



PHSDSBC

PUBLIC HEALTH AND SOCIAL DEVELOPMENT
SECTORAL BARGAINING COUNCIL

ARBITRATION AWARD

CASE NO: PSHS41-14/15

PANELIST: P DHLODHLO

DATE OF AWARD: 10 AUGUST 2014

IN THE MATTER BETWEEN:

NEHAWU obo Madondile L

APPLICANT

and

DEPARTMENT OF HEALTH- EASTERN CAPE

RESPONDENT

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DETAILS OF THE HEARING AND REPRESENTATION

1. This arbitration was scheduled at the Amatola District Office in East London on 31 July 2014 at 10:00am.
2. The applicant, Ms L Madondile was represented by Mr Z Tywala, a union official.
3. Ms O Mtengwane, the respondent's Employment Relations officer, represented the Department of Health-Eastern Cape.

ISSUE IN DISPUTE

4. I am required to establish if the applicant's alleged dismissal was procedurally and substantively unfair, and if so, to determine the appropriate relief.

BACKGROUND

5. Ms Lungiswa Madondile commenced employment with the respondent as a Data capturer on 1 October 2007.
6. She contended that her salary was unlawfully stopped, without a just cause by the respondent on 15 September 2013.
7. The respondent argued that the applicant had not been dismissed, but she voluntarily decided to abandon her workstation.
8. The applicant is seeking the reinstatement of her salary accordingly.

SURVEY OF EVIDENCE

Applicant's version

9. Ms Lungiswa Madondile testified that she was stationed at Thafalofefe Hospital prior to her dismissal.
10. In February 2013 she went to Nelson Mandela Metropolitan University (NMMU) pursue her B. Social Work degree at the beginning of 2013 subsequent to notification by the training committee that her study leave application was successful.
11. It was her version that prior to her departure she was disturbed by Mrs Mqongqo's (Acting Hospital Manager) interrogation that took place in her (Mqongqo) office demanding explanation for the applicant's decision to pursue Social Work studies instead of Radiography.
12. The applicant averred that her points were insufficient for her first choice (Radiography), therefore she qualified for her second choice (Social Work).
13. She reported her predicament to the Skills Co-ordinator, who advised her to pursue B Social Work before registration closes. The Skills Co-ordinator urged her to address formal correspondence, requesting approval of her deviation from the initial approved studies to the Training Committee, which she did.

Furthermore, she was advised by the training committee to utilise her annual leave, whilst the second choice issue was being negotiated.

14. The applicant stated that she and the Skills Co-ordinator were not aware that she was expected to return to work during the university vacations. She further explained that her September salary stoppage was reversed in November, although she has not been remunerated from December 2013 to date.
15. During cross-examination she conceded that her study leave was approved for Radiography and that the Skills Co-ordinator was adamant in their discussion that her change would be ratified by the Corporate Services Centre at the District office.
16. She further conceded that she received no official correspondence regarding her second choice request and that the Skills Co-ordinator advised her that her application was not approved because the hospital did not require a social worker.
17. It was the applicant's version that she was overwhelmed by her admission and never browsed the study leave conditions and the contents of the initial contract to study radiography.
18. She reiterated that she did not return to her workstation because her union was engaged in negotiations with the authorities and that the respondent's action (salary stoppage) was tantamount to dismissal.

Respondent's version

19. Mrs Thozama Mqongqo testified that she was the Acting Hospital manager at the time of the dispute.
20. She stated that the applicant applied for a study leave through the hospital's training committee, which she (Mqongqo) was part of by virtue of her position. The committee approved a study leave for Radiography taking into consideration the institution's organogram and the skills shortage. To her surprise she heard rumours that preparations were underway for the applicant's farewell party, despite her failure to meet the admission points for the Radiography course. She then called the applicant to verify the rumours and her (applicant's) response was that she was entitled to switch into any course as long it was relevant for the respondent.
21. The applicant's union confronted her two days later accusing her of disapproving the applicant's request. Mqongqo reiterated to the union that the final decision rested with the District office and not the Training Committee.
22. Mqongqo submitted that she notified the applicant and the union that she could lodge an appeal at the District office subsequent to her application decline. Furthermore the applicant's union was advised that the decision could not be reversed by the Committee, without the District office's approval.
23. The witness submitted that the applicant presented leave and /or sick leave documents for the period (28 January to 1 March 2013) she was not at work. She (Mqongqo) also forwarded a registered correspondence dated 1 August 2013 (attached in the bundle), wherein she was instructing the applicant

to return to work. The said correspondence was returned to sender due to non –collection by the applicant. Mqongqo submitted that she had called the applicant and warned her about the consequences of her actions.

24. The applicant informed her supervisor that her union and the authorities were engaged in discussions regarding her study leave, after the union was notified about the unsuccessful applicant's second request.
25. During cross-examination Mqongqo disputed that she approved the minutes in Annexure 5. She further argued were approved by her. She reiterated that the applicant was never granted study leave to pursue B A (Social Work) and that the applicant ought to have submitted an application for the following year in time for the respondent to reconsider other options, but she failed to do so.
26. The salary stoppage was processed by the District office to afford the applicant an opportunity to explain her position, but she did not come to her. The witness submitted that she had informed that she had informed the district office that the applicant was studying at NMMU without authorisation.

ANALYSIS OF EVIDENCE

27. In this matter the applicant union referred an unfair dismissal dispute.
28. The respondent disputed that it had dismissed the applicant arguing that she was still active in the system. It further argued that it was under no obligation to pay the applicant under the circumstances.
29. The applicant conceded that he was not dismissed and that she had not reported for duty subsequent to her unsuccessful application. She further conceded that she did not receive formal correspondence approving her study leave for B A(Social Work). It was the applicant's version that she had not signed the contract to pursue the degree in dispute, but she relied on the conversation she had with the Training Co-ordinator.
30. The applicant also conceded that the training committee recommendation was subject to the District office approval.
31. The applicant failed to submit credible evidence to support her dismissal claims, except that her salary was arbitrarily stopped in December 2013. From the parties submissions it is clear that the applicant was not dismissed, but her salary was stopped during her absence.
32. The respondent's witness submitted that she had informed the Human Resources department that the applicant was not at work despite the notification of approval and that it was the salary office that froze the applicant's salary as she was not at work.

33. Regarding the remedy that the applicant's seeks the payment of her (December 2013 to July 2014) salary and approval of her study leave, I am of the view that the Bargaining Council does not have jurisdiction on the two issues.
34. Furthermore, the applicant has failed to prove that she was dismissed by the applicant, but conceded that she had referred the rejection of her second choice study leave to her union for further engagement.
35. I therefore award as follows:

AWARD

36. The applicant was not dismissed by the respondent.
37. The Applicant's claim of unfair dismissal is hereby dismissed and she is not entitled to any relief.
38. No order as to costs is made.

SIGNED IN EAST LONDON ON 10 AUGUST 2014



PHSDSBC PANELLIST