



ARBITRATION AWARD

Case No: **PSHS968-22/23**

Commissioner: **Teresa Erasmus**

Date of award: **20 May 2023**

In the matter between:

PSA obo JACQUES DE WET

Applicant

and

DEPARTMENT OF HEALTH- WESTERN CAPE

Respondent

Details of hearing and representation

1. This matter was set down at the Worcester Provincial Hospital premises for Arbitration at the Public Health and Social Development Sectoral Bargaining Council for Arbitration in terms of section 186(2)(b) of the Labour Relations Act 66 of 1995 ("the LRA") on 12 May 2023. The Applicant was represented by Mr Daneal Johnson from PSA and the Respondent was represented by Mr Ayanda Mniki, the Labour Relations Officer at the Respondent. The proceedings were mechanically recorded. Both parties handed in bundles.

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) of the LRA 66/1995, related to unfair suspension or disciplinary action.

Background to the dispute

3. An informal disciplinary process was followed when a written allegation was put to the Applicant. The Applicant responded via email on the 15th of December 2022. A Final written warning was served on the Applicant on the 12nd of December 2022, valid for six (6) months. The Applicant filed an appeal on the 12th of January 2023, the outcome of which was served on the Applicant on the 3rd of February 2023, where the initial finding and sanction was confirmed.
4. The Applicant believes that he is not guilty of the allegation that he communicated with Dr John Grobbelaar of Tygerberg Hospital, which is outside the communication line of Worcester Hospital.
5. The Applicant seeks the removal of the Final Written Warning from his record.
6. According to the Respondent the instructions put to the applicant how the issue of the patients that could not be assisted at Worcester Hospital must be dealt with, he knew what to do. The effects of his actions could have been avoided if the Applicant followed his supervisor's instructions.

Summary of the evidence and arguments

Applicant's case

7. Jacques de Wet (the Applicant) testified that he is employed at the Worcester Hospital as a clinical audiologist, his profession is clinically and professionally based. The Applicant works very closely with the ENT doctor. On the date of the incident, the 25th of November 2022, the Worcester Hospital did not have an ENT doctor.
8. According to the allegations against the Applicant, he disregarded Dr Phillips and the institution. The Applicant received instructions from the CEO at Worcester Hospital Ms Elizabeth Vosloo to refer patients to Tygerberg Hospital. The Worcester Hospital is mandated by the Department of Health to attend to patients.
9. The Applicant played a voice recording of a meeting he had with Ms Vosloo, where she instructed him in no uncertain terms to refer patients to Tygerberg Hospital. Ms Vosloo reiterated during the meeting that he should not engage with individual doctors at Tygerberg Hospital. In the event of Tygerberg Hospital

refusing to accept referrals of patients from Worcester Hospital. He must inform Ms Vosloo of their refusal, in which case, she will escalate the matter to Dr Lizette Phillips.

10. The instruction was given multiple times to refer the patients to Tygerberg Hospital. Ms Jafta, the Applicant's line manager then instructed the Applicant to keep a waiting list of patients, the list became lengthy. On Friday 22 November 2022, the Applicant eventually got the time to refer the patients, he telephoned Charne, the secretary at Tygerberg Hospital ENT Department and asked her how he should go about the referrals. As Charne informed the Applicant that they were full at ENT Tygerberg Hospital until November 2023. Charne transferred his call to the matron, who in turn transferred his call to Professor Grobbelaar, new head of ENT, without the Applicant's prior knowledge. Professor Grobbelaar was in surgery, he then indicated to the Applicant that there were already negotiations between himself and Ms Vosloo about an outreach between Tygerberg and Worcester Hospital. Professor Grobbelaar recommended that the Applicant should motivate the appointment of an ENT doctor at Worcester Hospital. Professor Grobbelaar made it clear to the Applicant that he was not going to accept the referrals from Worcester Hospital.
11. When the Applicant spoke to Dr Grobbelaar, he asked for his email address, whereafter he copied the Applicant in the email to Dr Phillips, Chief Director for Rural Health
12. The tone of the email correspondence between Dr Phillips and Professor Grobbelaar changed when she told him that she would take the matter up with Dr Mukosi, the CEO of Tygerberg. The Applicant was then removed from the email stream after this communication.
13. There was reference to a meeting that took place on 7 June 2022, the Applicant did not know what the meeting was about. Ms Vosloo said: *"we are here to deliver a message to Mr de Wet."*
14. Everyone present was all asked to sign the letter and the Applicant left the meeting.
15. Ms Jafta, the Applicant's supervisor already informed him on an earlier occasion that Tygerberg Hospital is full for that year. Yet he did not adhere to the instruction and instead proceeded to contact Tygerberg Hospital. Jafta gave the Applicant instructions twice to refer patients to Tygerberg Hospital and they were declined. It was made clear to the Applicant that he must not refer 100 patients to Tygerberg Hospital at once, which instructions he disregarded when he contacted Tygerberg Hospital, even after the meeting with Ms Vosloo. She instructed him to refer any problems with referrals to Tygerberg Hospital to her, instead of taking the issue up with individual doctors.

