



## ARBITRATION AWARD

---

Case Number: *PSHS321 -11 /12*

---

Commissioner: *Adv. Thabang T. Serero*

---

Date of Award: *11 February 2014*

---

In the **ARBITRATION** between

***NEHAWU obo Chitja***

(Union/Applicant)

And

***Department of Health – Gauteng***

(Respondent)

**Union/Applicant's representative:** *Mr. D. Melk*

Union/Applicant's address: *P. O. Box 7549*

*Johannesburg*

*2000*

Telephone: *011-933-9093*

Telefax: *086-669-2253/086-271-7580*

**Respondent's representative:** *Ms K. Maphunye*

Respondent's address: *37 Cnr Market and Saure Street*

*14<sup>th</sup> floor Bank of Lisbon*

*Johannesburg 2001*

Telephone: *(011) 355-3184*

Telefax: *(011) 355-3358/086-618-4403*

E-mail:

**1. DETAILS OF HEARING AND REPRESENTATION**

- 1.1. This matter was set down for arbitration on 22 March 2012 and 10 August 2012. It remained part-heard and was finalized on 20 January 2014. A union official, Mr D. Melk represented the applicant (Mr Chitja), whilst the respondent was represented by its Labour Relations Officer, Ms K. Maphunye.
- 1.2. At the conclusion of the proceedings the parties agreed to submit written closing arguments within 7 days. Only the respondent's written arguments had been received at the time of writing this award.
- 1.3. A number of issues were raised in the parties' evidence. But, for the sake of brevity, I shall not repeat same in this award.

**2. ISSUE TO BE DECIDED**

- 2.1. Whether the applicant's dismissal was both substantively and procedurally fair.

**3. BACKGROUND TO THE ISSUE**

- 3.1. The applicant was employed as a Chief Personnel Officer. He (applicant) was dismissed for misconduct.

**4. Respondent's Testimony**

- 4.1. The respondent called three witnesses namely, Mr C. Woodworth, Ms T. Mpati and Mr. G. Papo.
- 4.2. The gist of the respondent's case is that the applicant was dismissed for submitting fraudulent leave applications and allowing his subordinates to approve his leave applications.
- 4.3. The respondent's first witness, Mr C. Woodworth confirmed that he is employed as a Deputy Director within the Human Resources Division at the Chris Hani (Baragwanath) Hospital. His duties entailed, amongst others, the dealing with strategic issues and the overall management of the Human Resources Division. He further explained that in terms of the respondent's leave application policy, an employee is required to complete the leave application form and engage his or her manager for approval. The employee must provide all the required details and the Head of Department or designate must approve the leave. The application form must be captured on the system and signed by a representative of the unit. Thereafter, the supervisor must sign the leave application. In this way, an employee cannot instruct his subordinate to sign and approve his leave application.
- 4.4. The respondent's second witness, Ms T. Mpati, confirmed that she was employed as the Personnel Officer on 1 December 2008. She was appointed as an Acting Principal Personnel Officer in 2010. She also confirmed that the applicant was the Chief Personnel Officer.
- 4.5. Ms T. Mpati testified that the applicant's leave application forms were signed by her subordinate, Ms S. Shongwe (See page 2, bundle B). The latter was instructed to sign as the applicant's supervisor. Another subordinate Mr Tsotetsi was also instructed to sign the applicant's leave application forms (See page 2, bundle B). This was a violation of the hospital's leave application procedures as the applicant's leave forms must be signed by his superior. The applicant was employed at level 8; whilst she and the two subordinates were employed at level 5.

