



# ARBITRATION AWARD

Panellist/s: Paul Kirstein  
Case No.: PSHS514-10/11  
Date of Award: 1-Mar-2012

In the ARBITRATION between:

**IN THE PUBLIC HEALTH AND SOCIAL DEVELOPMENT SECTORIAL  
BARGAINING COUNCIL  
(HELD AT BEAUFORT WEST)**

CASE NO: PSHS514-10/11

In the matter between

**T LAMANI**

**Applicant**

And

**DEPARTMENT OF HEALTH: WESTERN CAPE**

**Respondent**

**ARBITRATION AWARD**

## **DETAILS OF HEARING AND REPRESENTATION**

1.

The arbitration was set down on 24 February 2012 at Beaufort West. The applicant appeared in person. The respondent was represented by M Xoliza, an official in the employment of the respondent. The respondent submitted a bundle of documents marked bundle "A". The arbitration was mechanically recorded.

## **ISSUE IN DISPUTE**

2.

The applicant contends that his dismissal on 9 September 2010 was substantively and procedurally unfair.

## **SUMMARY OF EVIDENCE**

3.

The first witness on behalf of the respondent was R Jonas, a general farm worker employed at the farm Kruitfontein. On 13 July 2011 Jonas and his colleague, Blom, was instructed to move sheep from the farm. If a sheep becomes tired, the sheep must be fastened next to the road whereafter the owner (Herold) will pick up the sheep. A sheep became tired whilst the sheep were moved. The sheep was

fastened next to the gravel road. When Jonas and Blom was approximately 800m away from the sheep, they noticed that an ambulance stopped at the sheep. The ambulance passed Jonas and Blom. When Herold came it was enquired whether he picked up the sheep fastened next to the gravel road. Blom and Herold went to look for the sheep but it was missing. The SAPS was contacted.

4.

B Blom, a general farm worker employed at the farm Kruitfontein testified and confirmed what Jonas testified with regard to the incident on 13 July 2011.

5.

The next witness on behalf of the respondent was T Moletsane, a police officer employed at the stock theft unit in Beaufort West. Moletsane received information regarding an ambulance that picked up a sheep near Kruitfontein. The ambulance was stopped. The sheep was found in the ambulance. The driver of the ambulance and the applicant was arrested. The ambulance driver indicated that he needed to refuel the ambulance before he proceed to the SAPS. Moletsane referred to photos taken of the sheep in the ambulance. Moletsane confirmed that the applicant and

Persent, the driver of the ambulance, were found not guilty on a criminal charge regarding the incident. During cross examination Moletsane denied that it was indicated during the arrest that there was an intention to take the sheep to the police station. Moletsane confirmed that there is a police station at Nelspoort. The ambulance passed the police station at Nelspoort on his way to Beaufort West.

6.

The next witness on behalf of the respondent was R W Frederick, a supervisor employed at the Beaufort West EMS. The incident on 13 July 2010 was reported to Frederick. Frederick indicated that the applicant was suspended and an internal disciplinary process was followed. The applicant was given notice to attend the disciplinary hearing. According to Frederick the procedural rights were explained and followed at the disciplinary hearing. The applicant was represented by a union official during the disciplinary process.

7.

The applicant testified and indicated that he was employed by the respondent as an ambulance practitioner for 21 years. The applicant and Percent was called out on duty. According to the applicant it was a shortage of fuel in the ambulance and therefore they used the gravel road on their way back to Beaufort West. When they

passed the farm Kruitfontein they noticed that a sheep was fastened next to the road. The applicant indicated that they thought that somebody was attempting to steal the sheep. The sheep was loaded into the ambulance with the intention to take it to the police station. According to the applicant they did not stop at the Nelspoort police station because of the shortage of fuel. The applicant confirmed that they were stopped by Moletsane and that the sheep was found in the ambulance. Before they drove to the SAPS, they stopped at a filling station to fill up the ambulance with fuel. The applicant confirmed that he attended a disciplinary hearing. The applicant was found not guilty on a criminal charge relating to the incident. The applicant seeks reinstatement. During cross examination the applicant could not give a reason why the communication centre was not contacted regarding the incident. The applicant indicated that the failure to contact the communication centre was a mistake. The applicant indicated that it was another mistake not to ask the farm workers regarding the sheep. The applicant indicated that he thought it was the responsibility of the driver.

8.

Percent, a paramedic previously employed at the respondent and driver of the ambulance during the relevant incident, testified on behalf of the applicant. Percent confirmed the incident with regard to the loading of the sheep into the ambulance. Percent indicated that they had a fuel problem and the intention was to take the

sheep to the police station. Percent confirmed that he was the senior of the applicant. According to Percent he had not induction when he started his employment and did not call the communication centre because as a paramedic you must make a decision and inform your superiors afterwards.

## **ANALYSIS**

8.

It is common cause that the applicant was dismissed on 9 September 2010. The applicant contends that his dismissal was substantively and procedurally unfair. During the arbitration proceedings the applicant conceded that there was no procedural irregularities but the only concern was that he was dismissed for the incident on 13 July 2010.

9.

