

# ARBITRATION AWARD

Commissioner: **Gail McEwan**

Case No: **PSHS745-20/21**

Date of award: **12 March 2021**

In the matter between:

**NEHAWU OBO SIYABULELA JIJINGUBO**

(Employee)

and

**DEPARTMENT OF HEALTH- WESTERN CAPE**

(Employer)

---

## **PARTICULARS OF PROCEEDINGS AND REPRESENTATION**

1. Arbitration was held on 2 March 2021 at the Metro East Nursing College Campus in Bellville. Present was Siyabulela Jijingubo (employee) who was represented by Anwar Maniers (NEHAWU). Department of Health- Western Cape (employer) was represented by Ayanda Mniki (assistant director labour relations). The certificate of outcome declaring the matter unresolved at conciliation is on file and is dated 3 February 2021. These proceedings were digitally recorded and the employer handed in a bundle of documents. A Xhosa interpreter was present. Maniers explained that a different union official was allocated to this case but could not be present due to an emergency with his son. Maniers was able to take over but did not have the bundle of documents. It was agreed that arbitration would proceed using only the bundle of the employer.

## **THE ISSUE IN DISPUTE**

2. I am required to determine on a balance of probabilities whether the dismissal of Jijingubo was fair. The issues in dispute were narrowed to the severity of the sanction; for charges 2 and 4 the medical certificate was produced; in charge 2 Jijingubo had been at work on 6 July 2020 and the dishonesty charge in not producing medical certificate can be explained. There were no procedural challenges. Jijingubo is seeking retrospective re-instatement.
3. I have considered all the evidence and argument, but because the LRA requires brief reasons (section 138(7)), I have only referred to the evidence and argument that I regard as necessary to substantiate my findings and the determination of the dispute.

## **THE BACKGROUND TO THE DISPUTE**

4. Jijingubo started working for the employer on 10 August 2009; worked as a driver at Lentegeur Hospital; earned R12 034.25 per month and was dismissed on 29 December 2020. Jijingubo was charged as follows in summary: (1) Misconduct in that you were absent from duty without authorisation for the period 15 June 2020 to 3 July 2020; (2) Misconduct in that you reported late for duty on 6 July 2020 at approximately 09h00 and was not truthful in your response to the supervisors' request for the sick certificate. You stated that you forgot the certificate at home; (3) Misconduct in that on 7 July 2020 you were absent from duty without authorisation as you did not inform your supervisor; (4) Misconduct in that on 8 July 2020 you reported to your supervisor via WhatsApp that you visited a clinic on 7 July 2020 and you were booked off until 8 July 2020. When you reported for duty on 9 July 2020 and your supervisor required you to provide a sick certificate for the period 15 June 2020 to 3 July 2020, you reported that you were never at the doctor as you had no money and (5) Misconduct in that for the period 9 to 14 September 2020 you were absent from duty without authorisation from your supervisor.

## **SUMMARY OF EVIDENCE AND ARGUMENT**

### **The employer's version and testimony was as follows:**

5. Martin Barnard (assistant director support services at Lentegeur hospital) testified that he is head of the support services with employees who are drivers, messengers, collect specimens and such like at the hospital. Jijingubo reported directly to Ann Amansure (transport officer) who in

