



ARBITRATION AWARD

Commissioner: **Mr T. Ndzombane**

Case No: **PSHS1214-19/20**

Date of award: **15 September 2020**

In the matter between:

SOLIDARITY OBO CLAUDE A SCHOLTZ

(Applicant)

and

DEPARTMENT OF HEALTH- WESTERN CAPE

(Respondent)

DETAILS OF HEARING AND REPRESENTATION

1. The arbitration hearing was scheduled for and heard on 29 July 2020 and 02 September 2020, under the auspices of the Public Health & Social Development Sectoral Bargaining Council at Vredenburg Provincial Hospital in Vredenburg. The applicant; Mr Claude A Scholtz, was represented by a Union Official, Ms. Van Der Merwe from Solidarity. The respondent, Department of Health- Western Cape, was represented by the Labour Relations Official, Mr Mniki.
2. I proceeded with the matter in terms of Section 138(5) (b) (i) of the Labour Relations Act 66 of 1995, as amended ("the Act"). The proceedings were digitally recorded and handwritten notes were taken. Both parties submitted bundles of documents which were accepted and admitted as they purport to be. The parties agreed to submit their closing arguments by no later than 07 September 2020.

BACKGROUND

3. The applicant was employed by the respondent on 01 January 2005 as the Administrative Clerk at Louwville Clinic in Vredenburg. He earned a monthly salary of R18322.36 [eighteen thousand three hundred and twenty two and thirty six cents] prior to his alleged unfair dismissal on 10 December 2019. He does not dispute the existence of the rule and its reasonability. However, he denies that he was involved in an act of misconduct. The procedure is not in dispute. If, he succeeds with his case, he requested to be paid compensation.

4. The respondent stated that the applicant was charged with the following misconducts:
 - a. Charge 1: It is alleged that during the period 23 April 2019 to 12 June 2019, you made yourself guilty of an act of misconduct as contained in Annexure A of the Disciplinary Code and Procedure, Resolution 1 of 2003 when you contravened Clause 4.4.5 of the Code of Conduct for Public Servants(an employee does not engage in any transaction or action that is in conflict with or infringes on the execution of his or her official; duties) by giving a copy of an email containing confidential information to a person(s) who is not a government employee without permission of the Manger: Primary Health Care.
 - b. Charge 2: It is alleged that during the period 23 April 2019 to 12 June 2019, you made yourself guilty of an act of misconduct as contained in Annexure A of the Disciplinary Code and Procedure, Resolution 1 of 2003 when you contravened Clause 4.4.12 of the Code of Conduct for Public Servants (an employee honours the confidentiality of matters, documents, and discussions, classified or implied as being confidential or secret) by giving a copy of an email containing confidential information to a person(s)) who is not a government employee without permission of the Manager : Primary Health care.
 - c. Charge 3: It is alleged that during the period 23 April 2019 to 12 June 2019, you made yourself guilty of an act of misconduct as contained in Annexure A of the Disciplinary Code and Procedure, Resolution 1 of 2003 when you contravened Circular H36/2019 (Confidentiality and Professionalism) by giving a copy of an email containing confidential information to a person(s) who is not a government employee without permission of the Manager : Primary Health Care.
 - d. Charge 4: It is alleged that during the period 23 April 2019 to 12 June 2019, you made yourself guilty of an act of misconduct as contained in Annexure A of the Disciplinary Code and Procedure, Resolution 1 of 2003 when you contravened

the Public Service regulations Act, 2016, Chapter 2, ethical Conduct, Clause 13(g) (not use or disclose any official information for personal gain or the gain of others) who is not a government employee without permission of the Manager: Primary Health Care.

