



ARBITRATION

AWARD

Commissioner: **Khehla Khanyile**

Case No: **PSHS1165-19/20**

Date of award: **20 June 2020**

In the matter between:

PSA OBO SENZO SIMPHIWE MKHWANAZI

Applicant

and

DEPARTMENT OF HEALTH- KWAZULU NATAL

Respondent

DETAILS OF HEARING AND REPRESENTATION

1. The arbitration was scheduled for June 05, 2020 at Natalia Building offices in Pietermaritzburg. Mr. Senzo Simphiwe Mkhwanazi (the applicant) appeared in person and was represented by the Union Official, Mr. Siduduzo Ndlovu from PSA. Department of Health- KwaZulu Natal (the respondent) was represented by the Deputy Director Labour Relations Officer, Mr. Mzovukile Lembede. The proceedings were digitally recorded and I also took down notes. Both parties agreed to submit their written closing arguments on 12 June 2020.

ISSUES TO BE DECIDED

2. I am required to determine whether the suspension of the applicant was fair or not.

BACKGROUND TO THE DISPUTE

3. The applicant was employed by the Respondent in September 2015 as a Pharmacist. The respondent levelled two counts of misconduct against the applicant as follows:

Count 1

On 27 to 28 April 2019, while you were the Pharmacist on call for Edendale Hospital, you committed dereliction of duties in that you could not be found on 27 April 2019 and officials from the Nursing Department could not reach you in order for you to open the Pharmacy and dispense medication to various wards that needed medication and when the Matron finally found you on your phone on 28 April 2019, you still failed to come to open the pharmacy and dispense medication and as a result thereof the medication could not be dispensed to some wards for almost two days.

Count 2

On 27 to 28 April 2019, while you were the pharmacist on call for Edendale Hospital, you prejudiced the administration, discipline and efficiency of the Medical and Nursing Department in that you could not be found on 27 April 2019 by the officials from the Nursing Department in order for you to open the pharmacy and dispense medication to various wards

4. It is the applicant's contention that a final written warning and two months' suspension without pay was unfair. It is the respondent's contention that the applicant pleaded guilty to the charges, so the respondent imposed a fair sanction.

SURVEY OF EVIDENCE AND ARGUMENT

Applicant's case

5. The applicant stated that he was on call for the weekend from April 27 to April 28, 2019. He submitted that the reason why he could not be reached on his cellphone was that his girlfriend left with his car on the 26th of April 2019 because he had parked behind his girlfriend's car. He further submitted that his girlfriend had gone to Durban. He testified that he realized that his cellphone was in the car then called his girlfriend in order to get his cellphone because he needed it for work purposes, but the girlfriend

could not come back since she was far away. He further testified that when his girlfriend was back he got his cellphone and was reachable on the 28th of April 2019. He further submitted that he informed matron that the medication that was required was not an emergency. He stated that he also informed her that he was going to take her mother to church first, then come to dispense the medication. He further testified when he was at the hospital to dispense medication he found out that pharmacy keys were not in the car and went back to look for them at his place but could not find them.

Respondent's case

8. Ms. Subeda Kundethe (Matron) stated that she was on call on April 27, 28, 2019. She submitted that she called the applicant on April 27, but only got hold of him on the 28th of April 2019 at about 9:30. She submitted that she informed him urgency that medication was needed to be given to a child and other patients. The applicant stated that he was going to take his mother to church first, but he did not come to dispense the medication. She submitted that the required medication was dispensed by the Medical Manager, Ms. S Zibula, later on the day, 28th of April 2019.

ANALYSIS OF EVIDENCE AND ARGUMENT

9. The applicant referred an unfair suspension dispute to the council. I am required to determine whether the suspension of the applicant was fair or not. In terms of section 186(2)(b) of the LRA states an unfair labour practice means any unfair act or omission that arises between an employer and an employee involving an unfair suspension of an employee or any other unfair disciplinary action short of dismissal in respect of an employee. The applicant bears onus to prove that his suspension was unfair.
10. It is common cause that the applicant was on call for the weekend from April 27 to April 28, 2019. It is common cause that the applicant was unreachable on the aforesaid date April 27, 2019. It is further common cause that the applicant was reachable on the aforesaid date April 28, 2019. It is further common cause that the applicant did not open the pharmacy on the aforesaid dates. It is further common

cause that the Pharmacy Manager, Ms.Zibula came and dispensed medication on April 28. It is further common cause that the applicant pleaded guilty to the aforesaid charges. It appeared as common cause that the applicant called two of his colleagues who have spares keys and unfortunately, they were out of town.

11. The applicant contended that the suspension for two months was unfair. I reject the applicant's contention to be less probable than that of the respondent. It is undisputed facts that the applicant had access to a phone, but he did not report to the respondent about his situation on 27 April 2017. He was informed about the urgency of the medication, but he did not come to the pharmacy to dispense the medication. He did not inform matron that he lost the pharmacy keys on April 28 before he went back home. In this instance, the applicant in his evidence never mention time, he called two of his colleagues about spare key.

12. I accept the respondent's contention that the suspension of the applicant was fair. The evidence led by the respondent's witness, Ms. Subeda Kundette was consistent and credible. It is undisputed facts that the applicant did not inform the respondent that he was unreachable on April 27. It is further undisputed fact that she called the applicant to inform him urgency for the medication that was needed to be given to patients on April 28, but he did not dispense it. The applicant did not inform her that he had lost pharmacy keys, before he went back home. The applicant did not dispense medication on the aforesaid dates April 27, 28. In my view, the applicant put patients' lives at risk and compromised service delivery.

13. In light of the above, on the balance of probabilities, the respondent proved that the suspension of the applicant was substantively fair. Therefore, the application is dismissed.

AWARD

14. The suspension of the applicant was fair.

15. The applicant's claim is hereby dismissed.

16. No order is made as to costs.

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SIGNATURE: