



# ARBITRATION AWARD

Commissioner: **Lindiwe Makhanya**

Case No: **PSHS625-21/22**

Date of award: **01 December 2022**

In the matter between:

**ZAMOKUHLE JACQUELINE MKHIZE**

Applicant

and

**DEPARTMENT OF HEALTH- KWAZULU NATAL**

Respondent

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## DETAILS OF HEARING AND REPRESENTATION

1. This matter was scheduled for arbitration before me on 15 July 2022 and was heard on various occasions until it was finalized on 22 November 2022 at the Respondent's premises, at Prince Mshiyeni Memorial Hospital. It was held under the auspices of the Public Health and Social Development Sectoral Bargaining Council ("the council") PHSDSBC in terms of section 191(5) (a) of the Labour Relations Act No.66 of 1995, as amended ("the Act").
2. The Applicant, Ms. Zamokuhle Jacqueline Mkhize, was represented by Mr. A.S.Mathonsi, a union official from PAWUSA, and the Respondent, Department of Health -Kwazulu Natal, was represented by Mr. M. Shabangu, from Labour Relations department. The proceedings were digitally recorded.

## **PRELIMINARY ISSUES, JURISDICTION, AND ISSUES TO BE DECIDED**

3. No jurisdictional issues were raised. The matter was referred timeously to both conciliation and arbitration, and the dispute is properly within the jurisdiction of the Council.
4. On 15 July 2022, the Applicant's legal representative, Mr. L. Bramo from Molla Attorneys, applied for legal representation claiming that the matter was complex since the process will be dealing with electronic and financial systems and the data which will need to be interpreted. The Applicant's Attorney argued that the Applicant would be prejudiced if legal representation was not granted.
5. In terms of comparative ability, it was submitted that the Applicant would not be able to cross-examine the Respondent's witnesses as she had no knowledge of labour law. The Applicant's representative further submitted that he was an Advocate and had been employed as an employer organization official and that if he were allowed to represent the Applicant, he would be in a possession to assist the Council in dealing with the matter speedily.
6. The Respondent's representative objected to legal representation claiming that the arbitration hearing needed to be dealt with a minimum of legal formalities and that there was no need for legal representation because the Applicant was charged with misconduct. The Applicant was given a document of patient's cards that the machine scanned and did not need any interpretation. The Applicant was previously represented by the union, PSA, but decided to use the Attorneys. He further submitted that he was not an Advocate by profession but was employed as a labour relations official; therefore, it was not fair for the Applicant to be granted legal representation.

## **ANALYSIS OF SUBMISONS ON LEGAL REPRESENTATION**

7. Having considered the parties submissions, I decided to refuse legal representation because the Applicant did not make submissions that deal with the factors to be considered when determining whether to grant legal representation as per Rule 25 (4) of the Council's Rules ), which are the nature of the question of law raised by the dispute, complexity of the dispute, public interest, and comparative ability of opposing parties or their representatives to deal with the dispute. Having listened to the submissions, there was no issue of question of law raised by this dispute. The dispute before me is simple and not complex. I was unable to find any public interest regarding this dispute.

8. In the *SCA in CCMA & others v Law Society Northern Provinces* (005/13) [2013] ZASCA 118 dated 20 September 2013, the Court held that there was no absolute right to legal representation and that the nature of labour disputes was such that they should be dealt with speedily and with the minimum of legal formalities.
9. The application for legal representation was denied and the matter proceeded. The Applicants' request for a postponement to have her union representative present was granted. The matter was adjourned and proceeded on 17 August 2022.
10. The dispute is whether the dismissal of the Applicant was substantively unfair.

## **BACKGROUND TO THE DISPUTE**

11. The Respondent is the Department of Health, one of the government's executive departments assigned to health matters and located at Umlazi, KwaZulu Natal.
12. The Applicant commenced employment with the Respondent in November 2007 and was employed as a Finance Officer. She was dismissed on 08 September 2021 after a disciplinary enquiry into misconduct allegations. At the time of her dismissal, she earned a monthly salary of R17,284.94.
13. The Applicant referred an unfair dismissal dispute relating to misconduct to the Council. She sought retrospective reinstatement if the award is made in her favour.

