



PHSDSBC

PUBLIC HEALTH AND SOCIAL DEVELOPMENT
SECTORAL BARGAINING COUNCIL

ARBITRATION AWARD

Panellist: **Ncumisa Bantwini**

Case No: **PSHS1243-16/17**

Date of Award: **10 August 2017**

In the matter between:

PSA obo Lindelwa Mangaliso

(Union / Applicant)

and

Department of Health- Eastern Cape

(Respondent)

DETAILS OF HEARING AND REPRESENTATIONS

1. This arbitration was part heard on 03 July 2017 and was finalized on 03 August 2017. It was heard at Glen Grey Hospital in Lady Frere. It came before the PHSDSBC in terms of Section 191 (5) (a) of the Labour Relations Act, 66 of 1995, as amended (LRA) for an alleged unfair labour practice dispute based on unfair suspension and deduction of 2 months' salary. Mr. Zingisile Mbenyana of PSA appeared for the applicant, Mrs. Mangaliso while Mr. Them bani Moni appeared for the respondent, the Department of Health. Parties were allowed to submit written closing arguments on 08 August 2017. The proceedings were electronically recorded.

ISSUE TO BE DECIDED

2. I am required to decide as to whether the respondent committed an unfair labour practice based on sanction of suspension of the applicant for 2 months without pay and a final written warning imposed by the respondent.

BACKGROUND TO THE DISPUTE

3. The applicant is employed by the respondent as a Professional Nurse at Glen Grey Hospital in Lady Frere.
4. She referred a dispute through her union arising from the following allegations:
 - Charge 1 “On 19 /01/2016 you displayed insubordination, when you failed to adhere to the lawful instruction given by the doctor and the management to admit the patient.”
 - Charge 2 “On the 19 /01/2016 while on duty you conducted yourself in an improper, disgraceful and unacceptable manner when you shouted the management while they were trying to resolve the matter in female ward”.
5. The dispute was conciliated and it remained unresolved. The applicant, through her union requested arbitration.

Survey of Evidence

6. According to Mr Mbenyane’s opening statement, the applicant was charged for misconduct. She was found guilty of the 2 charges subsequent to a discipline hearing. The applicant seeks withdrawal of the sanction, final written warning and reimbursement of the 2 months’ salary which was deducted as a remedy.
7. The applicant, **Mrs. Lindelwa Mangaliso** testified as follows:
8. She started working for the respondent on 14 October 1991 as a Staff Nurse and she has clean disciplinary record. She is aware of the charges leveled against her and she pleaded not guilty during the disciplinary hearing.
9. On 19 January 2016, she was on lunch when a Nurse came telling her that there is a patient who has been admitted in OPD and she needs a cot bed. She immediately went

to Doctor Mfaku who admitted the patient to enquire as to why did he admit a patient who need a cot bed without enquiring if there were beds available or not. The Doctor should have phoned to check the availability of cot beds as the hospital has only 5 cot beds. In her assessment, the patient should have been kept for observation and be transferred to Komani Hospital.

10. When Doctor Mfaku suggested that she phones the CEO, she (the applicant) decided to phone the Operational Manager Sihlobo. She told the Nurse to keep the patient at OPD while she was still looking for a bed. Mr Sihlobo arrived at female ward coming from the Matron's office and she told him that the patient will be admitted but she is still looking for a cot bed.
11. The other patient who was in the cot bed was taken to a smaller bed and she (the applicant) called Nurse Mayekiso to change the linen so that the new patient can be admitted. She then phoned the OPD Nurse to bring the patient.
12. While she was still preparing a tray for the medication of the admitted patient, management arrived and asked to talk to her at the side ward and she agreed.
13. While she was relating as to what happened, Ms. Xotyeni kept on asking as to what was she (the applicant) going to do if Mr. Sihlobo was not in and she told her that she could have gone to the Aerial Manager to report that there is no cot bed available. She wanted to ask the Operational Manager Sihlobo as to what to do as he was on duty.
14. While she was still explaining to management as to how she could have dealt with the situation, her phone rang and she excused herself and went out. When she came back, the patient was already on bed and management had left. She took minutes to admit the patient.
15. She became aware of the allegations/charges when she read the charge sheet but Doctor Mfaku never laid a complaint against her. The patient was admitted by her as she prepared the bed. The applicant testified further that she never displayed insubordination to Doctor Mfaku and as a Senior Professional Nurse, she has a right to assess patients. The patient was not responding to her questions.

