



ARBITRATION AWARD

Case No: PSHS994-17/18

Commissioner: Christopher Mande

Date of award: 20 May 2019

In the matter between:

DIRENG BERNARD RAMAROPE

Applicant

and

DEPARTMENT OF HEALTH- LIMPOPO

Respondent

DETAILS OF THE HEARING AND REPRESENTATION

[1] This is the arbitration award between Direng Bernard Ramarope (hereinafter referred to as the Applicant) and the Department of Health- Limpopo (hereinafter referred to as the Respondent).

[2] The arbitration hearing was held at Louis Trichardt Memorial Hospital at Louis Trichardt in Limpopo Province on the 25 January 2019 and the 28 March 2019. The Respondent was represented by Mrs P.T.K Maenetja who was the Labour Relations Manager. The Applicant was represented by Mr. Singo who was an attorney from Kern and Dekker Attorneys.

[3] The witnesses adduced oral evidence to dispense off this arbitration hearing. The parties further agreed to submit written heads of arguments. The heads of arguments were submitted as agreed. I shall not repeat the written submissions and arguments in this award but I shall make reference to relevant submissions and arguments.

[4] The Labour Relations Act 66 of 1995 as amended shall be referred to in this award as “the Act”. The proceedings were recorded digitally.

ISSUE TO BE DETERMINED

[5] The dispute concerns section 186(2)(b) which is disciplinary action short of dismissal.

BACKGROUND TO DISPUTE

[6] The Applicant was employed in EMS of the Department of Health in Limpopo, and he was stationed at Louis Trichard Memorial Hospital. The Applicant was charged and found guilty. The Applicant was suspended for one month without pay and issued with a final written warning. The following were charges preferred against the Applicant:

- I. Charge One – Attempting To Assault**
- II. Charge Two – Display Unprofessional Conduct**
- III. Charge Three – Attempted To Defraud**
- IV. Charge Four – Bringing The Image Of the Department Into Disrepute**

[6] The Applicant was of the view that the one month suspension without salary meted against him was unfair because the the employetr did not have evidence to substantiate the sanction, on the othe other hand the Respondent viewed the sanction as fair under the circumstances.

THE OPENING STATEMENTS

[7] The Applicant's representative submitted that the disciplinary hearing was held and the chairperson gave the unfair outcomes without the supporting evidence. The sanction was one month suspension without pay and final written warning.

[8] The Respondent's representative submitted that the Applicant was subjected to the disciplinary hearing facing four charges of misconduct. The Applicant was found guilty on three allegation but one. The chairperson recommended a sanction of one month suspension without pay and a final written warning.

THE SURVEY OF EVIDENCE AND ARGUMENTS

THE APPLICANT'S EVIDENCE

The Applicant testified as follows:

[9] The position he occupied was ILS since 01 December 2002. He was earning R18 000.00 per month. He was called by his shift leader Ms. Mphaphuli to work on Eric Mudau shift. He agreed. The early morning on the 12 December at 05h00 on the 12 December 2015 he phoned Eric Mudau. He told Eric that he would arrive at the workplace late because he was transporting people to the funeral. At about 08h00 a.m. he arrived at the workplace. He was phoned by Ms. Mphaphuli telling him that Eric was saying that he should go back home. He went in the workplace and went to Eric's office. Eric told him to go back home. He phoned Lovemore, the

station manager who told him not to leave but to remain until knock off time. He waited until knock off time which was 19h00.

[10] He was phoned by Ms, Mphaphuli who told him that his overtime claim was running short of the document from the overtime control book. He went to work on the 07 January 2016. Lovemore called him to the office. In the office he was with Ms. Mphaphuli , Davhana and Lovemore. He was sitted close to Ms. Mphaphuli who was next to the window. Lovemore wanted to know what was happening regarding his overtime. He explained that Ms. Mphaphuli refused to sign his overtime alleging that he came to work late. Ms. Mphaphuli said that she would sign the overtime if the hours of work showed that he started work at 08h00 in the morning. He told Ms. Mphaphuli that he would not reduced the hours he worked. In the station there was a practice that if one arrived at work after 07h00 he should indicate 07hoo on the time register.

[11] The alleged incident happened when the overtime issue was discussed. Ms. Mphaphuli stood up and pointed at him and told him that she would rather bite her elbow instead of signing the said overtime. He also stood up and pointed at her while they were hauling insults at each other. Ms. Mphaphuli started to shout and accused him that he wated to bit her. He told her that there were no intentions to hit her but he wanted the overtime issue discussed. At the time they were close to each other. He did not get hold of her neither did she get hold of him. Ms. Mphaphuli then stormed out of the office banging the door and shouting that he wanted to assault her. He went outside the office together with Lovemore. He later got the letter transferring him to Siloam Hospital. He did not assault or attempted to assault Ms. Mphaphuli. He did not want to comit fraud when he recorded that he started to work at 07h00 but it was a practice to record as such even though one reported after 07h00.

