



ARBITRATION AWARD

Panellist/s: Joseph Mphaphuli
Case No.: PSHS445-10/11
Date of Award: 30-Apr-2011

In the MATTER between:

Marria Magdalene Hendricks

(Union / Applicant)

and

Department of Health and Social Development – Western Cape

(Respondent)

Union/Applicant's representative: Mr Daniels

Union/Applicant's address: _____

Telephone: _____

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Respondent's representative: Mr Collop

Respondent's address: Privaat Bag x 7

Sweewlendam

6740

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DETAILS OF HEARING AND REPRESENTATION

The award follows an arbitration hearing held in terms of Section 191 of the Labour Relations Act 66/1995 as amended.

The hearing took place at the Respondent's premises in Swellendam on 18 April 2011.

Present were Mr Daniels an official of an employee organisation and on behalf of the Applicant. Mr Collop an Assistant Director Labour Relations appeared on behalf of the Respondent.

The proceedings were mechanically recorded.

ISSUE IN DISPUTE

Whether there was a dismissal or not, whether the dismissal was effected for a fair reason and in accordance with a fair procedure and the appropriate remedy, if any.

BACKGROUND TO THE DISPUTE

The Applicant was appointed on 01 December 1989. The Applicant served in the capacity of Nursing Assistant. The Applicant was remunerated at R 94 848. 00 per annum. Her alleged dismissal took place on 30 October 2009. Her dismissal was for a reason unknown to her.

Both the substantive and procedural fairness of the dismissal were disputed.

The Applicant Party favoured reinstatement in the event of a successful application.

SURVEY OF EVIDENCE AND ARGUMENT

The Applicant took oath and testified: She sustained an injury on duty on 09 October 2005. This resulted in her undergoing a back operation. She was booked off work for two months. She reported back at work in January 2005.

She did not return to her normal working assistant duties but was placed in the filing room to assist with patients admission.

She spent another six months in the theatre doing nursing assistant duties. Her physical disabilities led her to being moved to the position of a ward clerk.

She could not revert to doing normal nursing assistant duties such as lifting patients, pushing trolleys etc due to her injury.

Doctor Du Toit, a medical superintendent at the hospital approached her and informed her that she would be medically boarded in 2009.

She was subsequently summoned to the hospital administrator's clerk where she was handed an early retirement application form due to ill health. She signed the form as was directed by the said administrator.

Dr Du Toit informed her on the 30 October 2009 that it was her last working day and that she would not be expected to report for duties beyond the date.

Dr Jacobs Pieterus Du Toit a hospital superintendent testified in the Respondent's case. The retirement application was handed over to the Applicant. The Applicant took the document and returned it after days and signed. It was his recollection that the Applicant confirmed that she was happy to proceed on early retirement due to ill health.

The hospital resorted to ill health retirement following the Applicant's inability to perform duties for which she was originally employed. Further because the hospital could not place her anywhere else in the hospital or the Overberg district.

ANALYSIS OF EVIDENCE AND ARGUMENT

There was no dispute about the Applicant's inability to fulfil duties for which was originally employed. The Applicant was employed as a Nursing Assistant. The Applicant had subsequent to her injury been unable to execute duties pertaining to the position of a Nursing Assistant. Among others such duties entails moving or pushing loaded trolleys, pushing beds and turning and lifting bed ridden patients, all of which involved physical application.

It was also not in dispute that the Applicant was certified as being permanently incapacitated by an authorised medical practitioner. Finally there was undisputable evidence that the Applicant applied for ill health early retirement.

In dispute was whether the Applicant signed the ill health retirement application due to undue influence, under duress or ignorantly.

Doctor Du Toit led unequivocal testimony to the effect that the Applicant's situation was discussed with the Applicant. The Doctor had referred the Applicant for examination by a competent medical practitioner in order to establish the extent of the injury and its effect on the job. The medical report confirmed the Applicant's incapacity.

It stands to reason that indeed the Applicant was aware of the investigations regarding her injury and that when she signed the ill health retirement application form she was aware of the consequences.

I reject the Applicant's version that she did not know what she was signing for. The Applicant was a reasonably learned person and fully appreciated the meaning of a signature and its legal consequences. I find the Applicant's argument that she signed the ill health retirement application blindly to be disingenuous and aimed at misleading.

Although the Applicant Party argued against a fair pre-dismissal procedure, the Applicant did not at all lead evidence to support the claim.

Dr Du Toit's evidence in respect of continuous discussions with the Applicant on the subject was not contested. Dr Du Toit's version that all attempts to find a place or a suitable vacancy within the institution were not successful was not contradicted.

There was also no evidence from the Applicant to counter Doctor Du Toit's version that the Applicant rejected attempts to place her outside the Overberg district.

All factors considered it is my conclusion that the Respondent had executed its duties in a manner that was diligent and compassionate. The Respondent had discharged its onus of proof as contemplated by Section 188 and 191 (2) of the Act.

AWARD

1. The dismissal was not unfair.
2. I dismiss the application for an unfair dismissal.



Joseph Mphaphuli
PHSDSBC Panelist
Signed 30 April 2011