- e. Charge 5: It is alleged that during the period 23 April 2019 to 12 June 2019, you made yourself guilty of an act of misconduct as contained in Annexure A of the Disciplinary Code and Procedure, Resolution 1 of 2003 when you contravened the Public Service Regulations Act, 2016, Chapter 2, Performance of Official Duties, clause 14(m) (not release official information to the public unless he or she has the necessary approval) by giving a copy of an email containing confidential information to a person(s) who is not a government employee without permission of the Manager: Primary Health Care.
- f. Charge 6: It is alleged that during the period 22 July 2019 to 30 August 2019, you made yourself guilty of an act of misconduct as contained in Annexure A of the Disciplinary Code and Procedure, Resolution 1 of 2003 when you failed to carry out a lawful order or routine instruction without just and reasonable cause given by Clinical Nurse Practitioners to you at Louville Clinic.
- g. Charge 7: It is alleged that during the period 22 July 2019 to 30 August 2019, you made yourself guilty of an act of misconduct as contained in Annexure A of the Disciplinary Code and Procedure, Resolution 1 of 2003, when you prejudiced the administration, discipline or efficiency of Louville Clinic.
- h. Charge 8: It is alleged that during the period 22 July 2019 to 30 August 2019, you made yourself guilty of an act of misconduct as contained in Annexure A of the Disciplinary Code and Procedure, Resolution 1 of 2003, when you perform poorly or inadequately for reasons other than incapacity at Louville Clinic.
- i. Charge 9: it is alleged that during 22 July 2019 to 30 August 2019, you made yourself guilty of gross insubordination given by Clinical Nurse Practitioner CS Van Dyk to you.

5. The applicant was found guilty on charge 1 to 5 and a sanction of dismissal was meted out. Although he was also found guilty on charge 6 to 9 he was issued with a final written warning. The respondent stated that the charges are viewed in a very serious light and the trust relationship between the parties is irretrievable broken down. The sanction of dismissal was fair in the circumstances.

ISSUE TO BE DECIDED

6. I am required to determine whether the applicant's dismissal was substantively fair.

SURVEY OF RESPONDENT'S EVIDENCE AND ARGUMENTS

7. **Mr Anthony James Bond Vaughan** stated that he is the Chairperson of the Facility Board of the Provincial Hospital in the Saldanha Sub-District and he presented the following evidence under oath. The clinic services were stopped as a result of a protest action by the community members. Police were called in to intervene. On two occasions he was requested to intervene at the clinic because of the protest action by the community. During the protest action, he had engagements whereby he exchanged his cell phone number with Mr Edward Sauls. Few days later, he received a telephonic call from Mr Sauls who wanted a meeting with him. The arrangement was that they should meet in town. In that meeting Mr Sauls informed him that they had approached the CEO of the hospital and handed over a copy of an email. Their problem was that patients' folders were removed from the clinic. Mr Sauls informed him that the email was given to him by the applicant. Immediately, he stopped Mr Sauls and questioned him as to whether he was aware of the gravity of his actions which may lead to a dismissal of the applicant. He also told Mr Sauls that if he was an employee, he would never give an internal email to outsiders. They reached an agreement that he would intervene and he would also ask the CEO to ignore the email. At the same time, he would make sure that the community problems were resolved. Mr Sauls's response was that he would convey their discussion to the other three women. At some stage thereafter Mr Sauls phoned him by saying that they were not willing to back -off. He told him that they had placed the applicant in a precarious situation that he could lose his job. Mr Sauls indicated that he had done a lot for the citizens and he would not appreciate to be the cause of the applicant's dismissal. His response to him was that he had already placed the applicant in a situation to lose his job by handing over the email to the CEO.
8. **Mr Mervin Julius** stated that he is employed by the respondent as the Assistant Director at Facility Management in Vredendal and he presented the following evidence under oath. Management appointed him to investigate allegation of misconduct at Louwville Clinic. At the disciplinary hearing he was the initiator. The allegations were that certain nurses at the clinic were giving prescribing medication to patients which they were not authorised to do. The medicine, in question, can only be prescribed by a medical doctor. Upon his arrival at the clinic he retrieved the folders in question and he made copies for

