



# ARBITRATION AWARD

Commissioner: **KM Moodley**

Case No: **PSHS853-22/23**

Date of award: **12 April 2023**

In the matter between:

**Siyabonga Buthelezi**

Applicant

and

**Department of Health- KwaZulu Natal**

Respondent

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## **Details of the hearing and representation**

1. The arbitration was held at the boardroom of the Respondent, Natalia, in Pietermaritzburg, on 28 March 2023.
2. The Applicant was represented by PSA official SN Ndlovu and the Respondent was represented by its official TM Madlala.
3. As the proceedings were mechanically recorded, I will only make reference to those aspects of the evidence that are relevant to my findings I am satisfied that the parties have been correctly cited and that the PHSDSBC has jurisdiction to hear this matter.
4. The parties tabled a common bundle of documents, i.e., Bundle A, the contents of which were accepted by both parties as being what they purported to be. No Points In Limine were raised by either of the parties.
5. No objection was raised to me as the commissioner presiding over the arbitration.

## **Issue to be decided**

6. The issue to be decided is whether or not the sanction of three months suspension without pay and a final written warning, was too harsh, and if so, what the appropriate sanction should be.

## Common cause issues

7. The following issues are common cause:

- 1) The Applicant was charged for, and pleaded guilty to a charge of misconduct. He was issued with a sanction of three months suspension without pay and a final written warning.
- 2) On 14 October 2021, the Applicant submitted medical certificates to the Respondent, in support of the various periods of absenteeism.

## Issue in dispute

8. The only issue in dispute is whether or not the sanction of three months suspension without pay and a final written warning, is too harsh.
9. The Applicant believed that the sanction is too harsh.
10. The Respondent believed that the sanction is an appropriate one considering the seriousness of the charge of misconduct.

## Background to the dispute

11. The Applicant is employed by the Respondent as a Human Resource Officer and he is based at the uMgungundlovu District Health offices in Pietermaritzburg.

- 3) On 2 December 2021 the Applicant appeared before a disciplinary inquiry to answer to a charge of misconduct.
- 4) The Applicant was charged for, and he pleaded guilty to the following charge:
- 5) *'You failed to submit Medical certificates and application for sick leave within 5 working days from the first day of absence. This was a contravention of section 14.5 of determination and directive on leave of absence in the public service (2018). The affected period is:*
  - 5 July 2021
  - 20 July 2021
  - 26 July 2021
  - 8 September 2021
  - 14 to 15 September 2021
  - 20 to 21 September 2021
  - 27 September 2021
  - 27 September 2021
  - 30 September 2021 to 1<sup>st</sup> October 2021."

12. He was issued with a sanction of three months suspension without pay and a final written warning. He lodged an appeal against the outcome but was unsuccessful.

13. He then lodged a dispute with the Council for adjudication.

## **Survey of evidence and arguments**

### **Applicant's case**

14. The Applicant argued that as he pleaded guilty to the charge therefore the sanction of three months suspension without pay and a final written warning, was too harsh.
15. The Applicant also argued that although he failed to furnish the required medical certificates within the 5 working days, as required by the Respondents policy, he did furnish all the medical certificates to the Respondent on 14 October 2021, although it was some 3 months late.
16. In addition, he had reported his absence to his supervisor at the time of his absence.
17. He believed that the chairperson did not take his personal circumstances into account when deciding on the sanction, especially considering that the Applicant had dependants, and that he was also the sole bread winner in the family
18. Therefore, the sanction imposed on him was too harsh.
19. He also pointed out that this was his first offence. He further argued that the Respondent should have implemented discipline as a corrective measure and not as a punitive measure.
20. He was of the view that a sanction of one month's suspension without pay, and a final written warning, was a more appropriate sanction.

### **Respondent's case**

21. The Respondent argued that the Applicant, was a Human Resources Officer, who had more than 10 years' experience in the field of Human Resources, and therefore he was familiar with the Respondent's human resource policies and procedures.
22. Therefore, the delay in submitting the medical certificates by some 3 months was unacceptable.
23. The Respondent pointed out that the Applicant's absence from work impacted upon other employees who had to step in to assist in completing the Applicants work.
24. The Applicant's supervisor repeatedly requested him to furnish the medical certificates but without any success.
25. In addition, the records show that the Applicant exhausted all his sick leave for that cycle.
26. Therefore, the sanction was not harsh under these circumstances.

### **Analysis of evidence and argument:**

27. The Applicant was employed by the Respondent as a Human Resources Officer and had some 16 years' experience working in the human resources department of the Respondent.
28. As such he was familiar with clause 14,5 of the Respondents Determination and Directive on Leave of Absence in the Public Service, which provides for applications for sick leave to be made within 5 working days after the first day of absence.
29. He was also aware of clause 14,6,2 of the directive which spells out the consequences for non-compliance with clause 14,5.
30. He was also reminded repeatedly by his supervisor, to submit the applications for sick leave, but he chose not to. It was only after his pay was docked by the Respondent that he submitted medical certificates on 14 October 2021, i.e. some 3 months later. (Coincidentally I noted that all the certificates were submitted on the same date i.e., 14 October 2021 although they were "issued" by the doctor on different dates.)
31. As part of his duties the Applicant is expected to interpret and implement the Respondent's human resources policies and procedures, and as such he is also expected to set an example to other employees, and to comply fully with such policies and procedures.
32. Policies and procedures serve to regulate the conduct of institutions and all employees are expected to abide by them. Failure to abide by them is unacceptable and should attract a strong sanction.
33. The Applicant's failure to comply with the Respondent's policies and procedures, on no less than 9 occasions, must therefore be viewed in a very serious light.
34. Under these circumstances I find that the conduct on the part of the Applicant is totally unacceptable
35. The Applicant argued that disciplinary action should be corrective and not punitive. Ordinarily, I would agree with this contention. However, in this case the Applicant defaulted with great impunity, on no less than 9 separate occasions and therefore a harsh sanction is, in my view, a corrective measure, and it is in order.
36. I also recognise that the prerogative of discipline rests with the Employer and therefore see no compelling reason in this case to interfere with the sanction imposed by the Respondent.

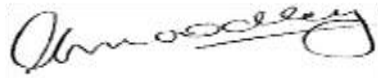
### **Conclusion**

37. Based on the above I therefore conclude that the sanction of 3 months suspension without pay, and a final written warning, is not harsh.

**Award**

38. I find that the sanction of 3 months suspension without pay and a final written warning, imposed upon the Applicant is not harsh and did not constitute an unfair labour practice.

39. The Applicant's claim is dismissed and he is not entitled to any relief.



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KM MOODLEY