



ARBITRATION AWARD

Case No: **PSHS275-22/23**

Commissioner: **Mr Anand Dorasamy**

Date of award: **20 September 2022**

In the matter between:

NPSWU OBO NOZIPHO VIRGINIA ZONDI & 1 OTHER

Applicant

and

DEPARTMENT OF HEALTH- KWAZULU NATAL

Respondent

DETAILS OF HEARING AND REPRESENTATION

1. The arbitration proceedings commenced at 10H00 on the 7 September 2022 at the EMS District Office boardroom in Stanger. After the evidence was completed, the parties submitted written closing arguments on the 14 September 2022. Ms Zondi Nozipho Virginia and Mr Mfanafuthi Moses Luthuli (“the applicants”) lodged a dispute in terms of section 186(2) (b) of the Labour Relations Act (LRA) challenging the sanction arising from the disciplinary action taken against them and prayed for compensation for unfair labour practice perpetrated against them.
2. The proceedings were mechanically recorded.

ISSUE TO BE DECIDED

3. I am required to determine whether the Respondent (employer) had perpetrated an act of unfair labour practice against the applicants in respect of their disciplinary sanction. Should I find in favour of the applicants, I am to determine what relief should be granted to them.

BACKGROUND TO THE DISPUTE

4. The applicants were disciplined for misconduct and received a Final Written Warning.
5. The applicants seek the removal of the Final Written Warning from their file and compensation of three months for unfair labour practice perpetrated by the employer. The respondent prays that the application be dismissed.
6. The Nature of the misconduct is:

You transgressed the Emergency Medical Services Standing Operating Procedure number 4 and 7 in that you:

 - You did not refuel your vehicle timeously.
 - You refused to take details and respond to case number 15 at 05H53 on 28 March 2022 indicating that you needed to refuel your vehicle.
 - Your last case was completed at 21H15.
 - Your refusal to proceed on a case resulted in a delay in providing service delivery

SUMMARY OF EVIDENCE

APPLICANTS' CASE

NOZIPHO ZONDI VIRGINIA

7. The salient aspects of the witness' testimony are recorded below.
8. She knows the Final Written Warning document issued on the 4 April 2022.
9. There is no specific time to refuel the motor vehicle. She has to leave the motor vehicle full for the next shift. She did that in the morning.
10. On the 29 March 2022 there was no patient sick or case number but she got log number 409 to refuel the motor vehicle.
11. She was given a case at 05H53 when she was at the garage. It was 29 March 2022.
12. She was treated unfairly and she tried to explain that she did not refuse the case.
13. Her last case was completed at 21H15 and she was available.
14. She did not delay any case and another motor vehicle did the case and it was not given to her.
15. At 05H53 on the 28 March 2022 she was at home.
16. The manager Mr Kerupershad did not want to listen.
17. The last case was at 21H50 on the 28 March 2022 and thereafter she was at the base.
18. Under cross examination she stated as follows.
19. The incident took place between the 28 and 29 March 2022. She reported for duty at 19H00 on the 28 March 2022 and finished at 07H00 on the 29 March 2022.
20. Her crew was Mr Luthuli.

21. On page 4 the ambulance stopped at the base at 21H50. At 05H39 she got the authorization number to fill petrol. At 06H06 (29 March 22) she was at the Caltex garage in Verulam. She refueled at 06H09 on the 29 March 2022.
22. The Final Written Warning was given to her without her supervisor knowing about it.
23. Both crew needed to be contacted about the proposed transport of a patient.
24. She felt that she was under pressure and the decision was already taken. She did not appeal.

