



PHSDSBC

PUBLIC HEALTH AND SOCIAL DEVELOPMENT
SECTORAL BARGAINING COUNCIL

ARBITRATION AWARD

Case No: PSH1374-17/18

Commissioner: T ERASMUS

Date of award: 13 June 2018

In the matter between:

A.O. PENXA

(Union/ Applicant)

and

DEPARTMENT OF HEALTH- WESTERN CAPE

(Respondent)

DETAILS OF HEARING AND REPRESENTATION

1. This matter was set down for Arbitration at the Public Health and Social Development Sectoral Bargaining Council in terms of section 191(5)(a) of the Labour Relations Act 66 of 1995 (“the LRA”) and was heard at the offices of the Boardroom, Bredasdorp Hospital, Bredasdorp on 5 June 2018. Applicant was represented by his attorney, Mr E Simons, from Simons Van Staden Attorneys, whilst the Respondent was represented by Mr M Ngqame, Labour Relations Officer at Respondent.

ISSUES TO BE DECIDED

APPLICANT'S OPENING STATEMENT

IN LIMINE APPLICATION FOR LEGAL REPRESENTATION AND OPENING STATEMENT

2. Applicant's representative addressed me in terms of Rule 25 of the Rules for conduct before the CCMA. He stated that although the matter is not complex, the comparative abilities between the parties are not equal in that the Respondent's representative is far more experienced than Applicant. Applicant was an administrative officer at the Bredasdorp Hospital. Applicant lost faith in his union, who represented him at the Conciliation. Applicant was charged with falsification of a medical certificate. Applicant was dismissed on 25 October 2017 and there was a lengthy delay in this matter, therefore his attorney had to intervene. Applicant earned R18 000.00 per month at the time of dismissal and commenced employment with the Respondent on 9 July 2012.

RESPONDENT'S OPPOSING STATEMENT

3. Respondent did not oppose the application for legal representation, he agreed thereto. Applicant was charged with submitting a falsified sick note for the period from 22 to 23 May 2017. He was found guilty at the disciplinary hearing as a result of which he was dismissed, the dismissal was confirmed on appeal. Respondent seeks an order whereby the dismissal is confirmed.

RULING

4. I granted permission for Applicant to have legal representation.

RESPONDENT'S CASE

5. **MZUKISI KHONONO testified on behalf of Respondent (hereinafter referred to as “Khonono”)**
6. Khonono testified that he is employed as a Senior Administrative Officer at Respondent and he was Applicant's supervisor. He received a sick note from Applicant, evidenced on page 17 of bundle R. It had a signature both at the space marked “Signed” as well as the space “Name (print)”. There was no name completed. Khonono did not take the sick certificate to the HR department, as HR would not accept it if there was something wrong with the sick certificate. He took the sick certificate to his supervisor, Dr Du Toit instead, after Du Toit asked him if he received a sick note from Applicant and whether he sent it to HR. Khonono responded that he did receive a sick note from Applicant, but he did not submit it to HR, as there was something wrong and not clear on the certificate. Khonono was unable to read the name which was signed on both open spaces.
7. Khonono did not take the matter up with Applicant. It looks like a signature was there where a name should have been printed. His supervisor told him to leave it with him, the sick certificate evidenced on page 17 is the same as the one that was presented to him by Applicant, the only difference being that the document on page 17 is a copy.

THE FOLLOWING ENSUED FROM CROSS-EXAMINATION:

8. Khonono conceded that although he works in Swellendam, Applicant reported to him. Khonono confirmed that Applicant called him on the morning of the 22nd of May to inform him that he was sick and that he had headaches. Khonono told him, that when he returns to work, he must hand in a medical certificate. Khonono's supervisor, Dr du Toit, asked him about the medical certificate. According to Khonono there was something wrong with the medical certificate, which he left with Dr du Toit and he is unsure what happened to the medical certificate hereafter.

9. Khonono is unable to explain why the disciplinary hearing only took place five months after the incident. Khonono conceded that Applicant complied with his instruction to submit a medical certificate, although he was not happy with the medical certificate. Khonono confirmed that the medical certificate was issued by the Hermanus Hospital, as Applicant attended to the Zwelihle Clinic in Hermanus, which forms part of the Hermanus Hospital.
10. Applicant will testify that he saw a professional nurse, Brian Ndelu, who issued the medical certificate to him. Khonono confirmed that his concern was based on the signature on the document and he cannot say who signed the medical certificate.

