



# ARBITRATION AWARD

Panellist: Bhekinhlanhla Stanley Mthethwa  
Case No.: PSHS228-10/11  
Date of Award: 15 June 2011

In the ARBITRATION between:

**HOSPERSA obo Mohale ,K**

(Union / Applicant)

and

**Department of Health: GP**

(Respondent)

**Union/Applicant's representative:** G. Khoza.  
**Union/Applicant's address:** P.O. Box 8789  
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**Respondent's representative:** K. Maphunye  
**Respondent's address:** Private Bag X 085  
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Telefax: (011) 355-3358

### **Details of hearing and representation:**

1. The matter was scheduled for arbitration on 4 February 2011 and remained part heard and was heard again on 29 April 2011 at the Bank of Lisbon Building in Johannesburg. Mr. E. Khoza a trade union official from HOSPERSA represented Mr. K. Mohale (hereinafter referred to as the Applicant) and Ms. K. Maphunye represented the Department of Health (hereinafter referred to as the Respondent). The proceedings were digitally recorded.
2. Having presented their respective cases, parties agreed to submit heads of argument by 6 May 2011 and only the respondent did so on 1 June 2011. The last day of this arbitration is thus 15 June 2011

### **Issues to be decided:**

3. The issue to be decided is whether or not the dismissal of the applicant was substantively fair.

### **Background to the issue:**

4. The applicant was appointed as a Driver. He continued in that capacity until his services were terminated for an alleged misconduct.

### **Summary of evidence and arguments:**

5. All witnesses gave evidence under oath. This is a summary and it reflects all the relevant evidence and arguments heard and considered in deciding this matter. The respondent led evidence of Mr. Edgar Almerio Bothma, Ms. Phuti Rachel Ngoepe and Mr. Alpheus Mangata Mamabolo. The applicant did not testify. Their evidence may be summarized as follows;

### **Respondent's case:**

6. The respondent contended that the applicant was dismissed for misconduct in that on 24 February 2008 he wilfully or intentionally took possession of the state vehicle with the registration number GFS 837G on an unauthorized trip where he got involved in an accident leading to damages amounting to R2 850 to the said vehicle. He also committed a similar transgression on 1 October 2008. As a result of the commission of the said offences the applicant was charged, found guilty and dismissed. It was on these bases that the respondent contended that the applicant's dismissal was fair.

### **The respondent called three witnesses in support of its case.**

### **First witness - Edgar Almerio Bothma**

7. Mr. Bothma testified as follows:
8. At the time of the incident he was supervising the applicant and he was responsible to make duty roster. It was his responsibility to see to it that employees have signed on and off on the attendance register. All drivers were under his supervision. Before a driver embarks on a trip there must be a transport form/ trip authority that must be completed. Any person in the wards that required driver's services he would complete a trip authority before a driver could be sent out.
9. It was not permitted to dispatch a driver verbally without any written and approved trip authority. On 24 February 2008 he got a message that the applicant had bumped a gate. He went to check what had transpired. Upon his arrival at the scene he could not find the applicant in the car. Thereafter the applicant disappeared for a week and he had to use another driver to fill in for the applicant.
10. The applicant did not have trip authority to use the vehicle that night. The incident occurred over the weekend. If there was a job to be done over the weekend the necessary arrangements would be made on Mondays. In that case the driver shall complete a log sheet and sign a trip authority on Monday. In this instance there was no paper work.

### **Second witness – Phuti Rachel Ngoepe**

11. Ms. Ngoepe testified as follows:
12. As an Assistant Manager she was in charge of the hospital during the night.
13. If a transport was required at night she would be called to authorize a vehicle. She was only authorizing vehicles during the night so that the whereabouts of a car would be known. The driver would leave the log sheet and trip authority at the transport department after using the car. The vehicle has never been authorized verbally hence there was a transport form.
14. In a case where a patient needs to be transported a patient's name and the destination would be recorded on the transport form. Where a doctor needs to transfer a patient a recommendation would be made and she would sign a transport form. When the car was bumped against the wall she was on duty and it was driven by the applicant; the applicant was not authorized to drive the car. She was alerted by another driver from the Coronation Hospital that the applicant was involved in the incident at the gate.

15. The applicant was travelling with an unknown lady in the car when the incident happened. The lady was taken to the casualty for treatment in the hospital. She thought the applicant would come and report the incident but he did not report the incident. When she realised that the applicant was not reporting the matter; she then phoned the applicant and instructed him to come to her office to explain the incident. The applicant disappeared and did not come to her office. After sometime she called the applicant again and at that time his mobile phone was on the voice mail. She then interviewed the lady that was travelling with the applicant and the lady told her that they were from a party in Westdene when the incident happened. She had to find another driver to come and stand in for the applicant when he disappeared on the night in question.

