



ARBITRATION AWARD

Case No: **PSHS79-20/21**

Commissioner: **Samuel Baron**

Date of award: **16 December 2020**

In the matter between:

PSA OBO NEIL NOVEMBER

APPLICANT

and

DEPARTMENT OF SOCIAL DEVELOPMENT-WESTERN CAPE

RESPONDENT

DETAILS OF HEARING AND REPRESENTATION

1. This arbitration was finalized on 4 December 2020. It was conducted virtually. At the conclusion of the matter, the parties requested seven days in which to submit their closing arguments and they duly obliged.
2. The Applicant, Mr. Neil November, was present and was represented by Mr. Johann Munro, an official from the trade union PSA, of which the Applicant is also a member.
3. The Respondent, the Department of Social Development-Western Cape, was represented by Ms. Aashiqa Champion from the Respondent's Employee Relations Directorate.
4. The proceedings were digitally recorded.

ISSUE TO BE DECIDED

5. I am required to determine whether the Applicant's dismissal was procedurally and substantively fair and if not, determine the appropriate remedy.

BACKGROUND TO THE DISPUTE

6. The Applicant commenced employment with the Respondent 3 December 2013 as a Child and Youth Care Worker at the Outeniekwa Child and Youth Care Centre. He was earning a salary of R12 351.27 per month at the date of dismissal, which occurred on 7 May 2020.
7. I made a ruling after two of the Respondent's witnesses testified, allowing that the statements of Jerome Smit, Joshua Toll, Morne Antonie and Henry Prins as well as the transcripts of the disciplinary proceedings be admitted into evidence at this arbitration.
8. The Applicant was charged and dismissed for the following misconduct:

Charge 1

- (a) It is alleged that you are guilty of misconduct in that on or about 6 June 2019, you assaulted a youth resident Mr Lorenzo Carolus, at the Outeniekwa Child and Youth Care Centre, by *inter alia* smacking and choking him.
- (b) It is alleged that you are guilty of misconduct in that on or about 22 July 2019, you assaulted a youth resident, Mr Morne Antonie, a resident at the Outeniekwa Child and Youth Care Centre, by inter alia smacking him.

Charge 2

It is alleged that you are guilty of misconduct in that on 6 June 2019, you displayed improper and disgraceful conduct during your interaction with youth residents at the Outeniekwa Child and Youth Care Centre, when:

- (a) you swore at, Jerome Smit, using words to the effect of '*jou ma se poes en Juffrou Barbara se poes*'.

SURVEY OF EVIDENCE AND ARGUMENTS

Respondent's case

9. The Respondent called three witnesses in support of its version and made use of the statements and the transcripts of the hearings mentioned above. The first witness, Mr. Heinrich Wehmeyer, testified that he was the Chairperson of the disciplinary enquiry. He testified further on the issues of the delay in the matter. The last offence according to him was committed on 22 July 2019 and the notice to attend the hearing was issued on 27 November 2019, which was represented a delay of about four months.
10. Mr. Wehmeyer referred to PSCBC Resolution 1 of 2003, the Disciplinary Code and Procedures for the Public Service, which stipulates that *“if an employee is suspended or transferred as a precautionary measure, the employer must hold a disciplinary hearing within a month or 60 days, depending on the complexity of the matter and the length of the investigation”*.
11. He further read the following extract from the Resolution:
- ‘2. Principles*
- 2. The following principles inform the Code and Procedure and must inform any decision to 2.1 Discipline is a corrective measure and not a punitive one.*
- 2.2 Discipline must be applied in a prompt, fair consistent and progressive manner*
- 2.3 Discipline is a management function.’*
12. He further referred case law (*NEHAWU obo Nkosi and 9 others v the Department of Economic, Small Business Development, Tourism and Environmental Affairs, Free State*) that apparently states that the literal meaning of prompt should not be considered, but that the word “prompt” in this context simply meant a reasonable time.
13. Mr. Wehmeyer further mentioned that no investigation took place yet, that there is a lot of red tape in the public service and that Supervisors get presented with evidence all the time. There was according to him no evidence that the Respondent had waived its right to discipline the Applicant. He further stated that there were two different hearings that were held, there were a few people involved and different witnesses had to testify. In that context, he stated, four months was not unreasonably long.

