



ARBITRATION AWARD

Case No: **PSHS515-22/23**

Commissioner: **Jules McGillavray-Teale**

Date of award: **19 February 2023**

In the matter between:

NUPSAW OBO MOSADI-MATSHEGO, RELEBOGILE JACQUELINE Applicant

and

DEPARTMENT OF HEALTH- NORTH WEST Respondent

Details of hearing and representation

1. The National Union of Public Servants and Allied Workers (NUPSAW) referred a dispute to the Public Health and Social Development Sectoral Bargaining Council (Council), in terms of section 186(2)(b) of the Labour Relations Act 66 of 1995 (LRA) pertaining to the unfair suspension of the applicant. The arbitration took place on 7 February 2023 at the Koster Hospital.
2. Mr Master Nomxanya, a NUPSAW union official, represented the applicant, while Mr Simon Chauke represented the respondent, Department of Health- North West.

3. Both parties agreed to use the bundle of documents submitted by the respondent during the arbitration proceedings.
4. The proceedings were electronically recorded, and the record filed with the Council's administration.
5. This award is issued in terms of section 138(7) of the LRA, which requires that a commissioner provide brief reasons for their outcome.

Issue to be decided

6. I must decide if the applicant was subjected to an unfair labour practice involving her unfair suspension and if so, to determine the appropriate relief.
7. The applicant seeks compensation as a *solatium* to remedy the alleged unfair suspension.

Background to the dispute

8. At the time of her suspension, the applicant was employed as the Assistant Director Administration at the Koster Hospital and was earning R38170.57 per month.
9. She was employed in 1986 and had been in the employ of the respondent for 36 years.
10. She referred an unfair labour practice dispute to the Council on 29 September 2022.

Survey of the evidence and argument

11. The following represents a condensed version of the respective submissions made by the parties. I have not captured the detail *verbatim* and this should not be misunderstood to suggest that I have not taken all the information into

account. My conclusion is accordingly within the context of all the evidence tendered.

Preliminary Issue

12. Mr Chauke submitted, on behalf of the respondent, that the dispute referral document suggested that the dispute arose 16 September 2022, when the applicant was only suspended in a meeting on 19 September 2022 and that the referral was therefore premature.
13. The applicant however argued that the letter signed by the Acting Chief Director of the Bojanala District, Dr KKP Segwai, was signed on 16 September 2022 and the dispute was only referred to the Council on 29 September 2022.
14. Therefore, the date the dispute arose was a non-material error on behalf of the PSA when they referred the dispute to the Council because although the letter was only presented to the applicant on 19 September 2022, it was signed on 16 September 2022 and the dispute referral to the Council was submitted on 29 September 2022. The dispute was therefore not referred prematurely.
15. Considering the submissions tendered by the parties in regard to the *point in limine* I ruled that the council had jurisdiction to hear the dispute and the matter proceeded to arbitration.

Applicant's case

Ms Relebogile Jacqueline Mosadi-Matshego

16. Ms Mosadi-Matshego testified under oath that she worked at the Koster Hospital and had been suspended by the hospital on 19 September 2022. She further testified that the matter had been set down for arbitration on 25 November 2022 but the respondent was not ready to proceed so the matter had been postponed with costs to the Department of Health of the North West.

17. She alleged that she was suspended by the Acting Chief Director when she should have been suspended by the Head of Department. She further disputed the reasons for her suspension and noted that she had not been provided with an opportunity to make representation as to why she should not be suspended. She further alleged that the suspension was community based, where she had good social standing but her suspension had impacted negatively on her reputation.
18. Her final point was that the suspension had exceeded 60 days by 5 days and that she had later been dismissed for entirely different reasons.
19. Under cross examination, the applicant was asked to verify if she was challenging the procedure because she had not been given an opportunity to respond to the allegations contained in the suspension document. She confirmed this and added that she had asked to keep her laptop during the course of her suspension which was denied.
20. It was put to the applicant that there was no unfair reason for her suspension. She maintained that it was unfair in all respects.

