



ARBITRATION AWARD

Arbitrator: **Mr Anand Dorasamy**
Case No: **PSHS 161-11/12**
Date of Award: **5 DECEMBER 2013**

In the ARBITRATION between:

NPSWU OBO PECCI

Applicant

and

DEPARTMENT OF HEALTH: KWAZULU NATAL

Respondent

Union/Applicant's representative : MR S HLONGWA

Union/Applicant's address : P.O.BOX 11100
DURBAN
4000

Telephone : 031 304 7563

Telefax : 031 307 3306

Respondent's representative : MR M MOLOTSI

Respondent's address : PRIVATE BAG X 9051
PIETERMARITZBURG
3200

Telephone : 033 395 3212

Telefax :033 395 3220

DETAILS OF HEARING AND REPRESENTATION

1. The arbitration proceedings commenced at 10H00 on the 29 September 2013 and continued on the 20 November 2013 at the King Edward Hospital Boardroom in Durban. Mr S Hlongwa of NPSWU represented the applicant and Mr M Molotsi an attorney represented the respondent. The matter was adjourned on the 29 September 2013 and reconvened on the 20 November 2013 because the applicant went overseas. Further the matter commenced late on the 20 November 2013 because the respondent's representative was engaged in another matter in the morning. The parties submitted written arguments on the 25 November 2013.

RESPONDENT'S OPENING STATEMENT

2. The applicant faced six charges (page 3) and was found guilty of all charges and was dismissed and on the balance of probabilities he committed the misconduct. The respondent prays that the dismissal be confirmed.

APPLICANT'S OPENING STATEMENT

3. The first trouble the applicant has with the charge sheet is that the charges are duplicated. The applicant denies that he committed the allegations and seeks retrospective re-instatement from the 21 October 2010.

ISSUES TO BE DECIDED

4. I am to decide whether the dismissal of the applicant was procedurally and substantively fair. Should I find in favour of the applicant then I am required to consider what remedy would be appropriate in terms of s 193 and 194 of the Labour Relations Act. Should I find against the applicant, then the matter would be dismissed.

BACKGROUND

5. The applicant was dismissed after being found guilty of all the charges as listed below. At this hearing he seeks retrospective re-instatement. The respondent contends that the dismissal of the applicant was both procedurally and substantively fair and seeks confirmation of the dismissal.

CHARGES

It is alleged that you contravened the provisions of the Act of Misconduct as laid down in Annexure A of Resolution 1 of 2003 where you,

1. stole 5 bales of toilet paper on the 21st April 2009 after you picked it up from stores.
2. fraudulently signed the requisition book on the 21st April 2009 for toilet paper.
3. failed to hand over the toilet paper to your base manager.
4. theft of drugs (ALS/ILS) on the 21st September 2009, after it was picked up by you from MGM Hospital.
5. failing to hand over the drugs to an ALS/ Supervisor at your base, whereby the drugs were left in A95F for the weekend.
6. took the keys for A95F home without authorisation from your base manager.

SUMMARY OF EVIDENCE AND ARGUMENTS

RESPONDENT'S CASE

6. MANQELA PAULOS

The salient aspects of Mr Paulos's evidence are recorded below.

- 6.1. He is the Sub District Manager and knows the applicant who was a supervisor and who reported to him.
- 6.2. The procedure to order toilet paper or anything was that the requisition book must be obtained from either the clerk or supervisor. The request must be written and signed by the requesting officer and he will check and see in the buffer room and he would authorise. The headquarters is in town and the book is given to the officer and he is given a copy and he must come back with a copy and he must hand over the copy after issue.
- 6.3. The supervisor is the overseer of stock and nobody is allowed to order if he is on duty. In respect of document 1 5 bales of toilet paper the same person (applicant) signed and his signature is not on the document.
- 6.4. On the 21 April 2009 he was on duty and nobody told him that they needed toilet paper and he was shocked to see one person sign and did not see the toilet paper. The applicant signed twice as the requisition and authorising officer in contravention of the rule. He never asked anybody to sign on his behalf and he was around in DHQ and if he is not in Durban he would ask his clerk to sign and not a supervisor. The copy could not be found after investigation but was found after a few days. Nobody saw the toilet paper and he asked about it, it was not there.
- 6.5. The applicant was the only person with the storeroom keys.
- 6.6. The requisition book went missing on the 21 April 2009. The clerk checked with DSQ and was told the applicant left with 5 bales of toilet paper. He did not hand over the copy of the order to the clerk.