16. On 19 January 2016, she never received an instruction to admit a patient from anyone, she only became aware about the patient when the OPD Nurse came to her about a patient that needs to be admitted. She never refused to admit the patient; instead she told the Nurse that there were no cot beds available.
17. The applicant stated further that she never shouted at management. Ms. Jibilikile stopped her while she was counting things she did for the patient.
18. Under cross-examination, the applicant testified as follows:
 19. She has a right to assess patients but can discuss the issue as a multi-disciplinary team. His senior is the Operational Manager and she talks to him when he is available. She was on lunch when an instruction to admit the patient came. She went to the Doctor as he (the doctor) was supposed to check the availability of beds before admitting the patient. The purpose was not to confront the Doctor.
 20. The applicant testified further that the doctor made a mistake by admitting the patient without checking the availability of beds. The patient was psychotic. Mr Sihlobo removed another patient to a smaller bed to accommodate the new patient.
 21. The applicant disputed that she refused to admit the patient as she prepared the bed and Nurse Dlikilili admitted the patient. While she was talking to management, she phoned OPD to notify Nurse Qele that the bed was ready.
 22. She stated further that she never shouted at management, she is a loud person and she was not angry. This happened for a period of 10 minutes. Mr Sihlobo came with management when he came for the second time. The applicant submitted further that there was no need for management to come down as the patient was being admitted.
 23. When it was put to the applicant that management came to mediate because the patient was not being admitted, the applicant submitted that the patient was being admitted and she told Mr Sihlobo to leave as everything was taken care of. She disputed having shouted to management and that she left the meeting with management when her phone rang and she excused herself.

24. The applicant disputed that she banged the door, saying “Andibazi obu bubhaxa ndibubuzwayo/ I don’t know the rubbish I am being asked”.
25. Under re-examination, the applicant submitted that it is not fair that she was charged by the respondent as the patient was admitted. She did not shout at anybody.
26. **Mrs. Sibongile Rose Mayekiso**, the witness for the applicant testified as follows:
27. She works at Glen Grey Hospital at casualty department since April 2010. On 19 January 2016, she was working at female ward. When Nurse Qele came in for a patient who needed to be admitted she told the applicant as there were no cot beds available.
28. The applicant went to see Doctor Mfaku who admitted the patient and came back. Mr Sihlobo, the Operational Manager came in the ward and offloaded another patient to a smaller bed so that the new patient could be admitted. The applicant prepared the bed and phoned Ms Qele to bring the patient as the bed was ready.
29. Afterwards she saw management coming to see the applicant in another room. She (the witness) cannot confirm that the applicant disrespected Doctor Mfaku and she cannot say the applicant was shouting at management as she (the applicant) was loud and Ms Xotyeni was also loud. The patient was admitted.
30. Under cross examination, the witness testified s follows:
31. She was in the ward when the applicant went to see Doctor Mfaku. The supervisor is responsible for arranging the beds not the doctors. She heard the loud voices of the applicant and Ms. Xotyeni; she cannot confirm that there was shouting as she was not there (in the side room/ward).
32. Under re-examination, the witness stated that Ms. Qele presented the patient after she was phoned by the applicant.
33. In closing, Mr. Mbenyane argued as follows:

34. In both public and private hospital environment, it is the doctor's responsibility to check/monitor the availability of beds before taking a decision to admit patients.
35. The respondent's witness Mr Sihlobo did not notice any disrespectful behavior and shouting at management by the applicant. The Chairperson was misled by the respondent's witnesses and therefore based his decision on facts which not correct as the applicant disputed the allegations against her. The applicant seeks reimbursement of her 2 months' salary and reversal of final written warning against her as a remedy.