turn reported to Barnard. Amansure had now retired. Lentegeur is a psychiatric hospital with about 714 patients and 706 staff. The estate is 166 hectares so it is not easy to get from one place within the hospital to another. Hence the drivers are used to transport equipment like wheelchairs; when patients need to be transported; blood specimens are taken to Groote Schuur hospital to that lab for analysis and such like. The daily work load was already heavy before the onset of Covid-19 which then became exacerbated by absenteeism which creates logistical problems to get all the tests done. Jijingubo is aware that if he is unable to come to work a process needs to be followed and this is covered during the orientation of all employees. In 2018 Jijingubo signed the internal policy of the hospital so is aware of what process needs to be followed for all types of absenteeism. This policy is on pages 7 and 8 of the bundle and was signed by Jijingubo on 9 April 2018. This is not a first offence for Jijingubo and the employer had tried to correct his behaviour over a period of time. A meeting had been held with Jijingubo to go through the required process to be followed. However the same offence was committed again which led to the formal disciplinary process being followed. These corrective measures never changed the misconduct of Jijingubo in regards to following the process when absent for any reason. Finally a final written warning dated 3 February 2020 had been issued (bundle page 17). When the behaviour never changed and the offence was committed again the employer had no alternative but to dismiss Jijingubo. In the early years of his time at the hospital Jijingubo had been one of the better workers and had been trustworthy. Things changed from 2019 onwards for Jijingubo and he could have been sent to ICAS (employee assistance programme) had he been forthright with whatever problems he was experiencing. Morale generally at the hospital was low as Jijingubo was frequently absent and it seemed to his colleagues that he was getting away with this. On 6 July 2020 Jijingubo had told his supervisor that he forgot his medical certificate at home. This was not the truth as later Jijingubo said he had not gone to the doctor as he had no money so therefore never had a medical certificate at all. This further damaged the trust relationship. In charge 5 Jijingubo had gone to the Eastern Cape. Referring to bundle page 15 there is a page of WhatsApp messages between Jijingubo and Amansure. It was conceded that the first page of the messages was not included in the bundle. The messages in the bundle started on 8 July 2020 when Amansure after a long delay acknowledged the message that Jijingubo had sent her. The response was late as Amansure had no data and had acknowledged his earlier WhatsApp message at 19h43. Jijingubo had answered that the problem had been sorted and he would speak to Amansure the following day. On 9 September 2020 Jijingubo had sent this message to Amansure:-“Hi Ann. I apologise. I’m on my way to Eastern Cape those guys they shoot my friend and my sister told they were here last night but that time I went to brother. Plz we will speak next week, if I am still alive”. Amansure discussed the message with Barnard

and it was thought that if Jijingubo feared for his life he should go to the South African Police Services (SAPS). The decision was jointly made that the annual leave applied for would be denied and this was communicated to Jijingubo by Amansure at 09h47 the same day. Jijingubo then had only responded on 14 September 2020 and the message sent reads as follows: "Hi Ann. I didn't have other plan because already on my way to Eastern Cape I apologize. Now I'm not going to make it we still in Touwsrivier. I'm coming tomorrow". The nub of the issue was that Jijingubo had requested annual leave but his application had been denied. Referring to charge 1 Jijingubo had been absent for the period 15 June to 3 July 2020 without notifying Amansure that he would be absent or the reason for his absence. Barnard was unsure of what type of leave had been taken. Jijingubo had never presented any medical certificate and had to be reminded to fill in the requisite leave forms by following the process. In charge 2 Jijingubo had arrived at work at 09h00 (instead of 07h30) and never apologized for his late arrival or proffered a reason as why he had been late for work. The process is that when an employee arrives late for work he must explain the reason for this to his supervisor. Referring to charge 3 Jijingubo was again absent on 8 July 2020 and this charge was confirmed as only relating to the fact that Jijingubo had not contacted Amansure to advise that he would not be coming to work. In charge 4 Jijingubo on 8 July 2020 had reported to Amansure via WhatsApp that he had visited the clinic on 7 July 2020 and had been booked off until 8 July 2020. When Jijingubo reported back to work on 9 July 2020 he had told Amansure that he did not have a certificate as he had no money to see a doctor. Jijingubo had failed to advise Amansure that he would not be at work over this period. Referring to the bundle page 13 there is a medical certificate for Jijingubo which confirms he received medical treatment on 7 July 2020 at 12h30 and due to a medical condition he would resume work on 9 July 2020. Jijingubo had only communicated with Amansure on 8 July 2020 that he was unable to come to work for the period 7 to 8 July 2020. Jijingubo was required to complete the requisite forms for his absence from 15 June to 3 July 2020 but had to keep being reminded to do this task. Referring to bundle page 22 where Barnard had written out a pre-investigation report on Jijingubo which is dated 28 July 2020. In point 13 Barnard wrote that drivers were also on leave during this period and from five drivers only one remained to do all the driving functions due to the unplanned absence of Jijingubo. This created a disturbance in the office environment which was not good for interpersonal relationships in the office. The unscheduled absence of Jijingubo put a massive strain on all to get all the work done.