## **SURVEY OF EVIDENCE AND ARGUMENT**

14. The Respondent presented a bundle of documents marked "B," and the Applicant presented a bundle of documents marked "A. Both parties submitted written closing arguments.
15. The Applicant was found guilty of one charge as per (Bundle "B," page two ) as follows:

On 12 August 2020, from approximately 08h19 am to 10h54 am at Prince Mshiyeni Memorial Hospital (PMMH), you stole PMMH fees in that you swapped the working cash register with an alleged broken cash register to generate money for your own gain without authorisation.

You contravened any prescribed code of conduct for the public sector. " 4.4.8 An employee is honest and accountable in dealing with public funds and uses the public service's property and other resources

effectively, efficiently, and only for authorised official purposes while on duty; you conducted yourself in an improper, disgracefully, and unacceptable manner.

## **THE RESPONDENT'S CASE**

16. Mr. Sipiwe Paulus Ngcemu testified that he joined Prince Memorial hospital in August 2020 as a chief security officer but had worked for the Respondent since 2007. His responsibilities were to safeguard the equipment of the Respondent, the staff, and patients, including viewing CCTV cameras.
17. He referred to page 5, "Bundle B," a report that he submitted to his supervisor, Mr. K.N. Ngcobo, regarding the activities he was observing, suspected theft of revenue money at the patient administration cash office. He informed his immediate supervisor and recommended an investigation because the cashier did not appropriately handle cash. She took money from the cash register and gave it to another employee.
18. During induction, he was informed that the other cash register, covered with white clothes, was not working, and the other machine was functioning properly. The cashier swapped the cash registers, prompting him to report the matter as he knew the other machine was not working. Both cash registers were being used, whereas the other needed to be fixed.
19. Under cross-examination, he reiterated that he did not capture every activity on the CCTV system unless there was some abnormality, like in the Applicant's case on the day in question. After he viewed the video footage, he extracted the part where he saw the Applicant swapping the machines and handing cash to Sizwe.
20. When he was asked if he saw the broken machine moved to the other table on the video footage, he said the video that was playing was incomplete; there was a part of the footage which was not shown; for instance, Sizwe was not shown putting money on his pocket as he had claimed in his statement. However, he denied that he had edited the video.
21. During re-examination, he said the money handed to Sizwe was not counted, and the machines had been swapped, whereas the other machine was not working.
22. Mr. Khayelihle Nelson Ngcobo was employed as Deputy director of facilities management. Some of his duties included supervising patient administration employees.

23. He referred to a till strip on page 8, "Bundle B," which was used at the administration for collection by revenue section. It was printed by the revenue section when they cashed the money from the cash register. The machine with six digits showed that it was switched on at 8h16 on 12 August 2020. He explained that a number starting with #043638 was machine generated for each patient who came to pay at the patient admin office; an amount of R40.00 was paid, and the transaction happened at 8h18:10. The Applicant was the operator of the machine. This machine was switched off at 8h19:01. The word "R Powered up" written on the till strip showed that the machine was switched on again at 10h54:16. He further stated that if the machine were not switched off, it would have worked continuously. However, the report showed a gap between 8h19 and 10h54, as no transaction occurred.
24. The other machine on page 13, "Bundle B," with four digits (till strip number 7258), was switched on at 8h27 am. The transaction was for an amount of R40.00 on 12 August 2022. He said the two machines were unable to operate at the same time.
25. He continued to refer to the machine with four digits from pages 14 to 25, where transactions were done between 8h27 and 10h27. When these transactions took place, the machine with six numbers on page 8, "Bundle B," was switched off until 10h54, when it was switched on. Both machines reflected the times and the date the transactions took place.
26. The cash register handing over and clearance record form was signed by the Applicant and revenue official on 12 August 2020 for an amount of R2,715.00, page 9, "Bundle B ."The cash collected was from the machine with six digits on page 8, "Bundle B ."There was no cash collection by revenue section for the machine with four digits, whereas the records showed that transactions did take place. Between 8h20 to 10h53, there was no money collected from the machine on page 8 because it was switched off.
27. He looked at the video and commented that it was not normal to see the Applicant handing over the cash to someone else since the procedure was not followed. The cash register handing over and clearance form had to be completed. After the procedure had been followed, money could only be handed over to the revenue official.
28. He pointed to a Delegation document for the Respondent, a standard operating procedure (SOP) on page 11, "Bundle B," which was signed by the Applicant when she was appointed. The Applicant was familiar with the procedure in that no private money or valuables were allowed at the cash office. She was not allowed to bring anyone to come or have access to the cash office, but she was seen on the video handing over cash to Sizwe, which was misconduct.