Respondent's evidence

21. Given the opportunity to present its case, Mr Chauke advised that the respondent would be calling a witness.

Thekiso Isaacs – CEO Koster Hospital

22. Mr Isaacs testified under oath that he was employed on 1 May 2019, that he was familiar with the applicant as she reported to him for more than 2 years. He had issued the suspension letter to the applicant on 19 September 2022. He was instructed by the Chief Director to do so but had not been party to the drafting of the suspension or the investigation.
23. Under cross examination he was asked to provide detail on the charges noted in the suspension letter, he noted that the detail was unknown to him since he did

not author the letter but was merely the messenger at the instruction of the Chief Director.

Analysis of evidence and argument

24. Section 185(b) of the LRA prescribes that every employee has the right not to be subjected to an unfair labour practice, and section 186(2)(b) defines an unfair labour practice as, *inter alia*, “any unfair act or omission that arises between and an employee involving unfair conduct by the employer relating to the suspension of an employee an employee.”
25. For the applicant to succeed in this matter, she bears the onus to show that she was unfairly suspended.
26. Section 194(4) of the LRA provides that: “The compensation awarded to an employee in respect of an unfair labour practice must be just and equitable in all circumstances, but no more than the equivalent of 12 months remuneration.”
27. From the testimony, it is clear the applicant was notified of her suspension on full pay, on 19 September 2022 by means of a letter signed 16 September 2022.
28. I am mindful of the fact that the disciplinary code and grievance procedure, included in the bundle recommends if an employee is placed on precautionary suspension, the employer must hold a hearing within 60 days.
29. There has been no reasonable explanation submitted by the respondent for the extended suspension.
30. As for who suspended her, the Code of Conduct submitted by the respondent in the bundle clearly states:

“7.2 Precautionary suspension

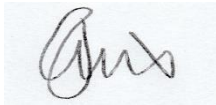
(a) The employer may suspend an employee on full pay...”
31. There is nowhere in the code that states that only a specific title holder is authorised to issue a suspension notice.

32. As for the applicant's allegation that she noted that her suspension was further unfair since she was not given an opportunity to make representation regarding the suspension. Here the ***Long v SAB (Pty) Ltd and others (2019) 40 ILJ (CC)*** judgement which was handed down on 19 February 2019 guides me. The court noted that a precautionary suspension was not disciplinary action and would find no application under the LRA. More importantly the court found that there is no requirement to afford the employee an opportunity to make representations before the suspension is effected.
33. As for the applicant seeking a *solatium*, I am guided by the judgement by Waglay JP in ***ARB Electrical Wholesalers (Pty) Ltd v Hibbert (DA3/13) [2015] ZALC 34; [2015] 11 BLLR 1081 (LAC); (2015) 36 ILJ 2989 (LAC) (21 August 2015)*** in which Waglay stated that "*the compensation that an employee who has been unfairly suspended, may be awarded is not aimed at making good the patrimonial loss that he/she has suffered.*"
34. *The concept of loss or patrimonial loss play a role to evince the impact of the wrong upon the employee and thus towards the determination of appropriate compensation, but compensation under the LRA is a statutory compensation and must not be confused with a claim for damages under common law or a claim for breach of contract or a claim of delict.*
35. *Hence there is no need for an employee to prove any loss when seeking compensatory loss when seeking relief under the LRA."*
36. Accordingly, there is no requirement for loss or damages to be established in order to award compensation. I am further aware that the respondent has committed an unfair labour practice by extending the term of the suspension without providing an explanation and subjected the applicant to an unfair labour practice and violated the right conferred on her in Section 185(b) of the LRA.
37. It would make no sense to uplift the suspension at this point since the applicant has subsequently been dismissed for another reason not related to this suspension. Although the applicant was subjected to an extension of her

suspension, at this point in time and in the circumstances, there is no requirement for any relief.

AWARD

38. The suspension of the applicant, Ms Relebogile Jacqueline Mosadi-Matshego does constitute an unfair labour practice.
39. The applicant is however not entitled to any relief.
40. There is no order as to costs.



Jules McGillavay-Teale