



ARBITRATION AWARD

Panelist/s: Joseph Mphaphuli

Case No.: PSHS384-11/12

Date of Arbitration: 13 September 2012

PSA obo C.E Walbrugh

(Union/ Applicant)

And

Department of Health – Northern Cape

(Respondent)

Applicant's Representative: Mr. Koopman

Applicant's Address: PO Box 3179

Kimberly

8300

Telephone: (053) 830 2000

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Respondent's Representative: Mr. Bakang Pape

Respondent's Address: Private Bag 5049

Kimberly

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Telephone: (053) 830 0569
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DETAILS OF HEARING AND REPRESENTATIONS

The hearing took place at the premises of the Respondent in Kimberely on 04 September 2012. The proceedings were conducted in terms of Section 191 of the Labour Relations Act 66/1995.

Mr. Koopman, a union official appeared on behalf of the Applicant. Mr. Bakang Pape, senior administration officer represented the Respondent.

The proceedings were digitally recorded.

ISSUE IN DISPUTE

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

BACKGROUND TO THE DISPUTE

The Applicant commenced duties in 1995. The Applicant served in the capacity of Emergency Practitioner Intermediate at a salary rate level 8. His dismissal was occasioned on 22 August 2002. Dismissal was for misconduct.

The Applicant Party contested both the substantive and procedural fairness of the dismissal.

The Applicant Party filed for the clearance of the persal system where it concerned the Applicant.

RESPONDENT'S SUBMISSIONS

The Applicant was served a charge sheet in compliance with Resolution 2/1999 as amended. To the best of his knowledge the Applicant's pre-dismissal enquiry conformed to the standard set in the aforesaid Resolution.

The Applicant faced serious charges at the pre-dismissal enquiry. The Applicant pleaded guilty to the charge in respect of assault of a fellow employee.

The Respondent led evidence in respect of other offences, namely insubordination, fraud, theft and receiving money from a member of the public for services performed in his official capacity.

The appointed chairperson at the enquiry found the Applicant guilty as charged and penalised the Applicant with dismissal.

He was of the view that the dismissal was for a fair reason taking into account the gravity of the misconduct. In his view the offences made for the intolerability of continued employment relationship.

APPLICANT'S SUBMISSIONS

The Applicant was not informed of his right to representation at the enquiry. In the second place he felt that the dismissal penalty was too severe a penalty and that a less severe penalty would have been sufficient.

ANALYSIS OF SUBMISSIONS

The Respondent Party's case was founded on the minutes of the pre-dismissal enquiry. The minutes were not at all disputed. In terms hereof the Applicant admitted to having assaulted a fellow employee. The assault was without provocation and there were no other extenuating circumstances.

A further factor of note was that the Applicant admitted to having used the state vehicle without authorisation. This constituted a grievous offence.

A combination of the assault and the offence in respect of using a state vehicle for personal benefit makes for a dismissible misconduct.

There was no evidence placed before me to suggest that the Respondent did not respect the Applicant's pre-dismissal rights, save for the Applicant's representative's unsubstantiated submissions to the contrary.

According to the minutes of the enquiry the Applicant was served notice of the process in writing and timeously so. Further the Applicant's right at a disciplinary enquiry were specified in the notice.

In the premises I find no basis to conclude that the dismissal was not for a fair reason. The reason for dismissal even if only limited to the accepted offences constitutes a fair reason to dismiss.

The Applicant's failure to respect a fellow employee is a serious violation. Similarly using an employer's vehicle without authorisation undermines an employer's right to manage its assets.

The admitted offences alone were serious enough to be penalised with dismissal as they were inherently capable of causing a total break down in the employment relationship.

AWARD

1. The dismissal was not unfair.



Joseph Mphaphuli
Signed
PHSDSBC Panelist

13 September 2012