**Third witness – Alpheus Mangata Mamabolo**

16. Mr. Mamabolo testified as follows:
17. He was responsible to render driving services to the hospital including taking the patients from one hospital to the other; he would also be sent to collect medication. They were not getting verbal authorisation to use vehicles but they were given written trip authority at all times.
18. They were not expected to leave the hospital without any trip authority; even in case of emergency they will be given a trip sheet to complete before taking a trip.

**Applicant's case:**

19. It was the applicant's case that the vehicle in question was authorised by the applicant's immediate supervisor. He did not commit any offence for driving the said vehicle. It was on these bases that that the applicant contended that his dismissal was substantively unfair.

**The applicant did not testify and did not call any witness.**

**Analysis of evidence and arguments:**

20. It is common cause that if there is a dismissal, the employer bears the onus in terms of section 192 (2) of the LRA to prove that the dismissal of the employee was fair. On the other hand section 188 (1) provides that a dismissal is not unfair if the employer proves that the reason for dismissal was for a fair reason based on the employee's conduct (and that the dismissal was effected in accordance with a fair procedure).

21. It was common cause that the applicant was only challenging the substantive fairness of the dismissal. Accordingly, it was common cause that should I find substantive fairness the appropriate sanction could be a dismissal.

**The allegation that the applicant was gross negligence when he took possession of the state vehicle without authorization on 24 February 2008 and got involved in the accident that led to the damages amounting to R2 850 to the state vehicle**

22. It should be noted that the applicant elected not to lead any evidence. Consequently, the only evidence before me is that of the respondent. It became abundantly clear during both evidence-in-chief and cross-examination of all three respondent witnesses that there was a rule i.e relating to authority to possess and usage of the state vehicle. The rule was that before a driver takes any assignment a trip authority should be issued authorizing him to be in possession of the state vehicle. I am persuaded to hold that the rule was reasonable under the circumstances. Further that the applicant must have known about the rule or in other words ought reasonably to have known about it.
23. All witnesses of the respondent in particular Bothma and Ngoepe testified that a trip authority should be issued before a driver is sent out for any assignment. This version was corroborated by Mamabolo who was a driver himself. Both Bothma and Ngoepe further testified that the vehicle was found unattended after the incident and the applicant was nowhere to be found. The applicant did not have authority to be in possession and drive the state vehicle on 24 February 2008. Ngoepe had instructed the applicant over the phone to come and explain how the vehicle got involved in the accident but the applicant decided to switch off his mobile phone and disappeared. The applicant did not dispute this crucial piece of evidence. Despite that the applicant's act of disappearance after the incident is consistent with a person who was desperately trying to conceal his wrongful deeds. Therefore, I accept the respondent's testimony that it was the applicant who was driving the state vehicle on the day in question. I also find that the applicant took possession of the state vehicle without authorization on 24 February 2008 and got involved in the accident that led to the damages amounting to R2 850 to the state vehicle.
24. It is also my findings that the applicant was aware of the rule and was guilty of breaching the rule relating to possession and usage of the state vehicle. The applicant was unable to account for the usage of the car on 24 February 2008 when he met the accident and decided to disappear in a thin air.

25. Undoubtedly, the applicant breached the rule of which he was aware of, the rule is that the driver of the state vehicle must be authorised and be in possession of a trip authority before he could drive the state vehicle, the applicant drove the vehicle on 24 February 2008 without a trip authority.

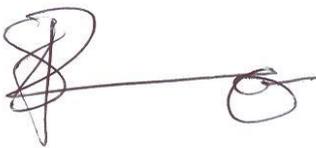
**Appropriateness of the sanction**

26. I have taken full account of the submissions made on behalf of the applicant including his length of service.
27. Having taken all the factors into consideration as required by schedule 8 of the LRA and Sidumo's case, I find that the gravity of the offence committed by the applicant is one that under the circumstances warrants dismissal and I make the following award.

**Award:**

28. Dismissal of Mr. Kaizer Mohale is confirmed, as substantively fair.
29. Mr. K. Mohale's application is dismissed and he is not entitled to any relief.
30. No order for costs is made.
31. This file should be closed.

**DONE AND SIGNED IN JOHANNESBURG ON THIS 15<sup>TH</sup> DAY OF JUNE 2011.**

A handwritten signature in black ink, consisting of a large, stylized initial 'S' followed by a horizontal line and a circular flourish at the end.

**Arbitrator: Bhekinhlanhla Stanley Mthethwa**