further investigation. The applicant requested him to give a list of the folders he made copies from which he refused. The applicant accused him of removing folders from the clinic. The removal of the copies of the folders was authorised by the CEO Dr Morales–Perez. The nurses which were under the investigation were the Operational Manager, Ms Sarah Thomas, a Clinical Nurse Practitioner, Ms Nicolle Erasmus and the Assistant Nurse, Ms Madeleine Liudick. Ms Sarah Thomas was dismissed whilst others resigned. At the disciplinary hearing the applicant testified in favour of Ms Thomas. There was also an allegation that the applicant gave an internal email communication to a member of the public by the name of Mr Sauls. Ms Anishka Erasmus did not have access to the applicant’s email hence she could not have handed it over to a member of the public. At the disciplinary hearing it was not mentioned that Ms Erasmus gave the email to a member of the public. The email is confidential because it relates to the removal of the folders. The applicant addressed it to Ms Nomsa Mkhwela and copied other managers. Patients were given schedule 5 and 6 without being prescribed by a medical doctor. He believes that the applicant and Ms Thomas are close friends. The applicant received favours from Ms Thomas for example he would receive a day off without following the proper processes and procedures. The policy states that no official must work on other employees’ user ID.

9. **Ms Nomsa Mkhwela** stated that she is employed by the respondent as the Primary Health Care Manager for Sadhana Sub- District and she presented the following evidence under oath. The email was addressed to her by the applicant. The email dated 23 April 2019 reads as follows: *“This is to inform you that on Thursday, 18 April 2019, a stack of patient folders was removed from the facility. No list of names was provided nor was any documentation signed to retain as proof that these folders were taken to the hospital. We were told that the names will be communicated from your office on Thursday. To date there has been no communication on this matter. The persons involved in the removal of these folders are:*

- a. *Ms Margaret van Vuuren (ASD: Vredenburg: HR & Facility Management).*
- b. *Mr Mervin Julius (ASD: Vredendal: HR and Facility management).*
- c. *Ms Meshano Afrikaner (Intern).*

Since we do not have any indication of how many folders, and which ones, were removed I have to ask if your office had instructed that these folders to be removed, and when we will be provided with a complete list of names. This similar to the previous time when

folders were taken under the pretext that your office has issued such instructions, just to inform that you were unaware of the incident”.

10. At that stage there was an investigation regarding the issuing of medication to patients which were not prescribed by a medical doctor. Folders were removed from the clinic for investigation. The original folders were left at the clinic. In the applicant's email it indicates that she was not aware that folders were taken but she had a list of the folders. The applicant was reporting to Ms Thomas who was under the investigation. Ms Thomas and the applicant had a healthy relationship and were commuting together to and from work. The email was leaked to a member of the public, Mr Sauls. Apparently, after Mr Sauls received the email, he then prevented the patients to access the clinic. Some patients went home and others stood outside of the clinic without receiving their medication. The patients told the staff that their folders were lost at the clinic. This prompted the community to embark on the protest action. The main issue to her was that the email was in the hands of a person who is not employed by government. Mr Sauls went to Dr Morales- Perez with the email saying that they would continue with the protest action. The claim was that folders were removed unofficial from the clinic. But copies were made for the patients to receive the primary health care. She cannot trust an employee who has leaked an email to a public member.

11. **Ms Rene Muller** stated that she is employed by the respondent at Information Management and Records and she presented the following evidence under oath. Her duties are to maintain record management for all electronic systems, to preserve data and confidentiality. Clause 4.4.12 of the Explanatory Manual on the Code of Conduct for the Public Service states that an employee honours the confidentiality of matters, documents and discussions, classified or implied as being confidential or secrete. Transparency means, inter alia, that everyone has the right to access to information held by the state if such information is required to protect certain rights of the individual. There may, however, be information that is classified as confidential. In such a case it is the duty of an employee to honour confidentiality, as disclosures may be detrimental to State. Circular H36/2019 has the following bullets:

- a. All electronic confidential information should be protected appropriately.
- b. Employees should clear their desks of any confidential information before going home at the end of the day.

