



ARBITRATION AWARD

Case No: **PSHS135-20/21**

Commissioner: **Jerald Vedan**

Date of award: **12 November 2020**

In the matter between:

PSA obo Fikile Idah Mntungwa

Applicant

and

Department of Health- KwaZulu Natal

Respondent

DETAILS OF HEARING, REPRESENTATION AND BACKGROUND

1. The hearing took place at the Labour Relations Boardroom, Natalia Building, 7th Floor, Room 12 North Tower, Pietermaritzburg at 10:00 am.
2. The Applicant was represented by S. N. Ndlovu, a Union Official
3. The Respondent was represented by T. M. Madlala, Assistant Director: Labour Relations.
4. The parties agreed to submit written closing arguments by 5 November 2020, with the award being due on 13 November 2020.

ISSUES TO BE DECIDED

5. Whether the dismissal of the Applicant was substantively fair.

OVERVIEW OF EVIDENCE AND ARGUMENT

6. The Applicant did not contest the procedural fairness of the dismissal, just the substantive fairness.
7. It is common cause that the Applicant was an Operational Manager at Impilwenhle Primary Health Care Clinic. She was appointed in 2003, and was dismissed on 28 May 2020, after a disciplinary hearing. The Applicant obtained her Matric in 1987. She had an “F” aggregate and an “F” symbol in English.
8. She obtained a diploma in Nursing Science and Midwifery at Edendale Nursing College in 1993, and was employed at Msunduzi Municipality, and worked at various clinics, until she was employed at Impilwenhle Primary Health Care Clinic with effective date from 1 August 2012.
9. The Applicant was charged with misconduct, and I quote verbatim:

“It is alleged that you misrepresented your qualification on your appointment to the post of Operational Manager Nursing by submitting a Senior Certificate (certified copy dated 2012/08/18) which was declared as unauthentic during verification with SAQA.”

10. The Respondent alleged that the Applicant committed an act of misconduct by submitting an altered document when requested to produce her Matric certificate, when the clinics under Msunduzi Municipality were taken over by the Respondent. The Matric certificate on file showed that the symbols for English and the aggregate were changed from “F” to “E”.

11. In August 2019, Head Office indicated verification of qualifications was to be done, and it was discovered by them that the Applicant's certificate was false, after verification with SAQA.
12. It is beyond doubt, and not disputed, that the Matric certificate denoting an "E" aggregate is false. The Respondent stated that the Applicant misrepresented her qualifications.
13. The Applicant brought a dispute regarding unfair dismissal in terms of Section 191(1) of the Labour Relations Act. She claimed that she did not break the rule, and even if she did the sanction instituted was too harsh for the misconduct in question.
14. The Applicant contended that she did not submit an altered document, and did not know why there were two different documents in existence.
15. She maintained that her dismissal was substantively unfair.

RESPONDENT'S EVIDENCE AND ARGUMENT

16. The first witness for the Respondent, Mr. Hamilton Sithembiso Mbanjwa, stated that his responsibility is to ensure that recruitment and selection processes are managed effectively, and to ensure the effectiveness of the Human Resources Department, Labour Relations and Employee Assistance Programmes.
17. He stated that he was employed on 19 June 2020, in a cross-transfer with Mr. Mkhize.
18. He further stated that he knows the Applicant, as she had worked as an Operational Manager at one of their clinics, Impilwenhle Primary Health Care Clinic, which falls under Imbalenhle Community Health Centre.
19. Mr. Mbanjwa stated that the clinics under Msunduzi Municipality were taken over by the Department of Health, and the process of taking them over was done at

District level on 1 August 2012. The Applicant had been working at one of those clinics, and she was taken over on that date. No interviews were conducted, as the employees were inherited.

20. According to Mr. Mbanjwa, the procedure for taking over employees entails the completion of a Z83 document in order to follow the selection and recruitment processes. The employees are required to fill in the Z83, and submit their qualifications and curriculum vitae. The Applicant followed this procedure.

21. After the Applicant submitted all the documents, an offer letter was issued, as well as a letter of appointment. This is prepared by the District office.

22. When the Applicant was inherited by the Respondent, she was already an Operational Manager. Mr. Mbanjwa cited the requirements for an Operational Manager as follows:

23. More than five years of experience in PHC environment:

- PHC qualification;
- Nursing Management Diploma;
- Matric; and
- A four-year Diploma in Nursing.

24. Mr. Mbanjwa stated that they received an e-mail from the Head Office, on or about August 2019, stating that they are conducting verification of qualifications. The e-mail stated that the Head Office would be visiting institutions, and auditing them.

25. According to Mr. Mbanjwa, the result of the abovementioned audit revealed that the Matric certificate of the Applicant was found to be invalid due to an alteration of the symbols for English and the aggregate.

26. The Applicant was thereafter requested to submit the original certificate in order for the Respondent to investigate the issue further.

