



ARBITRATION AWARD

Case No: **PSHS389-22/23**

Commissioner: **Teresa Erasmus**

Date of award: **14 December 2022**

In the matter between:

PSA obo JOHANNES, ELRICH

Applicant

and

DEPARTMENT OF HEALTH- WESTERN CAPE

Respondent

DETAILS OF HEARING AND REPRESENTATION

1. The matter was set down for arbitration.

ISSUE TO BE DECIDED

2. I must decide whether the Applicant was subjected to an unfair labour practice in terms of section 186(2)(b), related to unfair disciplinary action short of dismissal.

BACKGROUND

3. The Applicant stated that he was found guilty in an informal process. He was charged with disrespectful behaviour towards his colleague, Ms Esterhuizen on the 25th of May 2022. The

Applicant was issued with a written warning. The Applicant appealed against the sanction, but the sanction was upheld on appeal.

4. The Applicant submitted that all the information gathered during the investigation was not considered in the decision to issue a written warning. The Applicant seeks the removal of the written warning from his personal file because he is not guilty of the charges.
5. The Respondent called four witnesses who witnessed about the incident, on which the charge against the Applicant is based, all of them found the Applicant's conduct unacceptable. The Respondent seeks a finding in terms whereof the sanction of the written warning is confirmed, as there is no place for bullies in the workplace.

The Applicant's case

6. Dr Elrich Johannes testified that he has been employed as a Radiologist at the Paarl Hospital since 2015, he is responsible for CT scans, MRIs, and other radiology work. There was a scheduled technical assessment of the CT scan with Mrs Jacobs from Phillips on the 25th of May 2022. It took longer than anticipated and the workload was too high. Management often tries to force the radiologists to give more output than their capacity. Dr Stefan Fourie, medical services manager, who is second in charge of the hospital often puts pressure on them to do more scans than what they can handle, which puts patient's lives in danger.
7. Laurette Esterhuizen, head of Radiography overloaded the Radiologists with work, she did not reduce the number of scans as the Applicant asked her once again to be cognisant of the workload. It can endanger a patient's lives if for example, a patient has an aneurysm and is not operated immediately.
8. They had assessments and the Applicant went back and then Laurette Esterhuysen and Ms Sharon Jacobs handed a piece of paper to the Applicant, where he had to list all the technical problems he experienced with the scanner. Jacobs then left, as the Applicant informed her that he was too busy to complete it immediately.
9. Esterhuizen must compensate for the workload accordingly, she books too many scans for patients, to which the Radiologists have to attend, because Stefan Fourie forces her to do so. Esterhuizen told the Applicant that if he is not happy, he must take it up with Dr Stefan Fourie, as she doesn't want to get involved in the conflict. It was just a normal conversation, he thought

nothing of it at the time. The Applicant denies that he spoke to Esterhuizen in an attacking manner.

10. The Applicant was busy working when Esterhuizen and Jacobs interrupted his work, she had more than ample opportunity to say exactly what she wanted, the Applicant carried on with his work. The only people who were present in his office, during this conversation, himself, Esterhuizen and Dr Messiahs. Dr Messiahs will testify that he did not hear anything.
11. The Applicant denied that he shouted at Esterhuizen or that he intimidated her. Esterhuizen is under a lot of pressure from management to increase the output. She is the head of Radiography, she must ensure that the images are scanned at the hospital, but the technical report will show that the images scanned at the Paarl hospital is not on par with other hospitals.
12. The Applicant denies that he is guilty of the charge of being disrespectful towards Esterhuizen on the day in question. This kind of conversation often takes place around the workload and Esterhuizen has never lodged a complaint against him in the past.
13. The Applicant is the only full-time Radiologist, there is a second part-time Radiologist three days per week. The Applicant testified that interruptions are common in their working environment, as they are constantly interrupted by the radiographers. The Radiology department functions like an emergency unit.
14. According to the Applicant the conversation between himself and Esterhuizen on the day of the incident, was nothing other than a common workplace disagreement. The Applicant is of the opinion that Esterhuizen was somewhat emotional, because of the technical report that came out.
15. The Applicant conceded that he was unhappy about volume of scans that were scheduled for the Radiologists, which could potentially endanger people's lives. He was unhappy and he communicated his unhappiness to Esterhuizen.
16. The Applicant denies Esterhuysen's evidence that when he was handed the report, he told her that he was very busy and threw the report on the desk. The Applicant's version is that when he received the report, he put it down and explained that he did not have time to sign it off straight away. Jacobs accepted that there was not enough time and agreed to come back at a later date to go through it and sign it off. The Applicant then carried on with his work. According to the Applicant it is not the Radiologist's job to analyse the technical report, or to sign off the report, it forms part of the Radiographers' job description. The Applicant confirmed that although