Respondent's case

36. According to Mr. Moni's opening statement, the applicant was charged with serious allegations. The charges were read and the first witness, **Mr Vuyo Sihlobo**, testified as follows:
37. He works for the respondent as Operational Manager. She was busy with the change list when a call was received by Ms Xotyeni regarding a patient which was refused admission in female ward. Ms. Xotyeni instructed him to go and check as to why was the patient refused admission and he went to the female ward. He spoke to the applicant who said she told Ms Qele that there are no cot beds and that she will speak to him (the witness).
38. He sorted the issue of the bed by moving the patient who no longer needed the court bed to a smaller bed and asked Nurse Dlikilili to prepare the court bed for the new patient to be admitted. Afterwards, he asked the applicant to phone Ms Qele to bring the patient and went back to the meeting.
39. After giving the feedback to management, Ms Kubuli received another call regarding refusal of the patient's admission. Ms Xotyeni suggested that management go down to check as to what was happening with this patient and they all first went to OPD. The feedback from Ms Qele was that she was told by the applicant to bring the patient later. They (management) went to the female ward and upon arrival, Misses Xotyeni and Jibilikile asked to see the applicant in a side ward. The applicant was in the kitchen when they arrived.
40. He closed the door when he noticed that the voices were loud and he saw the applicant going outside. When he asked the applicant about the patient, she said she was waiting

for me as there no cot beds. The applicant never contacted him about the patient although she said she was waiting for him.

41. The applicant was responsible for arranging the bed as she is the senior and in charge of the ward. The applicant was not supposed to have gone to the Doctor as it is not the responsibility of the doctors to check the availability of beds before admitting patients.

42. When he left female ward for the first time, he told the applicant that the cot bed is available. The applicant denied having refused to admit the patient when she was asked by Ms Xotyeni. When they went to the female ward again, the patient was already admitted.

43. Under cross examination, the witness testified as follows:

44. He has been in Glen Grey Hospital since 2015 and the applicant has never displayed insubordination to him.

45. The applicant said she was waiting for him when she was asked as to why was the patient not admitted. When he left the female ward after the first call from Kubuli, he told the applicant to admit the patient and left for the meeting. During the meeting with the applicant in the side ward, the voices were high and he closed the door and he saw the applicant leaving.

46. The process of admission of the patient is that the doctor decides and the nurse in charge becomes responsible. He informed the applicant when the cot bed was ready. The patient's rights were violated as she (the patient) waited in OPD because of the cot bed.

47. The second witness, **Mirriam Nontombi Jibilikile** testified as follows:

48. She is the Area Manager in the hospital and she is senior to the applicant. On 19 January 2016, management was having a meeting in the boardroom when the OPD Area Manager received a call that female ward does not want to admit a patient. Mr Sihlobo was released to go and investigate the issue. He came back saying the problem has been resolved.

49. The second call again was received about the same patient who was denied admission at female ward. Management went down to OPD and female ward to check as to what was happening. The applicant was in the nurse's station upon their arrival at female ward.

50. Ms Xotyeni requested the applicant to meet with management at the side ward. When Ms Xotyeni asked as to what is happening, the applicant started shouting and marched out of the ward banging the door. At the corridor, she was saying "Abhezobuzububhanxa" meaning she is being asked stupid things"

51. The witness testified further that the applicant was responsible for accepting the patient on 19 January 2016. Mr Sihlobo was in a meeting. The second call from the OPD was from nurse Gwayi. The applicant should have arranged the bed for the patient and she can notify Mr Sihlobo when there is no cot bed, not the doctor.

52. Under cross examination, the witness testified as follows:

53. Management was shown the patient who was still in OPD when they arrived. When the applicant was asked by Ms Xotyeni as to what was happening with the patient, she shouted at management, banged the door and marched out, leaving the meeting. She heard the applicant saying "I don't know why they are here, asking me stupid questions".

