



ARBITRATION AWARD

Panelist/s: A.N MAFA
Case No.: PSHS 506-11/12
Date of Award: 24 JUNE 2012

In the matter between:

NEHAWU obo THABATHA M.C

(Union / Applicant)

And

Department of Health (GP)

(Respondent)

Union/Applicant's representative : Prince Matjika
NEHAWU
P.O. BOX 7549
JOHANNESBURG
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TEL: (011) 836 -9150
FAX: (011)834- 4856

Respondent's representative : Mrs. N. Madonsela
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DETAILS OF HEARING AND REPRESENTATION

- [1] This matter was set down for arbitration on the 04 June 2012 at 10:00am at Bank of Libson Building, 14th Floor, Cnr. Sauer and Market Streets, JOHANNESBURG.
- [2] Both parties attended the proceedings. The Applicant was represented by Mr. P. Matjika of NEHAWU and Mrs. N. Madosela appeared on behalf of the Respondent

- [3] Previously the matter was postponed because Applicant was not present and the representative was also not ready to proceed. I made an order that Applicant and his Representative must submit medical certificate as proof that he was indisposed and reserved the costs.
- [4] No reasonable explanation was given for not submitting the medical certificate. According to Mr. Matjika he was on leave and not sick and according to Applicant he was not informed that the matter was to sit on the 18 May 2012.
- [5] The proceedings were electronically recorded and detailed handwritten notes were also taken which forms part of the record.

PRE- LIMINARY ISSUES

- [7] None.

ISSUES TO BE DECIDED

- [8] Whether the dismissal of Applicant was both procedurally and substantively fair or not?

BACKGROUND TO THE ISSUE

- [9] The Applicant was employed by Respondent as a ground man stationed at Helen Joseph Hospital. As at the date of his dismissal he was earning a monthly salary of R4 583.75. On the 1st September 2009 Applicant was referred to ICAS for counseling. He was charged for misconduct i.e. absenteeism on the 28 August 2009. He was further charged for absenteeism on the 26 January 2012. The initial hearing was scheduled for the 10 September 2009 and in respect of the second charges the hearing was scheduled for 2 February 2010.
- [10] His services was terminated on the 29 May 2010. The Applicant challenged his dismissal on both procedure and substance. The Applicant will be the only witness and the Respondent will call 2 witnesses. Both parties have exchanged bundle of documents and agreed to use a common bundle submitted by the Applicant marked pages 1-50. Later the Respondent added another letter as part of the bundle marked annexure A with two pages.

SURVEY OF EVIDENCE AND ARGUMENT

RESPONDENT'S CASE

MOEGHMAT EBRAHIM ASMAIL WAS THE 1ST WITNESS.

- [10] He is employed as a supervisor and Admin Clerk dealing with property caretakers and cleaners at Helen Joseph Hospital. He knows Applicant as a former property caretaker employed at Helen Joseph Hospital. According to him he was dismissed for absenteeism on regular basis. His absence from work affected his works schedule as he was to deploy his co-workers to do his work. He testified that Applicant was issued with vernal written and final written warning before his dismissal but his behavior did not change. He testified that there

was no explanation or reasons given by Applicant for his absence and even after he was referred to ICAS for counseling he did not improve.

- [11] During cross-examination the witness could not recall exactly when Applicant was referred to ICAS and confirmed having spoken to Applicant on several occasions trying to find out what his problem was until Applicant at a later stage told him that he has a drinking problem.
- [12] It was also confirmed by the witness during cross-examination that in as much as the Applicant file went missing, he was reprimanded for his absenteeism, a written warning was issued and later a final written warning.
- [13] The witness further insisted that despite losing the Applicant file he did comply with the disciplinary procedure of the Respondent and also confirmed that he also testified as a witness in all the disciplinary hearings against the Applicant even though he cannot recall if Applicant file was available then or not.
- [14] It was also confirmed by the witness that the Applicant attended the EWP (Employee Wellness Programme) and he got the report through the HOD.

APPLICANT'S CASE

MHLANGABEZI THABATHA (APPLICANT).

