



ARBITRATION AWARD

Panellist/s: Leslie Martin
Case No.: PSHS230-10/11
Date of Award: 28-Mar-2011

In the ARBITRATION between:

PSA obo R. Hopley

(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 in Dorp Street Cape Town on 9 March 2011. The applicant, Ms Rosa Marie Hopley (Hopley), was represented by Mr. J. Kapp, an official of the PSA. The respondent, the Department of Health Western Cape (the respondent), was represented by Mr. R. Collop, its assistant director.

ISSUE TO BE DECIDED

2. Was the conduct of the respondent in issuing Hopley with a written warning fair?

BACKGROUND TO THE ISSUE

3. Hopley was given a written warning for late coming between 3 August 2010 and 13 October 2010. As a consequence of the written warning 5 leave days were deducted from Hopley's leave.

SURVEY OF EVIDENCE AND ARGUMENT

4. Each party handed a bundle of documents into evidence. No objections were recorded by either party.
5. Hopley and Juanita Fritz (Fritz) testified under oath for Hopley. Rashiek Schroeder (Schroeder), a deputy director and Hopley's direct line manager at the time, testified under oath for the respondent.

THE EVIDENCE FOR THE APPLICANT:

6. Although Hopley could not recall the reason for her coming late or leaving early between 3 August and 13 October she did have car related problems that time.
7. She would always work in the time she had come late or left early and without having been told to do so.
8. It was not standard practice to add up an hour or so taken to see the doctor or to attend to a break-in at home, with a view to working it in later.
9. When she had wanted time off to fix her car she had tried to get permission from Schroeder for the day off and to work it in later but he was not available. So she asked Mr. Fredericks, a pharmacist who had been working there for a long time. He had told her he was sure that it was in order and that he would inform Schroeder.
10. There were no attendance registers kept but the supervisors of the various departments monitored their staff individually.
11. Later that morning at approximately 10H00 to 11 h00 Hopley received an sms from Schroeder stating that she could not take a day's leave on that basis i.e. working in the hours and that she would have to apply for unpaid leave.
12. Hopley had not acted differently to the manner in which she had for 17 years and would not have taken off on the basis that she take a day's unpaid leave had she known this beforehand.
13. The time that she had come late Schroeder had said it was fine and had not taken disciplinary action against her. She had not been required to work the time back and the fact that she would get permission from other senior employees had never been disputed.
14. Schroeder had never communicated communication protocols to Hopley.
15. One, Ms. ncibi, a personnel officer, who is an employee of a lesser rank than Schroeder, chaired the disciplinary hearing to which she had been summoned on 31 March 2010. Hopley did not know whether this was a formal meeting or not.
16. Schroeder had drawn only Hopley's turnstile record and none of the other staff whom Hopley had heard had also transgressed in terms of late coming and leaving early. At that meeting he had given her an analysis of the time she owed the Western Cape Medical supply Centre.

17. Schroeder's discipline should have been corrective as it was the first time he had taken action against Hopley. The turnstile record at page is Hopley's for 3 August to 13 October. Hopley did not rectify all the periods reflected thereon
18. She may have done so on certain occasions but could not remember.
19. Schroeder should have raised these with her when they happened
20. Schroeder had spoken to Hopley regarding the turnstile report and had asked her which individuals had given her the time off.
21. It was impossible as it was so long ago and nobody could remember who had given her permission to take the time off as nobody could remember the times.
22. He was also supposed to have informed her of his whereabouts like she did him.
23. Schroeder's supervisor is located at head office which is about a 15 minutes walk away from his office.
24. The turnstile report does not show the reason for Hopley's leaving the building.
25. From 2006 to 2010 Fritz had acted as senior State accountant. She was not in the same department as Hopley but all resorted under administration.
26. During August 2009 Hopley had asked Fritz on occasion for permission to leave early as there was no manager on duty in her department so that she was aware Hopley's leaving. This was a general practice.
27. At the time Fritz was acting in a level 8 position otherwise she is of the same rank as Hopley i.e level 7.

THE EVIDENCE FOR THE RESPONDENT:

28. It was possibly not fair of the respondent to expect Hopley to recall the reason why she had left early.
29. There could have been instances where Hopley had left without Schroeder's permission.
30. As a consequence of Hopley's transgression 2381 had been lost. The lateness of the disciplinary action taken against Hopley was as a consequence of the time it took for Schroeder to obtain an analysis of the turnstile report and to give it to Hopley.
31. Hopley had indicated to Schroeder that she had obtained permission from other managers to leave work early.
32. In Schroeder's division any individual requesting to come late or leave early or who had left early or arrived late was responsible to report to Schroeder and in his absence to either Alber Glass, a pharmacist, or Steve Theron
33. Hopley's normal working hours were from 7h30 to 16h00. Then she changed working hours from 7h45 to 16h15. This was acceptable as she worked 8 hours.

34. There could have been instances where Hopley had left with the permission of Schroeder. The calculation of the amount of hours lost was incorrect. The turnstile report would not reflect the reason for Hopley's leaving early.
35. When Schroeder had given Hopley the turnstile report in order that she might work this out she had told him that he had not given her permission but that she had sought permission from other managers.