54. The witness submitted further that the patient's rights were violated because she waited for a long time that is why OPD was panicking. The court bed had been emptied by Mr Sihlobo. The applicant could have just sent somebody to call the patients.

55. Under re-examination, the witness stated that the applicant raised her voice and no further answers were given.

56. **Ms Zoleka Xotyeni**, the third witness testified as follows:

57. She works for the respondent as the Nursing Services Manager overseeing all departments. The applicant is allocated in female ward. On 19 January 2016, there was a management meeting when Mrs. Kubuli received a call regarding a patient who was denied admission at female ward because there are no available beds.

58. She requested Mr Sihlobo to go to see to it that the patient is being admitted. In 10 minutes Mr Sihlobo came back and confirmed that the matter has been sorted. He said there was no available cot bed but he relocated another patient to an ordinary bed to ensure the patient was admitted.
59. 45 minutes later another call came from Nurse Qele who said she was given telephone numbers of the applicant and she will be phoned when the bed is available. She was agitated and adjourned the meeting. She went to OPD and female ward with other managers to check as to why was the patient not being admitted.
60. The patient was psychiatric and was given stat doses and she was still in OPD. Her fear was that psychiatric patients are unpredictable and the doctor who admitted the patient was no longer in OPD but in casualty section.
61. Upon their arrival at female ward, the applicant was wearing gloves and she requested her to speak to them in a side ward. When she asked as to why is the psychotic patient not admitted, the applicant displayed arrogance, started shouting at them telling them that she was busy.
62. When she was asked as to how busy could she be for an hour to lapse without admitting the patient, she banged the door and left them standing.
63. They got into the ward, prepared the bed and requested a nurse to bring pyjamas and they left the patient safe in bed. The applicant as a Professional Nurse has a duty to organize, lead, plan and control the resources at her disposal. The common practice is to share the available resources within the hospital. Each unit has a borrowing book to record anything borrowed for the patient. Within her scope of practice, the applicant could have identified a need to check and borrow the cot bed from other units. The applicant failed to put the patient's needs first.
64. The witness disputed having shouted at the applicant and stated that her priority was to ensure the life of the patient was not threatened. The witness also disputed that the applicant left the meeting after receiving a call, instead she marched out of the meeting, banging the door.

65. Under cross-examination, the witness testified as follows:

66. She has worked in the hospital for 3 years. Her interest at during the incident was the safety and comfort of the patient as she is an advocate for the patient. The applicant is not directly reporting to her but when a complaint comes to her office, she leaves the office and address/resolve it.

67. Management left the meeting after the second call reporting that the patient is denied admission at female ward. The Operational Manager was instructed to go and check as to what was the problem after the first call. The Professional Nurse in OPD, Sister Gwayi phoned the Aerial Manager twice about the patient.

68. The applicant was cheeky, arrogant, shouting and banged the door leaving management standing in the side ward when she was requested to explain as to why is the patient denied admission. The applicant, as a Professional Nurse is responsible to manage, lead, organize and plan. It is in the applicant's scope of practice to have gone to another unit to borrow another bed.

69. It is not true that the applicant prepared the bed for the patient. Doctors decide to admit patients and the nurse does the admission. Professional Nurse determines the availability of beds in a particular ward. Giving injection/medication is the responsibility of the applicant.

70. The witness stated further that there is no bad blood between her and the applicant, instead their relationship is professional.

71. Under re-examination, the witness stated that she was not over reacting by making sure that the patient was safe and comfortable in bed and is respected by all staff. She left the meeting because her primary role is the patient's safety.