- [15] He confirmed having been referred to EWP (ICAS) by his supervisor and HOD. He confirmed the charges as reflected on pages 19 of the bundle. He further confirmed having been issued with verbal and written warnings and also having been informed of his rights during the hearing.
- [16] Under cross-examination the Applicant confirmed that he was dismissed because of his continued absenteeism but despite the fact that his dismissal was procedurally and substantially fair.
- [17] The Applicant however did not despite the fact that he was given the chance to attend the hearing and that he was referred to ICAS (EWP).
- [18] Under clarity seeking questions the Applicant indicated that because he received a dismissal letter 9 days after being referred to ICAS he feels that he wasn't given an opportunity to improve hence his challenging his dismissal on both procedural and substantive fairness.
- [19] He further indicated that after he was initially charged he did not attend the hearing but referred to ICAS for 6 weeks and he completed the programme. He also confirmed that he was at some stage absent from work after completing ICAS programme and he was dismissed on the 29th September 2011. Furthermore, he confirmed having lodged an appeal outside the required time frames and such his appeal was late.
- [20] The Applicant also confirmed the fact that his absence from work after completing ICAS programme was because of excessive drinking of alcohol.

ANALYSIS OF EVIDENCE AND ARGUMENT

- [21] The factual matrix of this case is that Applicant was dismissed by the Respondent following his continued absence from work. The evidence presented before me confirm that the Applicant's continued absence from work was as a result of excessive abuse of alcohol.
- [22] It is also clear from the evidence that corrective measures were invoked by the Respondent before dismissing the Applicant by reprimanding him, issuing a written and final warning without any positive results.
- [23] The Respondent immediately identified the actual cause of his absence from work referred the Applicant to ICAS/ EWP programme which the Applicant successfully completed.
- [24] There initial disciplinary inquiry was put on hold in order to give Applicant an opportunity to attend the ICAS/ EWP programme as an attempt to rehabilitate him.
- [25] Despite having successfully completed the programme, in his own words the Applicant admitted having continued absenting himself from work because of excessive drinking of alcohol.
- [26] Furthermore, I find it strange why it could be argued on behalf of Applicant that he was not given an opportunity to improve when he continued to absent himself after completing the programme for the same reasons.
- [27] Clearly, it is plausible to suggest at this stage that the Applicant's conduct post completing the programme is in indicative of his unwillingness to be rehabilitated.
- [28] The Applicant had a fundamental obligation as an employee to place his services at the disposal of the Respondent. I have no reason not to accept that his continued absence from work was willful and constitute a serious misconduct which warrant a dismissal. I am convinced that Respondent did everything in their power to assist the Applicant and their efforts did not produce any results.
- [29] I am not convinced further that Applicant was not given an opportunity to improve when he continued to be absent from work post the programme.
- [30] In as much as I would accept as a fact that the Respondent did not produce Applicant's disciplinary records throughout the proceedings, in his own evidence the Applicant confirmed that he was previously reprimanded and issued with warnings by the Respondent, and was given an opportunity to represent his case at the disciplinary inquiry.
- [31] Consequently, I am not persuaded by the arguments advanced on behalf of Applicant that he was not given an opportunity to improve and corrective measures were not taken presiding his dismissal by the Respondent.

FINDINGS

- [32] In essence, it is my considered findings that the Applicant was continually absent from work in circumstances where his absence could not be justified and as such his dismissal was both procedurally and substantively fair.

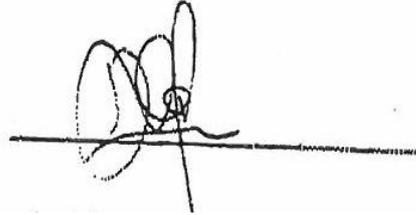
AWARD

[33] The dismissal of Applicant, Thabatha M.C. is both procedurally and substantively fair.

[34] The Applicant's case is therefore dismissed.

[35] I make no order as to costs.

DATED AT PRETORIA ON 22ND day of JUNE 2012.



Panelist *Archibald Ngoako Mafa*

Sector: *Public Health & Welfare*
