



ARBITRATION AWARD

Panelist/s: Thuthuzela Ndzombane
Case No.: PSHS34-11/12
Date of Award: 9-Aug-2011

In the ARBITRATION between:

PSA obo R. Mopp

Applicant)

and

Department of Health: Western Cape

(Respondent)

Union/Applicant's representative: Mr. Strydom [Union Official]

Union/Applicant's address: Private Bag x

Cape Town

8000

Telephone: (021)

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Respondent's representative: Mr. Nginase [Labour Relations officer]

Respondent's address: Private Bag

Cape Town

8000

Telephone:

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DETAILS OF HEARING AND REPRESENTATION:

1. The arbitration hearing was scheduled for and heard on 28 July 2011 under the auspices of the Public Health & Social Development Sectoral Bargaining Council at the Provincial

Office in Cape Town. The applicant, Mr. Mopp, was represented by a PSA official, Mr. Strydom. The respondent, Department of Health –Western Cape, was represented by its Labour Relations Official, Mr. Nginase.

2.I proceeded with the matter in terms of Section 138(5) (b) (i) of the Labour Relations Act 66 of 1995, as amended (“the Act”). The proceedings were digitally recorded and handwritten notes were taken. Parties also concluded their cases by submitting orally closing arguments on the day of the hearing.

BACKGROUND

3.The applicant was employed by the respondent in August 2005 as Administrative Clerk. He earned a monthly salary of R 7831.50 [seven thousand eight hundred and thirty one fifty cents] prior to his alleged unfair dismissal dispute. He denied that his action were grossly negligent instead he admitted that he had acted negligently in handling the monies under his control.

4.The respondent stated that the applicant was charged for :

- *“Gross Negligence: between date and date you received cash and issued receipts to the amount of R8450.00 but had only R3100.00 cash on hand resulting in a loss of R5350.00”.*

5.The applicant was found guilty of the charge and dismissed accordingly. The respondent argued that the dismissal was both procedurally and substantively fair.

ISSUE TO BE DECIDED

6.I am required to determine whether or not the applicant’s dismissal was substantively fair.

SURVEY OF RESPONDENT'S EVIDENCE AND ARGUMENTS

7. **Alice Adonis** stated that she is the supervisor at Kleinflei Community Health Centre and she presented the following evidence under oath. She has been with the respondent for a period of 35 years and is employed as a Senior Administrative Clerk. Applicant worked under her command for a period of six years. All employees were trained to work with finances as to how to take care of the safe key, be responsible for signing of handing over's of the certificate, what to do with the money and how much is in the safe, to make consignment, get the money ready for banking.
8. The applicant knew how to issue receipts and what to do with the money. She stated that the office has a reception area and a security gate is always locked. In side the reception area there is an office where the safe is placed, used as a storeroom and to keep bags of employees. This office has a security gate that remains open for the duration of the day but locked afterhours.
9. On 21 June 2010 in the morning between 08:00am or 8:30 am she had asked the applicant to make a consignment but the applicant did not respond. She approached him again that he should make a consignment because Woodstock people would come and fetch the money. At around 10:00 am to 11:00 am the applicant had not made the consignment but he just called her to the office. He told her that there was a shortage of money but did not tell her how much was short. At that time the receipt book and money were still in the safe.
10. She then requested the receipt book so that she could first check the amount received. The receipt book revealed that the applicant had received R8450.00 [eight thousand four hundred and fifty rand]. Subsequent to that she asked the applicant where the money was but he only showed her R3100.00 [three thousand one hundred rand]. Further the applicant said he did not know where the money was. According to her the applicant's actions were grossly negligent because he was trained as to how to take

control of the money. For the past six years the applicant handled the money without any loss. On the day in question the applicant failed to do the consignment which resulted to a loss of money.

- 11. Annette Neethling** stated that she works as Facility Manager at Woodstock and she presented the following evidence under oath. She was an investigator and initiator in the disciplinary hearing of the applicant. At the disciplinary hearing the applicant pleaded not guilty to the charge before him. During cross-examination the applicant changed his plea to that of guilty to gross negligence. She has ample experience in the investigation of loss of monies in the department. According to the policy of the respondent employees take full responsibility for the signing of a consignment.
- 12.** They are also responsible for the safe because they keep the safe key to themselves including outside working hours. Applicant was also an Occupational and Safety Representative. He had added training which is combined with to keep the money safe. The money that is lost is not R2 or R5 rand but it is a large sum of money. If, the department can allow this type of behaviour that it is okay to be gross negligence the message will be wrong. The applicant has enough experience to work with money and he was not a junior.
- 13.** During the investigation it transpired that the applicant had left the money unattended and the gate was not locked. She questioned how the applicant had worked with the money on the table where there were papers.
- 14.** Applicant had financial problems which makes her suspicious even though the applicant was not charged for theft. She fails to understand why the applicant did not secure the money he was working with. The applicant resigned to show that he knew that he was faced with serious allegation but later he retracted it.

