



**PHSDSBC**

PUBLIC HEALTH AND SOCIAL DEVELOPMENT  
SECTORAL BARGAINING COUNCIL

# ARBITRATION AWARD

Commissioner: **Thuthuzela Ndzombane**

Case No: **PSHS35-20/21**

Date of award: **16 July 2020**

In the matter between:

**NEHAWU OBO NTANDO PATI**

(Applicant)

and

**DEPARTMENT OF HEALTH–WESTERN CAPE**

(Respondent)

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## **DETAILS OF HEARING AND REPRESENTATION**

1. The arbitration hearing was scheduled for and heard on 08 July 2020, under the auspices of the Public Health and Social Development Sectoral Bargaining Council at Western College of Nursing in Athlone. The applicant, Mr. Ntando Pati, was represented by a Union Official, Mr. Meniers from NEHAWU. The respondent, Department of Health-Western Cape, was represented by a Senior Labour Relations Officer, Mr. Mniki.
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 typed notes were taken. A combined bundle of documents was submitted by the parties and it was accepted and admitted as it purports to be.

## **BACKGROUND**

3. The applicant stated that he was employed by the respondent on 1 March 2018 as a Laundry Aid. He earned a monthly salary of R8544.50 [eight thousand five hundred and forty four rand fifty cents] prior to his alleged unfair dismissal on 31 April 2020. In December 2019 he was instructed by his father to attend a ritual called *Izila* (meaning to bring back home the spirit of the dead) of his grandfather. As the eldest child it was compulsory for him to attend the ritual. After the completion of the ritual his sister committed suicide. The situation resulted to him not to think straight as he asked one of his friends to buy a medical certificate for him in order to cover for the period of absence. He had no intention to commit fraud. During the investigation and at the disciplinary hearing he pleaded guilty and apologised. He believes therefore that the sanction of dismissal was too harsh in the circumstances. The procedure is not in dispute. If he succeeds with his dispute, he requested to be retrospectively reinstated.
  
4. The respondent stated that the applicant was charged with the following misconduct:
  - a. Charge 1: It is alleged that you made yourself guilty of an act of misconduct as contained in Collective Agreement: Resolution 1 of 2003, Annexure A read with Fraud and Corruption Prevention Plan 2015/16-2016/17 and Public Service regulations 2016 in that on or about 06 January 2020 you submitted a fraudulent medical certificate dated 23 December 2019 in order to substitute your leave of absence from 23 December 2019 till 24 December 2019.
  - b. Charge 2: It is alleged that you made yourself guilty of an act of misconduct as contained in Collective Agreement: Resolution 1 of 2003, Annexure A read with Fraud and Corruption Prevention Plan 2015/16-2016/17 and Public Service regulations 2016 in that on or about 06 January 2020 you submitted a fraudulent medical certificate dated 23 December 2019 in order to substitute your leave of absence from 23 December 2019 till 24 December 2019. It is alleged that you made yourself guilty of an act of misconduct as contained in Collective Agreement: Resolution 1 of 2003, Annexure A read with Fraud and Corruption Prevention Plan 2015/16-2016/17 and Public Service regulations 2016 in that on or about 06 January 2020 you submitted a fraudulent medical certificate dated 27 December 2019 in order to substitute your leave of absence from 27 December 2019 till 231 December 2019.

The applicant pleaded guilty on these two charges. The respondent views this type of misconduct in a very serious light hence the sanction of dismissal was meted out.

### **ISSUE TO BE DECIDED**

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

### **RESPONDENT'S CASE**

6. Mr. Rodrick Vanaarde stated that he is employed by the respondent as the Chief Personnel Officer at HR: People's Practices and Administration. He presented the following evidence under oath. The applicant submitted a completed leave form with attached two medical certificates. An intern captured it into the system. As a practice it was brought to him to check the correctness of the application. He perused the medical certificates and found that they had two medical practice numbers. This to him raised suspicion that there was something wrong. An intern was instructed to consult the Medical Council to establish the authenticity of the medical certificates.
7. Dr Anele Botile from the Medical Council responded as follows: *"my apologies for not responding sooner, I was trying to get hold of the doctor who hold the MP number written on the sick note. Please be advised that the attached sick note is not valid and its fraudulent, the MP 0662488 belongs to Dr. Bongumusa Dumisani Melkezedeck Danil Ngobese and not Dr. Bunu and therefore was issued by an unregistered person. Further be advised that you should not accept this sick note as a valid and or legal document for any reason or purpose"*.
8. Thereafter he called the applicant to come to his office in order to clarify this issue. In that meeting the applicant told him that he had sent someone to buy the medical certificates for him whilst he was in the Eastern Cape. After this confession he then asked him to write it down. The intern typed what the applicant told them and the applicant had no objection to sign the statement. At no stage the applicant told him that he had attended a ritual or someone had passed on in the family. The respondent has zero tolerance with regard to fraud and corruption. In terms of the respondent's rules fraud and corruption will always lead to a dismissal. They are guided by polices of the respondent which stipulate that it is a dismissible offence.