Esterhuizen does not determine his working hours, she determines it with the workload that she puts on him. The Applicant denies having shouted at Esterhuizen, he only said to her that she is responsible for the bookings, because it is her job. The Applicant told Esterhuizen the workload of ten bodies per day for scanning is too much.

17. Esterhuizen reports directly to Dr Stefan Fourie, the Medical Services Manager. In private practice, the Radiographers report directly to Radiologists, but in Paarl Hospital the Radiographers report directly to DR Stefan Fourie. The Radiographers are responsible for arranging the day, not a single day can be planned ahead of time.

18. It was put to the Applicant that Fredericka Wentzel will testify as per her statement in in the Respondent's bundle, that:

“Ek was besig om uit die CT kamer te loop, die deur was ‘n entjie oop, maar ek kon duidelik hoor hoe Dr Johannes skree en Me Esterhuizen probeer praat....

Ek het nader gegaan en in die gang gestaan by die Radioloë se deur, Nadia het in die deur gestaan en Esterhuizen was binne in die Radioloë se kantoor. Ek kon nie een van die Radioloë sien nie, maar het Dr Johannes duidelik gehoor, ek kon nie alles hoor wat gesê is nie. Sy stemtoon was hard en aanvallend en intimiderend. Ek kon sien hoe Me Esterhuizen ‘n tree terug gee.

Me Esterhuizen het probeer praat, haar stemtoon was egalig en sy het probeer verduidelik dat dit haar opdrag is op tien ondersoeke per Radioloog per dag te boek. Dr Johannes het ewe skielik stil gebly en Me Esterhuizen het omgedraai en uitgeloopt omdat die gesprek nêrens heen gegaan het nie.

Dit was ‘n onaangename ervaring vir my om te sien hoe Dr Johannes op so onprofessionele manier Me Esterhuizen verskree en ook dat hy dit gedoen het voor haar personeel en ‘n application specialist van ‘n buite maatskappy.

Volgens my mening het die incident ‘n groot impak op Me Esterhuizen se gemoedstoestand gehad.”

19. The Applicant conceded that Wentzel could have heard what they were talking about, if she was standing just outside the door, but he denies that he was shouting, as they were only having a discussion, they had a different point of view of a long-standing problem.

20. The Applicant denied that he saw Wentzel standing in the door, as he should have line sight of her. According to the Applicant Wentzel is Esterhuizen's long standing friend, they studied together. The Applicant should have seen Wentzel when he got up to wash his hands, but I did not see her.

21. The Applicant was referred to Nadia Hendricks's statement where she stated as follows:

"According to Dr Johannes it was too much work and Ms Esterhuizen tried to explain to him that the hospital did not have any brain scans at the moment and that the only scans booked were for bodies. He was very aggressive and did not want to listen to what Ms Esterhuizen was saying.

His tone of voice became louder and very intimidating, and he jumped from his chair and Ms Esterhuizen had to jump back"

22. The Applicant did not see Nadia Hendricks standing outside his door. The Applicant has been disciplined previously for work quality and for not following the correct channels, as well as for poor job performance of the hospital, where he tried to correct the process. The Applicant received a final written warning on the 12th of July 2021 in respect of making unsubstantiated allegations, disrespectful behaviour and for inappropriately including colleagues in his unrelated conversation, valid for six (6) months. The Applicant initially disputed the final written warning, but subsequently withdrew his objection.

23. Dr Bradley Clinton Messiahs testified that he is employed at the Paarl Hospital in the capacity as a Radiologist at the Paarl Hospital, he has been working with the Applicant since April 2020. They share an office with two workstations and endeavour to maintain a good working relationship with each other. Although Messiahs's post is a fulltime post, he only works 25 hours per week, from Tuesdays to Thursdays. The Applicant has been employed at the Paarl Hospital for longer than Messiahs, they have the same qualifications, but the Applicant has more work experience than Messiahs, but they are employed on the same level.