SURVEY OF APPLICANT'S EVIDENCE AND ARGUMENTS

15. **Mr. Richard Mopp** stated that he is the applicant in this matter and he presented the following evidence under oath. His duties were to open new folders, trace folders, filling, and statistics, collect monies, and check stock, cleanness. He was not the only person who handled the money. They were supposed to rotate on a three months basis but that did not happen. He was always doing the money. On the day in question it was very full in the morning. He was placed at window 2 to do doctor's folders.
16. There was a shortage of staff and that alone pressurised him because he could not get up from his seat. When he was asked to make up the consignment he knew that the Head Office does not come on time for security reasons. He carried out with his work and when he was done he went to do the consignment. He opened the safe and started counting. He first dealt with receipts. There was a knock on the door that informed him he had a phone call. He went out of the room to attend to the call. At the time of attending to the call there was no one in the office.
17. He does not remember how long he was on the call. The call was a personal call. He came back and discovered that some of the money he left on the table was missing. When he left the door and security gate were open. At that stage as well there was no one in the office. According to him the supervisor should have informed him to lock the security gate. He felt that his supervisor should have informed him of this responsibility. The gate and door are locked after hours but leave the key hanging on the door. He was responsible for the money that was lost.
18. The inside office is used as a work area, stock room, rest room, clock room, safe, and for lockers. He denied that he changed his plea to that of gross negligence but admitted that his action were that of negligence because he did not leave with the money out of the office. He was not told that when dealing with money he should lock the door.

19. I will refer to cross-examination and closing arguments where necessary in my analysis.

ANALYSIS OF EVIDENCE AND ARGUMENT

20. The respondent bears the onus to prove on balance of probabilities that the dismissal was effected with a fair procedure and a fair reason in terms of Section 192(2) of the Labour Relations Act 66 of 1995, as amended (“the Act”). The applicant does not challenge the fairness of the procedure which need not be decided in these proceedings.

21. The following are common cause issues:

- that the applicant received an in house training with regard to handle the finances;
- that the applicant had six years experience in handling finances without any hassles;
- that on the day in question the applicant was requested on two occasions to make up the consignment;
- that the safe key was always with the applicant day and night;
- that the R *R5350.00* went missing on the day in question;

22. The requirement for negligence are :

- *that the employee failed to exercise the standard of care and skill that can reasonably be expected of an employee with his or her degree of skill and experience;*

- *that the lack of care and skill manifested itself in an act or omission that did or could have caused loss to the employer;*
- *that the loss or potential loss to the employer resulted or could have resulted from the employee's negligent act or omission;*
- *the negligence was gross[See Dismissal Discrimination & Unfair Labour Practice : Grogan: at page258].*

23. Evidence clearly shows that the applicant had received in house training and had sufficient experience in handling the money which was in his possession. The applicant's contention is placed on the fact that his supervisor Ms. Adonis never told him to lock up the security gate of the inside office when dealing with money. I find it very strange that the applicant felt that he should have been informed to lock up the security gate when dealing with money.

24. In my view it remains the responsibility of the applicant to make sure that precautionary measures were made to secure the safety of the money at all times. Such precautionary measures might include locking up the security gate when leaving the office. I think the applicant should have used his common sense.

25. The question that should be asked why he did not put the money back to the safe upon receiving his personal phone call or why he did not lock the security when he left the money unattended on top of the table. It should be remembered that the applicant was well aware that the office is accessible to all the employees.

26. The logic dictates that the applicant would have secured the money before he left the office. To me it remains a mystery then why he left such a bulk of an amount without being secured or not having made any attempt to secure it. The mere fact that he was not informed that he should lock up the gate does not itself exonerate him of his primary responsibility to secure the money.

27. Having considered the evidence before me I find that applicant's actions were grossly negligent in the circumstances based on the following two reasons. Firstly, it was his sole responsibility to secure the money before he left the office. In any event he had options available to him as to how to secure money for example put the money back to the safe or lock up the security gate. Secondly, the applicant knew that the fact that the office was easily accessible is good reason for the employee to first take precautionary measures before he left the money unattended/ unmanned.
28. Moreover, the amount of money the applicant left on the table obviously was a huge amount that any reasonable person would not leave it unattended. The fact that it was a huge amount could have been an indication to the applicant that any loss would be severe to the respondent. The problem about applicant's actions is inexcusable and as such is very serious in nature.
29. I find that the applicant neglected to appreciate his responsibility to secure such a bulk of an amount. In the light of the above I find that the applicant's actions were gross in the circumstances. Consequently, the applicant's dismissal was substantively unfair. The mere fact that the applicant blames Ms. Adonis that she should have informed him to lock up the security gate is misguide and also shows that he does not have any remorse of his actions. He is trying hard to place blame elsewhere without owning his own actions. The fact that he was trained and had ample experience works against him because it means that he should have known better to handle such situations.
30. I am not convinced that the applicant would not repeat the same offence as no remorse is made. I have also taken into consideration the fact that he was asked twice to make a consignment which leaves a lot of *ifs's*. For the above reasons I find that the applicant had led no reasons to convince me to tamper with the decision of the respondent.

AWARD

1. I find that the applicant's dismissal was substantially fair.

DONE AND SIGNED IN CAPE TOWN ON THIS 09 August 2011.

A handwritten signature in black ink, appearing to read 'Thuthuzela Ndzombane', enclosed within a large, irregular oval scribble.

Arbitrator: Thuthuzela Ndzombane