6. In cross-examination Barnard confirmed that Jijingubo reports to the transport officer (Amansure). Each morning Amansure reports to Barnard on who is absent. Referring to charge 5 where Jijingubo was absent for the period 9 to 14 September 2020 without notifying Amansure

that he was unable to come to work - the WhatsApp messages in this regard are on bundle page 15. Barnard confirmed that the part when Jijingubo asked for annual leave was not in the bundle and only the latter part of this exchange of messages had been included. It was put to Barnard that Jijingubo will say that that he sent a message to Amansure on 8 September 2020 requesting annual leave. On bundle page 15 it is confirmed that Amansure only got the message at 19h43 and in her response stated that she hoped everything had been sorted. Jijingubo responded at 19h45 that they would speak the next day. Amansure responded on 9 September 2020 at 09h47 that the leave request was not approved. It was put to Barnard that Jijingubo had given Amansure the reason for the leave requested which was the shooting incident. Jijingubo next responded on 14 September 2020 that he would be at work the following day. Barnard agreed that he had read the message and was part of the decision not to grant to the requested leave. It was pointed out that Jijingubo was running for his life. Barnard explained that the employer can accommodate emergency leave but this was not considered in this instance as there was no longer any trust in Jijingubo. When Jijingubo returned to work, Barnard had not sat down with him to discuss the disturbing message he had sent to Amansure. Barnard had handed the matter over for disciplinary action. It was put to Barnard that there was a page from the WhatsApp messages missing but it showed that Jijingubo had spoken to Amansure. Turning to charge 2 Barnard confirmed that Jijingubo was at work on 6 July 2020 but had arrived late and was dishonest about forgetting his medical certificate at home. Barnard was unaware of how Jijingubo travelled to and from work. It was put to Barnard that on 6 July 2020 Jijingubo had caught a taxi. Barnard confirmed that during Covid-19 no special arrangement had been made for the transport of staff. Barnard confirmed that for nursing staff there was the Blue Dot scheme where the nurses could book a seat on a taxi that would collect them from their homes and take them home once their shift was completed. It was put to Barnard that Jijingubo had been late due to how the taxis could be loaded at that time. Barnard agreed that many staff had been late but were never charged as their excuse had been accepted. Barnard confirmed that the problem on 6 July 2020 was that Jijingubo had never explained why he had been late. It was put to Barnard that Jijingubo will say that he phoned Amansure on 15 June 2020 as he was not feeling well and had done so again three days later. It was further put to Barnard that Jijingubo had been too scared to go to the doctor due to Covid-19. Barnard explained that he had no proof of this and Amansure had never said that Jijingubo had phoned in. Barnard added that Jijingubo would need to produce his phone records to prove he had indeed phoned Amansure. It was put to Barnard that Jijingubo was not feeling well so had stayed at home in self isolation. Barnard reiterated that Amansure never said that Jijingubo had phoned her. Turning to charge 3 it was put to Barnard that Jijingubo had a medical certificate for the period of absence for both 7 and 8 July 2020. Barnard stated that the

charge related to the failure of Jijingubo to advise Amansure that he was unable to come to work. NEHAWU stated that Barnard cannot testify to various things as he was not present and, in the circumstances, there were no further questions.