24. Messiahs received an email from Dr Fourie, the medical manager, he wanted a response from Messiahs of what happened on the day of the incident. Messiahs responded that Esterhuizen and Jacobs came into the office, they handed over documents to the Applicant. Then there was a conversation between the Applicant and Esterhuizen about the number of CT scans booked on a daily basis. Messiahs did not perceive the conversation as shouting or screaming by the Applicant towards Esterhuizen. He got the impression that both of them were firm about what they said.

25. Messiahs cannot recall that the Applicant threw documents on the desk. Messiahs only saw Esterhuizen and Jacobs in the office. From his chair, the door is to his left and he could see the Applicant sitting at his workstation. The office door opens to the inside; therefore, he can only see the door, but he cannot see in the hallway or into the isle. The Applicant's workstation is closer to the door. Messiahs did not perceive the Applicant as intimidating, but he saw it as a work-related discussion between two colleagues, they were both firm.
26. Messiahs testified that issues are taken up with management by either of them, depending on the type of scans involved. Issues with regards the Radiographers are usually addressed to management by the Applicant, because he is at work five days of the week, whilst Messiahs is only at work three days a week. The issues that arise from the work, affects both of them, therefore if the Applicant is not at work, Messiahs will address these issues. If there is an issue that he feels strongly about, he will take it up with management or if there is an issue that affects Messiahs personally, he would take it up with management or with the Radiographers directly. Messiahs denies that he is merely protecting the Applicant with his testimony.
27. Messiahs clarified what he meant with the word "firm", he said that it means that if one raises an issue, you stand by what you said. Both the Applicant and Esterhuizen had issues and stated their points, and they stood by their points. He did not mention the word 'firm' in his report, as he did not deem it was necessary. Messiahs denied that he would have seen either Hendricks or Wentzel standing outside their office in the passage.

Respondent's case

28. Laurette Esterhuizen testified that she is the ASG Radiography at the Paarl Provincial Hospital.
29. She reports to Dr Stefan Fourie. Esterhuizen testified about an incident that took place on the 24th of May 2022.
30. Sharon Jacobs, Phillips Application Specialist came to her office around 14:13 and asked her to walk with her to take the report that she had brought, that she wanted to discuss with the Applicant and request him to sign it off.
31. Esterhuizen knocked on the door and she and Sharon entered the office, Hendricks stood in the door. She gave the Applicant the document, she told him, it is the report of the training, he took the document, he didn't read it, he only scanned over it. The Applicant kind of threw the document on the desk, he did not put it down on the desk.

32. He then turned around after this and attacked Esterhuizen about the number of patients that had to be scanned on a daily basis. Esterhuizen tried to explain to the Applicant that there were only 6 brains in the hospital to be scanned and that the rest were body work. The Applicant told her that the Radiographers cannot scan 7 bodies for them, but before that he actually interrupted her rudely and she once again tried to explain that there were only 6 brains and 7 bodies to scan. She explained that they only scanned semi-urgent and urgent work. He stood up and walked towards her and deviated direction and walked towards the basin.
33. Esterhuizen tried to explain to him that they scanned 7 bodies for the Radiologists in the past on several occasions and he responded that was also too much. The Applicant then changed the topic and complained about his long working hours, Esterhuizen responded that he should discuss his complaints with Dr Fourie, his supervisor. The Applicant then started shouting at her, he was intimidating. He shouted that she is responsible for appointments and that she is booking too many patients for the Radiologists, to which she responded that she books 10 examinations per Radiologists as per instructions from Dr Fourie.
34. The Applicant then shouted at her: *“so jy sê jy vir my, gaan jy vir ons tien bodies bespreek”*.
35. The Applicant then ignored Esterhuizen and went to sit on his chair and stared at his computer screen. Dr Messiahs was busy reporting when she entered the office. When the discussions became heated, Messiahs turned around in his chair and looked at them with big eyes, but he didn't say anything (*this was not put to Messiahs under cross-examination*).
36. Esterhuizen disagrees with Messiahs's evidence that the conversation between herself and the Applicant was just a normal conversation. According to Esterhuizen, Messiahs's body language was that of shock (*this was not put to Messiahs under cross-examination*). Esterhuizen testified that the applicant raised his voice, and she was intimidated by this.
37. The Applicant must discuss his dissatisfaction with the number of scans that she books for him, with his supervisor, as his supervisor is responsible for the workload that Esterhuizen has to implement.
38. Esterhuizen felt totally confused and disorientated, she felt like she was being attacked, she felt totally disregarded, battered, and embarrassed, especially since it happened in front of her own staff and someone from outside. Her husband immediately picked up that someone major was wrong when she got home. Esterhuizen testified that she had trouble sleeping for quite some time. She attended three telephonic sessions with ICAS.