14. He stated further that he considered a request for postponement from the Applicant and took into account the fact the Applicant was transferred to another department as a precautionary measure, that Ms. Leonie Mohammed stated that time is of the essence and the fact that some residents might leave the facility.
15. Mr. Wehmeyer was also questioned about a statement of a witness that was not present at the hearing was allowed as evidence. He mentioned that he did not refer to that evidence in his final report. He thus did not allow any statement without any evidence being led.
16. Ms. Barbara Nicholas testified that she is the current manager of the facility. As such, she has a legislative duty to execute the Children's Act. Part of her duties are to ensure that the 140 residents have care and protection, that they have a safe environment and get the different type of services. These residents are all under 18 years of age and they come from very challenging backgrounds and experience behavioural challenges.
17. She mentioned further that the incidents of misconduct that led to the Applicant's dismissal was brought to her attention by Ms. Jermain Fredericks, the Social Worker. There are according to her protocols in place in terms of reporting these incidents and she had to report in to the Provincial Office in Cape Town. She handed the Applicant a notice to attend the hearing on 11 December 2019 and this document was forwarded to her from the Head of Department.
18. Ms. Nicholas testified further that the Applicant was removed from the facility to avoid the residents being intimidated and victimized by him. She mentioned that the Applicant, even if he was provoked, did not have to assault and abuse the residents. He could have spoken to them, asked the Supervisor to speak to them or ignore them. The Applicant received the Control and Restraint training. She stated that the misconduct committed by the Applicant fell within the definition of assault. She also mentioned that the Caregiver must execute the structured daily program. He should display model behaviour for the residents to follow. His behaviour on the days in question was thus improper and contrary to the Children's Act.

19. She testified further that although she did not witness this particular incident, she observed the Applicant's aggressive behaviour before on two occasions. He has a temper. She also mentioned that the residents would not have gained anything to make up stories against the Applicant. In the event that the Applicant is reinstated, she stated, the message would be sent that there are no consequences for adults that behave in such a manner. The residents would also feel that are not being protected and it will have a negative impact on their rehabilitation.
20. Ms. Nicholas finally mentioned that the Applicant showed no remorse for the misconduct and he showed no level of accountability. He cannot be trusted anymore. The Centre is a 24-hour Centre and the incidents at hand happened after hours when there was no management oversight. They needed to protect the children. The Applicant's behaviour was very serious and can have devastating consequences for the Respondent.
21. Ms. Nicholas denied under cross-examination that she was selective in reporting the cases involving the same misconduct of other staff members. She mentioned that she has to report all cases. She denied that she only referred the case because the Applicant also swore at her.
22. She was aware of the fact that Joshua Toll testified in the disciplinary hearing that because the Applicant is strict in managing the unit, they decided to make up stories to get him out of his work.
23. Ms. Nicholas was also asked about leaving in the Applicant in charge of the facility on a particular day in December 2019, but she did not recall that she did so. It was further put to her that the Applicant accompanied some of the residents in a car to an event. She denied that the Applicant was in the life space of the residents.
24. Ms. Jermaine Fredericks testified that she is a Social Worker at the facility and that she renders social work services to the residents. The incidents involving the Applicant were brought to her by an ex-employee Mr. Claassen. He informed her that the residents reported it to him. She thereafter consulted with the residents and took their statements. She completed an incident report form and recommended that the incidents be formally investigated. The residents whom she had taken the statements from had learning disabilities.

25. Ms. Fredericks then read the statement of Jerome Smit and she made reference to certain aspects of his testimony in the transcripts. According to the evidence of Jerome Smit, the Applicant swore at him as well as Ms Nicholas, and said. *'Ek het gese ek gaan vir Mev Barbara se Mnr dreig my. Hy se toe jou ma se poes en juffrou Barbara se me se poes'*. According to Ms. Fredericks, Jerome Smit stated the same version in his testimony at the hearing. According to him the Applicant did not make a joke when he said those words, but that was usually how he spoke to the residents.
26. Jerome Smit also stated that he did not have anything to gain by making up the story about the Applicant. Ms Fredericks in her testimony indicated that the residents did not have anything to gain in both instances, since they did not receive preferential treatment. Their sentences at the facility were not shortened and they did not receive any additional benefits at the facility.
27. Ms Fredericks went on to read the statement of Joshua Toll into record and also highlighted certain aspects of the transcripts in respect of his testimony. In his statement and testimony, he confirmed Jerome's version that the Applicant swore at Jerome Smit. He further confirmed in his testimony that the applicant *'nou en dan'* speaks to them in that manner. The aforementioned was confirmed in Jerome Smit's testimony. This was not disputed by the Applicant.
28. Ms. Fredericks further read Joshua Toll's statement which was confirmed in his testimony at the disciplinary hearing that the Applicant *'het vir Lorenzo aangerand'*. Joshua Toll, as indicated in the transcripts, testified how the Applicant assaulted Lorenzo Carolus: *'hy het hom gewurg eerste toe meneer inkom toe slaan meneer hom met die hande en trap toe en wurg meneer hom teen die muur. Die woord ingegaan is ons eie woord wat ons make vir slaan.'*
29. According to Ms. Fredericks, Jerome Smit and Joshua Toll's version corroborate each other, in that they confirmed that the Applicant had choked Lorenzo Carolus.
30. Ms Fredericks read another incident report, in relation to Charge 1 (b) into record and further testified that the Applicant himself had brought the incident to her attention. He apparently mentioned that he had hit Morne Antonie in the face. She recorded this in her