29. The Applicant's handling of cash symbolised that the money went to the wrong hands. Looking at the two machines used, money was only collected from one machine. The funds generated from the machine with four digits were not collected because that machine was not connected to the revenue section. The period between 8h19 to 10h54 was the busiest at the hospital, where patients collect their cards and pay. The Applicant knew how to keep state funds but what was seen on the video was not in compliance with SOP.
30. Under cross-examination, when he was asked why he had said the Applicant swapped the machines between 8h19 and 10h54 because the footage that was played showed the time 11h59 and did not show the Applicant swapping any machine at that time, he said his response was based on documents before him and the fact that on 12 August 2020 the Applicant was the only person working on that day and the till strip reflected that the machine was working till 8h19 and was powered up again at 10h54. During this period there was another till strip that showed that another machine was being used to scan the patient's files. The video footage did not record all the movement, but it showed that the machine had been moved, which meant the Applicant swapped the machines. It also did not display when the machine was powered up, whereas the till strips report showed.
31. He admitted that the scanned patients file on pages 13 to 25 did not have the cashier's name. However, in patient administration, all the patients that were seen were registered on the patient registers filed by the Applicant for all patients that came through her. On the register, the Respondent was able to pull out all files that the patients used on the day, and they used the cash office where the Applicant was working as she was the only person working in that unit on 12 August 2022. He said that although the patient register was not part of the bundle but was available to be presented.
32. He said that in his understanding, 01 was the code allocated to the Applicant as seen on pages 13 to 25, "Bundle B," and on page 08 of the same bundle showing L0001. The Applicant's name was not showing on the other machine because they were programmed differently. However, when he was directed to page 2, "Bundle A," where another cashier, Gumbi, had operated the machine with code L0001, he said he could not use the code as a basis for his argument. However, he insisted that the outpatient register gave them the exact information as to who was the person at the cash office at the time. The Applicant used another machine between 8h19 and 10h54, the busiest period with a queue of patients; it would be impractical to stop the machine during this time. The machine was scanning more than one card in one minute.
33. When he was asked about page 11, "Bundle B," if there was a clause that referred to how employees may acquire cash float, he said there was no clause. Still, there was always money at the cashier's office because the money that would have been made from the previous day was not collected until around 12 midday, as the revenue only collected money once a day. Hence, there was always extra cash for the previous day.

