



ARBITRATION AWARD

Panellist/s: Leslie Martin
Case No.: PSHS155-11/12
Date of Award: 6-Mar-2012

In the ARBITRATION between:

In the arbitration between:

J. Saal

(Union / Applicant)

and

Department of Health- Western Cape

(Respondent)

DETAILS OF HEARING AND REPRESENTATION

- 1.The arbitration was held at the Western Cape College of Nursing in Klipfontein Road, Athlone on Wednesday 22 February 2012.
- 2.An application for representation of the applicant was made by Mr. Buttress on the basis of his being a fellow employee of the applicant. The application was unsuccessful as there is no provision in the constitution of the bargaining council that allows for representation at this arbitration by a fellow employee.
- 3.The applicant, Mr. Jacobus Saal (Saal), represented himself. The respondent, the Department of Health Western Cape (the respondent), was represented by Mr. X. Nginase, a labour relations officer and Mr. R. Japhta, an assistant director of labour relations.

ISSUE TO BE DECIDED

- 4.Was the dismissal of Saal fair?

BACKGROUND TO THE ISSUE

5. Saal worked for the respondent from 1980 until he was dismissed in February 2011. At the time of his dismissal Saal was a general worker and earned R5,000.00 (five thousand rand) per month.
6. Saal was dismissed for the unauthorized removal of the respondent's property.

SURVEY OF EVIDENCE AND ARGUMENT

7. The respondent handed a bundle of documents into evidence. No objections were recorded.
8. It was common cause that Saal had removed the items and that these were 1 pack of Daylees and 1 pack of Kindri paper towels and that the total value of these items was between R60 to R70.
9. Desmond Brian van der Linde (van der Linde), the head of stores at Tygerberg Hospital and an assistant director testified under oath for the respondent.
10. Saal testified under oath on his own behalf. Kevin Koopman (Koopman), Saal's supervisor, also testified under oath for Saal.

THE EVIDENCE:

11. Perpetrators of the offence such as Saal had been dismissed for were also dismissed in the past.
12. The items that Saal had removed were essential for the patients and nursing staff to clean babies and the faces of patients who had no washcloths.
13. These items were also vital in the control of infections.
14. Saal was aware of the other employees who had been dismissed for the same offence. He had also attended at meetings where staff were advised that theft was a very serious offence.
15. Saal's immediate supervisors, Koopman and Williams had informed van der Linde that Saal could be taking things from the workplace.
16. As a consequence of this van der Linde had informed the hospital security but had not summoned Saal to a disciplinary hearing.
17. The security had searched Saal at the stores not at the exit.
18. It was common cause that van der Linde had followed Saal after he had been searched. It was then only on a second search that the items were found on Saal.
19. According to van der Linde after Saal had been searched he had gone back into a room. The items were found on him when he came out of the room.

20. Saal had told the security guards that the items were his.
21. Thereafter Saal was issued a precautionary suspension.
22. After Saal had pleaded guilty at the disciplinary hearing he was dismissed.
23. The chairperson at the disciplinary hearing had however recorded (see page 18 of the bundle of documents) that Saal had pleaded not guilty.
24. Koopman had heard that Saal was stealing stock and so reported it to his supervisor, Williams.

ANALYSIS OF EVIDENCE AND ARGUMENT

25. It is clear from the evidence presented at this arbitration that Saal had been in the unauthorized possession of the respondent's property on 18 February 2011.
26. It is clear too that Saal had obtained possession of the items in a very dishonest way in that he had removed the items after he had been subjected to a search which found him to have not had any unauthorised items in his possession.
27. This demonstrates not only that Saal had been dishonest in the taking of the items but also that he had been dishonest in the manner in which he attempted to deceive the respondent's processes.
28. While it is trite that theft constitutes a breach of the employment relationship, in this matter the manner in which Saal had gone about his dishonesty would constitute an even further breach of the trust relationship between the parties. .
29. I will now comment briefly on Saal's contention that his dismissal was procedurally unfair due to the respondent's not disciplining him immediately upon its having been reported that he might be stealing the respondent's property.
30. I cannot see what purpose this would have served because the evidence is clear that Saal was aware of the consequences of stealing the respondent's property. He had been privy to information regarding the consequences of such misdemeanor in the workplace. This is evident from the fact that he knew of the dismissal of other employees for such acts of misconduct.
31. The respondent had clearly decided not to discipline Saal upon its receipt of such reports as there was no evidence before it of his having taken the items. There was in fact no basis at that stage for any disciplinary action to be taken against Saal nor anything in law compelling the respondent to do so.
32. In respect therefore of Saal's further contention that the sanction of dismissal was too harsh, the evidence is of the respondent's consistently applying such sanction in cases of such misconduct.
33. It is further not illogical or unreasonable to conclude from the evidence presented at this arbitration that theft is not an uncommon occurrence at the

respondent's. The respondent's workplace is of such a nature that employees have access to many items that could be easily removed from its premises.

34. It is not difficult to conclude that the respondent, given its actual physical size suffers enormous loss through the theft of its property, much of which comprises items that can be used in the common household.
35. Employees cannot consider the respondent a supplier of materials for use in their households or any other reason.
36. The testimony of the respondent's witnesses is clear that the items that Saal had had in his possession without authorization are of an essential nature within the operations of the respondent.
37. Theft of items in a hospital would clearly affect the operational needs of the hospital.
38. The items that Saal had taken were also of reasonably high value thus contributing even more significantly to the overall loss that the respondent suffers through misconduct of this kind.
39. It is a further argument of Saal that his dismissal was unfair because of the respondent's not affording him a hearing prior to his suspension. In this regard the letter of suspension shows clearly that Saal had in fact been invited to make representation as to the suspension and that he be represented in so doing.
40. There is therefore sufficient evidence to show that the suspension of Saal was fair.
41. His suspension therefore does not impact negatively on the fairness of his dismissal.
42. It is furthermore clear that Saal has been in the respondent's employ for 30 years and with a clean disciplinary record. The evidence shows too that Saal is the sole breadwinner and has 2 children.
43. However, given the impact on the operational needs of the respondent and the seriousness of the offence and the fact that Saal was aware of the attitude of the respondent to such offence, the fact that he had a clean disciplinary record and the length of his service does not come to his assistance.
44. In considering ultimately the procedural fairness of the dismissal the further evidence is of Saal's having had a disciplinary hearing at which he was represented and at which he was afforded a fair opportunity to state his case. The evidence is in fact of sufficient compliance with the rules of natural justice to render the disciplinary hearing without defect.
45. Having therefore considered all the evidence presented at this arbitration I find that the dismissal of Saal was fair both procedurally and substantively.

AWARD:

46. This application for relief in terms of the provisions of the Labour Relations Act 66 of 1995 as amended is dismissed.

Panellist/s: **Leslie Martin**
Sector: **Public Health & Social Development**