- 4.6. Further, Ms T. Mpati explained that she approached the applicant about the irregular application. The applicant told her that he will investigate same. Additionally, she also informed the applicant's superior that his subordinates had signed his leave application forms. The latter told her that he will confront the applicant about the irregular leave application. Later, the applicant called her to his office and questioned her decision to inform his superior. He told her that this was not necessary because he had undertaken to investigate the matter. In actual fact, the applicant told her that this will result in her having to elect whether she wishes to continue reporting to him or his superior.
- 4.7. Ms. T. Mpati further stated that upon her return from a one day's sick leave, she discovered the application form on page 3 of bundle B was also signed by the two subordinates and processed on the system. She did not approach the applicant again due to his earlier reaction. The personnel number on the application form did not belong to the applicant. The applicant's personnel number is reflected on page 4, bundle B.
- 4.8. During cross – examination Ms T. Mpati stated that she did not know whether the applicant's relationship and his superior, Mr Papo, was good or not.
- 4.9. She confirmed that the applicant signed the leave application forms that appear on pages 1 & 10 of bundle A & B. The period of the leave was from 4 January 2010 to 8 February 2010. The forms were not signed by the applicant's supervisor.
- 4.10. Further, the document on page 2 of bundle B is dated 16 April 2010. She does not know whether the applicant had any reason to complete another leave application form. She nevertheless insisted that the problem was the unauthorized signatures and the fact that the second leave form did not reflect the whole duration of the applicant's leave. She refused to comment on the applicant's claim that he could not recall the exact leave days he had taken because he completed the leave forms on page 3, of bundle B four months later. Neither can she respond to the applicant's claim that he instructed his subordinates to sign the leave forms because of his bad relationship with his superior. The applicant's superior, Mr Papo, had previously signed and approved the applicant's leave form (See pages 1 & 10, bundle A & B).
- 4.11. Further, Ms T. Mpati stated that she was not aware of any alleged acts of misconduct by the applicant's superior, Mr Papo.
- 4.12. According to Ms Mpati, the applicant did derive some benefit by reducing the actual days of his leave on the second application. She said it was correct that the applicant had a credit of 5 days leave for 2009 and 2010 (See page 20, bundle B).
- 4.13. Indeed the applicant was not charged for the irregular leave application form reflecting the leave period of 17 September to 18 September 2009. This was due to the fact that the personnel number reflected on the document did not belong to the applicant (See page 5, bundle A).

## **5. Applicant's testimony**

- 5.1. The applicant confirmed that he was employed as the Chief Personnel Officer. He confirmed that he was aware of the allegations of misconduct which led to his dismissal. He was issued with the notice to attend the disciplinary enquiry outlining his rights including the right to representation. However, his representative, Mr Matjila was unable to attend the hearing because he had to attend to some problem in Limpopo. The chairperson refused to grant him a postponement and instead afforded him 40 minutes to prepare.

- 5.2. Further, he wrote a letter to the chairperson, Ms D. Radebe, to raise his concerns (See page 23, Bundle B). The latter responded in a letter that was sent to his representative, Mr Matjika (See page 17, bundle B). He was concerned that the chairperson, Ms D. Radebe was employed at level 10 and the initiator, Mr J. Phala was employed at level 7, whereas he is employed at level 8. In terms of the disciplinary code and Resolution 1 of 2003 the manager was supposed to effect discipline (See pages 24 & 31, bundle B).
- 5.3. The chairperson's findings do not explain how she arrived at the verdict that he was guilty. Neither does the document reflect the witnesses that were called at the enquiry (See page 19, bundle B). The findings do not indicate whether he was found guilty on all three charges that were levelled against him. The notice of the dismissal was issued by the Chief Executive Officer instead of the chairperson. This was done after 3 to 4 months instead of within 5 days. All this was not in compliance with the disciplinary code (See page 33, bundle B).
- 5.4. Further, the applicant stated that the charges preferred against him were baseless as he did not defraud the department. He did not submit the fake leave application forms. The forms were submitted by the leave section. The charge did not even indicate what the problem with the leave forms was. Nevertheless, the fake leave forms did reflect his name (See page 11, bundle B). He does not know who signed on his behalf and on behalf of the supervisor. He only saw the document around April 2010. This was four months after he had taken his leave. He took his leave from 4 January to 15 January 2010. He submitted the leave application form to his supervisor, Mr G. Papo.
- 5.5. The document on page 10 of bundle A reflects his 26 days leave from 4 January to 8 February 2010. He submitted the leave forms to his supervisor, Mr G. Papo on 31 December 2009. This period covers the period reflected on the fake application form on page 11 of bundle B. The total leave period on page 10 is 26 days whereas page 11 reflects 10 days leave.
- 5.6. Further, the document on page 12, bundle B reflects the leave from 18 January to 29 January 2010. Both pages 10 and 12 contain his signatures. However, the leave application on page 12 of bundle B was signed by the Clerical Personnel instead of the supervisor on 16 April 2010. This document was necessitated by the fact that he realized that the 10 leave days reflected on page 11 were incorrect. The leave section showed him page 11 after it was already signed and captured. So pages 10 & 11 reflect 20 days leave instead of the 26 days he had taken.
- 5.1. He claimed that he did not know why his supervisor, Mr G. Papo did not forward his activated leave application for capturing by the leave section. He insisted that his relationship with h Mr Papo was very bad. They were once involved in a physical altercation. He is also aware of the fraudulent acts committed by the finance department. In fact, Mr Papo had previously submitted fraudulent travel claims (See pages 4, 5, 6 & 7 Bundle B).
- 5.2. Finally, he did lodge an appeal with the Labour Relations department following his dismissal.
- 5.3. During cross – examination he confirmed that he was indeed employed in a managerial position. His duties involved the management of his subordinates, ensuring that they are paid timeously and that their leaves are

captured. And the Principal Personnel Officer signed the subordinates leave forms and forwarded them to him for approval.