6.7. In respect of the issue about the drugs, he received a call from Ms Bissetty who was in charge of drugs for the District. She stated that the drips were ready at MGH and he phoned the applicant to pick up the stock. The applicant went to MGH and picked up whatever was going to be needed for the long weekend. After 19h00 on the same day he received a call from the shift supervisor informing him that they could not go anywhere because they needed gloves and he asked the applicant to pick up the stock. He was told that the stock in the stores was empty. He phoned the applicant and enquired about the gloves. The applicant said that he returned late and nobody was at the base and that he had the stock. The applicant told him that he locked the state motor vehicle and took the keys home.

6.8. He told him that he would collect the keys and when he went to base he called Mr Bobby Luckraj and he opened and took the gloves and left the keys in his office and left the base. On the Tuesday as he was entering the base he saw the applicant driving another motor vehicle and told him that he never authorised the motor vehicle to him and that he had to take the motor vehicle that he was allocated. The motor vehicle allocated to him was parked. He went to him and gave him the keys and within 5 minutes the applicant returned and said that drugs were missing. The other guys said that the window was open and there were drugs in the vehicle. It is dangerous to leave drugs in the motor vehicle.

6.9. The drugs were to be handed over to ALS or ILS on that day and the applicant was aware of the procedure as he was a manager and an old staff member and he had to phone to hand over the drugs and he failed to do so. He did not phone to say he left the drugs in the vehicle. He was not authorised to take the keys home.

6.10. He knows Mr S Naidoo a paramedic and he was not on duty Mr Sookoo was on duty on that day.

Under cross examination he stated as follows:

6.11. When he was not on duty he did not get the supervisor to authorise but it was done by his clerk.

There was no need to order toilet paper.

6.12. The value of the drugs was about R 36 000.00. The drugs left in the vehicle and in the heat the drugs could go off and if given to a patient it may kill the patient. The drugs were schedule 7 drugs. When he went to the applicant to collect the keys and was told that there were drugs in the vehicle he would have asked him to go with him and count and keep it in a safe place. If the applicant came with the drugs he had to call him and not leave the drugs in the vehicle as it could go into the wrong hands. There was a supervisor at the base.

7. SONEEL SOOKOO

The salient aspects of Mr Sookoo's evidence is recorded below:

- 7.1. He is based at the Phoenix base and is an ALS paramedic. On the 21 April 2009 he was on duty from 07h00 to 19h00. The applicant brought drugs from MGH and did not inform him because he may have been out of the base. He could have got him on the high band radio or cellphone. It was important because one is dealing with drugs and it affects patient's lives and accountability and certain drugs have a double locking principle.

Under cross-examination he testified as follows: -

- 7.2. All emergency vehicles are fitted with radios.

8. DEVENDRAN MAISTRY

The salient aspects of Mr Maistry's evidence are recorded below.

- 8.1. The stock on page 1 he issued to Mr Pecci who signed on both places.

Under cross-examination he testified as follows: -

- 8.2. He enquired from the applicant about the signatures and was told that Mr Manquele was not available and he was standing in for him. He knows the applicant for a long time. The requisition book was taken back by the applicant.

9. CHRISTINE MARY DANIELS

The salient aspects of Ms Daniel's evidence are recorded below.

- 9.1. Whoever picks up stock gives her a copy and it goes into a file. On the 21 April 2009 the applicant did not provide a copy in her records.

Under cross examination she stated as follows:

- 9.2. There was no incident where a requisition book was lost.

APPLICANT'S CASE

10. GABRIEL ROMEO PECCI

The salient aspects of Mr Pecci's evidence are recorded below.

- 10.1. He was employed by the Department of Health on the 1 February 1999 and at the date of his dismissal he was a shift supervisor based in Phoenix. He was issued with a charge sheet, attended a disciplinary hearing before he was dismissed.

- 10.2. He did not steal the toilet paper. On the day of the incident he was contacted telephonically by Mr Manquele the Zonal Officer and was asked to pick up the toilet paper from the stores.
Mr Manquele told him that he was busy in a meeting. This was not the first time that he was asked telephonically to collect stock.
- 10.3. The second charge that of fraudulently signing the requisition book. When he goes to the District Headquarters he carries the requisition book to the stores. The book has a space for the signature of the requisitioning officer and authorising officer. He signed in both spaces and put pp before his signature. He signed both spaces because Mr Manquele was not at the base to sign the requisition book. It was not the first time that he signed on both places. The book is kept by the shift supervisor or the clerk.
- 10.4. The staff at the District Headquarters are not authorised to issue stock to him if he signed in both places.
- 10.5. In respect of charge three that he did not hand over the toilet paper to the base manager. He returned to the Phoenix base the Zonal Officer was not there and he could not put the toilet paper in the buffer store. He put it in the archive store. He got the keys from Ms Jabu the clerk and returned it to her. He did not see Ms Daniel's because it was almost knock off time.
- 10.6. Mr Manquele discovered a week later that the toilet paper was missing. He does not know who broke the padlock at the archive stores.
- 10.7. In respect of the issue of the drugs, he picked up the drugs from Mahatma Gandhi Hospital (MGM) but did not steal the drugs. On the 21 September 2009 he was instructed by Mr Manquele to pick up drugs from MGM Hospital. When he returned with the drugs the ALS was not at the base therefore he could not hand over the drugs. He left the drugs in the back of the ambulance and left it there. The shift supervisor was not at the base.
- 10.8. He took the keys home and Mr Manquele knew the reason for him taking the keys home. He did not have keys to the ALS room or office as only the ALS has keys. Mr Manquele wanted some surgical gloves and he phoned him and went to his house to pick up the keys. It was a long weekend
- 10.9. When he returned to work he wanted the keys to remove the stock and then he discovered that the drugs were missing and he asked Mr Manquele if he took the drugs.
- 10.10. The fifth charge of failing to hand over the drugs to an ALS /supervisor at base. The drugs were left in the motor vehicle for the weekend.
Under cross-examination he testified as follows: -
- 10.11. The requisition book and drug form are different. He left the drugs in the vehicle for the whole weekend. It was important that he handed over the drugs to an ALS or CCA.

