



ARBITRATION AWARD

Panellist/s: Colin Rani
Case No.: PSHS516-11/12
Date of Award: 2-Jul-2012

In the ARBITRATION between:

PSA obo T Du Toit

(Union / Applicant)

And

Department of Health: Western Cape

(Respondent)

Union/Applicant's representative: PSA obo T Du Toit

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Respondent's representative: Dept of Health - Western Cape.

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Details of hearing and representation

1. The arbitration hearing was held at the Community Library in Piketberg on 18 April, 2012.
2. Mr. A J Strydom, from PSA, represented Mr. M Du Toit. Mr. W Breuninger represented the respondent party, the Department of Health in the Western Cape. The parties agreed on a set of material and common cause facts.

Issue to be decided

3. Whether the dismissal of the applicant was substantively fair.

Background

4. The common cause facts: The applicant worked as the Emergency Care Officer at the Directorate Emergency Services in Piketberg. The applicant was charged with six counts of misconduct on 22 August, 2011 but was found guilty on only two charges: In the first of the two charges on which the applicant was found guilty, he was given a final written warning that, on 7 May, 2011, he prejudiced the administration, discipline or efficiency of a department, office or institution of the state by conveying a live lamb of a sheep in an ambulance without the necessary authorization.
5. On the second of the two charges, the applicant was found guilty and was dismissed, because, on 7 May, 2011, he removed private property, a live lamb, from the R365 road around the Morester farm. The applicant was effectively dismissed on 30 September, 2011. The applicant submits that his dismissal was substantively unfair, because he did not contravene any company rule, since the lamb was not private property. He wants to be reinstated retrospectively. At the time of his dismissal, the applicant was earning R10 717.75 per month.

Summary of evidence and arguments

6. Although I have considered all of the submissions and arguments, because section 138(7) of the Labour Relations Act requires that the reasons for my decision be stated briefly, I will refer only to the submissions and arguments that I regard as necessary to substantiate my finding and the determination of the dispute.
7. The parties agreed to the admission into evidence of a bundle of documents. Neither party disputed the validity of these documents. When the parties submitted their written arguments after the hearing, the respondent introduced new untested evidence that the applicant contravened rule DA 4.2 of the EMS

Standard Operating Procedures. The parties were subsequently recalled on 18 June, 2012 to present or refute the existence of the rule. On that date, the parties agreed to the admission into evidence of the EMS Standard Operating Procedures and the EMC Patient Care Report Form.

The respondent's case

8. Mr. Elven Pedro, who is the EMS District Manager in the West Coast Area, gave evidence. He testified that the applicant contravened rule DA 4.2 of the EMS Standard Operating Procedures. The rule includes the following language: "All private property must be left at the scene or handed to the police service ON SCENE".
9. Mr. Pedro submitted that, when an officer is dispatched to an incident scene, the route from the Communication Centre to the incident is regarded as part of the incident scene. Mr. Pedro stated that everything that happens on the route must be reported to the EMS Communication Centre. He said that, as a result, the applicant was required to report picking up the lamb to the Communication Centre. His failure to do so was a violation of the rule.

The applicant's case

10. The applicant submitted that it is the practise that the officers are dispatched to the incident scene with the clear stipulation of the time that they are to arrive and the time that they depart. This information is contained in the EMC Patient Care Report Form. He disputed that the route and the place where he picked up the lamb are regarded as part of the incident scene. The applicant submitted that there is no rule that says that the officers must inform the Communication Centre when they stop on route. He said that they are required to contact the Communication Centre only when there is a delay in reaching the incident scene.
11. The applicant testified that he picked up a distressed lamb on route to, but not at, the scene of the incident. He said he felt that it would be inhumane to leave a distressed lamb unattended. Consequently, he took the lamb for safe keeping and to ensure that it is returned to its rightful owner. He testified that he reported to SAPS officer. The applicant stated that he felt that there was no need to inform the Communication Centre about his stopping for the lamb, because he was still on time to reach the scene of the incident.