report. According to her she had nothing to gain by lying that the Applicant had reported that he had hit a resident.

31. She again went on to read the statements of the residents involved in the incident into the record and referred to various sections of the transcripts in respect of the residents' testimonies provided in the disciplinary hearing.

32. In his testimony at the disciplinary hearing, Morne Antonie explained the smack as '*toe ek voel is my gesig dood geklap*' and '*die binnekant van my mond was stukkend*'. Under cross in examination Ms Fredericks was asked whether Morne was confused about the incident on 22 July 2019, since Morne testified that Ms Champion had written his statement. She responded that Morne was not confused about the incident since he was clear about what had transpired on the day in question, but that he was nervous in testifying at the disciplinary hearing.

33. Ms. Fredericks further testified that in her voice note she made reference to the fact that she heard a rumour regarding an incident and stated that it appears that management chooses who they want to discipline. It was put to Ms Fredericks that she herself mentioned that a resident informed her of the incident. She mentioned that the management at facilities do not have the authority to determine which matters are referred for further investigation, only the Head of the Department.

34. Ms. Fredericks further testified that should the Applicant be reinstated; the residents will not have faith in the system in that they would not want to report matters since there would be no consequences for the perpetrators. She also mentioned that it will have a devastating effect on the rehabilitation programmes of the facility.

Applicant's case

35. Mr Mujahied Naidoo testified to the incident on 6 June 2020. He testified that he was on his last nightshift and was working alone at the B1 admissions centre. He testified further that the Applicant called him over the radio and informed him that Lorenzo Carolus did not want to go to bed. Mr Naidoo testified that when he arrived at the unit, he told Lorenzo to go to bed and he so. He did not observe any assault or swearing during the time he was there.

36. Mr Naidoo further stated that the residents had made up the story against the Applicant and that it was previously reported to Ms Nicholas, however nothing was done about it. Mr Naidoo mentioned further that other incidents of assault were reported to Ms Nicholas, but she did nothing about it. He was however cross-examined on this aspect and it mentioned that these issues were raised only after the Applicant was dismissed.
37. Mr Naidoo confirmed that he was no longer in the Respondent's employ and that he was dismissed for charges relating to assault and the failure to report an assault of a resident.
38. The Applicant testified that he called Mr Naidoo over the radio on the night in question (6 July 2019) because he thought that Jerome Smit was *'going to play'* with him. According to him, Jerome Smit got into bed when Mr. Naidoo arrived. He also mentioned stated that Lorenzo Carolus got out of bed and he told Lorenzo that it is bedtime. Mr Naidoo further instructed Lorenzo to go to bed and everything was settled. Both the Applicant and Mr. Naidoo thus denied that any assault or swearing took place at that time.
39. According to the Applicant, Joshua Toll was involved in raping another resident. He reported this to management, who in turn reported it to management, but management did nothing about it. This version was not put to the Respondent's witnesses.
40. The Applicant mentioned further that the residents wanted him out of the unit because he adhered to the rules and the residents did not want to abide by the rules. He also that he informed Mr Naidoo to make arrangements with Ms Nicholas to discuss the aforementioned, but nothing came from it.
41. The Applicant denied that he assaulted Morne Antonie on 22 July 2019. According to him, he tried to separate them because they were fighting. He saw the fight and tried to prevent them from getting hurt. He mentioned that he pushed them aside in order to break them up and thereafter took Morne Antonie to the bathroom to console him.
42. The Applicant denied that he had reported to Ms. Fredericks that he had hit Morne. According to him, he merely informed her that the two of them were fighting. According to the Applicant, he had a good relationship with Ms. Fredericks.

