



# ARBITRATION AWARD

Panelist/s: Leslie Martin  
Case No.: PSHS120-11/12  
Date of Award: 20-Nov-2011

In the ARBITRATION between:

H.O.S.P.E.R.S.A. on behalf of E.C. Pekeur  
(Union / Applicant)

and

Department of Health- Western Cape  
(Respondent)

## **DETAILS OF HEARING AND REPRESENTATION**

The arbitration took place at the offices of the Department of Environmental Affairs in Dorp Street, Cape Town. The applicant, Ms. Evel Clarese Pekeur (Pekeur), was represented by Mr. M.P Rademeyer, an official with HOSPERSA. The respondent, the Department of Health Western Cape (the respondent), was represented by Mr. R. Collop, an assistant director and Mr. D. Arnold, a senior labour relations officer.

During the proceedings the parties requested an opportunity to settle their dispute and undertook to forward the settlement agreement to the Council within 1 week. The parties undertook further, in the event of their failing to settle their dispute, to submit closing arguments in writing and with reference to the evidence led at the arbitration up to that point including the bundles of documents.

During the proceedings I informed Pekeur of her right to change her representative if she so wished. Pekeur declined this opportunity and chose to proceed with her appointed representative.

## **ISSUE TO BE DECIDED**

Was Pekeur dismissed and, if so, was the dismissal fair?

## **BACKGROUND TO THE ISSUE**

Pekeur worked for the respondent as a household aid until 1 April 2011.

## **SURVEY OF EVIDENCE AND ARGUMENT**

The parties each handed a bundle of documents into evidence. No objections were recorded in respect of the bundles of documents.

It was common cause between the parties that Pekeur had signed an application for ill health retirement

The application for ill health retirement was approved by the head of health and signed by Brian Booth, whose capacity is not contested.

Pekeur testified under oath on her own behalf.

### THE EVIDENCE FOR THE APPLICANT:

On 17 July 2005 Pekeur had injured herself while on duty and working with the buff machine. Pekeur had consequently filled in the necessary WCA forms.

The Workmans Compensation Commissioner paid everything and the doctor recommended light duty for Pekeur.

After her injury however Pekeur was absent many times due to being sick.

In 2008 Pekeur enquired of her management why she had to pay so much out of her own pocket as she had after all been injured while on duty.

Consequently the respondent referred Pekeur to a specialist surgeon but nothing was done regarding his report.

Pekeur continued working and due to the work much water was being built up in her back. This caused her much pain and consequent absence from work.

In January 2009 Pekeur felt she could not continue any longer as it was not a pleasure for her to be at home so often.

Pekeur then asked management regarding the 2008 doctor's report but no-one knew about it.

After she had then obtained another copy of the report and submitted it to management a meeting was held between her and Dr. Heins and 2 nursing sisters. Nothing came of this.

In 2010 because Pekeur's back was swollen the doctor booked her off work for 3 weeks.

Before her return to work Pekeur asked Heins to place her in a situation where she would not have to take off from work so often. He said she should continue doing the work she was doing.

This made Pekeur unhappy as it was placing much strain on her fellow employees.

So Pekeur asked Ms. Du Plessis who works in the respondent's human resources department to write a letter for her to the effect that if the respondent could not accommodate her they should rather consider boarding her for reasons of ill health.

In April 2010 management referred Pekeur to SOMA.

The recommendation was that Pekeur be placed in another area of work or transferred to Tygerberg Hospital. The work at Tygerberg Hospital was the same so would not improve anything.

When the management wanted to transfer Pekeur to the out-patients section she refused as she would have to work the buff machine again and, which if she refused to do the management would accuse her of failing to obey a legitimate instruction.

Thereafter Pekeur just carried on with working until the last time when sister Sieglaar called her to an interview. The interview pertained to how Pekeur got injured and her circumstances prior to that. Sieglaar was completing a form during the interview which Pekeur had not seen. Sieglaar told her the form was for the doctor.

When sister Sieglaar asked Pekeur to sign the form she told Pekeur that the hospital would not pay if she did not sign the form.

So Pekeur signed the form.

In November 2010 the matron in the presence of Pekeur's manager instructed her to work only at the level of her hands and not to do any bending.

In March 2011 Pekeur received a letter from the respondent to the effect that she would be finishing on 1 April 2011. She refused to sign for the letter not knowing that she had already signed the application for ill health retirement form.

Pekeur alleges that she had signed the said application for ill health retirement unknowingly as she had not completed the form herself.

When Pekeur enquired about the letter, Mrs. Heyman told her that she should never have signed the application for medical boarding.

### **ANALYSIS OF EVIDENCE AND ARGUMENT**

The evidence presented at this arbitration shows that Perkeur had sustained an injury to her back while on duty at work for the respondent.

Thereafter Pekeur had on numerous occasions visited the doctor regarding her injured back and that recommendations had been made by the doctor.

The evidence shows further that of the doctor's recommendations included that Pekeur be placed on light duty.

Although the respondent had placed Pekeur in different work locations Pekeur still contended that the work that she was required to do was still the same and that this necessitated her having to be absent from work frequently.

The documentary evidence shows further that the respondent had attempted to accommodate Pekeur in the workplace in respect of her injured back. This finds support too in the testimony of Pekeur herself pertaining to the instructions of the matron.

However, notwithstanding the efforts of the respondent to accommodate Pekeur it seems that it was an issue for her that her fellow cleaners were disgruntled about having to share more of the workload.

The evidence shows that Pekeur may have become frustrated with what she considered to be a process which was not having the outcome which she desired and therefore made the application for ill health retirement.

It is hard to believe that a person like Pekeur, who has impressed me as being a highly intelligent and very astute person would sign a document without reading it.

The effect of signing the document is in fact indicative of the fact that the signatory had read the document.

The evidence in fact suggests that Pekeur herself had suggested the ill health retirement which makes it even harder for me to believe that she was not aware of what it was that she was signing when she signed the application form for ill health retirement.

In the circumstances I find that Pekeur did know what she was signing.

The respondent has clearly acted in accordance with the procedures for ill health retirement initiated by the application of Pekeur for such ill health retirement. The consequence thereof was the termination of the working relationship between itself and Pekeur in accordance with the application for ill health retirement.

Consequently it cannot be said that Pekeur was dismissed fairly or unfairly as no dismissal had taken place.

#### **AWARD**

This application for relief in terms of the provisions of the Labour Relations Act 66 of 1995 as amended is dismissed.

Panellist/s: **Leslie Martin**  
Sector: **Public Health & Social Development**