Arguments

12. The respondent argued that the applicant broke the workplace rule when he removed the lamb from the side of the road, because the rule stipulates that all private property must be left at the scene or handed to police service ON SCENE. The respondent argued that this rule has been consistently applied and that the dismissal was an appropriate sanction.
13. The respondent further argued that the EMS workplace practice is that the crew of the ambulance is subjected to instructions of the Communication Centre whilst on duty. Any delay or other occurrence that impacts the ability of the crew to attend to the emergency call must be reported to the Communication Centre.
14. The respondent argued that a reasonable person would have put the lamb back over the fence of the adjacent farmer's property or, if the animal had been in distress, take the lamb to the farmer at Morester, whose farmhouse was a mere 150-200 meters away from where the lamb was found. According to the respondent, the applicant did not intend to return the lamb to its rightful owner, but instead intended to keep the lamb for himself. The respondent prays that the Arbitrator find that the disciplinary sanction imposed on the applicant was fair and that the application be dismissed.
15. The applicant argued that the respondent failed to prove that he contravened a workplace rule. The applicant argued that he was not charged with stealing the lamb. He had no intention to keep the lamb for himself. His intention was to take it to a nearby farmhouse. The applicant argued that it is absurd to expect the officer to report to the Communication Centre whenever he stops on the route to the scene of the incident. The applicant maintained that, when he stopped on route to pick up the lamb, it was not an incident scene. Therefore, he did not contravene the rule as contemplated in section DA 4.2 of the EMC Standard Operating Procedures.

Analysis of evidence and arguments

16. The employer must prove on balance of probabilities that the employee is guilty of misconduct. Schedule 8 of the Labour Relations in the Code of Good Practice provides appropriate guidelines.
17. Any person who is determining whether a dismissal for misconduct is unfair must consider:
 1. Was a rule contravened?
 2. If so, was the rule valid and reasonable?

3. Was the employee aware or could he reasonably have been expected to be aware of the rule?
4. Was the rule consistently applied?
5. Was dismissal an appropriate sanction?

18. Here, I must first establish whether the applicant contravened the rule. The respondent alleged that the applicant contravened rule DA4.2 of the EMC Standard Operating Procedure. The applicant refuted this. The rule states: "All private property must be left at the scene or handed to the police service ON SCENE."

19. The conduct at issue is that the applicant stopped while operating an ambulance and picked up a live lamb from the R365 road around the Morester farm. The respondent argued that the lamb was private property and that, therefore, rule DA4.2 is applicable. The applicant urged that the lamb was not private property, because nobody had a claim on it. Regardless of whether the lamb is regarded as private property, it is undisputed that the applicant was not the rightful owner of the lamb.

20. Simply, the rule prevents officers from taking private property and/or anything that does belong to the officers at the scene of the incident. The rule expressly instructs that the officer must leave the property at the scene or hand it to the police service on scene. At issue here is how "the scene" is defined as used in the rule. The respondent argued that the scene encompasses anything happening on route to a place where the officers are dispatched. The applicant refuted this, contending that the scene refers only to the location where the incident actually occurs.

21. According to the applicant, a standard patient-care report form that is used on a daily basis gives a clear explanation of what constitutes a scene. This report form highlights the time of arrival at and the time of departure from the scene where the incident occurs. I hold that the respondent's definition of the accident scene is too broad. If the respondent intended to have such a broad and all inclusive meaning, such that the scene encompasses all points between the Communication Centre and the location where the incident occurred, the rule ought to have been explicit. Under the circumstances, rule DA4.2 is not relevant.

22. Accordingly, the important enquiry here is whether the applicant's conduct on the day in question constituted misconduct. The applicant was charged with and found guilty of conveying a live lamb in an ambulance without the necessary authorization. The applicant was given a final written warning for this offence. I find that the applicant did contravene rule DA 4.2 of the EMS Standard Operating Procedures.

23. Therefore, I find that the respondent has not discharged the onus of proving that there was a reasonable cause for the dismissal of the applicant. The applicant's dismissal was substantively unfair.

Award

24. The respondent is required to reinstate the applicant's employment retrospectively on terms and conditions not less favourable than the conditions that existed at the time of the termination of his employment on 30 September, 2011.
25. The back pay is equivalent to R 10 717.75 X 9 (months) = R 96 459.75 (ninety six thousand four hundred fifty nine rand seventy-five cents), payable on or before 11 July, 2012. Finally, the applicant must report for duty on 11 July, 2012.

DONE AND SIGNED IN CAPE TOWN ON THIS 2nd DAY OF JULY 2012.

A handwritten signature in black ink, appearing to read 'Colin Rani', with a large, stylized initial 'C' and 'R'.

The arbitrator: Colin Rani