



ARBITRATION AWARD

Case No: PSHS492-21/22

Commissioner: Lillian Goredema

Date of award: 26 August 2022

In the matter between:

PSA OBO MARTHA HARRIS

(Applicant)

and

DEPARTMENT OF THE SOCIAL DEVELOPMENT- WESTERN CAPE

(Respondent)

DETAILS OF HEARING AND REPRESENTATION

1. This is an award in the arbitration held at the Department of Social Development on 10 February and 15 August 2022. Martha Harris (the applicant) was represented by Angelo Fisher an official of Public Service Association. Department of Social Development,- Western Cape (the respondent), was represented by Aashiqa Champion, an official of the Respondent.
2. The proceedings were manually and digitally recorded.

ISSUE TO BE DECIDED

3. I have to decide whether the a final warning and suspension for two weeks without a salary imposed on the applicant is fair.

BACKGROUND TO THE DISPUTE

4. The Applicant is employed by the Respondent as a Regional Director of the Department of Social Development for Metro East.
5. She alleges that from she was charged with impugning the integrity of the interview panel for the post of Chief Director, Social Welfare and Restorative Services, unreasonably and/or unjustifiably questioning the appointment and professionalism of Ms Leana Goosen and wrongfully questioning and/or creating the perception that the Directorate: Special Programmes was moved back to the Chief Directorate: Children, Families and ECD, because Ms Leana Goosen abdicated her responsibilities, knowing that it was not true. She was further charged with acting in an improper manner in that on 6 April 2021 she addressed email correspondence to various recipients with contents which was disrespectful and demeaning to Ms Leana Goosen.
6. The applicant was found guilty and she was suspended for two weeks without a salary and issued with a final written warning. She alleges that there was no substantive evidence presented to prove the two charges as she was making an inquiry which no one had clarified for her. She wants the sanction to be set aside.
7. Ms Champion alleged that sufficient evidence was presented in support of both charges and the sanction is appropriate.

SURVEY OF THE EVIDENCE AND ARGUMENTS

DOCUMENTARY EVIDENCE

8. The parties submitted bundles of documents and applicant's bundle of documents pages 1 to 131 which I marked as Bundle "A" and the respondent's documents pages 1 to 72 which I marked as bundle "B".

APPLICANT'S EVIDENCE

9. The Applicant testified under oath and stated that she is currently the Regional Director for Social Development Metro East. She has been employed by the Department for 39 years.
10. She is the Human Resources representative in the regional directorate.

11. She testified that she sent an email dated 27 March to various people including Leana Goosen (Leana) as she had certain concerns emanating from Leana Goosen's email which advised a number of people that as from 1 April 2021 Special Programmes would be transferred back to Charles Jordan (Jordan).
12. She said her concerns were that this was restructuring of the department without interrogating the whole structure and that Leana had no authority to send the email.
13. Ms Soraya Abrahams also sent an email about her concerns.
14. On 19 March 2021 Leana sent an email notifying people about transfer of duties so the applicant said Leana had no authority to make changes as she did not have delegated authority to do so.
15. She raised this in the bi-weekly meetings in her capacity as a member of the extended management comprising of the MEC, HOD and Regional and Chief Directors.
16. She said she did not know who the members of the selection panel were, but she was questioning the process and her email was not disrespectful and demeaning as she was inquiring about the changes stated by Leana in her email.
17. She said she copied her emails about an issue about an old person including Leana as she had been asked to intervene as the Head office had failed to assist. Leana was unhappy about being included in the emails.
18. She said the sanction imposed on her was unfair as all she intended by sending the emails was to seek clarity.
19. In answer to questions during cross-examination she said all the people addressed in her emails were the Executives of the Social Development department and Leana was part of the executive.
20. She said Leana could not manage as she was concerned that the changes announced by her did not follow due process and she was abdicating her duties. She said if she offended people by the use of the word she was apologizing but she did not apologise personally to Leana.

21. She said when Denzil Cowley asked her to remove Leana from the emails as she was not responsible for the programmes she persisted including her as she felt it was her responsibility.
22. She said her emails about the changes were ignored.
23. Mzwandile Hewu testified under oath and stated that he is Chief Director of Community and Partnership Development and he was included in the initial email sent by the applicant about the changes.
24. He had no knowledge of the reason for the changes.
25. He said the email was not directed to Chief Directors and Directors only but she knows that the applicant has a strong challenging personality.
26. He said it would have been better if the e mail had been addressed to the HOD.

