



ARBITRATION AWARD

Case No: **PSHS1269-19/20**

Commissioner: **Mr. Anand Dorasamy**

Date of award: **24 August 2020**

In the matter between:

HOSPERSA OBO SHARMILLA MAHARAJ

(Union/Applicant)

and

DEPARTMENT OF HEALTH-KWAZULU NATAL

(Respondent)

DETAILS OF HEARING AND REPRESENTATION

1. The arbitration proceedings commenced at 10H00 on the 4 August 2020 at the R K Khan hospital in Durban. After the evidence was completed the parties were to submit written closing arguments on the 14 August 2020. The applicant lodged a dispute in terms of section 24(2), [24(5)] of the Labour Relations Act (LRA) challenging the employer's decision not to grant her shop steward's leave in terms of Resolution 1 of 2019.

ISSUE TO BE DECIDED

2. I am required to determine whether the Respondent (employer) incorrectly applied Resolution 1 of 2019 against the applicant. Should I find in favour of the applicant, I am to determine what relief should be granted to her.

BACKGROUND TO THE DISPUTE

3. The applicant applied for leave as she was a shop steward for Hospersa but her leave was declined. The applicant prays that the employer interprets and applies the Resolution correctly.
4. The respondent contends that it applied the Resolution correctly.

SUMMARY OF EVIDENCE

APPLICANT'S CASE

Ms. SHARMILLA MAHARAJ

5. The salient aspects of her testimony are recorded below.
6. She requested shop steward leave in terms of Resolution 1 of 2019 which was refused and she is the only one whose leave was refused. It was requested timeously. She is the vice-chair of the branch and missed out because she was refused leave. The leave applied for were 20 March 2018, 6 August 2019, 12 and 13 December 2019, 12 March 2020 and 20-22 July 2020 a total of 8 days.
7. She is a social worker with 19 years-service and at the hospital since 2008. She was elected as shop-steward in 2017. At the time her colleagues did not understand the role of the shop-steward and she had to inform them about her role. There was no shop-stewards before. She spoke to all her colleagues who belonged to other unions including her manager who belongs to NEHAWU (Ms. Prea Naidoo).
8. There were no support from her colleagues and she lodged a complaint with the HR manager. There was a meeting and it was decided that Dr Behadar the senior medical manager will be authorizing all union leave for HOSPERSA.
9. She requested shop-steward leave and went to Dr Behadar who asked for documents and partial leave was granted. This has been going on since 2018. She requested two days and one day was granted because staff was on leave.

10. There are 8 social workers and they work in 3 teams and the manager and principal social worker are hospital based. Nobody would assist. She tried to resolve the matter internally but was referred to Dr Behadar. She lodged a grievance but it was unresolved.
11. She wants to be treated fairly like the other shop-stewards and the Resolution should be implemented.
12. Under cross examination she stated as follows:
13. When she lodged a complaint, her colleagues said that they would not assist if she went on leave. She agreed that Dr Behadar would deal with her leave. She had no support from her union members and does not know the reason for not supporting her. The chair is Mr. Paul.
14. There are three in a team and not all are Hospersa members. They see an average of 5-6 patients per day.
15. On the 20-22 July 2020 Dr Behadar refused to sign because he wanted details of the activities.

RESPONDENT'S CASE

PREA NAIDOO

16. The salient aspects of her testimony are recorded below.
17. She is the Head of Department of Social Services and has three sets of social workers.
18. The applicant's section has a larger workload. She tries to have adequate staff as the patients should not be compromised.
19. She does not approve union leave because her superior Dr Behadar approves the leave. When her powers to sign leave forms were taken away she did not challenge it although it was embarrassing to be stripped of the duty. Prior to that incident if nobody was on leave she had no objections to grant leave.

20. The applicant's supervisor is Ms. Q S Buthelezi.

21. Dr Behadar would call her about staff on leave and she gives him a weekly report. She gives information but does not make a recommendation.