CLOSING ARGUMENTS

The parties submitted written closing arguments on the 28 November 2013. The arguments submitted are recorded verbatim below.

11. RESPONDENT'S CLOSING ARGUMENTS

11.1. The dismissal of Mr Pecci (the Applicant) by the Department of Health, KZN (the Respondent) on the ground of misconduct, was both procedurally and substantively fair, as will be apparent herein below.

11.2. Procedural Fairness

11.3. The Applicant was served with the charge sheet, wherein various counts of misconduct were stipulated against him by the Respondent, on the 18th February 2010. The charge sheet informed the Applicant of his right with regards to the hearing, which was held consequently on the 7th May 2010.

11.4. During the arbitration, the Applicant admitted and stated that in terms of procedure, the Respondent was fair. He did not harbor any qualms with regard to the procedural fairness of his dismissal.

11.5. It is my submission that fair procedure was adhered to in this matter. Furthermore the Applicant was informed of his right to appeal and refer the matter to the Council- a procedure which he followed.

11.6. Substantive Fairness

The Applicant admitted the following facts during the arbitration:-

11.6.1. He signed the requisitioning book both as the requisitioning officer and an authorizing officer. He then collected and received five (5) bales of toilet paper, on the strength of the signed requisitioning book, from the DHQ. He was aware at the time of signing the book as aforesaid that such conduct is illegal.

11.6.2. I submit that his contention that he received authorization to sign as authorizing officer from his supervisor, Mr Manqele, is devoid of truth and should therefore be rejected by the arbitrator. Mr Manqele categorically disputed this assertion under cross-examination.

Furthermore the Applicant, even though he insisted that even in previous occasions he signed both as requisitioning officer and authorizing officer, he could not produce evidence to that effect. Therefore this allegation must be rejected

11.6.3. He collected and picked up the said five (5) bales of toilet paper from

DHQ by further misleading the officer in charge of the stores that he was authorized by Mr Manqele telephonically. This assertion Mr Manqele disputed.

11.6.4. He took the keys for A95F home without authorization, with the full knowledge that such conduct is illegal. He still persists that he telephonically was authorized by Mr Manqele to do so. Mr Manqele disputed and denied having given such authority.

11.6.5 He further admitted that he failed to hand-over the drugs to an ALS / Supervisor at the base, and

instead left same in the vehicle, A95F, for the weekend.

11.7.1 He justifies this conduct once again by the so- called authorization from Mr

Manqele however denied giving him such permission. The assertion that there was no ALS officer at the premises on his arrived to whom to hand over the drugs cannot also be accepted for there is evidence by Mr Sookoo, an ALS officer, who testified that on the day in question, the 21st September 2009, he was on duty from 7h00 to 19h00. Mr Sookoo also indicated that in case he had to leave the base (Phoenix) at any time, so other person would be in charge and also that he could be reached on his cellphone or on the radio.

11.7.2. It is abundantly clear that Applicant failed to establish or explore other means to avoid taking the keys home, and thereby leaving drugs of such importance exposed to theft for the whole weekend.

11.8. Conclusion

Based on the above it is submitted that the Applicant's actions and omissions resulted in the loss and theft of toilet papers and drugs.

It is further submitted that the Applicant acted fraudulently by authorizing himself to pick toilet paper. On several occasions, as indicated above, Applicant's version was false and merely concocted to escape liability/accountability for his conduct. There is overwhelming evidence of dishonesty on his part.

We prevail respectfully therefore on the Commission to find that the Applicant was fairly dismissed by the Respondent (the employer), on both procedure and substance.