THE FOLLOWING ENSUED FROM RE-EXAMINATION:

11. Applicant did not inform Khonono who gave him the sick certificate when he gave it to Khonono, and Khonono just handed it to his supervisor.
12. **SAMUKELISO BRIAN NDELU testified on behalf of Respondent (hereinafter referred to as “Ndelu”)**
13. Ndelu confirmed that he works at Hermanus CTC. He did not see Applicant at the hospital on 22 May 2017. Ndelu worked at the Mother and Child Department where sick babies and ante-natal visits are dealt with, therefore only pregnant mothers and sick children are treated there. He is not allowed to see patients other than mother and child at that department and would only issue a sick certificate in respect of mother and child-based illness.
14. It was put to Ndelu that Applicant will testify that he was seen by Ndelu on 22 May 2017 and that Ndelu issued a sick note in respect of Applicant. Ndelu denied that he saw Applicant or that he issued a sick certificate. Ndelu denied that he issued this sick certificate to Applicant evidenced on page 17 of bundle R and also denied that it is his signature evidenced on page 17. Ndelu confirmed that his initials are “SB” and that the initials on page 17 looks more like “KL” and is nothing close to his initials on the sick certificate or close to his surname.

15. Ndelu confirmed that he only saw the certificate once before at the disciplinary hearing at Hermanus Hospital. Ndelu stated that the number on the top of page 17, "**16976**", represents a copy of the original. The number is the same as the page number in the book. Ndelu confirmed that each department has its own book, therefore Mother and Child would have its own book and the sick certificate does not look familiar to him at all, as forming part of the Mother and Child Sick Note book.

THE FOLLOWING ENSUED FROM CROSS-EXAMINATION:

16. Ndelu confirmed that he has been employed as a professional nurse at the Zwelihle Clinic at Hermanus since 2014. He knew Applicant before 22 May 2017, as they both live in Zwelihle. Ndelu confirmed that his nickname in the community is "Gundi" and that Applicant knows him as "Gundi". Reference was made to page 19, Applicant's *audi alteram partem*. It was put to Ndelu that the reference to the "black, bold male" corresponds with his description. Ndelu confirmed that although he shaves his head, he is not bold and according to him he does not fit this description. He explained that he does not have an afro, but that his hair is short. It was put to Ndelu that Applicant does not know his real name and therefore he did not mention his name. Ndelu disagreed with this as he always wears a name tag.
17. It was put to Ndelu that he sees other patients as well at the Mother and Child Department. This was denied by Ndelu, as he only sees expecting mothers and children. It was put to Ndelu that on 9 April 2018 the Mother and Child Department also saw other patients. Ndelu responded that he cannot answer to this, as he was not working at that department on that date. Reference was made to the sticker on page 17 on the medical certificate with Applicant's details on. Ndelu confirmed that patients get their files at reception and stickers are printed at reception.
18. It was put to Ndelu that Applicant will testify that he collected his file at reception and he then went to Misile Mgale, who is also a professional nurse and colleague

of Ndelu at the Triage Department. Applicant asked Mgale to push him ahead of other patients in the queue as he also works for the Department of Health. Mgale said that he is very busy, but he should ask Ndelu to assist him.

19. It was put to Ndelu that Janine, a coloured lady who is the receptionist at the Mother and Child Unit, testified at the disciplinary hearing. Ndelu denied that she works at reception, as she is an HIV counsellor.
20. It was put to Ndelu that his office is the first office to the left. This was denied by Ndelu as the counsellor's office is the first on the left. He conceded that Janine also uses that office from time to time. Ndelu was questioned where his office is in relation to the counsellor's office. He confirmed that he was working opposite the triage area at the Mother and Child Unit on the day in question. Ndelu was challenged that he was making up the evidence as he was going along. This was denied by Ndelu and he challenged Applicant's representative to visit the clinic to confirm the location of the office where he worked on that day. Ndelu explained that the Mother and Child Unit is a bigger unit with different offices.
21. It was put to Ndelu that Janine called him and told him that Applicant was waiting for him. This was denied by Ndelu. It was put to Ndelu that Janine testified at the disciplinary hearing. He could not answer to this as he cannot remember whether she was at the hearing. It was put to Ndelu that Janine testified at the disciplinary hearing and she saw Applicant at the Mother and Child Unit on 22 May 2017. Ndelu responded that he cannot remember seeing Janine at the disciplinary hearing.
22. It was put to Ndelu that Janine saw him speaking to Applicant. They shook hands and Applicant informed him that he had a head ache and that he needed Ibrufen tablets, whereafter Ndelu issued the medical certificate. It was put to Ndelu that Applicant told him that his supervisor required him to hand in a medical certificate whereafter Ndelu gave him the medical certificate. Ndelu denied that he saw Applicant at all on 22 May 2017. Ndelu also denied that he was subjected to any disciplinary process with regards to issuing a medical certificate on behalf of Applicant. He did not issue a medical certificate. It was put to Ndelu that on the

face of the medical certificate evidenced on page 17, it appears to be a valid document. Ndelu was challenged on what was wrong with the document. Ndelu stated that this was a copy of the original. The handwriting is unclear and not legible. Where it is stated "Name (print)" it looks like a signature and not a name.

