicates the unreliability of their testimony and the Respondent proved its case on the balance on probabilities. The Respondent prays for confirmation of the dismissal.

APPLICANTS' CLOSING ARGUMENTS

KONDLO'S CLOSING ARGUMENT

46. Kondlo further stated that he listened to the evidence of Dlamini. Dlamini did not say that he was punched. The statement is in conflict with that of Stemper. He does not see any reason why he would rob an ambulance as he had everything at home in a medical bag. The ambulance has a tracker and he knows how the systems work. He is not saying that Nonpunga was not traumatized, but she could have had family issues as well as personal issues against him and Fuma. He never had any argument with him. He has a clean record and if anything is God willing he cannot stop it. He has a mother and four kids that he has to support. He wants his job back, he earned R15 000.00 before deductions.

FUMA'S CLOSING ARGUMENT

47. The department failed to bring the CCTV footage to the hearing. The evidence is only hearsay. Dlamini does not know who robbed him. Only Dlamini identified Fuma. He saw him on the newspaper. The police took finger prints, but the finger prints were not produced as evidence. It is impossible for them to rob their colleagues if they knew each other. He was not there at that particular time. He wants his job back as he is currently unemployed. He supports five children, his mother and grandmother. He earned R10 000.00 before deductions.

ANALYSIS OF EVIDENCE AND ARGUMENT

48. It is common cause that Dlamini and Fuma were the ambulance crew on the night of 13 May 2016 at the site C fire station, as they have been called out to deal with a gunshot wound. Dlamini was standing outside the ambulance, whilst Nonpunga was attending to a patient inside the ambulance. Dlamini was attacked by one of the gentlemen whereafter the other gentleman got into the ambulance

and drove away with Nonpunga and the patient. Nonpunga positively recognized Kondlo. She even spoke to him at which point Kondlo stopped the ambulance and ran away. Nonpunga bravely managed to jump behind the wheel, locked the door and returned to the fire station.

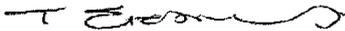
49. I find Nonpunga's explanation about her inability to follow exactly what was going on with the men attacking Dlamini acceptable in the light of the fact that she had to act swiftly in a dangerous situation and that her first thoughts were to grab hold of the radio in order to call for assistance. Dlamini explained that his cellular phone had been taken from him and he also noticed that one of the gentlemen was carrying a knife. Therefore he felt that his life was in danger. He recognized Fuma. There is no evidence before me substantiating Applicants' claim that the witnesses had anything personally against them or anything to gain by placing them on the scene.
50. I also find that the probability of Kondlo's red Astra being at the scene is more probable than it being a random red Opel Astra. Both Applicants confirmed that they were in the vicinity, albeit 10 minutes away from the fire station when they dropped off Siya in Greenpoint. There were also different versions as to where Siya was dropped off, whether it was on the N2 or whether in Greenpoint itself. If this had been the case I would have expected the Applicants to call Kondlo's girlfriend as well as Siya to confirm the time and place where Siya was dropped off. This is in line with Dlamini's evidence that there were two to four people in the vehicle. I can only deduct from Kondlo and Fuma's contradicting evidence that both Siya and Kondlo's girlfriend must have been in the red Opel Astra at the time of the robbery and that they must have remained in the vehicle, when Fuma and Kondlo got out of the vehicle to perform the robbery.
51. I can only deduct that Kondlo jumped out of the vehicle when he realised that he was recognised by Nonpunga. When Dlamini testified he was clearly fearful of the Applicants and requested to move away from the witness seat and sit in close proximity of myself. He was clearly traumatized. Nonpunga's evidence that she was traumatized and booked off for three months was also not challenged, in fact, Kondlo conceded that there was a possibility that she would have been traumatized.
52. I find that Applicants' dismissal was substantively fair as Applicants made themselves guilty of robbing their colleagues, which is a further aggravating factor. Thereby I find that the dismissal was procedurally fair. Under the circumstances I find that the sanction of dismissal was a fair sanction especially in the light of the seriousness of the offence and bearing in mind Pietersen's evidence that

ambulance crew are constantly subjected to danger in high risk areas and that the Respondent has a duty of care towards its employees in order to protect them.

53. There is no evidence before me substantiating Applicants' claim that their dismissal was procedurally unfair

AWARD

54. I therefore find that Applicants' dismissal was both procedurally and substantively fair and Applicants are not entitled to any relief.



COMMISSIONER: T ERASMUS