39. Friederika Joanna Wentzel testified that she is the Chief Radiographer in the Radiology Department, in charge of the Radiographers. Wentzel testified that as she came out the CT room on the 25th of May 2022, she saw Ms Jacobs standing at the CT room, a few steps away from the Radiologists' office, she heard the Applicant shouting. Hendricks stood in the doorway and Esterhuizen was inside the office, she overheard Esterhuizen saying that her instruction was to schedule 10 scans per Radiologist per day, Esterhuizen then turned around and walked out, the Applicant then kept quiet. It was a very uncomfortable experience. The incident took place both in front of staff and the Phillips application specialist, Sharon Jacobs.
40. Wentzel walked out of the CT room and stood in the small corridor, in front of the Radiologists' office. Jacobs stood on her left and they could both hear what was going on in the office. Wentzel testified that Esterhuizen took a step back when the Applicant was speaking in a loud and intimidating voice. Wentzel could not hear exactly what the Applicant was saying, but she could hear that he raised his voice.
41. Nadia Hendricks testified that she is a production Radiographer at the Paarl hospital, she mainly works in the CT room. She was working in the CT room on the day of the incident, when Esterhuizen and Jacobs came into the CT room. Esterhuizen informed her that Phillips was sorting out a few things with CT's and Scans, she asked Hendricks to accompany her to the Applicants' office to have the report signed off and to be present in case he wanted to make any additions.
42. Hendricks stood in the door, the Applicant and Dr Messiahs were in the office. Jacobs gave the document to the Applicant; he took it and pushed it aside and said that he was too busy to look at the document straight away. The Applicant then immediately started speaking about two brains and seven bodies that is far too much for work for one day. The conversation started on a low note and then it escalated, the Applicant also turned around.
43. Hendricks assumed that the Applicant was trying to get the message across to Esterhuizen in the same manner as he usually tries to get the message across to her, that it is too much work for them, especially if the work is complicated. The Applicant and Esterhuizen didn't give each other time to speak, it wasn't a normal conversation. Dr Messiahs also turned around, as he probably also noticed something was going on. Esterhuizen said to the Applicant that she is not the person to whom he must complain, he must speak to his supervisor, at which point the Applicant started to raise his voice. The Applicant normally speaks in a soft tone of voice. Wentzel experienced in the past that if the Applicant speaks in a loud tone of voice, it is because he wants to get the message across.

44. Esterhuizen was visibly upset when she left the room, judging from her facial expression and the way she left the room. The Applicant and Esterhuizen were not standing far from each other and when the Applicant stood up to go and wash his hands, Esterhuizen had to step back. As the Applicant's voice became louder, Wentzel immediately felt as if she was in trouble, because she was the cause of too many body scans being booked.
45. Wentzel testified that Esterhuizen was not talking loudly, she was trying to explain about the quota of patients. The Applicant spoke in a louder voice than normal because the Applicant was normally a soft-spoken person. The one didn't give the other time to speak, they spoke at the same time, that is why it got louder. Both of them didn't allow the other to finish their sentences. However, Esterhuizen did not use the same tone of voice from her side. It was a normal work conversation that escalated in a loud conversation. These kinds of conversations do happen daily, Wentzel has experienced this kind of few conversations with the Applicant, but it in a different tone of voice. She only saw Jacobs and Wentzel when she turned around.
46. Jacobs could have heard the conversation because she looked at Wentzel Hendricks differently when Hendricks turned around.
47. **Dr Stephanus Fourie** testified that the Applicant reports directly to him. Fourie saw it fit to discipline the Applicant, based on the incident report and the affect it had on Esterhuizen on the balance of probabilities. His decision to discipline the Applicant was based on the loud and intimidating manner in which the Applicant spoke to Esterhuizen and not whether the Applicant threw the document on the desk or whether he merely put it down on the desk.
48. It is not the first time that he has displayed this kind of behaviour.
49. It is standard procedure if the Applicant has an issue, he must report it either verbally or in writing and if he is not happy with the outcome, he can escalate it to the CEO. The Applicant has raised his concerns about work-related issues before. Esterhuizen wrote in her report about the affect it had on her, namely that she struggled to sleep and wanted to resign. Fourie could clearly see that she was upset, she fought back the tears and she trembled when she related the incident to him. Fourie referred her to Metropolitan (ICAS) for support. The incident had an effect on the working environment. The whole event happened in front of an external party, Jacobs and it brought the hospital's reputation into disrepute. Although the Applicant has not used the formal grievance procedure in the past, if he was not happy with a decision made by Fourie, he escalated his dissatisfaction to the CEO of the hospital.

