



ARBITRATION AWARD

Panellist/s: Joseph Mphaphuli
Case No.: PSHS259-11/12
Date of Award: 31-May-2012

In the ARBITRATION between:

HOSPERSA obo Hobyane, R
(Union / Applicant)

and

Department of Health - Gauteng
(Respondent)

Union/Applicant's representative: _____
Union/Applicant's address: _____

Telephone: _____
Telefax: _____

Respondent's representative: _____
Respondent's address: _____

Telephone: _____
Telefax: _____

DETAILS OF HEARING AND REPRESENTATION **DETAILS OF HEARING AND REPRESENTATIONS**

The hearing took place at the Department of Health in Tshwane. The hearing was constituted in terms of Section 191 of the Labour Relations Act 66/1995.

Mr. Machiche Labour Relations Officer appeared for the Respondent. Appearing on behalf of the Applicant was Mr. Khoza Labour Relations Officer in the service of Hospersa, employee organisation.

The proceedings were digitally recorded.

ISSUE IN DISPUTE

Whether the dismissal was fair or not and the appropriate remedy, if any.

BACKGROUND TO THE DISPUTE

The Applicant commenced employment on 01 October 2007. She was employed as a keyboard operating clerk. She was remunerated at R 6 300.00 per month. Her dismissal was occasioned on 21 May 2010. Dismissal was for misconduct.

Only the substantive fairness of the dismissal was in dispute. The Applicant Party favoured retrospective reinstatement in the event of a favourable award.

SURVEY OF EVIDENCE AND ARGUMENT

Mrs. Khensani Ritsuri a former employee gave testimony. She was previously employed as an H.R Officer at Steve Biko Hospital. She received a call on the 27 August 2009. The call was from Joshua Doore. The caller wished to confirm employment for one Stela. According to the caller the affected employee commenced employment on 01 September 2009. The affected employee was said to be employed as a community service nurse.

She advised that the said individual was not on the records of the institution.

The caller subsequently faxed her the letter of appointment in the caller's possession. She established that the contact number stated in the letter of appointment was the Applicant's number. The other feature in the letter linked to the Applicant was the work station namely, nursing management.

Finally the residential address stated on the letter was the Applicant's residential address.

Mrs. Gladys Moitshudu Malau, professional nurse testified. She was employed at Steve Biko Academic Hospital. She confirmed that the fax number, contact number and the Department identified in the letter used as an appointment letter were associated with the Applicant. She knew for a fact that the Applicant was a close friend of the person who attempted to open an account at Joshua Doore using a fraudulent letter of appointment. She also had knowledge that the Applicant shared accommodation with the said person.

The Employer closed its case.

The Applicant testified in her case. She denied being the author of the contested appointment letter. She did not understand why her particulars appeared on the letter.

She was acquainted with Refilwe Silowa, the person who attempted to open an account with a fraudulent letter at Joshua Doore. She was however, not friends with the said Refilwe.

ANALYSIS OF EVIDENCE AND ARGUMENT

Factors of common cause or evidence that was not contradicted was that:

- The applicant and the fraudster were friends.
- The Applicant and the fraudster shared residence.
- The particulars in the letter pointed to the Applicant.

At best the Applicant's defence was a total denial for any wrong doing. It was also the Applicant's case that the fraudster had made an affidavit or testified in her favour in the criminal proceedings.

It was the Applicant's case that the fraudster vouched for her innocence and was as a result acquitted in the criminal proceedings.

The Respondent's evidence that the letter heads were only accessible to officers in the affected section was untainted and untested.

Given this fact and taking into account the close relationship between the Applicant and the fraudster I do not find it too far fetched that the circumstances point to the guilt of the Applicant.

It is an accepted fact that the Applicant had a good friendship with the fraudster. The fraudster was unlikely to incriminate her friend whereas the likelihood of the Applicant to do the fraudster a favour was high. After all the fraudster had done the Applicant a great favour by offering her accommodation at the time when she needed it most. The possibility that the Applicant wished to return the favour is over riding. Offering the fraudster an opportunity to obtain goods under false pretence was one way of doing it. The Applicant was confident that the fraudster would not sell out on her.

All factors taken into account the balance of convenience favours the Respondent's version.

The misconduct was gross and had the effect of damaging the employment relationship beyond repair.

AWARD

1. The dismissal was not unfair.
2. I dismiss the application.



Joseph Mphaphuli
PHSDSBC Panelist