



ARBITRATION AWARD

Panelist: F.N.Bantwini

Case Number: PSHS323-11/12

Date of Award: 25 October 2012

IN THE ARBITRATION BETWEEN

NEHAWU obo Mazwi Skonzile: APPLICANT

AND

Department of Social Development-EC RESPONDENT

Union/Applicant's Representative : Ms. N. Mafanya
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Respondent's Representative : Mr. V. Majija

Respondent's Address : Department of Social Development
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DETAILS OF HEARING AND REPRESENTATIONS

1. This arbitration was part heard on 02 March 2012 and was finalized on 05 September 2012. It was heard in the offices of the respondent in Mount Ayliff. It came before the PHSDSBC in terms of Section 191 (1) 191 5 (a) read with Section 186 (2) (b) of the Labour Relations Act 66 of 1995 (the LRA). Ms. Nwabisa Mafanya, an official from NEHAWU appeared for the applicant, Ms. Sikhonzile Mazwi who was also in attendance while Mr. Vuyani Majija appeared for the respondent, the Department of Social Development. Parties agreed to submit written closing arguments on 14 September 2012. No arguments were received from the respondent.

ISSUE TO BE DECIDED

2. The issue to be decided is whether the applicant's suspension without pay as well as a final written warning issued by the respondent was fair or not.
3. I have to decide as to whether to order the respondent to pay costs for the postponements of 22 November 2011 as well as 16 April 2012.

BACKGROUND TO THE DISPUTE

4. The applicant, Ms. S. Mazwi referred a dispute to the PHSDSBC regarding her suspension without pay for 1 month and a final written warning imposed by the respondent. She was appointed by the respondent as a Junior Social Worker, salary level 7.

SURVEY OF EVIDENCE AND ARGUMENT

5. According to Ms. Mafanya's opening statement, the union is challenging both the procedural and substantive fairness of the sanctions of one month suspension without pay and the final written warning imposed by the chairperson of the disciplinary enquiry. The applicant seeks that both sanctions be set aside as a remedy.

Applicant's Evidence

6. The applicant, **Ms. Sikhonzile Mazwi** testified under oath as follows:
7. She works for the respondent as a Junior Social Worker, level 7 since 2008. She was allocated to do child abuse and ECDC programmes around July/August 2010. These programmes operate differently. She was not aware of the provisions of the business plan as she only saw it at the disciplinary hearing.
8. With regards to charge 3, she organized training on financial management skills which involve record and book keeping as well as how to utilize their monies. One of her tasks was to see to the smooth running of ECDCs by conducting visits and check if they write reports and also check if what is reflected in the reports is what they are doing and close gaps if there are any.
9. She advised the beneficiaries that they were responsible for the audit and training costs. Her job description does not indicate that she has to get authorization before developing a strategy to close gaps. Ms Giwu, her supervisor was made aware of the training. The ECDCs were audited for the first time and there was an audit query hence she identified the training gap on financial management.
10. The service provider was paid by some of the projects but some were later instructed by Ms. Lindi not to pay for the training. She testified further that she never damaged the name of the respondent as she was not the cause for the service provider not to be fully paid.
11. Under cross-examination, the applicant testified as follows;
12. She conducted training of the preschools on financial management because after they were audited there were audit queries. She advised Ms. Giwu who is hands on with ECDCs about the training and Ms. Lindi was also aware as she is Ms. Giwu's supervisor. Ms. Lindi instructed the preschools not to pay the service provider. The applicant stated that she never damaged the respondent's image as she never ordered preschools not to pay the service provider. There was nothing informing her to seek authorization before conducting training on ECDCs in her job description. She implemented the recommendations of the Auditor.
13. The first applicant's witness **Ms. Bonisa Benedicta Giwu** testified that she works for the respondent as an Assistant Manager for Child Youth Care. She was previously employed as an Area Co-coordinator for Children section. The applicant's supervisor was Ms Vuyokazi Lindi. When a gap has been identified in a programme, a supervisor is advised about the purpose of closing the gap. The intention is to let the supervisor know the plan, inform the supervisor not to get permission. The witness further testified that she was aware that all pre-schools had to be audited annually. There were different recommendations by the Auditor e.g. proper expenditure recording and annual budget preparation. The work plan agreements are usually signed at the beginning of April of each year.