MFANAFUTHI MOSES LUTHULI

25. The salient aspects of his evidence are recorded below.
26. He received the same Final Written Warning only the names were changed.
27. He was working with Ms Zondi on the 29 March 2022, starting at 19H00 and finishing at 07H00.
28. At 05H53 on the 28 March 2022 he was at home and he did not refuse any case because he was at home. He did not delay because he was at home on the 28 March 2022.
29. His last case finished at (number 3) 21H50 on the 28 March 2022.
30. The date was wrong and the decision taken wrong and he was not given a chance to explain as the letter was already written and he complied.
31. There is no given time to refuel. On page 6 the SOP (Standard Operating Procedure) the employee must comply.
32. Under cross examination he stated as follows:
33. In clause 4.3.2 of the SOP The fuel level..... at all times. The motor vehicle was refueled the next day.
34. He completed the document on page 4. Number 4 records 05H39 is for the 29 March 2022.
35. He did not appeal because he was shocked and innocent. His union appealed on his behalf

RESPONDENT'S CASE

KHULEKANI SIPHIWE ZULU

36. The salient aspects of his testimony are recorded below.
37. The motor vehicle must be ready at all times. Ndwedwe falls under rural area.
38. The fuel must be full at all times and one must not wait to get a call to fill up.
39. Under cross examination he stated as follows:
40. The applicants started at 19H00 on the 28 March 2022 and were charged on the document submitted by them. The instruction was given while on shift.

CLOSING ARGUMENTS

41. The parties agreed to submit written closing arguments on or before the 14 September 2022. The
42. arguments were considered when I made my determination.

ANALYSIS OF EVIDENCE AND ARGUMENT

43. This matter was cited as an unfair labour practice dispute in terms of Section 186 (2) (b) of the LRA.
44. The issues to be decided was whether the respondent (employer) perpetrated an act of unfair labour practice against the applicant in respect of the finding and sanction meted out to the applicants and if my finding be in the affirmative, what would the appropriate relief be.
45. I have taken cognizance of the decision in Sweeney/ Transcash [2000] 6 BALR 712 (CCMA) where the commissioner held that arbitration hearings constitutes a rehearing de novo on the merits. The award must accordingly be based on evidence led at the arbitration.
46. The parties submitted comprehensive closing arguments that has been taken into account in arriving at my decision.
47. The issues in dispute in this matter are fairly straightforward.
48. In order not to protract my determination I dealt with the matter on the evidence and submissions.
49. The applicants went on duty on the 28 March 2022 at 19H00 and finished work at 07H00 on the 29 March 2022.
50. The allegations and timelines are based on the trip sheet dated 28 March 2022.
51. It is correct that the applicants were not at work at 05H53 on the 28 March 2022 but reported for work at 19H00 on that day. They recorded their duties on the trip sheet. According to the trip sheet (page 4) number 3 at 21H50 they were at the base until 05H39 when they went to fill petrol.
52. The applicants could have filled the petrol between the hours of 21H50 and 05H39. The fuel level of the motor vehicle was not kept full during this time. This is against the Standard Operating Procedures (SOP). The reason for this practice is that the ambulances are ready to proceed with providing the emergency service it is tasked to fulfil. The trip sheet confirms that this was not done and thus the applicants were correctly found guilty in terms of the disciplinary procedures.
53. As a result of the applicants not complying with the SOP, they could not respond to case number 15 at 05H53 on the 28 March 2022 (according to the trip sheet date). This has been cured by evidence that the applicants were at work and filled petrol on that date (29 March 2022).
54. It is clear from the evidence that the applicants' refusal to proceed on the case resulted in a delay in providing the requisite service delivery as another ambulance had to attend to the case.
55. The supervisor had come to the correct conclusion that the applicants were guilty as charged and I am not convinced by the applicants defence that they were at home when the allegations occurred.

56. Therefore, the sanction of a final written warning appears to be lenient in the circumstances. I am not convinced that the sanction should be altered but should remain.
57. Because of the above I do not find the Respondent (employer) had perpetrated an act of unfair labour practice against the applicants in respect of his disciplinary finding and sanction.
58. The application is dismissed and the finding and sanction is confirmed.

AWARD

59. The respondent did not perpetrate any act of unfair labour practice against the applicants.
60. The application is dismissed.
61. The finding and sanction is confirmed.



Anand Dorasamy