## **APPLICANT 'S CASE**

9. The applicant presented the following evidence under oath. At around 19 December 2019 his father instructed him to attend a ritual Izila for his grandfather in the Eastern Cape. This was the first time he became aware that the ritual was going to be performed. As the eldest son he was expected to attend it. However, he did not inform the respondent of his requirement to attend the ritual. Whilst, in the Eastern Cape, his sister committed suicide. This compounded his problems and he was not in good state of mind. He then asked someone to go and buy two medical certificates for him in order to cover for the period of absence.
10. According to him he did not know that his actions were fraudulent. The respondent confronted him as to where he bought the medical certificates. His response was that he did not know that they are fraudulent and he apologized. He has two siblings, his sister studies at a university and he was the only one who is working. He has two children of his own who are depended on him. During these difficult times he receives financial support from his brother.
11. Because he had apologized, he thought he would receive a lesser sanction. During that period, he had already exhausted his annual leave although he knew that he could apply for unpaid leave. He was not aware that the certificates were fraudulent. The doctor's surgery is in Gugulethu. Generally, he uses only one doctor who has a surgery in Delft. It was the first time he used this doctor. If he knew that the medical certificates were fraudulent, he would not have submitted them.
12. I will refer to closing arguments and cross examination where necessary in my analysis.

## **ANALYSIS OF EVIDENCE AND ARGUMENT**

13. The respondent bears the onus to prove on balance of probabilities that the dismissal was effected with a fair procedure and for a 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 procedural fairness of his dismissal.

14. In this regard I must consider item 7 of the Code of Good Practice on Dismissal. The Code states that an arbitrator must consider whether or not the employee contravened a rule or standard regulating conduct in, or of relevance to the workplace; and if a rule or standard was contravened, whether or not the rule was a valid or reasonable rule or standard; the employee was aware, or could reasonably be expected to have been aware, of the rule or standard; the rule or standard has been consistently applied by the employer and dismissal was an appropriate sanction for the contravention of the rule or standard and the CCMA arbitration Guidelines.
15. It is well accepted that an employee cannot be involved in acts of dishonesty. It is common cause that the respondent has a rule that regulate acts of dishonesty. There is no dispute about the reasonability of the rule. There is also no dispute that the respondent applied the rule consistently in the workplace. The applicant only challenges the appropriateness of the sanction of dismissal.
16. 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. Dishonesty therefore can consist of any act or omission which entails deceit. This may include withholding information from the employer, or making false statement or misrepresentation with the intention of deceiving the employer or taking the employer's property without permission. It is perfectly clear that a rule guarding against dishonesty is reasonable and it may invite a sanction of dismissal.
17. The applicant admits that he committed a fraudulent activity by buying medical certificates from a bogus doctor. I then need to check whether he has a valid reason to find himself in such a situation. Firstly, he accepts that he was aware that he could have applied for annual leave or unpaid leave. Secondly, if his sister indeed had passed on he was entitled to receive the family responsibility leave or any other leave that the respondent may have considered fit for the purpose.
18. He claims that he was instructed by his father to come back to the Eastern Cape in order to attend a ritual of his grandfather. I agree with the applicant that this is a very important ritual whereby most of the family members are expected to attend it. Because of its importance family members are informed in advance between six months to a year in order for them to make arrangement for the attendance. It is

therefore highly improbable that the applicant would have been informed of the need to attend the ritual at the beginning of December 2019.

19. His father knew that he was working and he would need permission to attend the ritual from his employer. It is therefore doubtful that indeed the applicant attended his grandfather's ritual, in particular, that he did not even bring an affidavit from his father in order to substantiate this claim. For the above reason I am not convinced that the applicant attended the said ritual as claimed by him. The applicant also claims that his sister committed suicide which had a negative effect on his mind. The difficulty about this assertion is that the applicant elected not to bring the death certificate to substantiate his claim. There is no valid or plausible explanation for buying medical certificates which he knew that he was not diagnosed by a medical practitioner. Any reasonable person in his position would have known that buying of medical certificates amount to fraud.
  
20. I am bound to follow the judgment of *Hulett Aluminum Pty Ltd v Bargaining Council For the Metal Industry & Others* [2008] 3 BLLR 241 (LC) at paragraph 42 where the court stated that "*turning to the issue of the seriousness of the offence, the presence of dishonesty tilts the scales to an extent that even strongest mitigating factors, like long service and a clean record of discipline are likely to have minimal impact on the sanction to be imposed. In other words, whatever the amount of mitigation, the relationship is unlikely to be restored once dishonesty has been established in particular in case where the employee shows no remorse. The reason for this is that there is a high premium placed on honesty because conduct that involves corruption by the employees damages the trust relationship which underpins the essence of the employment relationship*".
  
21. It will normally be unfair to require an employer to retain in its employment someone who is correctly found guilty of misconduct involving dishonesty and whom it does not trust. I have taken into account the gravity of misconduct, the fact that he is unemployed, that he had a clean disciplinary record and he had shown some remorse. But the gravity of the misconduct outweighs any compelling mitigating factors adduced on his behalf.

22. I therefore find that there is no compelling evidence submitted to require me to interfere with the sanction of the respondent as the actions of the applicant were destructive in nature and had gone to the heart of the employment relationship which is based on honesty and trust. Having considered the evidence before me I find on balance of probabilities that the respondent has discharged the onus that the dismissal of applicant was for a fair reason.

**AWARD**

23. I find that the applicant's dismissal was substantively fair. Consequently, this application is hereby dismissed.

A handwritten signature in black ink, enclosed in a faint rectangular border. The signature is stylized and appears to read 'Thuthuzela Ndzombane'.

**Thuthuzela Ndzombane**  
**Sector: Public Health**