



PHSDSBC
PUBLIC HEALTH AND SOCIAL DEVELOPMENT
SECTORAL BARGAINING COUNCIL

ARBITRATION AWARD (2)

Case No: PSHS931-13/14

Panelist: PH KIRSTEIN

Date of award: 9 September 2014

In the SECTION 188A – PRE-DISMISSAL ARBITRATION between:

DEPARTMENT OF SOCIAL DEVELOPMENT

EMPLOYER

AND

M C BOK

RESPONDENT

DETAILS OF HEARING AND REPRESENTATION

[1] In an arbitration award dated 15 August 2014 a ruling on allegations of misconduct was issued. The employee was found guilty of the alternative charge to Charge 1 being:

“You made yourself guilty of misconduct in terms of Chapter 7 of the SMS Handbook, as amended, in that, you brought the name of the Department of Social Development into disrepute. It is alleged that, in October 2012, you failed to properly manage the implementation of the online Non-Profit Organisation Database system to be viewed by the Public, which resulted in the de-registration of 35000 NPOs, without notification.”

[2] On 8 September 2014 the parties were given opportunity to submit evidence and make submissions regarding an appropriate disciplinary sanction.

[3] The employee was represented by M Seloane. The respondent was represented by A F van der Mescht. The employee submitted 3 documents:

- Internal memo dated 30 April 2014.
- Acting appointment dated 30 June 2014.
- Acting appointment dated 31 July 2014.

The representatives submitted written submissions.

SUMMARY OF EVIDENCE

[4] M C Bok, the employee, testified and indicated that he started his employment at the employer during 2002. Currently there is no warning against the employee's name. There was a warning issued but expired in April 2014. The applicant has two dependents and a nephew to support. The applicant referred to a memorandum dated 30 April 2014 and indicated that he is appointed in a Bid Evaluation Committee to evaluate proposals received for the rendering of travel management services. The employee referred to an appointment letter as Acting Chief Director: Non-Profit Organisations dated 30 June 2014. In terms of the letter the employee has acted for the period of Chief Director: NPO from 1 July until 31 July 2014. The employee referred to a letter dated 31 July 2014 indicating that the employee was appointed in the acting position of Chief Director: NPO from 1 August until 31 August 2014. The employee is not currently holding the mentioned position. The employee was not suspended during the disciplinary process. During cross examination the employee denied that the acting capacity referred to was withdrawn.

[5] The next witness on behalf of the employee was D Morata. Morata indicated that he was responsible for the deregistration of NPOs. According to Morata none of the NPOs that were deregistered complied with the legal requirements.

[6] The respondent did not call any witnesses.

SUBMISSIONS

[7] The representative of the employee indicated that the following should be considered in determining a disciplinary sanction:

- The employee was found guilty of an alternative charge. The indication is therefore that such charge is not serious.
- The employer acted irregular by disclosing a previous written warning issued to the employee prior to the finding of guilt.
- The NPOs that were deregistered did not comply with the legislation.
- The relevant website was not terminated despite the alleged misconduct.
- The employer failed to show a breakdown in the trust relationship.
- The employee was not suspended during the disciplinary process.
- The appointments of the employee show that there is still a working relationship.
- In the absence of dishonesty the employee should not be dismissed and even a final written warning would be too harsh.

[8] The employer's representative made the following submission:

- The employee is employed as a senior manager and rules apply more stringent where senior managers are involved.
- The employee failed to comply with the NPO Act.

- The employee should have foreseen the consequences of his action by allowing the online website to go live.
- The working relationship has seriously been harmed and the employer's name was brought into disrepute.
- The employee showed a tendency of not following proper procedure. Reference is made to a final written warning issued on 20 October 2013. Although the previous warning has lapsed it still need to be considered in determining an appropriate sanction.
- The employee as senior manager did not show any remorse. The misconduct upon which the employee was found guilty of is sufficient to warrant a dismissal.
- A sanction of dismissal is appropriate alternatively a final written warning coupled with 3 months' suspension without pay.

ANALYSIS

[9] Having considered the evidence and submissions regarding an appropriate sanction, the indication is that the trust relationship between the employer and the employee has not broken down. The employee was not suspended during the disciplinary process. The employee acted in the position of Chief Director: Non-Profit Organisation up until 31 August 2014. The employee was gainfully employed throughout the disciplinary process. In such circumstances a sanction of dismissal is not appropriate. Apart from the previous written warning that expired in April 2014 there is no indication that the employer is dissatisfied with the performance of the employee. It cannot be determined that the employee has a tendency in not following procedures. The misconduct the employee was found guilty of did not cause irreparable harm to the employer. A disciplinary sanction of 3 months suspension without remuneration would be too harsh in the circumstances. The employee must accept as a senior manager that he should take great care before executing duties that may bring the name of the employer into disrepute.

RULING

[10] The employer must issue to the employee a final written warning for the failure to properly manage the implementation of the online non-profit organisation database system and thereby brought the name of the employer into disrepute. The final written warning must be issued for a period of 6 months valid with effect from 8 September 2014.

SIGNED AT PRETORIA ON THIS THE 9th DAY OF SEPTEMBER 2014.



**PH KIRSTEIN
ARBITRATOR**