34. During re-examination, he emphasized that the Respondent had never had issues with cash float because it charged a specific amount of R40.00. And the money given to Sizwe was not counted and was a considerable sum. In contrast, only the revenue department was permitted to collect money, and specific procedures had to be followed. By giving Sizwe money, the Applicant was in contravention of clause four, page 12, "Bundle B ."The document on page 11, clause 2c stated that every receipt issued shall reflect the nature of the money received, e.g., cash, cheque, warrant voucher, or postal order; however, there was no receipt issued to Sizwe.
35. There was a gap between 8h19 and 10h54, and there was no indication that the machine was broken during that period. When one looked at the times of the transactions on page 8, it could be seen that within one minute, the Applicant was able to do more than one transaction. It was clear that many transactions were done during this time which was sufficient evidence that the money given to Sizwe was not cashed up during that period because if the machine was off, it could not record. He said the Applicant balanced on the money collected, but between 8h19 to 10h54, the funds collected during that time were not accounted for.
36. He emphasized that the Applicant was the only person working on that day as a cashier at the second visit, and the Respondent pulled out all patient files that were registered on the day of the second visit.
37. He clarified that code 01 was linked to the cash office, not to the individual cashier and that in his earlier evidence, he had confused the issue of cashier and cash office.
38. Ms. Thobile Nomaswazi Ngubelanga said that the Respondent had employed her for 12 years. She was working as an acting supervisor in the revenue section. Her primary duties included collecting revenue for the Respondent and doing banking.
39. Revenue officials collected money once a day from different cashiers being escorted by security guards. The procedure was that they would insert the revenue section key in the machine when they got to the cash point to get the clerk's report. Handing over register form would be completed and signed by the cashier and the revenue official to confirm the cash collected as per page 9, "Bundle B.
40. When the video footage was played where the Applicant was seen handing money to Sizwe Ntuli, she said it was not permitted as Sizwe did not work for the revenue section.
41. She pointed to page 11, "Bundle B," a document signed by all officials who handled state cash. She said petty cash was kept at the revenue office for any emergency. She disagreed with the version of the Applicant

that she had given Sizwe money to get cash float because the money she gave to Sizwe belonged to the state and she did not follow the procedure when she handed Sizwe the money.

42. She referred to page 8, "Bundle B," as a till strip with a sequence number generated every time a payment was made. She compared it with page 13, "Bundle B," in that both documents had a 01 code, categorised as paying patients who could pay anywhere else in the hospital.
43. Under cross-examination, she said all patients were allowed to pay in other cash points. i.e., the 01 code would reflect, for paying patients, a category code. Page 8, "Bundle B," was the same code, L0001, for paying patients.
44. She could not tell by looking at the patient's cards on pages 13 to 25 who was the cashier who had scanned them unless the revenue checked through the portfolios and went through each till.
45. They had never been given cash float as revenue. Cash was collected anytime between 11h00 and 13h00. When the other cashier finished his or her shift, the money was kept in the cash register, and the exchange was done with the other cashier. The clerk's report could show who had worked and how much each cashier generated.
46. During re-examination, she said the cashing up was done once a day, but in an emergency, they would return and clear the machine when it was faulty. She was adamant that they were never allocated cash float.

## **THE APPLICANT'S CASE**

47. Ms. Zamokuhle Jacqueline Mkhize testified under oath that she denied swapping the cash registers as she did not know how to continue working after the machine had stopped working. The revenue official or Sizwe would be called whenever the machines became faulty.
48. She admitted that she was seen carrying the machine on the video footage for 12 August 2020, but she did not recall what had happened, and the video footage did not show her swapping the machines. Whenever the machine got faulty, she would continue with other duties while patients would be directed to the other cashier's office. When there was an electrical fault, the machine would switch off, and the word "R powered up" would show when it got switched on.
49. She conceded that she was operating the machine as shown on page 8, "Bundle B," but when she was directed to explain what had transpired at 10h54 when the machine wrote "R powered up," she said she did



not recall but looked like there was some electricity issue. She also referred to page 1, "Bundle A," Gumbi's till strip where the "R powered up" appeared, and that an electrical issue may have been the problem.