- c. Employees should refrain from leaving confidential information visible on their computer monitors when they leave their work stations.
 - d. All confidential information, whether contained on written documents or electronically, should be marked as “confidential”.
 - e. All confidential information should be disposed of properly e.g employees should not print out a confidential document and then throw it away without shredding it first.
 - f. Employees should refrain from discussing confidential information in public places.
 - g. Employees should avoid using e-mail to transmit certain sensitive or controversial information.
12. An employee cannot release an official information to the public unless he or she has the necessary approval. The applicant was aware of these rules.
13. **Ms Anishka Erasmus** stated that she worked as an Intern for the respondent and she presented the following the evidence under oath. She was placed at Louwville Clinic and she started working there from 01 April 2019 until 23 April 2020. She denies that she had knowledge about this email and she never gave it to Mr Sauls. She did not have any personal dealings with Mr Sauls. The applicant mentored her during her employment with the respondent. She did not have access to the applicant’s computer and she did not know his passwords.
14. **Ms Shamien Van Dyk** stated that she is employed by the respondent and she presented the following evidence under oath. She worked with the applicant at Louwville as the Operational Manager. All employees have their own passwords and are shared among them. The applicant was the only person who refused to share his password. If he was not at work, they had to wait for him to return. This caused unnecessary backlog of work. They could not access the information on his computer. It is not true that he gave his password to other employees.

APPLICANT’S CASE

15. **Mr Arnoldus Sauls** stated that he is the Resident of Vredenburg and he presented the following evidence under oath. He is a patient at Louwville Clinic. In 2018 he was diagnosed with cancer. At that stage he had to visit the clinic twice a week. He serves on the Panorama School Steering Committee. His business is to bake and sell bread to

the community. The first protest action was on 14 May 2019. Sisters at the clinic were suspended. A patient told him that there was a big problem at the clinic. He is a very popular person among the community. People know that he does not compromise the disadvantaged. On his arrival at the clinic there were about thirty people. He then approached Sister Erasmus and questioned her as to what was going on and why the clinic was taking thirty people on that day. Her explanation was that it was due to the shortage of the staff. He told her to call the superintendent in order to tell him as to why Sister Erasmus was not getting assistance. She spoke to the superintendent. Afterwards he spoke to the superintendent that he should come to the clinic. Police assembled outside the clinic and they questioned him what was the problem. His response was that there was no problem instead they wanted to speak to the superintendent. After twenty minutes the CEO and Mr Johnny Vaughan arrived at the clinic. He asked them as to why there was only one sister at the clinic. The response was that one sister was suspended. There was a male nurse outside and he approached him to establish why he was there. His response was that he came from Hopefield and he was also suspended.

16. He informed the protesting people that they should refuse to be helped by a person who was suspended. There was a second protest because their folders were not at the clinic. There was no person who was willing to give them reasons for the missing folders. This resulted to them not to receive medication. People submitted affidavits to this effect. Early in June 2019 he went back to the clinic however patients were turned away. Ms Erasmus gave him a name list of the patients and the email which was written by the applicant. She printed it from the computer as she was seated on the workstation of the applicant. At that stage he did not know her name. Upon reading the email he realised that there was no procedure followed when the folders were taken away from the clinic. He would not be surprised she denies that she handed over to him the email. He realised the person who works at the clinic does not know where the folders were. He informed patients that there was no procedure followed when their folders were removed from the clinic. The following day he approached the CEO and he showed him the email. He was accompanied by three women and they questioned the CEO if he was aware of the email. The response was negative. Ms Nomsa Nkhwele was supposed to have reported the content of the email to the CEO. He left the copy of the email with the CEO who assured them that he would revert back to them.