14. In closing, **Ms Mafanya** argued as follows;
15. The respondent failed to inform the applicant about the findings of the disciplinary hearing. He breached clause 7.3 of the disciplinary code of the respondent.
16. With regards to substance, the applicant did not contravene any rule or legal obligation of the department as there is no rule suggesting that the applicant must seek permission when intending to perform a task or intervention to close a gap. The applicant also, did not damage the image of the respondent as she never instructed the ECDCs organization not to pay the service provider.
17. The applicant was not aware or was not reasonable expected to be aware of the following rules;
18. The business plan level agreements of the ECDCs as she never got orientation on ECDCs when she joined the programme. She was not aware of the procedure to follow when planning to conduct training. Ms. Lindi also testified that the applicant was never trained on ECDCs programme .The applicant's representative also stated that the respondent failed to comply with PFMA.
19. The applicant seeks reversal of a final written warning with one month suspension with no pay. Ms Mafanya further reiterated that the respondent is liable of paying wasted costs amounting to a sum of R4 375, 00 which she incurred on 22 November 2011 and 16 April 2012 respectively.

The respondent's evidence

20. Mr. Majija submitted in his opening statement that the respondent will rely on witnesses and on documentary evidence to prove its case. The respondent did not lead evidence and indicated before the sitting of 05 September that it has closed its case. Mr. Fekade attended the proceedings as an observer.

Cost order arguments

21. During the sitting of 22 November 2011 and 16 April 2012 the respondent made applications for postponement. The basis for the request was that the budget was not loaded and as such it was not accessible to the officials who were dealing with the case as travelling arrangements from King Williamstown to Mount Ayliff had to be made. The applicant's representative vehemently opposed both postponements stating that postponements are prejudicial to the applicant and the respondent should not have agreed on the dates as it is aware of its working environment.

22. Ms Mafanya finally submitted that the respondent must be ordered to pay the wasted costs of the arbitration proceedings in amount of R4 375,00 . Both postponements were granted with costs based on the fact that the respondent should have made an application for postponement in terms of Rule 23 of the PHSDSBC Rules. I consider the respondent's actions to have been frivolous and wasteful of the other parties' time.

ANALYSIS OF EVIDENCE AND ARGUMENTS

23. It must be noted that the respondent did not lead evidence. This means that there was no counter evidence presented to me. After considering the undisputed evidence presented by the applicant, the following is found:

24. It is common cause that the applicant referred a dispute to the PHSDSBC for allegations of unfair labour practice which emanated from her suspension and final written warning being issued by the respondent.

25. It is also common cause that the applicant was charged and found guilty of the following charges;

(a) Failure to comply with the provisions of the business plans and service level agreements of ECDCs by organizing/conducting training of ECDCs (preschools programme) in which she was aware that it is not covered in terms of the provisions.

(b) Wrongfully organizing use of ECDCs finance and damaging the image of the respondent/putting its name into disrepute by failing to ensure that the service provider was paid for the service.

26. The applicant disputed all the allegations and testified that she never got guidance/ training on ECDCs. She identified training gaps after there were audit queries on how the pre-schools were handling their finances, e.g. record keeping and budgeting. No authorization was supposed to have been sought by the applicant from her supervisor. Both Misses Lindi as well as Giwu was aware of the training. This evidence was corroborated by Ms. Giwu who was the applicant's witness and one of the applicant's supervisors at the time.

27. The applicant further testified that she never damage or put the name of the respondent into disrepute and never instructed the pre-schools not to pay the service Provider instead , Ms. Lindi instructed the pre-schools not to pay the service provider. She also testified that she advised the preschools that they are responsible for payment of audit and training costs.

28. In the absence of any evidence to the contrary by the respondent, the applicant's evidence must be accepted as truth. I am therefore satisfied that the evidence presented before me has established that the applicant's suspension without pay for 1 month and final written warning imposed by the respondent were substantively unfair but procedurally fair.

AWARD

29. I therefore make the following award:

- 30. I find that the applicant's suspension was procedurally fair but substantively unfair.
- 31. The respondent, the **Department of Social Development-EC** is ordered to set aside the final written warning imposed and pay the applicant, **Ms. Sikhonzile Mazwi**'s salary with full benefits for the month of December 2010 on 15 November 2012.
- 32. I further order the respondent, the Department of Social Development-EC to pay costs incurred by the applicant, Sikhonzile Mazwi due to postponement of 22 November 2011 and 16 April 2012 respectively.
- 33. The true extent of costs shall be determined after taxation in terms of the Rules of the PHSDSBC read with Section 138(10) of the LRA.



Signature
Faith Ncumisa Bantwini
PHSDSBC Panelist