7. In re-examination Barnard confirmed that the dates as stated in the charges had been discussed between him and Amansure. Amansure had never said that Jijingubo had phoned her as for example on 15 June 2020 and had never said that Jijingubo was in self isolation. Barnard added that there was no reason for Jijingubo to not have the requisite medical certificate. Barnard was reminded that Jijingubo had said he never went to the doctor as he had no money. Barnard was adamant that Jijingubo had never spoken to Amansure about Covid-19 as this was never raised in their daily meetings about who was absent. Barnard explained that there are protocols in place to deal with Covid-19. Turning to charge 5 Barnard confirmed that Jijingubo had gone to the Eastern Cape during the period 9 to 14 September 2020. Jijingubo had never come afterwards to explain why he had to go to the Eastern Cape. Barnard confirmed that NEHAWU had said some of the WhatsApp messages between Jijingubo and Amansure had not been included in the bundle.
8. NEHAWU confirmed that Jijingubo still had the messages on his phone and that he would read them into the record. On 7 September 2020 at 08h15 Jijingubo had told Amansure about a problem involving a fight and Jijingubo had to run to his uncle in Kraaifontein. Jijingubo would be coming to work on 8 September 2020. The next message said that Jijingubo was not coming on 8 September 2020 as he needed to fix the problem – this message was sent at 07h43. Amansure had only responded at 19h43 which was twelve hours later as on bundle page 15.
9. Barnard agreed that only the absence on 9 July 2020 was a problem and hence Jijingubo had been charged.

**The employee's version and testimony were as follows:**

10. Siyabulela Jijingubo testified that regarding charge 5 he had been absent for the period 9 to 14 September 2020. On 9 September 2020 over a weekend they (presumed gang members) had beaten up a member of the community. Thereafter they had placed the blame for the beating on Jijingubo saying that he beat that guy that then had to be taken to hospital. The gang members then came looking for Jijingubo which is when he had run to his uncle in Kraaifontein. The next day Jijingubo had explained to Amansure via WhatsApp what had happened. The families involved had spoken to each other and tried to resolve this thing. NEHAWU reminded Jijingubo

that he had only been charged for his absence from 9 September 2020 to 14 September 2020. Jijingubo stated that on 9 September 2020 he was on his way to the Eastern Cape as members of the gang were carrying guns as related to Jijingubo by his sister. Once in the Eastern Cape Jijingubo had no data and had only seen the message that his leave was not approved when on his return from the Eastern Cape. On his return Jijingubo had told Amansure what had happened and she had said she was glad that Jijingubo was alive. No-one called Jijingubo if they had needed further information. Turning to charges 3 and 4 Jijingubo explained that he hurt his knee so went to the clinic when he was booked off for both 7 and 8 July 2020. Jijingubo had asked his neighbour Maibulelo Mpale to send Amansure a message that he was unable to come to work. Referring to bundle pages 7 and 8 Jijingubo confirmed that he is aware of the processes that he needed to follow when he was unable to come to work. Amansure had never approached Jijingubo and he was charged with unauthorized absence for the period 15 June 2020 to 3 July 2020 for which period Jijingubo had no medical certificate. On 15 June Jijingubo had told Amansure that he was not feeling well and had been in touch with her once every week thereafter. Jijingubo was scared of Covid-19 and had no money to go to the doctor. Jijingubo had been feeling sick for three weeks and as data was a problem he had not phoned Amansure every day. Regarding charge 4 Jijingubo explained that he had a medical certificate for the period of his absence for 7 and 8 July 2020. When asked for the certificate Jijingubo had thought that Amansure was asking for the leave forms so this had been a misunderstanding. Charges 2 and 4 related to the same period of 7 to 8 July 2020. Jijingubo denied he was dishonest as he had thought that Amansure was talking about the completion of the leave forms. Jijingubo had told Amansure he would bring the forms in the next day. On 6 July 2020 Jijingubo had been late for work due to the taxis. Jijingubo explained he stays in Mfuleni where there had only been a few taxis at that time. There was a long que waiting for the taxi so by the time Jijingubo was able to get onto the taxi it meant he was late for work. Jijingubo explained he had no data to phone Amansure to tell her he would be late. On his late arrival at work Jijingubo had signed in at 09h00 and went straight to carry out his duties.

11. In cross-examination and with reference to charge 1 it was put to Jijingubo that he had not submitted a medical certificate for the period of his absence from 15 June 2020 to 3 July 2020 yet Jijingubo is aware that a medical certificate is required for any absence of more than two days. It was further put to Jijingubo that he was aware that Amansure was asking for a medical certificate and not the leave forms. It was put to Jijingubo that he had been asked for a medical certificate on 6 July 2020 and he had said he left the certificate at home. This was denied by Jijingubo. It was put to Jijingubo that the employer had to again ask for the medical certificate.