50. When one commences employment in the public sector, you get an induction, which includes the grievance procedure. Therefore, the Applicant should have been aware of the grievance procedure. The Applicant was previously subjected to discipline during July 2021 for a similar way of communication and disrespect towards colleagues, in respect of which a final written warning was issued to him on the 12th of July 2021 by the CEO, Francois van der Walt.

Analysis of the evidence and arguments

51. The applicant was charged with unprofessional and disrespectful conduct towards his colleague, Ms Esterhuizen in the presence of an external stakeholder on the 25th of May 2022, he was found guilty of the charges and received the sanction of a written warning, valid for six months.

52. The Applicant tried to justify his behaviour, by stating he has problem with the delays of the department and that there are too many scans scheduled on a daily basis. Dr Fourie put a lot of pressure on Esterhuizen to book a certain amount of scans. The Applicant maintains that he did not shout at Esterhuizen. According to Dr Messiahs who is junior to the Applicant insofar as experience is concerned related to the incident as a normal conversation between colleagues.

53. Fourie requested Messiahs to give a report on the incident, but he made his decision based on all the evidence before him and on the balance of probabilities. Resolution 1 of 2003 makes provision for an informal procedure, which procedure Fourie elected to follow in this instance. Fourie gave the Applicant an opportunity to give his version. Therefore, a proper procedure was followed. Fourie testified that whether the Applicant threw the document on the table or whether he put it down, was not a deciding factor in his decision to discipline the Applicant.

54. The applicant handled his dissatisfaction regarding the workload and scanning in an inappropriate manner, he should have spoken to Fourie about his dissatisfaction and if he was unhappy with the outcome, he could have escalated the matter to the CEO as he had done in the past. There is no justification for taking Esterhuizen to task for scheduling too many scans per day, as per his own evidence she was merely carrying out instructions received from Fourie.

55. I am satisfied from the inspection in loco that we carried out in the course of the hearing, that Wentzel, Hendricks and Jacobs were all within of the Radiologists' office and that they would have heard loud voices in the Radiologists' office. From the evidence before me, I find no

reason why Wentzel or Hendricks would lie about hearing the Applicant raise his voice, especially since he is usually a soft-spoken person.

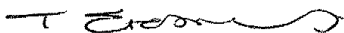
56. I accept Esterhuizen's evidence of the effect that the Applicant's behaviour had on her, this was not disputed by the applicant. It is highly unlikely that Fourie would have send her to ICAS for support if she was not genuinely upset by the incident. The Applicant did not dispute that an outside person, Jacobs was present during the incident. It put the reputation of the hospital into disrepute.

57. The Applicant received a final written warning in the past for a similar incident, although this warning had already lapsed, therefore he should be careful about this kind of behaviour and ensure that he does not repeat this kind of behaviour, in spite of his frustration with the workload. The Applicant must ensure that he follows the correct procedures in future to voice his concerns about the workload.

58. I find the Applicant's conduct was inappropriate and the sanction of a written warning was fair under the circumstances

Award

59. The Applicant was not subjected to an unfair labour practice, and he is therefore not entitled to any relief.



TERESA ERASMUS