- 5.4. The applicant could not explain why his representative did not solicit a postponement two days prior to the enquiry as outlined in the notice to attend the enquiry. Neither could he dispute the fact that his representative failed to attend the enquiry because he had to attend a conciliation hearing.
- 5.5. Further, the applicant confirmed that as he was employed within the Human Resources Department, he was capable of represent himself because he is conversant with human resource processes. It is correct that after the enquiry, he was afforded an opportunity to submit a written closing statement. The union official, Mr Mekgwe instead wrote a letter to the chairperson requesting some information.
- 5.6. He (applicant) could not dispute the fact that the Chief Executive Officer had the obligation to issue the letter of dismissal because he is the Accounting Officer. Neither could he dispute the fact that Resolution 1 of 2003 merely requires the chairperson of the enquiry to pronounce on the outcome.
- 5.7. The applicant could not dispute the fact that the department had followed proper procedures in effecting his dismissal. He merely stated that he did not commit the alleged misconduct. He argued that he completed the second leave form after he realized that his original leave form was not captured on the system.
- 5.8. Further, the applicant failed to explain why his supervisor, Mr Papo approved his initial leave application if indeed he had an ulterior motive. Neither could he explain why he tried to rectify the issue of the uncaptured leave in April 2010 if indeed he had approached Mr G Papo about the matter in February 2010. He also could not explain why the leave application form he completed to rectify the problem reflects 10 days leave instead of the 26 days leave had already used.
- 5.9. The applicant admitted that he violated the leave application procedures by requesting his subordinates to sign his leave form. He stated that the subordinates signed because his superior was not willing to do so. He nevertheless denied that this amounted to a fraudulent conduct.
- 5.10. He later, stated that he did not approach his supervisor to sign his leave form because he had no hope that he will help him.
- 5.11. The applicant's first witness, Mr J. Mekgoe confirmed that the applicant's representative, Mr Matjika requested him to solicit a postponement. This was because the latter had to attend to some family matter in Limpopo.
- 5.12. During cross – examination Mr J. Mekgoe stated that Mr Matjika did not inform him about the conciliation. He only told him that he was supposed to attend the disciplinary enquiry. He stated that he does not recall that the chairperson did not grant the postponement because he (Mr J. Mekgoe) failed to present the prove that Mr. Matjika had to attend a conciliation.

- 5.13. Further, Mr J. Mekgoe stated that he also does not recall that the applicant told the chairperson that he will represent himself as he was conversant with the Human Resources procedures.
- 5.14. The applicant's second witness, Mr P. Matjika confirmed that he was not able to represent the applicant at the disciplinary enquiry. This was because he had to attend to a problem at home in Limpopo. Thus, he requested his colleague, Mr J. Mekgoe to solicit a postponement.
- 5.15. During cross – examination Mr P. Matjika denied that his failure to attend the enquiry indicates that he did not view the applicant's matter in a serious light.
- 5.16. The applicant's third witness, Mr G. Papo confirmed that he is employed as an Assistant Director within the Human Resources Department. He also confirmed that the applicant was his subordinate.
- 5.17. Further, Mr G. Papo stated that he was called as a witness at the applicant's disciplinary enquiry. It is correct that as the applicant's superior he had to sign his annual leave application forms (See page 1, bundle A). The applicant took 26 days leave from 4 January to 8 February 2010. This leave was applied for on 28 December 2009.
- 5.18. He (Mr G. Papo) stated that after attaching his signature he is required to dispatch leave applications to the relevant section for capturing. He signed the leave application form in question on 6 January 2010. This was during the period he was appointed as the Acting Deputy Director. He was reporting to the Director, Mr Mbalati who was then seconded to the Hillbrow Community Services.
- 5.19. Further, the application could not be processed as it required three signatures and his superior could not sign as he had taken a compassionate leave. However, the fact that the application was not signed by the third person as required did not bar the applicant from commencing his leave. Hence the applicant was allowed to commence his 26 days leave.
- 5.20. According to Mr G. Papo he did not sign the annual leave application forms that appear on pages 2 & 3 of bundle A. The forms were not also signed by his superior. The document indicates that the leave would commence on 18 to 29 January 2010. This period is covered in the leave application forms that appear on page 1 of bundle A.
- 5.21. The leave application forms on page 3 indicate that the leave would commence on 4 January to 15 January 2010. However, Mr G. Papo stated that he was puzzled as to why the applicant was compelled to complete the two additional leave forms. In fact it is correct that the applicant stood to benefit because pages 2 & 3 reflects 20 days leave instead of 26 days he took as per page 1 of bundle A. As a result, the applicant would now have a credit of 6 leave days on the system. The applicant did not alert him of the two additional applications but they were processed on the system. Yet the original leave application form for 26 days leave was not processed on the system. The system would have rejected the two additional leave applications if the original 26 days leave was captured.
- 5.22. Certainly, the period reflected on pages 2 & 3 of bundle A does amount to 20 calendar days if you exclude weekends. The applicant had 5 outstanding leave days in September 2010 which he was not barred from utilizing.