17. During the protest action Mr Johnny Vaughan gave him his cell phone number. He then called him as he realised that Mr Vaughan was the only person who could help them with their problem. They met in town whereby he gave him the email, the list and affidavits. Upon Mr Vaughan perusing the email with an eye of a magistrate. He also told him that the list and the email were received from the clinic. Mr Vaughan's response was that this email would put the applicant in a disadvantaged position. He informed him that he left a copy of the email with the CEO. This irritated Mr Vaughan as he made a comment to the effect that the email would lead to the applicant to lose his job. Few days after the meeting he got sick and left the town. Whilst he was away, he received a phone call from Mr Vaughan asking about his health. Upon his return he heard that the applicant was in trouble. They decided to approach the MEC whereby they were told that this could happen two weeks thereafter. But the meeting did not occur. They arranged to meet the premier. He denies that the applicant gave him the email because the applicant was not at work when he received the email. As from 2018 he knew the applicant from the clinic. The applicant used to make his appointments with Grooteschoor hospital. They are not friends he does not have his cell phone number of the applicant. He told Mr Vaughan that he received the email from the clinic and he did not mention any name of a person.

18. **Mr Claude Scholtz** stated that he is the applicant in this matter and he presented the following evidence under oath. His duties were to put patient's information into the computer, to open files and to give information to patients. The email was sent electronically by him to other officials. He did not give the email to a member of the public. Initially there was one computer in the office. However, in 2018, they got a second computer. His work station was far from the entrance point. When a person enters the office, she or he will pass the first computer. There were desks in the office. Both computers had word application. To use a computer, one needed to have a password. Once a person has accessed the computer most functions will be available. The way the computers were set up one would put a password and there would be no limit to all functions. The previous supervisor used his access code whilst each user had their own profile account. In August 2019 any one could punch in the windows access code. The result would be that one would also access outlook ie emails. The IT Technician, Mr Fransman told him to share a password would get him into trouble. The setting was changed for one to have a password in order to access the outlook. His work station was regarded as a restricted area. To keep people away from his work station that caused friction among the employees and the public. Cleaners and temporary employees were

allowed to access the restricted areas. He differed a lot with his colleagues about the access to restricted areas and the movements of files. There is a policy regarding the sharing of the passwords among the employees. This practice is not allowed.

19. He would report any problems to IT section if someone has a problem with a password. But if the problem is an invalid password an employee should report herself or himself. At some stage only three employees had passwords to access windows. This resulted to allow doctors, occupational therapists and physiotherapists to use their computers. At his area there were two computers which were accessed through access code. The code had to be renewed every three months. There was an intern and other employees who accessed to his computer. Sister Erasmus could only access his computer with regard to patient information. On occasions when he was off duty colleagues would call him to ask for the access code which included the arrangement for transporting patients. However, interns worked on the first computer. Ms Van Dyk used her own access code. There was a big fight about other employees using other employees' computers. He tried to stop the practice. An IT Specialist will ask his access code and he would give it to him. When he was not on duty colleagues asked for his password and he would give it to them. He had fights with the IT technician because he would leave the computer screen open but it would automatically close itself. He worked with two interns, they respected each other and they divided the work among themselves. Ms Erasmus was scared of the patients and he preferred that she worked on the computer. She then worked on the computer closer to the door. She did not have access code however she used Sister Thomas or Sister Erasmus passwords. He believes that Ms Erasmus knew his password because he had opened his computer in her presence. She could have his access code. One can print from both computers. He would logout his computer and he would log in her computer to print. There were no occasions that she was not allowed to work on his computer. If she needed to scan something, she would scan it form his computer and print it there. He does not know where Mr Sauls got the email whether from Ms Erasmus.