ANALYSIS OF EVIDENCE AND ARGUMENT

43. Section 188 of the LRA provides that a dismissal is be unfair if the Employer fails to prove that the reason for the dismissal was not for a fair reason (substantive fairness) and that the dismissal was not effected in terms of a fair procedure (procedural fairness).
44. The Applicant's challenge to the procedural fairness *inter alia* involves the delay in finalizing the internal disciplinary hearing of the Applicant. It took approximately four months from date the last alleged offence was committed until the date the notice to attend the hearing was served on the Applicant. The date of the hearing was set for 11 December 2019.
45. On this aspect, a lengthy delay in the conclusion of the disciplinary proceedings, cannot *per se* lead to a conclusion of unreasonableness and unfairness. It does not automatically follow that the Respondent has aborted the disciplinary hearing simply because there was a long delay. More is required. What must always be considered holistically, in deciding whether to finish off disciplinary proceedings because of an undue delay, is the following as espoused in the Labour Court case of *Moronyane v Station Commander of the South African Police Services, Vanderbijlpark [2016] JOL 36595 (LC)*
46. The delay has to be unreasonable. In this context, firstly, the length of the delay is important. The longer the delay, the more likely it is that it would be unreasonable. As I mentioned, the delay in this case was about four months.
47. The explanation for the delay must be considered. In this respect, the employer must provide an explanation that can reasonably serve to excuse the delay. A delay that is inexcusable would normally lead to a conclusion of unreasonableness. The explanation of the Respondent's witness, Mr. Wehmeyer, is that there is normally a lot of red tape in the public service and this normally results in delays, He also mentioned that the investigation was not finalized yet. The fact that there is "red tape" in the public service, on its own, cannot serve as an excuse for unnecessary delays in the conclusion of disciplinary proceedings. I do accept however, that the finalization of investigations could be lengthy process.

48. It must also be considered whether the employee has taken steps in the course of the process to assert his or her right to a speedy process. In other words, it would be a factor for consideration if the employee himself or herself stood by and did nothing. There is no evidence that the Applicant engaged the Respondent on the issue of the lengthy delay or that he made a referral to the Council for an unfair labour practice relating to an unfair suspension based on the delay in the proceedings.
49. Another aspect is whether the delay caused material prejudice to the employee. In establishing the materiality of the prejudice, I have to make an assessment as to what impact the delay has on the ability of the employee to conduct a proper case. The Applicant was transferred to another department and got paid during that period. He did not lead any evidence that his ability to prepare and conduct his case was impaired in any way.
50. The nature of the alleged offence must be taken into account. What it means is that the nature of the offence could in itself justify a longer period of further investigation, or a longer period in collating and preparing proper evidence, thus causing a delay that is understandable. The Application was of course charged with serious offences and required thorough investigation, especially in the environment of the minor residents in this instance.
51. Having assessed the above factors holistically, I find that the delay in the circumstances was not inordinate. Although the explanation for the delay is not entirely convincing, the Applicant did not take any steps to assert his right on this aspect, did not suffer material prejudice in conducting a proper case and the nature of the offence was indeed serious, causing a delay in the proceedings. I thus reject the Applicant's contention that the delay in the proceedings should lead to a conclusion that the dismissal was unfair on that aspect.
52. A further challenge on the procedural fairness is the Applicant's assertion that the Chairperson the hearing was biased in refusing a postponement of the hearing. The Chairperson, Mr. Wehmeyer, had the discretion whether to postpone the matter or not. In deciding the matter, it was required of him not to exercise such discretion in an unreasonable and irrational manner.