Jijingubo was reminded that the version about confusion with the leave forms had not previously been put forward by him. Jijingubo held that Barnard had told many untruths which was refuted by the employer. Referring to charge 1 regarding the absence of Jijingubo for the period 15 June 2020 to 3 July 2020 it was put to Jijingubo that Amansure had followed the protocols but had never said that Jijingubo said anything about Covid-19. Jijingubo said he had no money to see a doctor. Jijingubo explained that he had symptoms of Covid-19 so had stayed at home. It was put to Jijingubo that his statements are inconsistent. Referring to charge 5 and his absence from work for the period 9 to 14 September 2020 it was put to Jijingubo that if his life had been threatened he needed to go to SAPS. Jijingubo confirmed he had gone to SAPS before he left for the Eastern Cape. Jijingubo said he had been absent for six days and had explained the reason for his absence to Amansure. It was put to Jijingubo that there had been a disciplinary hearing but he had not produced anything from SAPS to corroborate his version. It was put to Jijingubo that he was untrustworthy as at arbitration he had still not bought any proof that he had been to SAPS. Jijingubo explained that in regards to charge 3 he had asked his neighbour to advise Amansure that he was unable to come to work. Jijingubo confirmed he is aware of the process and it was put to him that a neighbour phoning in was not part of the process. It was emphasized that the process does not allow for a neighbour to send messages on his behalf. Jijingubo explained that he had written the message on his neighbours' phone but cannot say for sure that said message had been sent. Referring to charge 2 Jijingubo stated that he had not communicated the reason why he was late to Amansure. It was put to Jijingubo that he therefore had not followed the process.

12. In re-examination and with reference to charge 2 Jijingubo confirmed that on 6 July 2020 only Amansure had been present and not Barnard. Jijingubo explained that he had never returned to SAPS to get proof of the incident as no-one had ever asked him for such proof.

13. In answer to a question in clarification from me Jijingubo explained that a person was beaten up and went to hospital to be treated for his injuries. A rumour was started that it had been Jijingubo who had beaten the other person. This meant that the foreign nationals were after Jijingubo As at 12.

14. It was agreed that closing arguments would be submitted to me by no later than 17h00 on Tuesday 9 March 2021. As at 12 March 2021 no closing argument was received from NEHAWU. The employer submitted their closing argument as agreed and I have noted the contents thereof.

## **ANALYSIS OF THE EVIDENCE AND ARGUMENT**

15. There were no procedural challenges in this dismissal and the procedure followed by the employer aligns with the provisions of Schedule 8 – Code of Good Practice: Dismissal of the LRA. Consequently, the dismissal of Jijingubo is found to be fair on procedural grounds.
16. I have taken note that the exchanges in this matter were directly between Jijingubo and Amansure who was not at arbitration simply because she had retired. I was not told what efforts had been made to subpoena her or just ask her to be present. That being the case the employer was confident that they only required Barnard to be present as all absenteeism was covered in his daily meetings with Amansure regarding absenteeism on any given day.
17. Item 7 of the Code of Good Practice : Dismissal reads: 'Any person who is determining whether a dismissal for misconduct is unfair should consider: - (a) whether or not the employee contravened a rule or standard regulating conduct in, or of relevance to, the workplace; and (b) if a rule or standard was contravened, whether or not- (i) the rule was a valid or reasonable rule or standard; (ii) the employee was aware, or could reasonably be expected to have been aware, of the rule or standard; (iii) the rule or standard has been consistently applied by the employer; and (iv) dismissal was an appropriate sanction for the contravention of the rule or standard. (c) proof of the offence.' Bundle pages 7 and 8 sets out the procedure to be followed when an employee is unable to come to work due to being sick. The procedure reads as follows: \*When you are sick you must phone into your supervisor; \*You must phone inside of two hours of shift starts; \*You must phone in person; \*No SMS; \* No messages; \*No please call me; \*Do not call, SMS or mail your colleagues; \* .... I have only referred to the relevant bullet points. This policy is dated 9 April 2018 and had been signed for by Jijingubo the same day. Barnard conceded that in terms of the policy WhatsApp messages were now acceptable. This negates some of the above and there was no indication given if the policy had been updated to include the acceptance of WhatsApp messages. I have noted that with the acceptance of WhatsApp messages there is nothing to show that Jijingubo could reasonably have been expected to know that neighbours sending the WhatsApp message is not permitted, Be that as it may the rule exists that an employee is required to notify his superior (or if unavailable the one-up in the hierarchical structure) of any inability to come to work within two hours of the shift starting.
18. Jijingubo was issued with a final written warning (valid for a period of six months) on 3 February 2020 for “being absent from work without prior permission and you did not contact your supervisor to state the reasons”. Therefore, the final written warning was due to be removed

