



ARBITRATION AWARD

Panellist/s: Asha Sewpersad
Case No.: PSHS54-11/12
Date of Award: 26-Jul-2013

In the ARBITRATION between:

In the matter between:

HOSPERSA obo JACOBUS N.G.B

(Applicant)

and

DEPT OF HEALTH:KZN

(Respondent)

Union/Applicant's representative: HOSPERSA
Union/Applicant's address: P.O. Box 30857
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Respondent's representative: MR B. HLELA
Respondent's address: P.O. Box 126
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1.DETAILS OF HEARING AND REPRESENTATION

- [1.1] The arbitration was held at the King Edward Hospital, VIP Lounge, Doctors Quarters, Durban on 1 July 2013.
- [1.2] The Applicant was represented by Mr S. Adkins a union representative from Hospersa and the Respondent was represented by Mr.B.S. Hlela, an Attorney.
- [1.3] The Applicant submitted a bundle of documents which were marked Annexure "A" and which was admitted into evidence.
- [1.4] The Applicant chose not to lead any evidence and a request was made for the submission of written closing argument.
- [1.5] The parties were granted seven days within which to file their closing arguments and both parties filed their closing arguments.

2.ISSUE TO BE DECIDED

- [2.1] Whether the Applicant was unfairly dismissed?

3.BACKGROUND TO THE ISSUE

- [3.1] The Applicant was employed by the Respondent as an Emergency Care Practitioner and was a member of the Health Professions Council of South Africa(HPCSA) which regulated the requirements in order for him to carry out his duties.
- [3.2.] The practices and rules of the HPCSA were contained in a document known as a Standing Operational Policies/ Procedures which was issued by the Respondent and furnished to all employees.
In order for the Applicant to remain employed as a ECP Practitioner he had to be in possession of a Public Road Driving Permit (PRDP) for passengers as he was expected to drive an ambulance in the course of his duties.
- [3.3] In terms of an internal circular issued by the Respondent on 13 January 2003 to the District Management Head of Sections all EMRS practitioners were required to have PRDP's and it was the responsibility of each individual employee to renew his PRDP 6 months before the current PRDP expired and each employee was expected to submit a valid PRDP to his/her District headquarters 60 days before the expiry of his/her PRDP. The circular also stipulated that failure to comply would lead to suspension of the employee's salary and misconduct proceedings being initiated.

- [3.3] The Applicant was convicted of assault on 14 October 2005 and his PRDP was suspended and he could only drive vehicles with goods which was against the nature of his duties.
- [3.4] On 8 June 2009 the Applicant was called upon by the Respondent to furnish the following documents by 12 June 2009:-
1. Current HPCSA
 2. Valid code 10 driver's licence with PRDP as a statutory requirement for his current post of ECP.
 3. Outstanding monthly medical progress reports.
- [3.5] The Applicant failed to comply and disciplinary action was instituted against him and he was dismissed.
- [3.6] It was the Respondent's case that the dismissal was fair and sufficient evidence was led to justify a dismissal.
- [3.7] It was the Applicant's case that his temporary PRDP was issued on 30 October 2010 and that he had only not fulfilled one criteria set down by the HPCSA and that the sanction of dismissal was too harsh as he had satisfied the requirement of the PRDP 2 months after the disciplinary hearing.
- [3.8] The relief sought by the Applicant was reinstatement.

4. RESPONDENT'S EVIDENCE

The Respondent led the evidence of Saloshni Govender, an Acting HR Practitioner at EMRS Ethekeweni, and Paulos Manquele a Subdistrict Manager at EMRS Ethekeweni.

4.1. GOVENDER testified as follows:-

- 4.1.1. The requirements for an ECP Practitioner were a matric certificate, a valid PRDP for goods and passengers and a valid certificate of registration with HPCSA and it was the responsibility of employees to ensure that they complied with those requirements.
- 4.1.2. The consequence of not complying in respect of the PRDP requirement was that one would not be able to work in the vehicle and practice as an ECP Practitioner and this would result in the employee's services being terminated. This requirement was not negotiable as it was in terms of the Road Traffic Regulations.
- 4.1.3. In terms of Paragraph (i)at Page 28 of the Standard Operational Policies/Procedures:-
"Whilst operating an EMRS vehicle, all ECP's must carry a valid driver's licence with a valid PDP"
- 4.1.4. On 25 February 2011 she forwarded a letter to Ms B.N. Zungu, the District Manager advising that the Applicant's salary was frozen on 24 June 2009 as he had been receiving a salary from the

Department and at no time had he advised his immediate Supervisor that he was not in possession of a valid PRDP since April 2005 due to him having been convicted of a criminal offence.

4.1.5. The Respondent had terminated the services of two other employees, Mr Alagiry and Mr Pillay for not having submitted proof of registration with the HPCSA and a valid PRDP .

4.1.6. On 15 June 2010 all EMRS District Managers were and Operations Managers were issued with a circular relating to the renewal of the PRDP (goods and passengers). The Applicant was served with a request for outstanding documentation on 6 June 2009 and he failed to comply with same.

During cross examination she testified as follows:-

4.1.7. In the absence of a valid PRDP one could not transport patients and therefore the Applicant was not able to work in an ambulance vehicle. Although the Applicant worked with a co-employee they alternated their tasks and in the absence of a valid PRDP the Applicant could not work in an ambulance vehicle as there was no rule which provided for an employee to conduct patient care only.

During re-examination she testified as follows:-

4.1.8. It was not possible to allocate him to driving or to patient care in the absence of a valid PRDP (goods and passengers) and a registration with the HPCSA.