53. The reason given by Mr. Wehmeyer for refusing the postponement was that one of the pressing issues was that some of the residents were about to leave the facility. Also, that the Applicant had enough time to prepare for the hearing and further that the PSA was a large union and therefore should have found someone else to represent the Applicant in the hearing. The issue here is whether the reasons given for the refusal of the postponement proved that the Chairperson has shown bias towards the Respondent.
54. In my assessment, Mr. Wehmeyer considered the application in front of him and made a decision based on certain factors he felt required consideration in his view. He thus considered the issue judicially and I fail to detect any malice or arbitrariness in making that decision. The Applicant was ultimately represented in the disciplinary hearing by an advocate. I thus cannot find that he displayed any bias towards the Respondent. That challenge resultantly also fails.
55. Lastly, the issue of the Chairperson of allowing evidence into the record of a person not physically at the hearing was dealt with by Mr. Wehmeyer. He stated that he did not consider such evidence in his final report. The Applicant did not dispute that. Thus, having assessed the Applicant's challenge to the procedural fairness of the dismissal, I conclude that no procedural unfairness was visited upon the Applicant and the dismissal was thus procedurally fair.
56. In determining the substantive fairness of the Employee's dismissal I must consider item 7 of the Code of Good Practice on Dismissal. The Code states that an arbitrator must consider whether or not the employee contravened a rule or standard regulating conduct in, or of relevance to the workplace and if a rule or standard was contravened, whether or not the rule was a valid or reasonable rule or standard; the employee was aware, or could reasonably be expected to have been aware of the rule or standard; the rule or standard has been consistently applied by the employer and dismissal was an appropriate sanction for the contravention of the rule or standard.
57. The Applicant denies that he is guilty of the misconduct for which he was dismissed. He also asserts that the Respondent applied its rules inconsistently. I am thus required to determine afresh, on the evidence before me, whether the Applicant was guilty of the offences and if I so find, consider whether there was any inconsistency and lastly whether the sanction of dismissal was appropriate under the prevailing circumstances.

58. Charge 1 (a) relates to the alleged assault of one of the residents, Lorenzo Carolus (“Carolus”). It is alleged that the Applicant smacked and choked Carolus. Assault is the act of inflicting physical harm or unwanted physical contact upon a person. This incident was reported to the Social Worker, Ms. Fredericks, who completed an incident report on the matter and also took Carolus’s statement in which these allegations were made. Two residents, Jerome Smit (‘Smit’) and Joshua Toll (“Toll’), who apparently witnessed the incident, made a statement to this effect and further testified at the hearing on that aspect. Carolus did not testify. It is apparent that the statements of Smit and Toll as well as their testimonies at the disciplinary hearing correlates.
59. The evidence of the Applicant on this charge is that it never happened. He testified that he called Mr. Naidoo on the radio to inform him that Smit is going to “play with him”. The evidence of the Applicant and his witness, Mr. Naidoo (“Naidoo”), differs as to the reason why Naidoo was called by the Applicant on the radio. The Applicant said it was because Smit was going to play with him. Naidoo said it was because Carolus did not want to go to bed. The Applicant found it difficult to explain this anomaly.
60. He also asserts that it was impossible for him to chase Carolus around the bed because the area between the beds were too small. The transcript of the hearing indicates that this matter was not actively pursued by the Applicant’s representative in cross-examination. Only Carolus mentioned this in his statement. In my view, even if it is so that Carolus might have been mistaken on that aspect, it does not mean that the incident did not happen.
61. There is no dispute about the fact that Naidoo at the time of his testimony was also dismissed for assault as well as a failure to report assault on residents. I am thus inclined to thread lightly around his evidence. He also mentioned that management set the Applicant up by letting the residents testify against him. Yet the residents testified that they had nothing to gain from testifying against the Applicant. Other than the bare allegation, nothing of substance was produced by Naidoo to back it up. Naidoo’s evidence on this aspect is thus rejected.
62. An assessment of the evidence on this charge sees a statement by the victim that he was assaulted by the Applicant as well as statements by two eyewitnesses whose

statements corroborated that of the others as well as testimonies in the disciplinary hearing of these witnesses that correlates with their statements. The weight of this evidence is pitted against the evidence of the Applicant's bare denial as well as the contradictory evidence of his witness. In such circumstances, I conclude that the Applicant is guilty of Charge 1 (a).

63. Charge 1 (b) also relates to an assault charge, this time allegedly by the Applicant on a resident by the name of Morne Antonie ("Antonie") To that effect, Ms. Fredericks took a statement from him as well as Henry Prins ("Prins") in which they accused the Applicant of slapping Antonie in the face with an open hand. According to Ms. Fredericks, this incident was reported to her by the Applicant himself.

64. Again, the statements of the Antonie and Prins, on the whole, correlates with the evidence they gave at the disciplinary enquiry. It is common cause that the Antonie and Prins were fighting when the Applicant allegedly came from behind and slapped Antonie in the face. It is not in dispute that the Applicant received training in the Restraint and Control Procedure.