50. She denied stealing money from the Respondent because the cash collected by revenue section on 12 August 2020 was balanced. It would be stupid of her to swap the machines when she knew cameras were at her workstation. She had worked for the Respondent for 13 years and had never had any problems.
51. She gave Sizwe money she counted before he arrived, but the video footage did not show that part. She did not recall the amount she gave him, but she had requested some change. It was the norm that they would ask someone to obtain cash float whenever they needed change for the money. She was familiar with the document on page 12, "Bundle B," however, it was silent on the issues concerning cash float. The document did not state what steps to take if she needed change for the money.
52. She did not scan the patient's file on pages 13 to 25, "Bundle B," because her name was not shown anywhere in the patient's file and the code 01 meant that it was for paying patients, as shown on page 13, the payment of R40.00 by a patient. All Patients were allowed to use any cashier's office if her machine was faulty.
53. The money given to Sizwe was not generated from a broken machine, and he brought back the change, but it was not shown in the video footage.
54. Under cross-examination, she insisted that code L0001 was the number of all working machines at the Respondent and that the H1 code was for paying patients. She reiterated that although she did not recall what problem she faced on 12 August 2020, when the word " R powered up"appeared, she could have encountered some problems. Whenever she had technical glitches with the machine, she would call Sizwe or revenue, but she did not recall whom she called on this particular day.
55. She was advised to call Sizwe if the machine got faulty. She did not recall how much she gave Sizwe to get a cash float on 12 August 2020 because it happened every day.
56. She explained that when she reported for duty, she and the cashier who had been working before her shift would count the money to see if it balanced so that she would continue working. Still, she ran short of change every day and asked vendors or revenue section and, sometimes, Mrs. Mhlongo, her supervisor.
57. She disputed that as a cashier, she did not need the change as money came in continuously, and all cashiers faced the same problem. She could not answer why other cashiers were not seen on the video footage taking money out but said the camera did not show the money being brought back to her. She denied that she did not count the money before giving it to Sizwe because she would count the money before anyone

came to fetch it to get change for her. She would give that person the money and tell them how much it was. It was up to the person she gave the money to count it.

58. She was familiar with the document on page 11, "Bundle B," and had signed it even though no one explained it to her. She still regarded the money taken away from the till as state money because the person who was sent to get cash float was an employee of the Respondent. She conceded that she was the only person who was allowed to deal with cash from her till.
59. It was a practice by all cashiers to give other people money to get cash float for them. As she was charged, it meant all cashiers were supposed to be charged. She denied being in a syndicate group stealing money from the Respondent. She did not recall what she was doing on the video clips as she was seen on the video carrying the machine. She reiterated that she did not swap the machines to steal the money.
60. When she was asked why she did not challenge the version of Ngcobo that the machine did not have a problem on 12 August 2020, she responded that she did not know she had to challenge him. She was also asked why she did not challenge Ngcobo's version, that when the machine showed "R Powered up," it meant the machine was switched off; she said she did not know that she had to challenge him.
61. She said the patient's cards on pages 13 to 25 were scanned on an old machine. However, the till strip would be able to show the name of the cashier who was using the machine. When asked why she did not request the machine printout from the revenue section, she did not give a specific answer. She also did not respond when it was put to her that she did not request the printout from revenue section because she knew the machine was not connected there.
62. During re-examination, she maintained that it could not be shown who scanned the patient's cards on pages 13 to 25 on 12 August 2022 between 8h19 and 10h54. The video footage did not show her swapping the machines, and Sizwe returned the money.
63. Mr. Sizwe Sanele Ntuli testified under oath that he started working for the Respondent on 12 November 2007 as a Finance clerk and was appointed also super user until he was dismissed. Some of his duties as a super user included communicating with IT personnel regarding repairing the machines and computers. When cash register machines were faulty, he was called to fix them if it was a minor issue or liaise with the IT personnel, and the machine would be fixed remotely.
64. He said it was not easy for the cashier to swap machines, which was why they were reported to him when they became faulty. He worked for the patient admin department, where approximately 2000 patients were admitted daily, non-paying and paying patients. Patients would come with money that required change,

sometimes R50 or R100.00 they would encounter a problem of running short of change. It was the duty of all cashiers to get change for the patients. In the video footage for 12 August 2020, he was seen taking money from the Applicant to get change for the patients because it was not easy for her to leave the office. This was a practice in the admin patient section, and sometimes he would go to the garage or to the shop to get change. He brought back the change, but the video footage did not show that part.

