



ARBITRATION AWARD

Panellist/s: Leslie Martin
Case No.: PSHS222-10/11
Date of Award: 15-Feb-2011

In the ARBITRATION between:

N.E.H.A.W.U. on behalf of P. Hermanus

(Union / Applicant)

and

Department of Health- Western Cape

(Respondent)

DETAILS OF HEARING AND REPRESENTATION

1. The arbitration took place at the offices of the Department of Health, Dorp Street Cape Town on Wednesday 2 February 2011. The applicant, Ms. Petronella Hermanus (Hermanus), was represented by Mr. A. Meniers, an official with N.E.H.A.W.U. The respondent, the department of Health, Western Cape (the respondent), was represented by Mr. X. Nginase, a senior labour relations officer and Mr. R. Collop, an assistant director.

ISSUE TO BE DECIDED

2. Was the dismissal of Hermanus fair?

BACKGROUND TO THE ISSUE

3. Hermanus worked for the respondent from January 1986 until 19 May 2010 when she was dismissed. At the time of such dismissal Hermanus was a general assistant and earned R5,300.00 (five thousand three hundred rand) per month.

SURVEY OF EVIDENCE AND ARGUMENT

4. A common bundle of documents was handed into evidence.
5. It was common cause that Hermanus had been dismissed for being in possession of stolen property that belonged to the State viz. 4 packets of abdominal swabs, 1 packet of liquid dishwasher and 1 theatre cap and for offering to pay R100.00 (one hundred rand) to the security officer who had apprehended her in order that the matter not be reported to management.
6. It was agreed between the parties that Hermanus had stolen the said items
7. Catherine Dorothea Jonkers (Jonkers), a senior security officer and Noel Adonis (Adonis), a senior housekeeper at Karl Bremer Hospital, testified under oath for the respondent.
8. Hermanus testified under oath on her own behalf.

THE EVIDENCE FOR THE RESPONDENT:

9. During a routine search Jonkers had discovered the items in Hermanus' bag.
10. Upon Jonkers asking Hermanus where she got the items and telling her that she would have to confiscate the items, Hermanus said to Jonkers that she would give her R100.00 (one hundred rand) to let her go.
11. Jonkers told her that she could not do that as it was her job. Hermanus said that that was fine.
12. After Jonkers had taken the identity details of Hermanus, Hermanus had left and Jonkers reported the matter to Mrs. Du Plessis who took the matter further.
13. On a previous occasion Jonkers had apprehended another employee, Bosman, who had some items including a tin of paint in her car.
14. She had also reported this incident to du Plessis.
15. Jonkers could not estimate the value of the items that Hermanus had stolen.
16. During an interview of Hermanus by Adonis who had been appointed to investigate the matter, Hermanus had told him that she had offered to give Jonkers R100.00 (one hundred rand) if she let her go.
17. He obtained confirmation from Jonkers that Hermanus had offered her R100.00 (one hundred rand).
18. Hermanus had declined representation at the disciplinary hearing
19. Hermanus had pleaded guilty to both charges at her disciplinary hearing. She had pleaded in mitigation, showing remorse for everything that she did.

THE EVIDENCE FOR THE APPLICANT:

20. When Jonkers searched Hermanus' bag only the two of them were present in the room.
21. Jonkers had said to Hermanus that if it were only a few items that she had had in her bag she would let her go.
22. Hermanus did not offer Jonkers any money and did not know why she would make such an allegation.
23. Adonis had approached Hermanus as a friend and had told her not to tell anyone that he was investigating the matter.
24. Adonis had told Hermanus that it was not a big case and that she did not need a representative. He had however asked her several times about a representative.
25. Hermanus did not confirm with Adonis that she had offered Jonkers R100.00 (one hundred rand).
26. Hermanus did not plead guilty to both charges but did so in respect of only one. She had not been told how the procedure works.
27. Adonis had not given Hermanus an opportunity to talk at the disciplinary hearing.
28. Hermanus had never offered a bribe to Jonkers.

ANALYSIS OF EVIDENCE AND ARGUMENT

29. The evidence presented at this arbitration shows that Hermanus had stolen the items and that she had been dismissed therefore.
30. Hermanus had also been dismissed for having attempted to bribe Jonkers but denies that she had done so.
31. In this regard Hermanus had been unable to suggest a reason for Jonkers' having testified under oath to the effect that Hermanus had offered her the R100.00 (one hundred rand). Her defence was a bald denial of having done so.
32. Even in respect of the testimony of Adonis that Hermanus had confirmed to him that she had attempted to bribe Jonkers, Hermanus offered only a bald denial as a defence.
33. I cannot find fault with the testimony of Jonkers and Adonis in respect of the allegation that Hermanus had attempted to bribe Jonkers. I therefore accept their testimony in this regard and reject that of Hermanus.
34. Regarding the contention of Meniers that the respondent had been inconsistent in in application of discipline especially in so far as the allegation of theft in the Bosman case and that of Hermanus is concerned, this no longer becomes an issue. This is so as Hermanus had been dismissed for both theft and her attempt to bribe Jonkers.

35. Regarding the fairness of the procedure afforded Hermanus in her dismissal the evidence shows that she had been afforded an opportunity to state her case. The evidence shows further that she had been afforded an opportunity to appoint a representative at her disciplinary hearing but that she had declined such opportunity.

36. Having considered all the evidence presented at this arbitration I find that the dismissal of Hermanus was fair both procedurally and substantively.

AWARD

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

COMMISSIONER: L. MARTIN



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