27. He referred to the Applicant's Matric certificate that was on file, and to the one that was submitted upon request. He stated that he was not there when the Applicant submitted the requested document. He further stated that the Applicant did submit the original certificate. He was concerned with the document submitted, as it looked like the document with the "E" aggregate was tampered with. The one submitted by the Applicant, after she submitted the requested original, was the one with the "F" symbol.
28. Mr. Mbanjwa stated that they requested the original in order to check if the results from the audit were accurate. He further stated that when Human Resources requests an employee to submit a document, it is expected that the document submitted is correct. The Applicant did not submit the right certificate, as it was not the one that was initially verified.
29. The Department had to investigate the matter, and an investigator had to be appointed. He requested the original document as a part of his investigation.
30. Mr. Mbanjwa stated that along with a qualification, honesty, integrity and loyalty are required in order to be an employee of the Department. He further stated that the trust relationship has been broken, as the Applicant submitted an altered document.
31. He stated that the request for copies in 2012 was just to ensure that they had file copies, and that the Applicant was already an Operational Manager. She did not gain anything irregularly.
32. He further stated that the Applicant pleaded guilty to the charges during her disciplinary hearing.
33. The second witness for the Respondent, Nontobeko Mkhize, stated that she worked at Imbalenhle as the Human Resource Officer/Supervisor since 10 April 2006. She knows the Applicant as the Operational Manager at Impilwenhle Clinic.

34. She stated that she was the individual conducting the verification process for the matter. She found that the Applicant's verification had not been done, and requested her to submit a copy of her Matric certificate. The Applicant submitted the copy without the alterations. Mrs Mkhize thereafter handed the document to her senior, Mr. Mbanjwa, and the verification was done.

35. Mrs Mkhize stated that she received the verification from SAQA, which stated that the symbols on the Applicant's qualification were tampered with.

APPLICANT'S EVIDENCE AND ARGUMENT

36. The Applicant stated that in 1992, she did a four-year course at Edendale Hospital. She started working at the Edendale Office. In 2002 she was employed at Msunduzi Municipality, where she worked at many different clinics. She then obtained the post of Operational Manager at Msunduzi, specifically at Impilwenhle Clinic. In 2012 they were transferred from Msunduzi to the Department of Health. At this point, they were asked to submit their qualifications.

37. She stated that she was called to Mrs Mkhize's office in November 2019, where she was asked if she had a Matric certificate. Mrs Mkhize asked for a copy of the certificate, which the Applicant provided. The Applicant never received a letter detailing this request. It was done verbally.

38. She submitted a copy of the certificate in November 2019, which was not altered, and her disciplinary hearing was held in March 2020. She stated that she was shocked, as she had never before been called to a disciplinary hearing. She further stated that she was unwell at the time, and was confused. Therefore, she did not know what was happening. Her representative spoke at the hearing.

39. The Applicant stated that the certificate she submitted was not altered in any way, and that she had not tampered with any certificate, as she was already an Operational Manager.

40. She stated that she went to verify the certificate herself after she was dismissed, as she wanted to make sure it was valid.

41. She further stated that she did not know where the altered document came from, as she had never submitted it. The Matric certificate was presented whenever she applied for a job.

42. She stated that she would like to know how there came to be two certificates when only one was asked for.

ANALYSIS OF EVIDENCE AND ARGUMENT

43. The Respondent has to prove its case on a balance of probabilities that the reason for the dismissal of the Applicant was fair.

44. The false certificate was in the file. This is undisputed. The false certificate has an "E" aggregate, and has been stamped a certified copy by the Branch Manager, Scottsville. However, there is no indication on the false certificate of the address of the Post Office, if indeed it was the Post Office where the certificate was certified, neither is there further details of the Branch Manager. This appears to be in contravention of the law governing Commissioners of Oaths.

45. When the Applicant took the certified copy of the Matric certificate with an "F" aggregate, certified by the same Branch Manager, to the Department of Education for verification, one has to ask the question how did she come into possession of a certified copy of the original certificate. This was in direct contrast to the one in the file of the Department of Health. The question has to be asked why did she not take the original certificate for authentication, which was done after she was dismissed on 24 June 2020.

46. The Applicant admits that the certificate in the file is false. Her defence is that she does not know how it got there. There is no evidence that anyone else could have placed the certificate in the file. The only conclusion, on a balance of probabilities, is that the Applicant submitted the false certificate when the change-over was being

done. The reasons for her doing so are best known to the Applicant, but it could be that it was to enhance her status, and job prospects.

47. The other factor is that the Applicant has obtained high qualifications after her Matric, and she would not have pleaded guilty at the disciplinary enquiry without carefully considering all the factors involved.
48. The evidence given by Mr. Mbanjwa was clear and concise. He set out the details of the matter in a credible fashion, and also indicated that the falsification of certificates is a serious offence, which has resulted in the breakdown of the trust relationship between the Respondent and the Applicant.
49. It is a well-known fact that the falsification of such certificates, if pursued in a Court of Law, could result in a criminal conviction, and even a civil claim if instituted by the employer.
50. The original verification feedback from the National Learners' Records Database (SAQA) indicates that with regards to the certified copy of the document submitted initially that, "The Department of Basic Education has confirmed that the certificate provided is not valid. The tampering of symbols for English 2nd Language SG from (F to E) and the Aggregate symbol from (F to E) on the document changed the validity of the certificate not to be authentic."
51. It would seem to me that the Applicant finding herself in a quandary then took the certified copy that was untampered with to the Department of Education, and obtained verification in an attempt to conceal what had been done. It would seem that she was in possession of a certified copy that was untampered with, and it would further seem that the document in the Respondent's file was tampered with after it was certified.

FINDINGS

52. Based on all the above I am upholding the dismissal in this matter.

AWARD

53. I therefore make the following award:

54. The application is dismissed.

55. There is no order as to costs.



JERALD VEDAN

Commissioner