65. When the Applicant called him, he took the money without counting it because the Applicant had already told him how much it was. They were never informed of the proper procedure to get cash float, so they had to find a way to assist the patients. He signed the documents on pages 11 and 12, "Bundle B," but it did not mention how to obtain cash float.
66. He said it shocked him that the Respondent implied that he stole the money because the cashier's office had cameras and computerized machines. If the cashier had stolen the money, it would not have been balanced.
67. Under cross-examination, he said the supervisor put the other machine at the Applicant's workstation and had been there for about three weeks.
68. The document on pages 11 and 12 did not mention the issue of cash float, and all cashiers made it their responsibility to find change. He had been asked by Mtambo, a cashier, to help her when she ran short of change. Other cashiers would come to them to ask for assistance as well.
69. He admitted that he took money from the Applicant on 12 August 2020, an amount of R870.00, to get cash float. He brought change from the shop and the canteen. He admitted that it was not normal to move the machine as he was shown the video footage where the Applicant was seen carrying the faulty machine.
70. He conceded that the numbers starting with # on page 8, "Bundle B" were transaction codes. It showed that a machine with six digits was used, whereas page 13, Bundle B" had four digits meaning different machines were used. The machine with four digits was an old one. He said the two machines shown in the video footage were the same as they were both new.
71. Although he did not recall, the Applicant may have called him or revenue section on 12 August 2020 regarding the faulty machine. He did not record it anywhere when machines were reported faulty. He did not remember what time it was when he collected money from the Applicant.
72. When asked why the camera had not captured other cashiers exchanging money but had only captured him, the Applicant, and Mtambo, he said the video footage did not show him returning the money, which was unfair.

73. During re-examination, he maintained that the machines shown in the video footage were both new, whereas the machine used to scan cards on page 13 was the old machine he did not see on the video footage.
74. He emphasized that it was not possible to say which cashier had scanned the patient's cards on page 13, but he did not see the swapping of machines in the video footage; there was also no disconnection or connection of machines shown.

## **ANALYSIS OF EVIDENCE AND ARGUMENT**

75. I have taken note of section 185 of the LRA, which states that "every employee has the right not to be unfairly dismissed." I read this section with section 192(2) of the Act, in which the employer bears the onus to prove on a balance of probabilities that the employee's dismissal was fair.
76. There was no challenge to the procedural fairness of the dismissal. I will only deal with the substantive fairness of the Applicant's dismissal.
77. It was common cause that on 12 August 2020, the Applicant operated the cash register with six digits in the morning between 8h16:19 to 8h19:01. It was also common cause that the machine started working again at 10h54.
78. The Applicant disputed that she swapped the machines and stole the money. On the other hand, the Respondent argued that the Applicant switched the machines in her office on 12 August 2020 to generate money for herself. In the video clip which was played during this proceeding, the two machines were seen in the Applicant's office when she was working, and the faulty machine was behind her. Moments later, the Applicant was seen carrying and moving the faulty machine to its original place. When the Applicant was asked why she had carried the machine, which was faulty, she said she did not remember.
79. The Applicant's bone of contention was that the cash she collected on the day in question was balanced, as the revenue section confirmed. Ngcobo's undisputed testimony was that the other machine was not connected to the revenue section because it was faulty, and the patient's files were scanned. The money collected from it could not be accounted for. This is evident that money was stolen using the faulty machine as the patient's cards indicated that the patients had paid money.
80. The Applicant argued that the video clip did not show her swapping the machines. Ngcemu testified that the security department did not record every movement. He would only extract the clip where he saw irregularity;

in this instance, the Applicant was seen carrying the faulty machine, which showed that it had been moved from its original place. The Applicant did not dispute that she carried and moved the machine, as seen in the video clip. When asked why she moved the faulty machine, she said she did not recall. The inference that can be drawn is that the Applicant had swapped the machines. Now the question remains whether the Applicant stole the money.