23. Ndelu denies that he told the OPS Manager that he together with some other employees were informed by Dr Mostert that they would be subjected to a disciplinary warning.
24. Ndelu was challenged whether the number "**16976**" at the top of the medical certificate comes from the Mother and Child Department. Ndelu stated that he is unable to confirm this as he did not do an investigation of the book. It was put to Ndelu that the book was presented at the disciplinary hearing and that it comes from the Mother and Child Unit. Ndelu confirmed that he was not told this and he cannot reply to this. Ndelu was challenged on whether he knew that Applicant recorded the conversation he had with Ndelu after the disciplinary hearing, which Ndelu was unaware of.

THE FOLLOWING ENSUED FROM RE-EXAMINATION:

25. Ndelu denied that his signature is the signature evidenced on page 17. He has no reason to lie. He did not issue the sick certificate, treat or diagnose Applicant on 22 May 2017. Ndelu confirmed that there is no bad blood between himself and Applicant, subsequent to the incident or after Applicant was charged at the disciplinary hearing. Ndelu confirmed that there were other nurses on duty who could also have issued the certificate, but it was not him. Each and every consultation room has its own sick book.
26. **MISILE MGALE testified on behalf of Respondent (hereinafter referred to as "Mgale")**

27. Mgale testified that he is a clinical nurse practitioner and he was on duty at Zwelihle Clinic at Hermanus on 22 May 2017. He saw Applicant and he had a conversation with him, although he cannot clearly recall the details of the conversation.
28. It was put to Mgale that Applicant will testify that he asked Mgale to fast track the process for him and that Mgale told Applicant that he was busy and that Applicant must go to Mr Ndelu instead, who would assist him. This was denied by Mgale. Mgale stated that Applicant had to come through him, as all patients have to come through Mgale. He was working in the triage department. After the observations were completed by the nurse, Mgale would have been given the file for consultation. He did not see Applicant for a consultation and he would not have referred him. In the triage they try to see outpatients and if he did not have enough time to treat him, he would have sent him down the passage to be treated by another nurse.
29. There are a lot of other nurses who can see patients. Mgale was challenged whether he could fit the description of a “bold black man”, which he denied. If he was the clinical nurse practitioner, he would have issued the certificate.
30. Mgale was challenged on whether it was possible that Applicant could have been seen by other nurses, which Mgale denied, according to the standard process, all patients have to pass through him and he would then direct them to other nurses. The Applicant did not come through him. He has known the Applicant for more than 10 years. He knows that Applicant was at the clinic before. He did not see him at the clinic again on the same day. He did not consult, examine, diagnose or treat Applicant on 22 May 2017, he did not refer him to anybody else either. It would be incorrect if he did, as the Mother and Child Department is strictly for mother and child only. Mgale confirmed that he had seen the medical certificate on page 17 before. Number 2 must be specified and number 5 is the diagnosis. His initials are “M” and that of Ndelu is “SB”, therefore he does not see either of their initials on the sick certificate. The number at the top “16976” is normally on the sick nota and in the duplication book. Every person is supposed to have a sick note. (I (Commissioner) cannot identify the sick note without the book. I requested

the relevant patient's sick book, as well as proof from which department the book emanates.)