- 5.23. There are number of reasons as to why there could be a delay in capturing leave applications on the system. There could be a back-log of leave applications or the applications may not have been forwarded for capturing timeously.
- 5.24. Mr G. Papo stated that it is incorrect that one of his colleague's Mpho Nefale was the Acting Deputy Director during period 28 December 2009 to 6 January 2010.
- 5.25. Further, he (Mr G. Papo) stated the he could not respond to questions about whether he was previously charged with any misconduct. It is correct that his travel claim forms were signed by Ms Baloyi who was employed at level 7.
- 5.26. Further, the two dubious leave application forms which were captured on the system resulted in the investigation of the applicant's leave applications.
- 5.27. Mr G. Papo denied that he his relationship with the applicant was strained and that they were once involved in a physical altercation. During cross – examination, he insisted that he had a good relationship with the applicant. He often visited the applicant's office to discuss about his favorite team, Orlando Pirates.
- 5.28. The applicant's original leave application was for a period of 26 days. The additional leave forms create an impression that he only took 20 days leave. The applicant was supposed to approach him to enquire as to why his original leave application was not captured on the system. Therefore, the applicant was dishonest by completing additional leave forms reducing the actual period of his leave.

## **6. ANALYSIS OF EVIDENCE AND ARGUMENT**

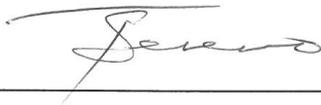
- 6.1. The respondent's version is that the applicant was employed as a Chief Personnel Officer and was dismissed for misconduct. He (applicant) was charged with dishonesty, fraud and falsifying company documents. The respondent referred to some legal authorities to argue that the dismissal of a dishonest employee was justified. This was particularly because the applicant was employed at a managerial level.
- 6.2. Furthermore,, the applicant failed to challenge the company version that he instructed his subordinates to approve his leave. This was strange because his original leave application was approved by Mr G Papo whom he now claims he could not approach because they had a bad relationship.
- 6.3. As indicated elsewhere in this award, the applicant has failed to submit his closing arguments. The gist of his case was that he did not commit the alleged misconduct. He merely sought to rectify the problem of his original leave application that was not captured on the system.
- 6.4. It is imperative to indicate that the applicant has indeed failed to challenge the respondent's version. It is no wonder he could not explain why he instructed his subordinates to approve his fraudulent leave application forms.
- 6.5. The fact that he may not have been in good terms with his superior does not justify flouting of the respondent's procedures. In fact this conduct gives credence to the respondent's assertion that he could approach his superior because the two leave forms were fraudulent. Additionally, the applicant stood to benefit from his dishonest and fraudulent conduct. He confirmed that the additional leave forms he completed reflected that he had been on leave

for 20 days instead of 26 days. This means he would have obtained 6 days leave credits even though had already taken 26 days leave.

- 6.6. The applicant could not explain why Mr G Papo had signed his previous leave application forms if indeed they were not in good terms.
- 6.7. The applicant was unable to substantiate his claims of inconsistency. In actual fact most his claims in this regard were not presented to the company witnesses. It was not even clear as to why he queried the signing of Mr G Papo's travel claim by a junior employee. Put differently no evidence was led on the applicable procedure.
- 6.8. Furthermore, the applicant's witness could not even assist his case. In particular his supervisor, Mr G. Papo. Hence he was forced to declare the latter a hostile witness. Mr G. Papo corroborated the testimony of the respondent's witnesses.
- 6.9. The applicant failed to dispute the fact that he was subjected to a fair disciplinary process. In fact most of his claims about procedural unfairness were not even presented to the respondent's witnesses.
- 6.10 It is trite that in employment law a premium is placed on honesty because conduct involving moral turpitude by employees' damages the trust relationship on which the contract is founded (See Sappi Novaboard (Pty) Ltd v Bolleurs 19 ILJ 784 (LAC) & Central News Agency v CCMA & another (1991) 12 ILJ 340 (LAC).
  
- 6.12 In the circumstances, I am unable to conclude that the applicant's dismissal was both substantively and procedurally unfair

## **7. AWARD**

- 7.1. The applicant's dismissal was both substantively and procedurally fair.
- 7.2. The application is dismissed
- 7.3. There is no order as to costs.



---

Adv. T. T. Serero.

---

Public Health

---