It is common cause that the applicant, an ambulance practitioner, and Present, a paramedic, was on call on 13 July 2010. On their way back from a call out the applicant and Percent stopped with the ambulance on a gravel road near the farm Kruitfontein and picked up a sheep that was fastened next to the road. At Beaufort West the ambulance was stopped and the applicant and Percent were arrested. It is the applicant's contention that they had no intention to steal the sheep. The

applicant and Precent were under the impression that somebody wanted to steal the sheep and they wanted to deliver the sheep at the SAPS in Beaufort West. The version of the applicant and Percent is regarded as improbable. It is common cause that the applicant and Percent failed to make contact with the communication centre regarding the sheep. It is not part of the duties of ambulance personnel to pick up sheep fastened next to the road. If the applicant and Percent was concerned about the possible theft of the sheep, it would have been more prudent to contact the SAPS. Not far from where the applicant and Precent picked up the sheep with the ambulance they have passed the farm worker moving sheep. The applicant could not give any reasonable explanation other than to state that he regarded Precent's responsibility to stop at the farm workers and ask about the sheep. Although the indication is that the ambulance was short on fuel, there was no reason for the applicant and/or Percent not to contact the Nelspoort police station when they were passing Nelspoort to collect the sheep. It is determined that the respondent proved on a balance of probabilities the allegation of misconduct against the applicant. It is required to determine whether the dismissal of the applicant in the circumstances was appropriate. It was indicated that the incident was reported to the media and had a negative influence on the view of public of the EMS at Beaufort West. Although Precent was the superior of the applicant during the incident, the applicant participated without objection. It is common cause that the applicant has a clean disciplinary record and an extended

period of employment at the respondent. It has been shown that the applicant harboured a dishonest intent. The sheep was not the property of the respondent but the incident occurred whilst the applicant was executing his duties with an ambulance of the respondent. In the case of **WOOLWORTHS (PTY) LTD**<sup>1</sup> the Labour Court dealt with an employee who harboured a dishonest intent by concealing property of the employer. This incident was also the first transgression of the employee. The Labour Court sets out its conclusion as follows:

*"[48] It has long been held that the employer's decision to dismiss an employee will only be interfered with if that decision was found to have been unreasonable and unfair. The fact that an employee has had a long and faithfully service with the employer thus far is indeed an important and persuasive factor against a decision to dismiss the employee for misconduct, but is by no means a decisive one. In Toyota South Africa Motors (Pty) Ltd v Radebe and Others, this Court held:*

*"Although a long period of service of an employee will usually be a mitigating factor where such an employee is guilty of misconduct, the point must be made that there are certain acts of misconduct which are of such a serious nature that no length of service can save an employee who is guilty of them from dismissal. To my mind one such clear act of misconduct is gross dishonesty."*

*[49] Accordingly, notwithstanding her long service with the appellant, the employee committed, on two successive days, acts of gross misconduct involving gross dishonesty, in circumstances which, in any opinion, justified the appellant's assertion that the trust relationship between it and the employee broke down irreparably."*

In the case of **RAINBOW FARMS (PTY) LTD**<sup>2</sup> the Labour Appeal Court concluded that an employee who was found in possession of free issued milk to be utilised in the canteen had breached a well known and strict rule that constitutes dishonesty. The Labour Appeal Court determined that the trust relationship between the employer and the employee was destroyed because of the dishonest conduct. In the case of

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<sup>1</sup> **Woolworths (Pty) Ltd v CCMA & Others (Unreported JA 30/10 26 May 2011)**

**DE BEERS CONSOLIDATED MINES LTD** <sup>3</sup> the Labour Appeal Court stated inter alia that the dismissal of the employees has little to do with society's moral approbation of a minor theft, but it has everything to do with the operational requirement of the employer's enterprise. The respondent enterprise *in casu* is to deliver a service to the public. The misconduct perpetrated by the applicant must have had a negative influence on the view of the public with regard to officials employed at the EMS at Beaufort West. In the **DE BEERS CONSOLIDATED** case the Court addressed the issue of long service as mitigating factor. Reference was made to the decisions of **TOYOTA SOUTH AFRICA MOTORS (PTY) LTD** <sup>4</sup> where it was held that serious acts of misconduct such as gross dishonesty would render factors such as length of service and clean disciplinary record irrelevant in determining the appropriate sanction to be applied and came to the conclusion that the Court that a high premium must be placed on honesty in the work place.

10.

It is common cause that the applicant was found not guilty on a criminal charge relating to the incident. The fact that the applicant has been acquitted in the criminal case does not assist the applicant on the basis that a different standard of proof is required at an arbitration. <sup>5</sup> Having considered the abovementioned issues and the

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<sup>2</sup> **Rainbow Farms (Pty) Ltd v CCMA** [2011] 11 BLLR 451 (LAC)

<sup>3</sup> **De Beers Consolidated Mines Ltd v CCMA & Others** [2000] 9 BLLR 995 (LAC)

<sup>4</sup> **Toyota South Africa Motors (Pty) Ltd v Radebe & Others** [2000] 3 BLLR 243 (LAC) and **Hulett Aluminium (Pty) Ltd v Bargaining Council for the Metal Industry & Others** [2008] 3 BLLR 241 (LC)

<sup>5</sup> **Moshela v CCMA** [2011] 32 ILJ 2692 (LC)

applicable case law it is determined that the sanction of dismissal was appropriate and fair.

## **AWARD**

1. The dismissal of the applicant on 9 September 2010 was substantively and procedurally fair.
2. No order as to costs.

SIGNED AT PRETORIA ON THIS THE 27th DAY OF FEBRUARY 2012.

A handwritten signature in black ink, appearing to read 'PH Kirstein', is written above a horizontal line.

**PH KIRSTEIN**  
**ARBITRATOR**