THE FOLLOWING ENSUED FROM CROSS-EXAMINATION:

31. Mgale confirmed that the process is as follows: With unbooked patients they first get a number. They are treated on "a first come first serve basis". Unbooked patients are issued with a number and then they receive their files at reception. When the clerk draws a file, they print out the stickers and put it in the file. Mgale was challenged as to whether the sick note came from the Mother and Child Unit. He said that he could not reply to this, as he would have to see the original book. Sick notes are usually completed in duplicate. The duplicate remains in the book and he did not have an opportunity to look at the book. Mgale confirmed that he knows the Applicant quite well. He confirmed that he would send the patient to the other nurse practitioners in the same department, if he was unable to assist the patient, but he would have to see the patient first, as all patients come through him first.
32. Mgale was challenged as to whether Ndelu's office was opposite the triage room where he worked on the day in question. Mgale confirmed that there is more than one consultation room, he does not know where Ndelu worked on that day and one cannot see the Mother and Child Unit from the triage room.
33. Mgale confirmed that he saw Applicant at the clinic on 22 May 2017, but he cannot recall what they spoke about. It was put to Mgale that Applicant will testify that he spoke to Mgale and asked him, since they know each other, whether he can help him to go through the system quicker and that Mgale told him to speak to Brian Ndelu, who would assist him. Mgale responded that this was impossible, as he would not send him to the Mother and Child Unit, if he could not help him, he would have send him to one of the other nurses.
34. Mgale confirmed that the problems he picked up with the sick certificate on page 17, was that it was not completed and according to the qualifications it looked like

a clinical nurse qualification. The diagnosis cannot be completed without the patient's permission. I asked Mgale how the Applicant would obtain the sick certificate if it was not issued by one of the nurses. Mgale could not respond to that.

APPLICANT'S CASE

35. **AKHONA PENXA testified in support of his own case (hereinafter referred to as "Applicant")**
36. Applicant testified that he commenced employment with Respondent in the position as an intern on 1 November 2010 and he was appointed in a permanent position on 9 July 2012. He worked for EMS. He had an opportunity to work as an administrative officer at the Bredasdorp Hospital. He reported to Mr Khonono, who in turn reports to Dr du Toit. Applicant was dismissed on 25 October 2017 at which time he earned a gross salary of R18 000.00 per month.
37. Applicant was charged and dismissed for submitting a falsified sick certificate. He referred an unfair dismissal dispute to the Council, as he was unhappy with the outcome of his disciplinary hearing.
38. Applicant confirmed that on 22 May 2017 he was not feeling well, he was stabbed a few weeks earlier and was suffering from headaches one again. He was seen by Mgale after the stabbing incident.
39. Applicant phoned Khonono on 22 May 2017 and informed him that he was not feeling well and he would not be coming to work. Khonono said that it was in order and a few minutes later he sent him an SMS to inform him that he must hand in a sick certificate on his return to work. Applicant lives in Zwelihle and his girlfriend drove him to the clinic in Hermanus just after 9:00.
40. Applicant did not go to the help desk, he went straight to the waiting area, he took his file from reception and then went to the triage room, where a lot of people were

already waiting. He saw Mgale and said that he was not feeling well, he had headaches that were getting worse and he could not wait. Mgale told Applicant there were a lot of people waiting and they were very busy, but that he could go to Gundi (Brian Ndelu) who will assist him. Applicant did not know Ndelu's real name at the time. He only discovered that his real name was Brian Ndelu a few days before the disciplinary hearing, when Dr Du Toit asked him whether he knew who the nurse was who helped him. He then found out that Gundi's real name is Brian Ndelu. He did not notice Ndelu's name tag on the day in question.

41. According to Applicant he went to the Mother and Child Unit and said that he needed help. He saw Janine, at first, he thought she was a nurse, but he learnt at the disciplinary hearing that she was a counsellor. She went to Gundi's office, he came out and called him. He told him that he used Ibrufen before. Gundi turned around on his swivel chair to the left to get the tablets, which he then gave Applicant. Applicant was busy drinking the tablets, whilst Gundi was writing out the medical certificate which Applicant requested from him before he gave him the tablets.
42. Applicant had to sign a leave form and attach the sick certificate to it on his return to work on 24 May 2017, which he gave to Khonono. Khonono did not have a problem with the sick certificate at the time. He gave him the document evidenced on page 17 of bundle R. There were no problems with the sick certificate until Dr Du Toit and Mr Dennis Brecht called him in, the date which he cannot recall. He referred to his reply to Dr Du Toit on pages 18 and 19, signed on 14 June 2017. He did not mention Ndelu's name there, as he thought it would be unprofessional to mention a nickname.
43. He was referring to Brian Ndelu on page 19 where he stated "*I saw a Nurse, black bald male...*" It was put to Applicant that Ndelu denied that he gave Applicant a sick note. This was denied by Applicant. He stated that Ndelu knew what he was doing. He could have written it out and cancelled it, but Applicant questioned him why he took it out of the book. This means he wrote the sick note somewhere else. There

is no duplicate in the book according to Applicant, as the book was showed to him at his disciplinary hearing. According to Applicant, Janine admitted in the disciplinary hearing that she saw Applicant on 22 May 2017. After the hearing he asked Ndelu what happened, because he denied at the hearing that he saw him on 22 May 2017. Ndelu responded to him that they do not know who is wrong, either Applicant or Ndelu. Ndelu told Applicant everyone is going to get warnings. He said that the union must appeal, because he is friends with the initiator and the chairperson. The receptionist, Nono, said she did not give him the file, although she indeed handed him his file. Sokojika gave him the file according to Nono. Sokojika should not have been in the front at reception, she should be at the back. (This was not put to any of Respondent's witnesses.)