72. The fourth witness **Ms Tandeka Qele** testified as follows:

73. She works at Glen Grey Hospital as an Assistant Nurse. She was on duty on 19 January 2016 and she was dealing with admissions in OPD. She went to female ward to request

a bed for a patient. Upon arrival, the applicant asked the diagnosis of the patient and she told her that the patient is psychosis. The applicant told her that there are no beds she will phone her when there is one available. The applicant requested her cellphone number and asked the name of the doctor who admitted the patient. She told the applicant that Doctor Mfaku admitted the patient.

74. When the applicant phoned about the availability of the bed, she (the witness) looked for the patient and found her sleeping outside the building. She went to the female ward for the patient twice. She was panicking and afraid of being beaten up by the psychotic patient. At some stage, she came and stood in front of her staring at her (the witness).

75. Management came to OPD while she was still waiting for the applicant's call. The applicant phoned her telling her the bed was ready.

76. Under cross examination, the witness testified that the applicant did not refuse to admit the patient, instead she told her that there are no beds available and she will phone her when there is one available.

77. The applicant was not angry. Management came in OPD while she was still waiting for the applicant's call.

78. She did not see the applicant admitting the patient. Management was in another ward when she took the patient to female ward for the third time.

79. In closing, Mr Moni argued as follows:

80. The applicant failed to admit the psychiatric patient as per the doctor and later management's instruction. This constitutes misconduct hence she was found guilty.

81. The applicant's evidence to the fact that she confronted Doctor Mfaku because according to her view, the patient could have been kept for observation and be transferred to Komani Hospital is shocking. This, according to the respondent is not only a violation of patient's right to primary healthcare but undermines the doctor's authority.

82. The applicant could not account for her behavior of shouting at management, leaving them standing in the side ward without being released and banging the door and the table. Her evidence to the fact that she was answering the phone could not be corroborated even by her witness as no phone rang. The respondent's representative finally submitted that the applicant's application must be dismissed and that the respondent's sanction was fair.

ANALYSIS OF EVIDENCE AND ARGUMENTS.

83. It is common cause that when an instruction from the doctor came for the patient to be admitted, the applicant, instead of making means to get a cot bed, for the patient, she first confronted the doctor expressing her view that the patient should be kept for observation and be transferred to Komani Hospital. This to me is a total insubordination and failure to admit the patient.

84. The fact that even after Mr Sihlobo instructed the applicant to admit the patient after he relocated another patient to a smaller bed so that the patient can be admitted in a cot bed, but still the patient was turned back until management adjourned the meeting to check as to why was the patient denied admission, indicates insubordination and failure to admit the patient.

85. The 2 respondent's witnesses, Misses Jibililikile and Xotyeni testified that instead of answering the question as to why is the patient not admitted, the applicant shouted at them, marched out and banged the door saying "Ndibe ndibuzububhanxa" .

86. The applicant disputed the allegations stating that she left the meeting at the side ward when she had to answer her cellular phone. Surprisingly, none of the witnesses heard the applicant's phone ringing.

87. This to me is a sign of improper, disgraceful and unacceptable conduct that was displayed by the applicant.

88. In **Duncan Manufacturing v MEIBC and others** [2010] ZALC 131 it was held that in assessing the inference to be drawn from the fact the commissioner should look at the totality of the evidence and weigh it on a balance of probabilities. The different versions narrated by the applicant leading to the failure in admitting the psychotic patient

persuades me to draw inferences not favourable to her. On a balance of probabilities, having taken the above into consideration, I am persuaded to accept the conclusion reached by the respondent: that the applicant displayed insubordination and conducted herself in an improper, disgraceful and unacceptable manner by shouting at management.

89. All witnesses testified that the based on the applicant's conduct, the patient's rights were violated.

90. The applicant has failed to discharge the onus to prove the claim of unfair labour practice against the respondent.

AWARD

91. In the circumstances, I deem it reasonable to make the following award:

92. I find the sanction of final written warning and suspension of the applicant for two (2) months without pay was both substantively and procedurally fair. The respondent's conduct did not constitute an unfair labour practice.

93. The application is dismissed.

94. There is no order as to costs.



Signature

Ncumisa Bantwini

PHSDSBC Arbitrator