[12] He testified during cross examination that he pleaded not guilty on charge 1. It was true that he had an argument with Ms. Mphaphuli on the 07 January 2016. Mr.

lovemore and Davhana were present during the argument. The argument was about the fact that he should write 08 h00 a.m to 19h00 instead of 07h00 to 19h00. On page 21 was the overtime claim in question. He arrived at the workplace at 08h00 but indicated that he started over time work at 07h00 on the overtime claim because it was the practice. The day of the claim in question was the 12 December 2015. If the signatories signed the claim form he would have been paid.

The Respondent's witness Ms. T. M Mphaphuli testified as follows:

- [13] She was a shift manager who was acting station manager. There were eleven officers reporting under her. The Applicant was also reporting to her. The Applicant was no longer reporting to her following the quarrel they had. Mr. Mudau called her on the 11 December 2015 and told her that he needed an additional officer on his shift on the 12 December 2015. She then called the Applicant to assist on Mr. Mudau's shift. The Applicant agreed. There was a statement she wrote to the risk section of the department concerning the incident that happened on the 12 December 2015 on page 11 of the Respondent's bundle of documents. She read the statement into the record.
- [14] She received a call from Mr. Mudau telling her that the Applicant had not arrived at work at about 10h00. Mr. Mudau told her that she should call the Applicant to tell him not to come at work for overtime anymore. She called the Applicant who told her that he was already at the gate. The procedure to record the officer for overtime was that the such an officer would be recorded on the rooster and that when an officer claimed for overtime worked he or she would attach that page of the rooster on the overtime claim.
- [15] She was directed to the Applicant's overtime claim which was on page 23 of the Respondent's bundle of documents. The Applicant noted that he arrived at the workplace at 07h00. The arrival time was not correct because Mr. Mudau called her at about 10h00 on the day in question and told him that the Applicant did not

arrive at work. She requested the Applicant to note the correct time and to attach supporting documents on the overtime claim. The Applicant did not resubmit the correct overtime claim. She read another statement on page 14 of the Respondent's bundle of documents.

[16] On the 07 January she was in Lovemore office with Mr. Lovemore, Mr. Davhana and the Applicant. She was seating next to the Applicant. Mr, Lovemore gave her the Applicant's overtime claim to sign. She said she would not sign until the Applicant correct the hours on the claim. The Applicant started to argue with her about the claim. The Applicant charged her holding the chair. The Applicant wanted to hit her with a chair but Mr. lovemore grabed the chair. Mr. Davhana also stood up. She escaped and run away to her car. She drove out of the workplace. She was scared of the Applicant such that she would not point a finger at him. She did not provoke the Applicant. She screamed and run away because she was fearing for her life. The Applicant displayed unprofessuinal conduct before other personnel. She did not sign the Applicant's overtime claim because the Applicant wanted to defraud the department. There was no practice that one could record the starting time although one came late. The Applicant should have recorded the correct time. She wanted the attachments from the Applicant and not from Mr. Mudau.

[17] She testified during cross examination that the Applicant took his chair and was about to hit her when Mr. Lovemore grabbed it. Davhana and Manenzhe overpowered the Applicant and she escaped. According to her the statement that she wrote on the day of the incident and the one she wrote later were the same. She did not open a criminal case because she thought that reporting the Applicant to the management was enough. She was scared of the Applicant. The Aplicant tried to assault and insulted her. She received a call at about 10h00 that the Applicant had not arrived at work. The Applicant was supposed to get the duty rooster that he worked overtime from Mudau. The Applicant attempted to commit

fraud by writing the hour he did not work. She refused to sign the overtime claim because there was no supporting documents that the Applicant worked overtime.

The Respondent's second witness Mr. Lovemore testified as follows:

[18] He was the station manager. He was the overseer of the station. The shift leader was responsible for the overtime worked. He was in the office when the Applicant came to inquire why his overtime was not signed. He summoned Ms Mphaphuli and asked her why was she not signing the Applicant's overtime. Ms. Mphaphuli said that she would sign if the Applicant wrote the correct hours. The Applicant moved his chair and stood up. He grabbed the chair. The lady went out screaming. Manenzhe and Davhana prevented the Applicant to follow Ms. Mphaphuli. The Applicant and Ms. Mphaphuli were verbally assaulting each other. The Applicant could not throw the chair because there was no space to do so. He wrote the report to the District Manager. The Applicant was given the precautionary suspension pending the investigation. The Applicant's behaviour was unbecoming. He together with Davhana stopped the Applicant from assaulting Ms. Mphaphuli. The Applicant displayed unprofessional behaviour on the day. The Applicant was supposed to write the correct time he reported for overtime duty on the claim form. He was not aware of the practice that if one arrived for overtime after 07h00 he should record that he reported at 07h00.