ANALYSIS OF EVIDENCE AND ARGUMENTS

12. This matter was cited as an unfair dismissal dispute in terms of Section 191 of the LRA and the issues to be decided was whether the dismissal of the applicant was procedurally and substantively fair.

13. The respondent charged the applicant in respect of two broad allegations. Firstly in respect of toilet rolls and secondly in respect of drugs.

THE ALLEGATIONS AGAINST THE APPLICANT

The applicant was charged as follows:

14. It is alleged that you contravened the provisions of the Acts of Misconduct as laid down in annexure A 11 of Resolution 1 of 2003 where you,

1. stole 5 bales of toilet paper on the 21st April 2009 after you picked it up from stores.
2. fraudulently signed the requisition book on the 21st April 2009 for toilet paper.
3. failed to hand over the toilet paper to your base manager.

4. theft of drugs (ALS/ILS) on the 21st September 2009, after it was picked up by you from MGM Hospital.
 5. failing to hand over the drugs to an ALS/ Supervisor at your base, whereby the drugs were left in A 95F for the weekend.
 6. took the keys for A 95F home without authorization from your base manager.
15. The following are clear from the evidence:
- 15.1. The applicant signed for both the requisitioning officer and authorising officer for the toilet rolls:
He collected the toilet rolls from the District Headquarters and took it to the base and put it in the archive store and a week later Mr Manquele discovered the loss.
 - 15.2. The applicant collected the drugs from MGM Hospital took it to the base and left the drugs in the vehicle and took the keys home. When he returned to work he found certain drugs missing.
 - 15.3. The applicant was a senior employee.
16. The questions that arise are whether the applicant is guilty of theft of the toilet rolls and drugs. Further whether the related charges if in the affirmative would justify a sanction of dismissal.
17. A person commits theft if he unlawfully and intentionally appropriates moveable, corporeal property which;
- (a) belongs to, and is in the possession of, another;
 - (b) belongs to another but is in the perpetrator's own possession ;or
 - (c) belongs to the perpetrator but is in another's possession and such other person has a right to possess it which legally prevails against the perpetrator's own right of possession provided that the intention to appropriate the property includes an intention permanently to deprive the person entitled to the possession of the property, of such property.
18. The toilet rolls and drugs were the property of a government/state created and funded institution. The applicant collected both goods but did not exercise the requisite care and diligence expected of an employee of his position. In respect of the goods the applicant had undertaken the tasks previously without any loss to the institution. In the first instance of the toilet rolls he did not store the goods in the normal storage place and did not inform Mr Manquele and the loss was discovered by Mr Manquele a week later.
19. In the second instance the applicant picked up the drugs and other goods and left the goods in the vehicle and took the keys home. He ought to know that he was to be away from work for a long weekend and the goods were required by the institution. Further he waited for Mr Manquele to collect the keys from him and if he informed him that there were drugs in the vehicle then his action would be what is expected of a reasonable employee in the status of the applicant.

20. On both occasions the applicant's actions his actions were not that of a reasonable employee with the responsibility entrusted on him.
21. Therefore it is reasonable to draw the inference that the actions of the applicant resulted in the loss suffered by the respondent. In not carrying out his tasks diligently and with the requisite care and diligence it is reasonable to infer that goods were appropriated by the applicant and the respondent was deprived of the goods resulting in financial loss.
22. As a consequence of the above I determine that the employer was correct in arriving at the finding the applicant was guilty of the charges.

THE ALLEGATION THAT THE APPLICANT'S DISMISSAL WAS PROCEDURALLY UNFAIR

23. The applicant was notified to attend a disciplinary hearing, was represented by his union at the hearing, was found guilty and was informed of the presiding officer's decision and referred the matter to the Council. In taking the aforesaid into question I determine that the dismissal of the applicant was procedurally fair.

APPROPRIATENESS OF SANCTION

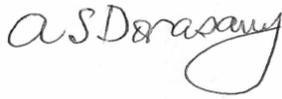
24. Theft from state institutions especially hospitals and clinics has reached alarming proportions. The net result being that an enormous burden is placed on that state to discharge its obligation to provide adequate and effective service to the public.
25. I concur with the presiding officer that theft should not be tolerated and severe sanction would send a message that theft of lack of diligence in protecting state assets would not be treated lightly. The sanction imposed on the applicant was appropriate.

AWARD

26. The dismissal of the applicant was both substantively and procedurally fair.
27. The applicant's application is dismissed and he is not entitled to any relief.
28. No order for costs is made.
29. This file should be closed.

DONE AND SIGNED IN DURBAN ON THIS 5th DAY OF DECEMBER 2013.

signature

A handwritten signature in cursive script, appearing to read 'aSDorasamy', written in black ink.

Arbitrator: Anand Dorasamy