ANALYSIS OF EVIDENCE AND ARGUMENT

36. In its written closing arguments the respondent raised a point in limine. It argues that the applicant is dealing with an issue pertaining to a benefit when it raises argument in respect of the unpaid leave.
37. In dealing with the point in limine raised by the respondent I find that it is abundantly clear that the contention of the applicant is not to do with the question of a benefit but rather the fact that the respondent had implemented a sanction which affects the benefit.
38. I am therefore satisfied that the matter referred is one of an unfair labour practice regarding disciplinary action short of dismissal.
39. In dealing with the incident of Hopley's absence from work around the time of the repair of her motor vehicle it would be appropriate to consider the fact that Hopley was unable to get hold of Schroeder and that she said how difficult it always was to get hold of him.
40. Schroeder on the Friday had sent her an sms between 10/11 a.m leading one to conclude that Fredericks had managed to contact Schroeder and quite quickly too given the hour of the day.
41. In this regard particularly noticeable is the fact that Hopley had attempted to phone Schroeder on the Thursday which she testified was a public holiday. She ought not to have been surprised that Schroeder was away on such a day. In fact it's being a public holiday would suggest that Schroeder is in fact not at work.
42. While Hopley's testimony in this regard is vague it would not be unreasonable for me to then conclude that she had then contacted Fredericks on the Friday, unless of course she had his contact details as well. Such is the unlikelihood of this being the case that I would conclude in the absence of evidence to that effect that Hopley does not have such contact details for Fredericks. It would therefore not be unreasonable to conclude that Hopley had contacted Fredericks the Friday morning when he was at work.
43. There is furthermore no evidence that Hopley had instead or first tried to contact Schroeder that Friday morning. This is what Hopley ought to have done given the fact that Schroeder was her direct line manager and not Fredericks.
44. I reiterate, the fact that Schroeder contacted Hopley as early as he did that Friday and the ease with which he had probably done so leads me to conclude that Hopley in fact did not attempt properly to contact Schroeder to obtain from him the necessary permission to have the Friday off.

45. I am also of the view that as a consequence of the aforesaid Schroeder was then entitled to ask Hopley to take a day's unpaid leave.
46. In considering the fact that Schroeder had requested the leave form from Hopley already on 29 September and that he forwarded a reminder to Hopley on 13 October to which Hopley only then responded that she had got permission from Fredericks again leads me to conclude that Hopley is in fact reluctant to communicate with Schroeder in matters where she is in fact obliged to by virtue of their ranking and authority in terms of their working relationship.
47. I furthermore accept Schroeder's remarks that Fredericks is not entitled to grant Hopley leave.
48. Hopley's response as to why should Fredericks then have granted her the day off if he did not have the authority to do so must then be considered in the context of what she herself said Fredericks' response was when she approached him.
49. According to Hopley's own testimony Fredericks had said that he was sure that it would be fine and that he would inform Schroeder cannot be said to be granting Hopley permission to take leave.
50. It would in fact have been appropriate for Hopley to have called Fredericks to testify in corroboration of what she contended he had said.
51. Furthermore, and in respect of the evidence and argument pertaining to the turnstile report Schroeder had conceded that it was probably unfair to expect of Hopley that she recall what had happened in respect of the irregularities in timekeeping reflected thereon.
52. The evidence of Fritz however is of her having given Hopley permission to leave earlier on at least 3 occasions during that time.
53. The entire body of evidence before me shows clearly that Hopley had transgressed as alleged on numerous occasions between 3 August and 13 October 2009. This is manifested particularly in her failure to contact or attempt to contact Schroeder on Friday 29 September 2009, preferring to deal with Fredericks. The evidence is clear that Schroeder was her direct supervisor whom she ought to have requested permission of on that day and notwithstanding the fact that she had telephoned him the day before.
54. There are also those occasions that she obtained permission from Fredericks and Fritz, which occasions do not constitute the valid authorization as these persons did not have the power to do so.
55. Schroeder's testimony in this regard was clear: it was Albert Glass and Steve Theron who had the authority to grant authorization to an employee to arrive late for or to leave early from work.
56. There is before me sufficient evidence to conclude that the sanction of a written warning was justified.

57. Regarding the deduction of leave days from Hopley the evidence is clear that it could not generally be established accurately what the quantum thereof was. In such circumstances it would then be left to the respondent to guess the appropriate overall quantum for the purposes of imposing such sanction. As stated above the respondent clearly could not do so. It was therefore unfair of the respondent to deduct the leave days of Hopley as it did as a sanction. However the evidence shows that Friday 29 September Hopley took off the entire day. In respect of this day therefore I am of the view that the respondent can legitimately deduct only one day's leave from Hopley

AWARD:

58. In making this award I have taken into account the provisions of the Labour Relations Act 66 of 1995 as amended in particular sections 193 and 194.

59. I order that the sanction of a written warning remains enforced. I order that the respondent deduct only one day's leave from Hopley's accumulated leave.

COMMISSIONER: L. MARTIN



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