65. The Applicant denied that he reported to Ms. Fredericks that he slapped Antonie. He however did inform her that they were fighting and that he separated them. His version is that he came from behind and pushed them aside. He however did not complete an incident report nor did he take Antonie to the health practitioner. According to him he did not do so because the issue was "sorted out".

66. Antonie and Prins testified at the disciplinary hearing that they had nothing to gain from testifying against the Applicant. Ms. Fredericks also mentioned that she equally had nothing to gain. The Applicant himself testified that he had a good relationship with Ms. Fredericks. A further aspect is the evidence of the Applicant that the other residents said to him that he should not hit Antonie in that way and that they would report this to Ms. Fredericks. In my view, that is the reason why he reported this to Ms. Fredericks first.

67. Based on the evidence, I conclude that the Applicant in all probability did indeed slapped Antonie in the face and he is thus also guilty of Charge 1 (b).

68. Charge 2 (a) relates to the alleged swearing on 6 June 2019 of the Applicant at one of the residents, Jerome Smit while using words to the effect of '*jou ma se poes en Juffrou Barbara se poes*',
69. Smit, Carolus and Joshua Toll ("Toll") gave statements that the Applicant uttered these words on the day in question. Once more, they testified to this affect in the disciplinary hearing and it correlates with the statements they gave. According to the hearing transcripts, Smit was very sure that Carolus also heard the swearing because he asked him whether he did. It also indicates that the evidence of Prins and Carolus closely resembles that of each other.
70. Toll's evidence at the hearing was that he did not exactly hear the words used by the Applicant when he allegedly threatened Carolus. He was however very sure that he heard him swear at Carolus.
71. Both the Applicant and Naidoo testified that the swearing and the threats never occurred and that the residents made up the stories in order to have the Applicant removed from the unit because he did not allow illegal activities to take place. Smit however testified at the hearing that the other Care Workers also did not allow such activities.
72. The probabilities in my view again points to the fact that the Applicant uttered those words when he swore at Smit. I thus find him guilty of the offence.
73. The Applicant, regarding his inconsistency challenge, was required to place sufficient evidence before me in order for the Respondent to respond to such challenge. The Applicant's witness mentioned incidents involving a Mr. Nakana who allegedly assaulted another resident and that this was never dealt with. He was however not in a position to shed much light on the incident. Ms. Nicholas's evidence on this aspect was not convincing, but as I said, it was incumbent on the Applicant to place sufficient evidence in this regard on the table. I am not satisfied that it was.
74. Evidence from Ms Fredericks transpired that she made a voice note wherein she accused management of reporting only certain incidents of assault and not others. She admitted to making this voice note, but was not able to pinpoint exact incidences of such.

75. In the end, not enough evidence was placed before me to conclude that the Respondent acted inconsistently in dealing with issues of assault on residents and that challenge accordingly also fails.
76. This brings me to issue of whether the sanction of dismissal was appropriate under the circumstances. This requires me to take into account the totality of the circumstances surrounding the dismissal. The Applicant is guilty of very serious, dismissible offences. He assaulted children from challenging backgrounds who required nurturing and protection. I do grasp that it is definitely a tough environment and these residents were of course no angels. As mentioned however, the Applicant received all the necessary training in how to deal with the situations he faced and he had other options than resorting to violence and swearing.
77. It is understandable why these rules are in place. As was testified by Ms. Nicholas, the Respondent is duty bound to ensure that the Children's Act is implemented in order to protect vulnerable children. The Applicant failed to do so.
78. The Applicant accused the residents of a plot against him, but very little proof was submitted in that regard. It was testified that one of the resident's mentioned that they wanted to "make a plan" with the Applicant, yet the same resident testified that these incidents indeed occurred.
79. The Applicant did not state that he required additional training in order not to repeat the misconduct, instead he maintained that he did not commit the offences. He thus did not show any remorse.
80. The Applicant's service record of seven years cannot serve as a consideration for a lesser sentence in my view.
81. Having considered these circumstances, I conclude that the misconduct is sufficiently serious and of such gravity that it warranted the Applicant's dismissal. The dismissal was thus also substantively fair.
82. In the premises therefore, I make the following award:

AWARD

83. The dismissal of the Applicant, Mr. Neil November, by the Respondent, Department of Social Development- Western Cape, was procedurally and substantively fair.

84. The Applicant's claim is dismissed and he is not entitled to any relief.



Samuel Baron