from his record by 4 August 2020. The final written warning confirms that Jijingubo was aware of the rule and what was expected of him if he was unable to come to work.

19. Turning to the first charge -(1) Misconduct in that you were absent from duty without authorisation for the period 15 June 2020 to 3 July 2020. It was established that authorisation simply meant that the supervisor was aware that the employee was unable to come to work. The version of Jijingubo was that he was scared of Covid-19, lived alone, was not feeling well so had decided of his own accord to self-isolate for eighteen days. However it is trite that for any absences of longer than two days a medical certificate must be provided. The policy relied on by the employer is silent on this matter. It is also the version of Jijingubo that he had sent a WhatsApp to Amansure and had kept contact with her at least once a week during the three week period. Jijingubo had no authorization to decide without the advice of a medical practitioner to remain home for such a lengthy period of time. In June/July 2020 the isolation period recommended was fourteen days and not eighteen. Jijingubo at that time had to have been aware that any further transgressions of this nature may lead to his dismissal as the final written warning at that time was still active. There is no doubt that Jijingubo broke the rule and failed to keep in touch with Amansure by his own admission as he only contacted her once a week in the eighteen days that he was absent. I find on a balance of probabilities that Jijingubo is guilty of charge 1.

20. Charge 2 reads as follows: (2) "Misconduct in that you reported late for duty on 6 July 2020 at approximately 09h00 and was not truthful in your response to the supervisors' request for the sick certificate. You stated that you forgot the certificate at home". The version of Jijingubo was that he arrived, signed in at 09h00 and went straight to start his duties. It may well be that the que for a taxi from Mfuleni was long and due to the social distancing requirement Jijingubo had to wait longer than was normal to get a taxi. Jijingubo failed at the time to report to his supervisor that he had arrived late at work and the reason for his late coming. I doubt that there was confusion regarding what Amansure was asking Jijingubo to bring. This was at a time when Jijingubo had resumed work after an absence for a period of eighteen days. The 4<sup>th</sup> and 5<sup>th</sup> of July 2020 fell over a weekend. There would have been no reason for Jijingubo to have forgotten his leave form at home as it is most probable that he still had to get hold of the leave form once back at work to complete it for his eighteen days of absence. In the circumstances I find on a balance of probabilities that Jijingubo failed to advise Amansure of the reason for his late arrival and had been dishonest saying he had left the medical certificate at home whilst knowing at that time he had not visited a doctor.