44. Reference was made to page 17, being the medical certificate. Applicant denies that he stole the certificate, he received it from Brian Ndelu. He did not fabricate the certificate as he would never do something like that. He has never been subjected to a disciplinary hearing before, other than a warning he received on the same day when Dr du Toit spoke to him about the present matter a few days before his disciplinary hearing. Applicant seeks retrospective reinstatement.

THE FOLLOWING ENSUED FROM CROSS-EXAMINATION:

45. Applicant confirmed that he handed the sick certificate evidenced on page 17 to his supervisor. According to Applicant, he has never seen a sick certificate in the past, therefore he is not sure what is wrong with it. Applicant assumes that the signature on the sick certificate on page 17 is that of Gundi (Ndelu). According to Applicant he cannot decipher the handwriting, as it is an ugly handwriting. Applicant testified that Mgale told him to go to Ndelu, who would assist him as a patient. It was put to Applicant that he heard Mgale testify that he had to go through him as a patient, which Applicant did not dispute. According to Applicant, he asked him where Ndelu is and explained to him that he is just down the passage. According to Applicant, he had never been to a clinic before, but the process is the same as at any other hospital. He is aware of the process that he has to obtain his file from reception and then go to the triage room. It was put to Applicant that

skipping the process and going before other patients in the queue is taking a shortcut, to which Applicant conceded. It was put to Applicant that he also tried to take a shortcut with the sick note. This was denied by Applicant. Applicant was challenged on whether he was examined by anyone. Applicant responded that he told Ndelu what was wrong with him, Ndelu did not examine him.

46. Applicant was challenged that Ndelu would not issue someone with a sick certificate and issue medication without examining him. Applicant maintained that Ndelu simply gave him the medication and sick certificate without examining him. Applicant was challenged that it is not the correct process to receive treatment, without being examined. Applicant conceded that he went to the hospital a week earlier after he was stabbed. He told Ndelu that he was getting headaches which were getting worse, he was not feeling well and he was using Ibrufen. Applicant stated that he did not think there was anything wrong with the fact that Ndelu did not examine him prior to giving him Ibrufen. He gave him IBrufen which he drank in the office.
47. He asked for the sick note at the same time he asked for the tablets and the file was with Ndelu. He only saw in the hearing that Ndelu did not write anything in the file. It was put to Applicant that he got his sick certificate through a shortcut. It was put to Applicant that a copy of the sick note should have been in his medical file. It was put to Applicant that nothing was written about his medical condition.
48. (My question to Applicant was whether his previous Ibrufen which were issued to him was finished and how he would obtain more tablets if he did not go to the clinic for a sick certificate on request from his supervisor.) Applicant replied that he would have come to the clinic in Bredasdorp, as he lives in Hermanus and therefore he drove in and out every day and he went to the clinic closest to his home when he was sick.
49. According to Applicant the medical information has to be written in his file. Applicant was challenged whether the sick certificate was acceptable to him. He stated that he was told that the “name” is not completed. Applicant was challenged on how many tablets he received. He was unsure and then later he said he got a

sachet with perhaps 15 tablets in. The tablets lasted him a week, because his headaches carried on.

50. Applicant was challenged on why Ndelu would complete a certificate of this nature and come to the disciplinary hearing and deny that he did not issue the certificate. Applicant could not answer this and said he had the same question and that is why he recorded the conversation. They never spoke again after the incident; therefore, he did not help Ndelu when he was in a fight. Applicant believes Ndelu is angry with him because he did assist him when Ndelu was in a fight. (This was not put to Ndelu under cross examination at all.) Applicant was challenged why he did not challenge Ndelu evidence when Ndelu said there was no bad blood between the two of them. Applicant responded that he believed that he was not allowed to speak. Applicant was challenged on this as he was writing down notes for his representative throughout the Arbitration hearing.