[19] He testified during cross – examination that the Applicant did not pick up a chair because the office space was small. Both the Applicant and Ms. Mphaphuli **stood** up and had an altercation.

The Respondent's third witness Marubini Tshikweta testified as follows:

[20] On the 07 January 2016 she was stationed at the control room. On the day she did not see anything but only heard the sound. She went out of the control room. She did not know whether it was a man or a woman screaming.

The fourth witness of the Respondent Mr. Eric Mudau testified as follows:

[21] He was the shift manager at the EMS. Ten personnel report under him. It was his duty to compile the duty rooster. The document on page 15 was the report he wrote to the management. He wrote the report following the incident where the Applicant was supposed to have worked overtime. He requested Ms. Mphaphuli to send him one person from her shift to come for overtime in his shift. Ms. Mphaphuli send the Applicant. The Applicant phoned him at 05h00 in the morning and told him that he would arrive at 07h00. He phoned Ms. Mphaphuli and told her that the Applicant was not coming. After the call to Ms. Mphaphuli the Applicant arrived at 09h00. The Applicant did not work on the day and he did not call anyone to replace him. The Applicant was not even on the roster because he came late . He was not aware of the practice that one should indicate that he started on the time in question. The Applicant recorded 07h00 on the overtime claim form when he came at work at about 10h00.

[22] He testified during cross examination that the Applicant phoned and told him that he would arrive at the workplace at 07h00. The Applicant's name was not in the roster for that day in question.

ANALYSIS OF EVIDENCE AND ARGUMENTS

[23] In this matter it is upon the Applicant to prove on the balance of probabilities that the Respondent committed an act of unfair labour practise by suspending him for a month without a salary. The Respondent charged the Applicant with four charges of misconduct and found him guilty on three charges.

[24] The Applicant testified that he did not attempt to assault Ms M Mphaphuli a colleague and his supervisor. The Applicant testified that he had the arguments with Ms Mphaphuli because Ms Mphaphuli did not want to sign his overtime forms. In his evidence the Applicant admitted that he stood up and pointed his finger at Ms Mphaphuli in addition to his testimony, Mr Lovemore testified that the Applicant attempted to pick up his chair and was prevented by Mr Lovemore from throwing the chair. It seems to be true that the office space was too small for a chair to be thrown but the Applicant's actions were that of a person who wanted to assault Ms Mphaphuli. It must be borne in mind that Ms Mphaphuli was the Applicant's supervisor, and a female supervisor for that fact, so, it is highly probable that anyone could interpret the Applicant's actions as that of one who wants to assault Ms Mphaphuli. The Applicant's actions were also unprofessional. The Applicant testified that there was no need for him to be trained on the code of conduct in order for him to view the preceding actions as misconduct.

[25] The Applicant testified that he attended work at 08H00 on the 12 December 2015, while Ms Mphaphuli and Mr Mudau corroborated each other to the fact that the Applicant arrived at work after 10h00 on the day in question. The Applicant further testified that on the overtime form he noted that he commenced work at 07h00, I take it that the starting time testified by the Applicant, Mr Mudau and Ms Mphaphuli is immaterial. The Applicant intentionally noted an incorrect time on the overtime claim form and then diverted his explanation to Departmental culture and practice but none of the witnesses corroborated his standing. It is my findings that the Applicant attempted to defraud the Department. Had the supervisor Ms Molly Mphaphuli signed the forms as requested, the Applicant would have been remunerated undeservingly for the time he did not work.

[26] It is my findings on the balance of probabilities that the Respondent did not commit an act of unfair labour practice by suspending the Applicant for a month without pay and further slapping him with a final written warning.

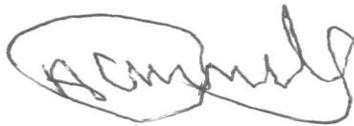
[27] The acts the Applicant committed would have warranted a dismissal but the Respondent fairly looked into the alternatives which safe guarded the Applicants employment .

AWARD

[28] The Respondent did commit an act of unfair labour practice.

[29] The application is dismissed.

[30] I make no order as to costs.



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Christopher Mannde