



ARBITRATION AWARD

Commissioner: **Mbuso Mbuli**

Case No: **PSHS1263-19/20**

Date of award: **07 December 2020**

In the matter between:

DENOSA OBO MWELASE THULISIWE

(Applicant)

and

DEPARTMENT OF HEALTH- KWAZULU NATAL

(Respondent)

DETAILS OF HEARING AND REPRESENTATION

1. This matter was placed on the roll before me for arbitration on 19 November 2020 as well as 20 November 2020. The Applicant was represented by Mr. S. Xulu a union official from the Democratic Nursing Organization of South Africa (DENOSA) and the Respondent was represented by Mr. TS Mzimela. The parties were given seven (7) days within which to file written closing arguments.
2. The proceedings were mechanically recorded.

PRELIMINARY ISSUES, JURISDICTION and ISSUES TO BE DECIDED

3. No preliminary or jurisdictional issues were raised and the Public Health and Social Development Sectoral Bargaining Council (PHSDSBC) has the required

jurisdiction to hear the matter. As will appear hereinafter, I am required to only decide whether the sanction of dismissal imposed upon the Applicant was unfair. Should I find in her favour I need to decide what relief she would be entitled to.

BACKGROUND TO THE DISPUTE

4. The Applicant was dismissed after she was charged with and found guilty of the following offence: *On your appointment at Vryheid District Hospital on the 01st October 2018 as employee you misrepresented yourself to the employer by submitting fraudulent matric certificate.*
5. At the commencement of the proceedings the Applicant's representative Mr. S. Xulu advised me that the Applicant has decided to admit the charge and that left me to only decide whether the or not the sanction of dismissal imposed upon the Applicant was unfair. Both representatives requested that they file written submissions in respect of the fairness or not of the Applicant's dismissal. The parties were given seven (7) days within which to submit written submissions.

SURVEY OF EVIDENCE AND SUBMISSIONS

The Respondent's version:

6. Mr. T.S. Mzimela submitted on behalf of the Respondent that the Applicant pleaded guilty on the internal disciplinary hearing of submitting a fraudulent matric certificate. The Applicant's appointment was subjected to vetting and verification of her qualifications and the Applicant had accepted these terms and conditions. According to the Respondent disciplinary code the actions of the Applicant warrants dismissal. The trust relationship between the Respondent and the Applicant has been severely damaged and the offence committed by the Applicant warrants dismissal.

The Applicant's version:

7. Mr. S.Xulu submitted on behalf of the Applicant that the Applicant be given a lesser sanction equivalent to three months without pay. The Applicant is very sorry for her actions. She did not benefit from submitting a fraudulent matric certificate. The Applicant is willing to get proper matric qualification. The Applicant is a sole breadwinner who is looking after her child and family. The Matric certificate was not a requirement for the position of an Enrolled nurse.

ANALYSIS OF THE EVIDENCE

8. I have taken note of section 188 of the Labour Relations Act No.66 of 1995 (as amended) ("the Act"), in terms of which the Respondent bears the onus to prove, on balance of probabilities, that the Applicant's dismissal was procedurally and substantively fair. I read it together with item 2 (1) of Schedule 8 of the Code of Good Practice: Dismissal, in terms of which the dismissal is unfair if it is not effected for a fair reason and in accordance with a fair procedure. I only need decide whether the Applicant's dismissal was substantively fair.
9. It is common cause that the Applicant submitted a fraudulent matric certificate. The Respondent's representative submitted that the trust relationship between the Respondent and the Applicant has been damaged, and the offence committed by the Applicant warrants dismissal. On the other hand the Applicant's representative submitted the Applicant be given a lesser sanction equivalent to three months without pay. The Applicant is very sorry for her actions. She did not benefit from submitting a fraudulent matric certificate.
10. In determining appropriateness of the sanction, I have taken into consideration, the gravity of the offence committed by the Applicant, the application of progressive discipline by the Respondent, the circumstances of the employee, the harm caused by the conduct, the actual prejudice suffered, the extent to which the trust relationship has been impaired and the effect of the conduct on

other employee. The general principle in this regard is that the sanction must be appropriate for the contravention of the rule or standard. The Respondent's representative submitted that the trust relationship between the Respondent and the Applicant has been severely damaged and the offence committed by the Applicant warrants dismissal.

11. The issue of misrepresentation of qualification has become a big problem in the country and the Courts points in the direction of viewing misrepresented qualifications as being so serious as to irreparably damage the trust relationship between the employer and employee. This has been clearly demonstrated the recent rulings on this matter. In **Hoch v Mustek Electronics (Pty) Limited (2000) 21 ILJ 365 (LC)** the Labour Court held that the employer was justified in terminating a contract of an employee who had misrepresented her qualifications prior to her appointment. The same conclusion was reached in **Mukhtar Mahommed Sheik and Department of Housing (Case No NP11899)** it was alleged that the applicant had misrepresented his qualifications by inflating the symbols for his matric examinations; he was dismissed on the grounds that he could no longer be trusted.

12. Having regard to all the above-mentioned principles, I find that the dismissal was the appropriate sanction to impose upon the Applicant. In the case of **Sidumo and another vs Rustenburg Platinum Mines Ltd and another (2007) 12 BLLR (CC)**, the court held that: *an arbitration award will be unreasonable, and thus reviewable, if it is a decision that a reasonable decision maker could not have reached. The Applicant would also have to prove that the result lies outside the range of reasonableness.* I cannot conclude that the Respondent's decision to dismiss the Applicant falls within the ambit of these guidelines. Hence, I make the following award:

AWARD

13. The sanction of dismissal imposed upon the Applicant was not unfair and therefore his dismissal was substantively fair.

14. The Applicant's claim is dismissed.

A handwritten signature in black ink, consisting of several overlapping loops and a vertical stroke, positioned above a horizontal line.

M Mbuli