22. Under cross examination she stated as follows:

23. The HR manager, Mr. Paul and the applicant took the decision to take her powers away.

DEVISHEN BEHADAR (Dr)

24. The salient aspects of his evidence are recorded below.

25. He is the manager medical services. The applicant was unhappy about the union leave applications.

26. The HR asked him to deal with union leave. He looks at the provision of services and patient care as a priority.

27. The applicant belongs to a team leader and two other members. It is preferred that two people are at work.

28. The applicant on a number of occasions made leave applications and it was not granted example three days applied for and one day approved. There was a request for July 2020 for union activities and elections and he was not aware of the elections because of the pandemic and lockdown. No social events were being held and the union activities were not defined example distribution of diaries in July, half the year gone by and seven people applied to get leave.

29. When he asked for supporting documents and if he does not receive it he does not approve. Decision made based on information. He referred to the clause that "The granting of leavenot automatic on an application."

30. This is a busy hospital.

31. Under cross examination he stated as follows:

32. He asks the applicant about the leave. At times Mr. Paul at the hospital will advise him. He declined leave because too many shop- stewards were to be on leave. At times the applicant's leave has been granted and he made concessions at times. He is aware of the Resolution and makes reference to it.

33. He looks at the Department as a whole.

CLOSING ARGUMENTS

34. The parties agreed to submit written closing arguments on or before the 14 August 2020. The respondent submitted its arguments on the 18 August 2020 and the arguments were considered when I made my determination.

ANALYSIS OF EVIDENCE AND ARGUMENT

35. The parties submitted comprehensive closing arguments that has been taken into account in arriving at my decision.

36. I have considered the following aspects of the documents submitted in making my decision:

8. SHOP STEWARD LEAVE

8.1. The Head of Department shall develop standard operating procedures to ensure that the utilisation of the pool of shop stewards leave is properly managed, recorded and monitored to ensure that the leave days available in the pool is not exceeded and/or abused.

8.2. Shop steward leave may only be utilised for activities related to the employee's union position.

All applications for this type of leave must be submitted in writing on the prescribed leave application form, together with supporting documentation. (Page 4).

37. The following is recorded from PHSDSBC Resolution 1 of 2019:

11. LEAVE FOR TRADE UNION ACTIVITIES (Page 9)

11.3. Prior arrangements must be made to obtain permission at all times from supervisors in the event this right being exercised, which permission shall not be unreasonably withheld.

38. The following are recorded from HRM CIRCULAR NO 98 OF 2013 issued by the Head of Department

5.The granting of leave is not automatic but depend on the exigencies of the institution. (Page 2)

39. The issues in dispute in this matter are fairly straightforward.

40. The issue of the interpretation of a collective agreement is a product of a collective agreement in this case PHSDSBC Resolution 1 of 2019 and is binding on the employer and unions hence the applicant is bound by the content of the agreement.

41. The next question is whether the respondent applied the Resolution correctly. There is no challenge that the applicant is the vice chair of the union at the institution. Mr. Paul is the chairperson of the union at the hospital.

42. The respondent had granted Mr. Paul shop steward leave when requested and he has not challenged the respondent in this regard. The applicant on the other hand is a social worker and has at least five union members working with her and who are not prepared to cover her work if she goes on shop steward leave.

43. The applicant has been granted leave on occasions and at times granted one instead of two days leave. The respondent via Dr Behadar has to make sure that the service delivery in the social work department is complied with and if other social workers are on leave or absent the decision to refuse the leave may be made.

44. The granting or refusing of shop steward leave is based on the effective service delivery of the hospital. The applicant is employed in a critical service in a large hospital.

45. The fact that there are discussions with the applicant and her superior Ms Naidoo to ascertain whether the department is adequately staffed is not unreasonable and is justified so that service delivery to the community it serves is effective. Further other union officials like Mr. Paul is granted leave shows that the institution is applying the Resolution correctly.

46. I do not believe that the respondent has incorrectly applied the Resolution and when refusing leave takes into account the needs of the institution.

47. As a consequence of the above, the application must fail and be dismissed.

AWARD

48. The respondent correctly applied PHSDSBC Resolution 1 of 2019.

49. The application is dismissed.

A handwritten signature in black ink that reads "a S Dorasamy". The signature is written in a cursive style with a large, looped 'D' at the end.

Anand Dorasamy