



ARBITRATION AWARD

Panelist/s: Adv PM Venter
Case No: PSHS 467-11/12
Date of Award: 1 February 2012

In the ARBITRATION between:

PAWUSA obo JANTJIES
(Applicant)

and

DEPARTMENT OF HEALTH: FREE STATE
(Respondent)

ARBITRATION AWARD

DETAILS OF HEARING

1. The matter was set down for arbitration on **25 January 2012** (where after parties had one week to submit written heads of argument) at the offices of the Respondent in Bloemfontein.
2. The Applicant was represented by Mr Geduld, an official from PAWUSA, whilst the Respondent was represented by Ms Jones, from the Labour Relations Directorate.

3. No interpreter was required and the matter was mechanically recorded.
4. At the commencement of the proceedings it was agreed that no witnesses would be called and that parties would argue their respective matters by means of written argument only.

ISSUE TO BE DETERMINED

6. I was called upon to determine whether or not the Respondent committed an unfair labour practice within the ambit of section 186(2)(b) of the Labour Relations Act, 66 of 1995 (hereinafter referred to as "the LRA").

BACKGROUND TO DISPUTE

7. The matter was referred as an unfair labour practice dispute (section 186.2.b) and relates to unfair conduct (unfair suspension).
8. The Applicant is employed as a Environmental Health Practitioner with effect from 1 May 2010. Prior to this date he held another position within the department.
9. An Environmental Health Practitioner must be registered with the Health Profession Council. The Applicant therefore had to be registered by 1 May 2010. The Applicant paid registration fees during March 2010 and also completed his application during the same month.
10. His registration by the Health Profession Council was only completed after 1 May 2010. He was subsequently suspended from duty for a period of 20 days until his registration was finalised. During the 20 day suspension (from 22 August 2011) period he received no salary.

SURVEY OF ARGUMENTS PRESENTED

ARGUMENTS OF APPLICANT

It was argued on behalf of the Applicant that:

11. The Applicant completed his registration documents in advance and paid the necessary fees. This was done during March 2010 already and the Health Profession Council only informed him 2 months later that he also needed to complete an oral examination. The Applicant immediately completed the oral examination and his registration was finalized.

12. The Applicant did not delay his registration and was not negligent in any manner. He was subsequently suspended in terms of Resolution 1 of 2003 (misconduct) and received no salary for a period of 20 days. The Applicant committed no misconduct and suspension without pay is contrary to the Resolution and constitutes an unfair labour practice.
13. The Applicant was not provided with an opportunity to state his case.

ARGUMENTS PRESENTED BY THE RESPONDENT

It was argued on behalf of the Respondent that:

14. The Applicant was obliged to register at the Health Profession Council of South Africa as an Environmental Health Practitioner. In terms of Section 17 (1) of the Health Professions Act, 1974 (Act Number 56 of 1974), it is stipulated that “No person shall be entitled to practice within the Republic – The profession of a medical practitioner, dentist, psychologist or as an intern or an intern psychologist or any other profession registrable in terms of this Act, unless he is registered in terms of this Act.”
15. As registration at the Health Profession Council of South Africa is an inherent job requirement, approval for Applicant’s transfer was depending on the registration at the Health Profession Council prior to his lateral transfer to the Environmental Health Directorate with effect from 1 May 2010. The Applicant complied with the above-mentioned condition for transfer by applying for restoration of his name to the Register and paid the necessary penalty fees during March 2010. On the grounds of the proof of the above-mentioned application form and payment, the Respondent allowed the Applicant to be laterally transferred with effect from 1 May 2010.
17. In terms of Section 22 (1) (a) of the Health Professions Act, 1974 (Act Number 56 of 1974), it is stipulated that: “...Provided that in the case of any person whose name does not appear in such copy, or whose name has been added to the register after the date of the last published issue thereof, a certified copy under the hand of the registrar of the entry of the name of such person in the register, shall be proof that such person is registered under the provisions of the Act;”
18. Ms Jones conceded that the Respondent was negligent to assume that the Applicant was registered at the Health Profession Council based on the proof of payment to the Council only. The Respondent requested proof of registration only during August 2011, in order to give the Applicant an opportunity to submit proof of registration due to the administrative backlog that usually occurs at the Council.

- 19 Due to the seriousness of the outstanding registration certificate, the Respondent had no choice but to suspend the Applicant from service, as Section 22 (1) (a) of the Health Professions Act, 1974 (Act Number 56 of 1974), Section 44 determines that: “Every person who has been suspended or whose name has been removed from the register in terms of section 42 shall, if his or profession is one which, under this Act, cannot be lawfully carried on by an unregistered person, be disqualified from carrying on his or her profession and his or her registration certificate shall be deemed to be cancelled until the period of suspension as expired or until his or her name has been restored to the register by the professional board.”
- 20 Ms Jones also conceded that the Respondent erroneously suspended the Applicant in terms of the Disciplinary Code. She argued that the Applicant failed to meet the requirements of his employment contract and that the procedural error should not lead to any finding against the Respondent.

ANALYSIS OF ARGUMENTS PRESENTED

- 21 The onus to establish that an unfair labour practice was committed, was vested on the Applicant. He had to establish, on a balance of probabilities, that the Respondent treated him unfairly.
- 22 The facts of the matter are mostly common cause. It is clear that the Applicant applied for registration in advance as he applied during March 2010. Registration was only needed on 1 May 2010 and Ms Jones conceded that there is usually a back-log at the Health Profession Council. Surely this is not the mistake of the Applicant.
- 23 The Health Profession Council only informed the Applicant 2 months later that he also needed to complete an oral examination. The Applicant complied and also paid the necessary fees in this regard.
- 24 In my view the Applicant is not to blame for the delay with applications. The Respondent furthermore failed to follow any fair process in suspending the Applicant and never provided him with an opportunity to present his arguments.
- 25 I also found it odd that the Disciplinary Code was used in this instance. The Applicant was never charged for misconduct and seemingly committed no wrongdoing. The Disciplinary

Code states, in any event, that any precautionary suspension should be with retention of salary. The Respondent seemingly failed to consider this aspect.

- 26 The Respondent could have handled the matter in another manner and acted unfairly. They could have, for example, utilised the Applicant in another position pending the finalisation of his registration. This is only one example.
- 27 In my view the Respondent committed an unfair labour practice in suspending the Applicant in terms of the Disciplinary Code and not paying him his salary during the period of suspension.

AWARD

28.1 The suspension of the Applicant, without pay, constituted an unfair labour practice.

28.2 The Respondent, the Department of Health: Free State, is ordered to reimburse the Applicant, Arthur Jantjies, Persal Number 51865491, in an amount equal to 20 days remuneration on the salary level applicable at the time of suspension.

28.3 Payment is to be effected within 30 days of receipt of this award.

28.4 I make no order as to costs.



Adv PM Venter
PHSDSBC Arbitrator