81. The Applicant claimed that she did not scan the patient's cards to generate private money as she did not know how to operate the machine once it had stopped working. However, the Respondent was adamant that she had scanned the files using the faulty machine because the transactions took place between 8h19 and 10h54 when the machine with six digits was off. The Applicant claimed that when the machine with six digits showed "R powered up," it was not working and could have been caused by an electricity trip, but she did not present any evidence to suggest that Sizwe or revenue officials had been called to attend to the machine; instead, she said she could not recall who she called.
82. The evidence of Ngcobo that there was no report of the faulty machine on the day in question was not disputed. I accept that the machine with six digits was not reported faulty.
83. The Applicant said any other cashier could have scanned the patient's cards because her name was not on the patient's cards, and only the printout of the till strip could show who was operating the machine. The Applicant knew that there was no printout at the revenue for this machine as it was faulty because when she was asked during cross-examination why she did not request this printout, she did not provide an answer.
84. No evidence was presented to suggest that after 10h54, when the machine with six digits started working, the faulty machine continued to work. For this reason, I accept the Respondent's version that the Applicant had scanned the patient's file using the faulty machine and generated money which was later given to Sizwe. More, so because the evidence of Ngcobo which revealed that the two machines were unable to work at the same time remained unchallenged.
85. The Applicant did not dispute that she removed money from the till and gave it to Sizwe in order to get cash float. They did not sign any document as proof that a certain amount of money had been taken out of the till; this was against the Respondent's policy. If the version of the Applicant were to be accepted, who would be accountable for the money if it got lost outside the cash office because the people she sent to get cash float would go to the shop, canteen, garage, or the vendors. The Applicant and Sizwe did not count the money because it no longer belonged to the state after it was removed from the till. The evidence of Ngcobo and Ngubelanga that only the revenue officials were permitted to take money from the cash registers after following a procedure was also not disputed.

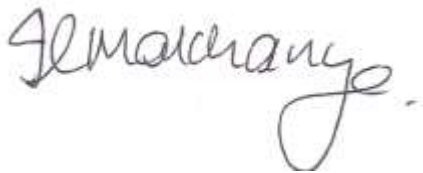
86. The Applicant testified that if the machine were faulty, she would direct patients to the other cash points, but she did not do so when she did not have cash float. Instead, she decided to take money outside the cash office without the approval of management. Her supervisor, Mhlongo, who she claimed gave her cash float, was not called to testify. The evidence of Sizwe is rejected because he was seen on the video taking cash when he was unauthorised to do so.
87. The Respondent had employed the Applicant for many years at the cashier's office. Still, her conduct suggests that she was not an honest employee and could not be accountable when dealing with the state's money because she did not remember how much money she had given to Sizwe on the day in question as she always gave him money to get cash float. She did not count the money, and no documents were signed when the money was taken out of the till. The Respondent's version that the Applicant generated cash from 8h19 until 10h54 for her private use is accepted because there was no explanation from the Applicant as to why the machine with six digits was off. The Respondent's version that the money taken out of the machine went to the wrong hands and was not collected by the revenue section is accepted because the money was not handled in accordance with the procedure. The patient's cards were scanned on the same day at the same time when the machine with six digits was off. The Applicant was seen moving the faulty machine on the video, which did not connect to revenue.
88. Based on the balance of probability, the Applicant was guilty of swapping the working machine with a faulty machine to generate money for private use. This is a serious misconduct, as the funds generated through the faulty machine could not be collected.
89. The Respondent discharged its duty of establishing a prima facie case of misconduct which called upon the Applicant to provide an explanation as to why she moved the faulty machine and gave an unauthorized person cash without following the procedure. The evidentiary burden of providing a credible explanation was why the working machine was switched off at 8h19 and only started working at 10h54. The Applicant's evidence did not present any possibilities that indicate that the patient's cards were scanned by someone else. The sanction imposed by the Respondent was appropriate.
90. In Zondo JP held in *Toyota SA Motors (Pty) Ltd v Radebe & Others* (2000) 21 ILJ 340, it was held that a Commissioner must only interfere with the sanction imposed by the employer if it shocks and alarms. In the circumstances, I cannot interfere with the sanction imposed by the Respondent because based on the evidence submitted the Applicant committed a serious misconduct which warranted a dismissal.

91. It is my view that the Respondent has succeeded in carrying out the onus that rested upon it. Therefore, I find that the Applicant's dismissal was an appropriate sanction. I am satisfied, having regard to the evidence and the arguments presented, that the dismissal was both procedurally and substantively fair.

## **AWARD**

92. The dismissal of the Applicant, Zamokuhle Jacqueline Mkhize, was procedurally and substantively fair.

93. The application is dismissed.



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**LINDIWE MAKHANYA**