THE RESPONDENT'S EVIDENCE

27. Leana Goosen testified under oath and stated that she is the Chief Director Social Welfare and Restorative Services.
28. She said on her appointment special programmes fell under her, but on transfer of the ECD to the department of Education, Charles Jordan requested to deal with special programmes. The transfer was approved by the HOD and the MEC.
29. Thereafter she advised every one of the changes.
30. She said she felt that her ability and credibility for the position was attacked by the applicant in her email dated 27 March when she wrote: "*seemingly Leana cannot manage the Chief Directorate that you have created and appointed her in for the past five months which to me speaks volumes for the panel's objectivity and integrity when they assessed candidates based on their performance during the interview, as well as the results of the psychometric test. Were requirements of the Chief Director post filled by Leana relaxed to ensure that she would fit the criteria to become fit for purpose?*"

31. She said if the applicant was grieved by her appointment she should have lodged a grievance rather than attack her in an email including her juniors.
32. The applicant also said “ *Charles for many years you carried the entire Social Welfare pillar of DSD while Mr. Hewu carried the limited Community and Partnership Development Chief Directorate for obvious reasons. This unequal distribution of work creates anomalies which are questionable if certain individuals which were found to be capable and appointed in high level posts can willingly shift/abdicate responsibilities of the post. No official can just shift their work scope responsibilities and accountability without consequences and thereby diminishing the intended purpose of this Chief Director position.* ”
33. She said that the implications of this paragraph were that she had abdicated her responsibilities and her post was null and void although she does not report to the applicant. She had no idea how she had assessed her capabilities.
34. The email was sent when she had been five months in the position and she became anxious and started second guessing herself as the e mail shook her confidence.
35. The email by the applicant on Pam Phillips had nothing to do with her as that section no longer fell under her and the applicant was aware that she was no longer in charge of Jordan and she was reminded of this by Denzil Cowley.
36. She said the applicant was wrong in sending her the emails and she contravened a section of the Western Cape Government IT End User Policy which states that it is unacceptable to create and exchange messages that can be interpreted as offensive, harassing, obscene, racist, sexist, ageist, pornographic or threatening.
37. She also stated that the Senior Management Service Public Service Handbook states that senior managers should treat all people with whom they interact fairly, with courtesy and sensitivity and the applicant breached this.
38. She also testified that the public service Regulations stipulate that every employee’s conduct should be ethical and deal with each other in a professional manner, fairly and equitably. The witness said she felt ridiculed by the emails.
39. In answer to questions during cross-examination she said the applicant disrespected her and included her in emails which did not concern her as she had informed every one of the changes.

40. She said the applicant's emails were an attack on her abilities.
41. The transfer was an end product of consultations and she did not have to explain the process to the applicant.
42. It was not about the tone of emails but they were attacking the appointment process. The applicant could have addressed her issues with the Head of department.
43. Her statements formed judgement on the selection panel's objectivity and integrity as well as the results of the psychometric tests. She sought clarity after making allegations.
44. Charles Jordan testified under oath stating that he is the Chief Director Children and Family.
45. He has known the applicant for 15 years. When all ECD programmes were transferred to the Education department he asked for special programmes to be transferred to him from Leana and so this was done in April 2021.
46. He said the email from the applicant dated 27 March was inappropriate as it questioned the integrity of Leana it should have been addressed to the HOD.
47. He said he requested to take on the duties not that the Leana tasked him to take over the duties therefore she did not abdicate her duties.
48. Applicant's emails were not professional.
49. In answer to questions during cross-examination he said the applicant never said she was addressing emails on behalf of MANCO.
50. Robert Macdonald testified that he is the accounting officer in the department of Social Development in the Western Cape and HOD.
51. Cowley, the Director of Special Programmes was approached by Jordan who asked to head special programmes and this was discussed with the MEC and she agreed with the transfer.
52. Leana was authorized to advise everyone about the transfer.

53. He said the email by the applicant on 27 March was insulting and improper and implied that Leana abdicated her duties. There was also an accusation of impropriety of the recruitment process and some of the phrases implied that the MEC and other personnel were unprofessional.
54. His concern was that such emails were sent to everyone.
55. If the applicant was seeking clarity she should have directed the email to the decision maker either the MEC or himself not everyone with pejorative insinuations.
56. This was referred to a disciplinary hearing as the applicant persisted with the theme. Her conduct was unbecoming of a senior manager.
57. He said the applicant was asking about the actual recruitment and not only the transfer alluding that it was unfair to transfer duties to Jordan and impugning Leana.
58. Her conduct was potential misconduct that is why he referred it for a disciplinary process. The emails were outbursts and lacked good faith.

ANALYSIS OF THE EVIDENCE AND ARGUMENT

59. The applicant asked me to find that the disciplinary action taken against her and the sanction were unfair.
60. In coming to a decision, I have taken into account the closing arguments as well as evidence presented by both parties.
61. I find that the emails by the applicant went further than inquiring about the transfer. She could have asked for clarity directly to the HOD without copying a number of people. Further the content indeed impugned, insulted, and demeaned Leana and challenged the integrity of the process adopted when appointing Leana.
62. It is clear that the applicant doubted Leana's capabilities in shifting her responsibilities. The irony of this is that if she had contacted the HOD she could have been advised why the transfer was made and that it was at the request of Charles Jordaan whom she seemed to protect.
63. All the witnesses including the applicant's own witness said her emails were improper.

64. The language used was wrong, even if I accept that the applicant is part of the extended MANCO and she was seeking clarity. She testified that no malice was intended but the e mails were loaded with malice innuendos and malice.

65. Consequently, I find that the charges against the applicant were proved.

66. I find that the sanction borders on the side of leniency but I cannot find fault with it and find that it was appropriate.

AWARD

67. The applicant's suspension and sanction are fair and her application is dismissed.



Lillian Goredema