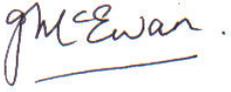
21. Turning to the next charge which reads as follows: (3) “Misconduct in that on 7 July 2020 you were absent from duty without authorisation as you did not inform your supervisor”. Jijingubo had a medical certificate for this day and the charge only related to him informing Amansure that he was unable to come to work. The version of Jijingubo was that he asked his neighbour to send the message and had typed it out on his neighbour's phone to send. If that were true it is probable that the message was sent but there is no proof in this respect. I would think that knowing that he was already on a final written warning it was incumbent on Jijingubo to prove that he had typed the message and it was sent. Jijingubo conceded that although he had typed the message he was unable to say with any certainty that the message had been sent. In the circumstances I find on a balance of probabilities that Jijingubo failed to advise Amansure that he was unable to come to work on 7 July 2020.
22. Charge 4 reads as follows: (4) “Misconduct in that on 8 July 2020 you reported to your supervisor via WhatsApp that you visited a clinic on 7 July 2020 and you were booked off until 8 July 2020. When you reported for duty on 9 July 2020 and your supervisor required you to provide a sick certificate for the period 15 June to 3 July 2020, you reported that you were never at the doctor as you had no money”. This charge is badly worded and confusing. The medical certificate in the bundle of documents confirms that Jijingubo was seen by a medical practitioner on 7 July 2020 and was booked off work for that date and 8 July 2020. The certificate that Amansure was looking for related to the eighteen days absence from 15 June 2020 to 3 July 2020. I have covered the medical certificate issue for the period in question under charge 1.
23. Charge 5 reads as follows: (5) “Misconduct in that for the period 9 to 14 September 2020 you were absent from duty without authorisation from your supervisor”. It is evident from the evidence that Jijingubo had applied to Amansure for annual leave for the period in question. Amansure got the WhatsApp message late at 19h43 and responded that she trusted that everything had been sorted out. Jijingubo replied with a WhatsApp message at 19h45 that everything was sorted but that they would speak the next day which was 9 September 2020. On 9 September 2020 Jijingubo sent a further WhatsApp message to Amansure advising that he was already on his way to the Eastern Cape. The version of Jijingubo was inconsistent in that initially he said that another had been beaten up and taken to hospital. This changed to “those guys shot his friend” and he and Amansure would speak the next week if Jijingubo was still alive. The message itself was very dramatic. Jijingubo returned to work on Tuesday 15 September 2020 but never said how he knew then that it was safe for him to return if his life had been in danger. It is reasonable to expect that if Jijingubo had escaped to the Eastern Cape to save his life that those same foreign nationals would still be in the neighbourhood when he returned on 14 September 2020.

There is no way in such a short period of time that Jijingubo could be running for his life but returning unperturbed six days later. It maybe, that there was no signal or poor reception wherever Jijingubo had gone to in the Eastern Cape. The version of Jijingubo was that he only saw the WhatsApp message from Amansure that his annual leave request had been denied when he was already returning from the Eastern Cape. Six days later Jijingubo sent a further message to Amansure stating that he did not have another plan because he was already in the Eastern Cape, Jijingubo apologises and states he will be back at work the following day – being 15 September 2020. The version of Jijingubo in this regard is not the truth on a balance of probabilities. It also begs the question as how Jijingubo would know he only needed six days on his leave application in advance of him running for his life to the Eastern Cape. It is trite that annual leave must be applied for in advance. The employer allows for leave in emergency situations and had Jijingubo been forthright with them he may have received a different outcome. Jijingubo applied for annual leave but before getting this absence approved he was already on his way to the Eastern Cape for the six day period. In the circumstances I find on a balance of probabilities that Jijingubo made a fatal error in assuming that his annual leave would be approved and simply proceeding as if that leave had been approved with a rather dramatic story which I do not find to be at all credible.

24. Having found Jijingubo guilty of all the charges against him I now turn my attention to see whether the sanction of dismissal was reasonable in the circumstances. There is no doubt that Jijingubo contravened the rule in the workplace; the rule is valid and reasonable; Jijingubo was fully aware of the rule; consistency was not placed into dispute and he had been issued with a final written warning for the same misconduct. I find on a balance of probabilities that dismissal in these circumstances is reasonable. I therefore also find on a balance of probabilities that the dismissal of Jijingubo is substantively fair. I have addressed the issues narrowed to be in dispute in terms of each charge addressed.

## AWARD

25. The dismissal of Siyabulela Jijingubo is found to be fair on both substantive and procedural grounds. Consequently, the employee's claim is dismissed.

A handwritten signature in black ink, appearing to read "Gail McEwan", with a horizontal line underneath the name.

Gail McEwan