51. Reference was made to Applicant's *audi alteram partem* letter on pages 18 to 19. Applicant was asked on where he referred to Ndelu in the *audi* letter or whether he ever heard of the name Ndelu or Brian. According to Applicant, he heard the name "Ndelu" at the Arbitration hearing for the first time and the name "Brian" at the disciplinary hearing. It was put to Applicant that he was not telling the truth and that he knew that Ndelu's name was Brian Ndelu. According to Applicant there were only two male nurses who are black and bald. It was put to Applicant that Ndelu testified that he is not bald. This was disputed by Applicant. Applicant was challenged on his evidence that he had stated that the sick note emanated from the Mother and Child area. Applicant was challenged on whether it was possible that he wrote the sick certificate and tore both copies out of the book. This was denied by Applicant. According to Applicant it was the first time he received a sick note.

THE FOLLOWING ENSUED FROM RE-EXAMINATION:

52. Applicant confirmed that the black and bald guy he saw on that day was Brian Ndelu. The description on page 19 fits Ndelu. Ndelu gave him the sick certificate, which he believes to be a proper medical certificate.

Both parties filed Closing Arguments, the contents of which I took cognisance.

ANALYSIS OF THE EVIDENCE AND ARGUMENT

53. It is common cause that Applicant was off sick on 22 May 2017 and that he contacted his supervisor to inform him that he would not be at work due to his illness. It is furthermore common cause that Applicant's supervisor, Khonono, requested him on the same day to hand in a sick certificate on his return to work. Applicant adhered to the instruction to hand in a sick certificate. Khonono did not lodge the sick certificate with Human Resources Department, as he foresaw certain problems with the sick certificate. Khonono then handed the sick certificate to Dr Du Toit on being questioned about the sick certificate. He informed Dr Du Toit that he did not lodge the sick certificate with Human Resources Department, as he picked up certain problems with the sick certificate, which he pointed out to him, being the fact that the signature is where the name is to be printed, both are illegible and seems to be a scribble. Furthermore the dates of the absenteeism have not been completed and the nature of the injury or illness are not completed or signed by the patient or dated. This is not normal. It was also impossible to confirm that the said sick certificate came from the Mother and Child Unit as averred by Applicant.
54. The question remains who issued the certificate. Ndelu denied that he saw Applicant on the day in question. Mgale testified that no patient could go to any other unit unless the patient went through him and Applicant definitely did not go through him on 22 May 2017. This was not challenged by Applicant under cross examination.
55. I now turn to look at the sick note book and more specifically the page numbered "16976" thereof. I had an opportunity to view the original sick note book, which

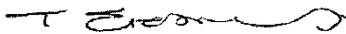
came from the Mother and Child Unit, as per my request during the Arbitration hearing.

56. The following sick notes in the book before me, were all completed: 16801, 16802, 16975 and 16977. The duplicate of sick note number 16976 is in the sick note book, however it is blank, whilst the sick note “**16976**” on page 17 of bundle R is completed, with an eligible signature on it.
57. I can therefore come to no conclusion, other than that Applicant must have torn the original certificate out of the sick note book and completed the certificate himself.
58. Applicant was clearly impatient and had no intention to be examined or wait his turn to obtain his sick certificate. Ndelu denied having seen Applicant on 22 May 2017 at Zwelihle Clinic or that he issued the medical certificate to Applicant at all. Applicant did not challenge Mgale’s evidence that it was impossible for Applicant to see another nurse without first going through him. Applicant testified that he did not want to use Ndelu’s nickname in his *audi* letter, as he viewed it as unprofessional. I find this explanation most improbable. Applicant testified that he was shown the sick note book during the disciplinary hearing and that the duplicate page in the book had been torn out. This evidence is in direct contradiction to what I viewed in the original sick note book, as sick note 16976 was certainly intact in the book and completely blank. Therefore, Applicant was clearly lying in his testimony as aforesaid. Applicant’s dishonest conduct amounts to serious misconduct.
59. I find that Applicant falsified the medical certificate evidenced on page 17 of bundle R.
60. I find that dismissal was an appropriate sanction in the light of the serious nature and the breach of the trust relationship as a result of the serious transgression. The fact that Applicant has a clean disciplinary record is however overshadowed by the seriousness of the transgression. I find that Applicant’s dismissal was

substantively fair. There was no evidence of procedural unfairness before me. I find that Applicant's dismissal was procedurally fair.

AWARD

61. Applicant's dismissal was both procedurally and substantively fair, therefore Applicant is not entitled to any relief.



COMMISSIONER: T ERASMUS