20. There was an incident in May 2019 whereby she informed him that there was a gentleman who asked for a document. She did not give a name of the gentleman other than that it was someone who was at the clinic. She said it was not a document with a letter head. He asked if the documents had patient's names. According to her the person asked about the files of the patients. She was unsure about the information and she did not say what she gave to this person. The second occasion he met two officials and she

told him that the two officials were sent to take the files. She would not have told him if she gave files to the persons if he did not enter the office. The first time when the files were taken, she did not tell him. Mr Sauls is a patient at the clinic. The standard rule is to refer patients to Cape Town, they had to make arrangement. For a follow up on appointment the hospital will make arrangement for the patients. Mr Sauls used to tell him he was stranded he needed transport to go to the hospital in Cape Town. He denies that he handed a document to Mr Sauls. He did not know about the document that was leaked until he was charged. At the disciplinary hearing he heard that he leaked the document. Mr Vaughan and other colleagues claimed that he leaked the document to Mr Sauls. He wonders why they did not provide the video material if this occurred at his work. He thinks this incident occurred at work because he does not have Mr Sauls' contact numbers. There was no personal gain for him in leaking the email except it was alleged that he had a relationship with Thomas.

21. At the time the document was leaked he had applied for early retirement. The termination caused a penalty to his pension benefit. He is unemployed, has lost the medical aid benefits and has no income and he is responsible for his wife and mother in law. This email shows that there was malpractice hence he wrote it to the CEO pointing out about another official who was involved. He was a witness at Sister Thomas's disciplinary hearing. The receipt of his email was acknowledged but there was no response. He was a whistle blower and they decided to charge him. The dismissal was unfair.

22. I will refer to cross-examination and closing arguments where necessary in my analysis.

ANALYSIS OF EVIDENCE AND ARGUMENT

23. The respondent bears the onus to prove on balance of probabilities that the dismissal was effected with a fair procedure and for a reason in terms of Section 192(2) of the Labour Relations Act 66 of 1995, as amended ("the Act"). The applicant does not challenge the procedural fairness of his dismissal. In this regard I must consider item 7 of the Code of Good Practice on Dismissal. The Code states that an arbitrator must consider whether or not the employee contravened a rule or standard regulating conduct in, or of relevance to the workplace; and if a rule or standard was contravened, whether or not the rule was a valid or reasonable rule or standard; the employee was aware, or

could reasonably be expected to have been aware, of the rule or standard; the rule or standard has been consistently applied by the employer and dismissal was an appropriate sanction for the contravention of the rule or standard and the CCMA arbitration Guidelines.

24. It is well accepted that an employee cannot be involved in leaking internal confidential information of the respondent to any member of the public. It is common cause that there are a number of rules of the respondent that regulates the handling of confidential information. There is no dispute about the reasonability of the rule. There is also no dispute that the respondent applies the rule consistently in the workplace. This dispute emanates from the facts that three nurses were suspended for prescribing medication to the patients that they had no authority to do so. Apparently, the medication, in question, can only be prescribed by medical doctors. Obviously, if the nursing personnel had no authority to prescribe the medication this could easily exposed the respondent to civil litigation. And to leak this information had a detrimental harm to the reputation of the respondent. It appears that the acts of the nursing personnel were reported to the CEO. This resulted to the investigator to be appointed to investigate whether there were any wrong doing by the nursing personal in question. The investigator's evidence shows that he did not take away the original folders of the patients instead he copied them. It appears that the methodology that was employed for the investigation was not to communicate any information to the staff as to what was going on. Apparently, the applicant tried to get the list of the folders from the investigator but to no avail. So, this prompted the applicant to believe that the patient's folders would be lost and he remembered that, in the past, folders were taken and were lost. This resulted to them as employees to face the wrath of the patients. To prevent the repeat, he penned an email which was addressed to the management raising the issues that folders were taken and could be lost.

