



ARBITRATION AWARD

Commissioner: **A.N MAFA**

Case No: **PSHS83-17/18**

Date of Award: **10 July 2017**

In the matter between:

NEHAWU obo Motumi Hlahaswane

(Union/ Applicant)

and

Department of Health – North West

(Respondent)

DETAILS OF HEARING AND REPRESENTATION

1. This matter was set down for arbitration on the 27 June 2017 at Potchefstroom Hospital and at 10:00 am. Both parties attended the proceedings.
2. The applicant, Mr. Motumi Hlahaswane was represented by Mr. R. Kgoadi, a union official from NEHAWU and Ms. J. Van Wyk represented the respondent.
3. The proceedings were digitally recorded and detailed handwritten notes were also taken which forms part of the record.

PRELIMINARY ISSUES

4. The respondent applied for a postponement on the basis that the official who had to deal with the matter was attending arbitration, the applicant is employed at Witrand Hospital and not Potchefstroom Hospital and that witnesses are not available.
5. In response, the applicant's representative indicated their unhappiness in opposing the application for a postponement in that such application was brought already on 20 June 2017 by Mr. Dlamini in writing through Council indicating that he has another arbitration to attend.
6. The applicant formally opposed the application for postponement and Council made a ruling that the matter will proceed on the scheduled date having considered both applications.
7. Furthermore, it was submitted that the applicant was suspended since June 2016 contrary to the provisions of Resolution 1 of 2003 and as a union official he was to attend a NEHAWU congress but prioritized the matter over it.
8. Having considered the submissions by both parties I indeed confirmed that I was in possession of a Council ruling regarding the issue of postponement and was of the view that the respondent was attempting to have a second bite of the cherry.
9. In my view, the main reason for not being able to proceed with the matter was captured in the respondent application made by Mr. Dlamini on 20 June 2017 and a ruling was made to that effect.
10. Accordingly, I made a ruling to the effect that a ruling on the issue of postponement has already been issued by Council and both parties were aware of it and as such the matter is proceeding.
11. The respondent representative then requested to be excused from further participating in the matter as her instructions were only to request a postponement.

ISSUE TO BE DECIDED

12. Whether the suspension of the applicant is further or not.
13. If it found to be unfair it be uplifted immediately.

SURVEY OF EVIDENCE AND ARGUMENTS

The Applicant's case

14. The applicant, **Motumi Daniel Hlahaswane** testified as follows:

15. He was employed at Witrand Hospital on 1 March 1986 as a Professional Nurse.

16. In 2007 he was appointed as an Operations Manager and his immediate supervisor is Mr. Mogotsi who reports to Mr. Setshwaro as at the date of his suspension.

17. According to him after he was transferred to the District Office he applied for a month leave, from 1 until 30 June 2016, which was approved by Ms. Smith who was in charge then since his supervisor Mr. Chauke was not around.

18. He became aware of the letter of intention to suspend him through NEHAWU on 10 June 2016 while he was on leave.

19. As a NEHAWU branch chairperson he was expecting the letter to be send to him directly but after receipt he requested NEHAWU to attend to the letter.

20. On 27 June 2016 he was issued with a letter of suspension for allegations of misconduct he is not aware of. The author of both letters is the Chief Director, Ms. Nella Mojanaga.

21. After his suspension he has been checking with NEHAWU if there was any communication from the respondent since then to no avail.

22. He is also familiar with a letter from NEHAWU to the respondent challenging the procedural defects regarding his suspension dated 29 June 2016 which did not receive a courtesy of a response.

23. He confirmed that he is currently still on suspension.

The Respondent's case

24. The respondent did not present any evidence as Ms Van Wyk excused herself from the proceedings for reasons already alluded to above.

ANALYSIS OF EVIDENCE ARGUMENTS AND FINDINGS

25. Clause 7.2 (c) of Resolution 1 of 2003 provides that *“if an employee is suspended or transferred as a precautionary measure, the employer must hold a disciplinary hearing within a month or 60 days, depending on the complexity of the matter and the length of investigation. The chair of the hearing must then decide on any further postponement.*

26. Section 186 (2) of the Labour Relations Act provides that unfair labour practice means any unfair act or omission that arises between an employer and an employee involving –

(a).....

(b) the unfair suspension of an employee or any other unfair disciplinary action short of dismissal in respect of an employee

27. The applicant's version was not challenged that his suspension is more than a year and I find it to be probable.

28. Suspension pending a disciplinary hearing should not be unreasonably long, otherwise its effect would be disciplinary in nature [see *CEIWU obo Khumalo and SHM Engineering CC (2005) 26 ILJ 1803 (BCA)*]. In *Mabilo v Mpumalanga Provincial Government & others (1999) 20 ILJ 1818 (LC)* the following criteria have been laid down for judging the fairness of a suspension under these circumstances:

“[T] he employee is entitled to a speedy and effective resolution of the dispute. Employers must not be allowed to abuse the process. The investigation must be concluded within a reasonable time taking all the relevant factors into consideration and the employee must be informed without undue delay about the process steps that the employer is initiating.

This may take the form of allowing the employee to return to his or her work or alternatively furnish this individual with a charge sheet summoning the individual to a properly constituted disciplinary hearing. The disciplinary hearing must be initiated within a reasonable time of the individual being suspended”.

29. The fact that applicant continues to be paid and his benefits have not been affected, in my view, defeats the whole purpose of speedy and effective resolution of labour disputes. In *SAPO Ltd v Jansen Van Vuuren NO & others (2008) 8 BLLR 798 (LC)* it was held that a suspension, even whilst investigations are underway, amount to unfair labour practice, if the period of suspension exceeds the period stipulated in a disciplinary code, collective agreement, regulations, or contract of employment.

30. Herein, notwithstanding the fact that the period of suspension excessively exceeded the period stipulated in Resolution 1 of 2003, which the respondent is a party to such collective agreement, there is no explanation for the delay in finalization the investigations.

31. Accordingly, I find the continued suspension of the applicant to constitute unfair labour practice.

32. The applicant further indicates that he lost 3 days of his leave as a result of his suspension and was also working on weekends. In this regard, I am of the view that the issues may be pursued separately since applicant could not quantify the extent of his loss.

33. I therefore proceed to render the following award:

AWARD

34. The continued suspension of the applicant beyond 60 days constitutes unfair labour practice.
35. The respondent is ordered to uplift the applicant's suspension by no later than 14 July 2017.
36. The applicant must report for duty on 17 July 2017.
37. I make no order as to costs.



Signature: _____

Commissioner: Archibald Ngoako Mafa

Sector: Public Health