



ARBITRATION AWARD

Case No: **PSHS246-22/23**

Commissioner: **Mr Anand Dorasamy**

Date of award: **16 November 2022**

In the matter between:

NUPSAW OBO DLAMINI NOZIPHO

Applicant

and

DEPARTMENT OF HEALTH-KWA ZULU NATAL

Respondent

DETAILS OF HEARING AND REPRESENTATION

1. Mr Magalingum Moodley of NUPSAW represented the applicant Ms Dlamini Nozipho and Ms Sbongiseni Mlothswa represented the respondent. The arbitration proceedings concluded on the 31 October 2022 at the King Dinizulu Hospital Boardroom in Durban. The dispute concerns the alleged unfair dismissal of the applicant.

The parties agreed to submit written closing arguments on the 7 November 2022 and was extended to the 11 November 2022.

BACKGROUND

2. The applicant lodged a dispute challenging her dismissal and the respondent believes that her dismissal was fair. The applicant challenges the substantive aspect of her dismissal.

The charges against the applicant were as follows:

It is alleged that for the period 17th October 2021 till 02 November 2021 you have taken unauthorised leave of absence and you failed to follow a standard procedure in that you:

1. Ms N Dlamini failed your responsibility to timeously report your absence from duty to your Manager/ Supervisor.
2. Ms N Dlamini had been grossly absent without authorisation.
3. Ms N Dlamini has shown no improvement to correct your conduct after been given a written warning early this year on 05 January 2021.
4. Ms N Dlamini due to your frequent absenteeism, your work performance is unsatisfactory, since your work is reallocated to your colleagues.

By your actions you contravened the Code of Conduct. .

3. The applicant pleaded guilty and was found guilty and dismissed after an unsuccessful appeal

ISSUES TO BE DECIDED.

- 4 I am to determine whether the dismissal of the applicant was substantively fair and make the appropriate relief if any.

SUMMARY OF THE EVIDENCE

RESPONDENT'S CASE

MAUREEN ANIROODH

The salient aspects of her testimony are recorded below.

- 5 She is the Human Resources supervisor and the applicant reported to her. She is the author of the document on page 27. The applicant did not report for duty and she wanted to start the absconding process. The applicant fell under her on the 1 October 2021 after she (witness) was transferred from Wentworth hospital.
6. Then the Department sent a leave of absence and the abscondment process was started. The letter was sent via registered mail (page 28-29). The applicant returned on the 3 November 2021. She spoke to her and counselled her and referred her to EAP which she declined.
7. She did not report for duty and did not take her advice.
8. On page 32-34 the persal printout was perused.
9. The applicant pleaded guilty to all charges. Since 1 October 2021 the applicant did not show any sign of improvement. She explained the reason for her absence.
10. She made an appointment for EAP which she did not attend because she was booked off sick. On page 3 B1 dated 14 February he was not at her work station.

Under cross examination she stated as follows:

11. During her absence her work was given to other workers. She was absent for 16 days. According to her records she was absent regularly. She was given Leave Without Pay (LWOP) She absconded herself and did not report to her.
12. She had a good working relationship with the applicant. The applicant had the Department policies on her computer.

EPHRAIM SIBUSISO MGWABA

The salient aspects of his testimony are recorded below.

13. He is the Assistant Director Human Resources Management since 1 September 2020. The applicant reported to him. He knows her very well. Since he came there were challenges about her absenteeism. She did not report her absence to her supervisor.
14. He called her as a father to talk about her problem and to refer her for EAP. Her supervisor referred her to EAP but she did not honour her meetings with the EAP practitioner. She was absent from work before the period she was charged and continued to absent herself after the period.
Under cross examination he stated as follows.
15. She was charged for misconduct and pleaded guilty and there was no need for witnesses.
16. He knows Ms T P Nombe who was on the same level as the applicant. She was charged for being absent for 14 days and the applicant was charged for being absent for 16 days. The applicant was dismissed. Ms Nombe received a two month suspension without pay as a sanction.
17. He was not part of the disciplinary hearing.
18. When she absconded her colleagues were complaining that they were doing her work. Her work was distributed. He does not think that she can be re-habilitated. Her persal records show a pattern of LWOP.

APPLICANT'S CASE

Ms NOZIPHO DLAMINI

The salient aspects of her testimony are recorded below.

19. She has worked at the hospital for ten years. She was dismissed because her supervisor alleged that she did not report to her when she stayed away. She was not in good terms with her supervisor.
19. She was charged for misconduct for being absent for 16 days. Her phone was lost. There was a disciplinary hearing where she pleaded guilty as charged.
20. She knows Ms T P Nombe because is her friend and works at asset department. She was charged for being absent for 14 days. She does not know if she pleaded guilty.

21. She was represented by the same union representative at the disciplinary hearing. Ms Nombe was also represented by him. She got two months suspension without pay and is back at work.
22. She was given a written warning previously (5/1/2021 and 2/10/2015). She absented herself because she was in an abusive relationship.
23. She knows Ms Aniroodh her supervisor who offered her EAP which she did not attend. After her dismissal she was kicked out by her partner and presently rents on credit. She is struggling to get a good nanny to look after her children.
24. She pleaded guilty and was dismissed. She seeks to be re-instated.
Under cross examination she stated as follows
25. She was the assistant to the CEO and transferred to Human Resources Department.
26. She did not send her messages because there was a misunderstanding about who she should contact. She did not report her absence and pleaded guilty.
27. She has four children, three from the same person. She does not have a protection order against her partner. She knows about Gender Based Violence. She did not think of it in that way.
28. She worked with the CEO but was move because of other personal problems.
29. She did not approach HR about her problem. She worked in HR for more than 10 years. She knows that when employee have problems they go to HR.

CLOSING ARGUMENTS

30. The parties agreed to submit written closing arguments on or before the 7 November 2022 but was extended to 11 November 2022.. The arguments were taken into account in arriving at my decision.

ANALYSIS OF EVIDENCE AND ARGUMENT

31. This matter relates to the dismissal of the applicant on allegation as recorded in paragraph 2 above.
32. The applicant was in the Human Resources department and ought to know the policy in reporting absence from work. She had a good working relationship with her supervisor Ms Aniroodh who approached her to undergo the EAP programme which she refused.
33. The applicant had a history of being absent and was disciplined on numerous occasions. Her fellow employees complained that they had to do her work.
34. The applicant was afforded an opportunity to defend her actions at a disciplinary hearing. Her union represented her at the disciplinary hearing.
35. In HOTELICCA obo Tshijila v Azores Manufacturers CC [2006] (1) BALR 109 (LAC) the following factors were held to be decisive in whether absence from work can justify a dismissal:
 - a) The length of absence;
 - b) The nature of the employee's job;

- c) Previous records;
 - d) Whether the employee attempted to contact the employer during the period of absence.
36. The applicant had stayed away on numerous occasions without informing her employer. Her job was related to good discipline at the workplace which she failed to uphold. There is no evidence that she tried to contact her employer about not attending work. In fact her colleague complained that they had to do her job.
37. I believe that the presiding officer was correct in finding her guilty and handing down the sanction of dismissal.
38. Therefore I find that the dismissal of the applicant was procedurally and substantively fair.

AWARD

39. I find that the applicant's dismissal was procedurally and substantively fair.
40. The application is dismissed.



Anand Dorasamy