4.2. MANQELE testified as follows:-

4.2.1. He was a qualified Emergency Care Practitioner and an Intermediary Life Support Practitioner.

4.2.2. The minimum requirements for patient care were:-

- a) A valid PRDP
- b) Certificate as an Emergency Care Practitioner
- c) Registration with HPCSA
- d) Matric certificate

and these requirements could not be relaxed.

4.2.3. During the course of his investigations the Applicant told him that he could not obtain a valid PRDP because of a criminal conviction.

4.2.4. It was the duty of employees to ensure that they were always in possession of a valid PRDP and failure to comply with the requirement would result in disciplinary action being instituted.

4.2.5. There were quite a number of employees in his zone whose services were terminated due to non compliance with the requirements.

4.2.6. At the time of the hearing the Applicant did not produce a valid PRDP and his services were terminated.

During cross examination he testified as follows:-

4.2.7. At the time of his investigations the Applicant was not in possession of a temporary PRDP.

5. ANALYSIS OF EVIDENCE AND ARGUMENT

My analysis and findings below take into account all the evidence presented above and shall therefore not be repeated. I shall mention only the salient aspects and that which are relevant to my findings.

- 5.1. It is common cause that the Applicant failed to comply with the requirements of his job as an Emergency Care Practitioner as he was not in possession of a valid PRDP certificate and certificate of registration with the HPCSA.
- 5.2. It is the Applicant's case that the sanction of dismissal was too harsh as he was in possession of a temporary PRDP two months after the disciplinary enquiry.
- 5.3. In terms of the Standing Operational Policies/ Procedures, ECP'S must practice within their scope of practice as prescribed by the Health Professionals Council of South Africa and accept responsibility for their own act or omission.
- 5.4. All ECP's employed by the Department of Health Kwazulu Natal had to comply with the Standing Operational Policies/Procedures. In terms of vehicle operations all ECP'S whilst operating a vehicle must carry:-
 - (i) a valid driver's licence with a valid PDP;
 - (II) Valid HPCSA registration card
- 5.5. The Applicant in his closing arguments submitted that the Respondent was at all times aware that the Applicant's renewal of his PRDP was imminent. However in terms of the letter from the Department of Transport dated 26 April 2010 the Applicant did not satisfy the conditions of the delegations which state that the period between the conviction and an approval shall be five years. The fact that the Applicant's PRDP was suspended in 2005 was only brought to the attention of the Respondent in the course of its investigations in 2010. Clearly the Applicant was in breach of the Standing Operational Policies/Procedures as early as 2005 and the fact that he was eligible for application for a PRDP in a few months from the date of the investigation and that a temporary PRDP was issued on 30 November 2010 is of no consequence and hence falls to be rejected.
- 5.6. The Respondent's evidence on the whole remained unchallenged more especially the fact that other employees in the same zone had their services terminated due to non-compliance.

5.7. The requirements of the Standard Operational Policies/Procedures are peremptory irrespective of whether one was driving a vehicle or not and this was confirmed by Manquele whose evidence was never challenged in that regard.

5.8. The Applicant was clearly aware of the existence of this requirement and requests were made to him by the Respondent asking him to comply with same or face disciplinary action and whilst it was his responsibility to ensure that he was in possession of a valid PRDP at all times he failed to adhere to same and chose not to even disclose his criminal conviction in 20005 which immediately rendered him unfit for duty.

5.9. In Sidumo and another V Rustenburg Platinum Mines Ltd & Others (2007) 28 ILJ 2405(CC) the Constitutional Court qualified its findings as follows:-

- * Although the Commissioner must pass a value judgment it was not the intention of the law maker to leave the determination of fairness to the unconstrained value judgment of a Commissioner;
- * Commissioners should not approach the matter on the basis of what decision they would have made had they been the employer;
- * A Commissioner is not given the power to consider afresh what he or she would do;
- * A Commissioner's task is not to ask what the appropriate sanction is but whether the employer's decision to dismiss was fair;
- * What is required is that the Commissioner must consider all relevant circumstances some of which are:-
 - I) the importance of the rule which was breached;
 - ii) the reasons for establishing the rule including its reasonableness;
 - iii) the harm caused by the employee's conduct;
 - iv) the impact it had on the trust relationship;
 - v) the effect of setting a precedent;
 - vi) the reason why the employer imposed the sanction of dismissal;
 - vii) the basis of the Applicant's challenge to the dismissal

In Wasteman Group v Samwu & Others Davis J.A. confirmed that :-

“The Commissioner is required to come to an independent decision as to whether the employer's decision was fair in the circumstances, these circumstances being established by the factual; matrix confronting the Commissioner.”

Turning to the present case in the light of the totality of circumstances established by the evidence during the arbitration which remained unchallenged, I find that the Respondent's decision to dismiss was fair.

A careful consideration of all the facts in this case show that the Respondent's decision to dismiss in the circumstances was fair based on the Standing Operating Policies/Procedures, the requirements of which the Applicant was fully aware of, and given numerous opportunities to comply with and notwithstanding that he failed to comply with same. The requirements as set out in the Standing Operational Policies/Procedures were peremptory for all ECP Practitioners and therefore the failure to comply with same cannot under any circumstances be condoned.

I find on a balance of probabilities that the Applicant's dismissal was fair.

6. AWARD

This application is dismissed.

DATED AT DURBAN ON THIS 22nd DAY OF JULY 2013.



ASHA SEWPERSAD

PANELLIST