25. However, the true reflection of events is that the folders were not taken away from the clinic. It stands to reason therefore that patients were not deprived to access the primary medical care. Be that as it may the suspension led to the shortage of the nursing personnel at the clinic. This caused discomfort to the patients as the clinic could only take a certain number of patients per day. The patients were not happy with the situation and they embarked on a protest action which resulted to the closure of the clinic. The suspensions resulted to the tension among the department and the public and this

negatively affected service delivery. It also appears that the community was given wrong information in that their folders were taken away.

26. Generally, any business value the privacy of company's secrets and procedures. This means that employees are expected to maintain the standard of confidentiality. It is common cause that the email that the applicant penned to the management was leaked to a member of the public. The motive to leak the email was solely done to fuel the fire and incite the members of the public to embark on the protest action. Logic dictates that the only people who would benefit from the chaos was Sister Thomas at al. The question that should be asked is who had leaked the email to a member of the public. Evidence shows that the applicant was unwilling consumer to share his passwords to other employees. Obviously, his actions were in line with the policy of the respondent on the usage of passwords as they are regarded as confidential and should be kept secret. The applicant did not dispute that at the disciplinary hearing he did not lead the evidence to the effect that it was Ms Erasmus who had leaked the email in question or he had given her his password.
27. During his evidence in chief he indicated that Ms Erasmus might have seen him typing the password as he had done so in her presence. Under cross-examination when he was informed that he was not sure whether she knew his password. He then changed his version by saying that he gave his password to her. This is a sharp contradiction which clearly shows that he has no knowledge that Ms Erasmus knew his password. In addition, it was not put to Ms Erasmus that he gave his password to her. In any event both testimonies of Mr Sauls and the applicant were riddled with inconsistencies to such an extent that I find their evidence not to be credible. I think that Mr Sauls realised his actions had compromised the applicant's employment, in trying to save him, he came up with the story to blame Ms Erasmus. It should be noted that Ms Erasmus does not work for the respondent anymore and any lies levelled against her will not have any consequences to her. She became an easy target in order to the applicant's witnesses to tailor their evidence to implicate her whilst they did not do so at the disciplinary hearing. Ms Erasmus's testimony was short and precise to the extent that it was consistent and she did not break during cross-examination. I find her testimony to be credible that she had no personal dealings with Mr Sauls.

28. It does not make sense as to why Mr Vaughan would come and lie here when he was the one who cautioned Mr Sauls that by handing over the email to the CEO that had a potential to place the applicant's employment security at risk. According to Mr Sauls 's testimony Mr Vaughan was irritated that they left a copy with the CEO. There is no evidence led that there was a sour relationship between the applicant and Mr Vaughan. Under cross-examination Mr Sauls indicated that Mr Vaughan and the applicant attend the same church. For the above reasons I find on balance of probabilities that the applicant gave the email to Mr Sauls in order to incite the members of the public to embark on a protest action with the hope that the suspension against Sister Thomas would be lifted.

29. It will normally be unfair to require an employer to retain in its employment someone who is correctly found guilty of misconduct involving leaking of confidential information to a member of the public and whom it does not trust. I have taken into account the gravity of misconduct, the fact that he is unemployed, that he was on final written warning which was valid at the time of dismissal and he continued to deny the leaking of coincidental information and, in doing so, he has shown no remorse. The gravity of the misconduct outweighs any compelling mitigating factors adduced on his behalf. I therefore find that there is no compelling evidence submitted to require me to interfere with the sanction of the respondent as the actions of the applicant were destructive in nature and had gone to the heart of the employment relationship which is based on honesty, allegiance and trust. Having considered the evidence before me I find on balance of probabilities that the respondent has discharged the onus that the dismissal of applicant was for a fair reason.

AWARD

30. I find that the applicant's dismissal was substantively fair. Consequently, this matter is hereby dismissed.

A handwritten signature in black ink, enclosed in a hand-drawn oval. The signature is stylized and appears to read 'Thuthuzela Ndzombane'.

Thuthuzela Ndzombane