16. Dr Hilda Marlese Kunneke testified on behalf of the Applicant. Kunneke testified that she was part of the meeting on the 7th of June 2022, when Ms Vosloo stated that she wanted to deliver a message to the Applicant to: *“Follow the correct lines of communication and stop insulting the management of this facility.”*
17. Kunneke (Head of Paediatrics) had no idea, why they were called into the meeting by Ms Vosloo’s office. Kunneke is the intern co-ordinator, she must ensure that interns complete HSBC training to qualify. She was not briefed by Ms Vosloo before the meeting. It relates to charges against the Applicant about communicating with other hospitals. They refer to Tygerberg Hospital for super-specialist services. Kunneke has been employed at Worcester Hospital since 17 November 2002. She is not expected to go through internal communication channels before referring to another hospital. Sometimes when she is working in Hermanus Hospital, she will get referrals from amongst others, Speech therapist and not even from a doctor.
18. Kunneke has never experienced that the Applicant failed to follow the lines of communication or disrespected management, she has always experienced him as very professional in his work.

Respondent’s case

19. Surina Jafta testified that she is employed as the Assistant-manager, Pharmacist Services, she is also responsible for Allied Health, the Applicant reports to her. Jafta was informed of the email communication between Ms Vosloo and Dr Grobbelaar. Vosloo asked her to investigate the emails. At that stage, Ms Vosloo was busy with negotiations with Tygerberg Hospital about ETN services. Initially Vosloo had a very positive communication with Dr Grobbelaar until the Applicant contacted Dr Grobbelaar. Jafta send an email to the Applicant on the 8th of September 2022, she indicated to him that Tygerberg Hospital was already full. The applicant’s response to the Audi letter was that he contacted Tygerberg Hospital to refer 100 patients to Tygerberg Hospital on instructions from Ms Vosloo on the 11th of November 2022. She requested Vosloo to draft a report on what happened in the meeting with the Applicant on the 11th of November 2022. If Tygerberg says they are full, he must refer it back to Jafta, whereafter she will refer it to Ms Vosloo, who will refer it to Dr Phillips in turn.
20. Jafta investigated the Applicant's conduct. The mere idea that someone wanted to refer 100 patients to Tygerberg Hospital at once I was absurd. Jafta refer to the meeting 7 June 22 where the Applicant was

reprimanded. She had no idea what the meeting was about she was not informed about the reason for the meeting. She is unsure as to why applicant was reprimanded in front of other employees no documentation which documentation was based was provided at the meeting.

21. Jafta confirmed that Dr Grobbelaar is the Head of ENT at Tygerberg Hospital. Dr Mukosi is the most senior reporting structure at Tygerberg Hospital. Dr Phillips informed Dr Grobbelaar that she would no longer discuss the matter with him but refer the matter to Dr Mukosi for immediate solution of the problem.
22. Jafta testified that the Applicant failed to follow the lines of communication in that he contacted Dr Grobbelaar directly, albeit that it was not his intention to contact Dr Grobbelaar directly when he made the telephone call to Tygerberg Hospital. When he was transferred from one person to the other, he should have realised that there is a problem, at which stage he was meant to come back to her. Ms Vosloo also told the Applicant in the past that he should not contact Professor Luke, the Head of ENT at Tygerberg Hospital.
23. Jafta testified that an informal disciplinary process was followed with the Applicant and a Final Written Warning is the appropriate sanction, according to the Respondent's Code of Conduct, in the light of the seriousness of the transgression. The Applicant is a senior clinician with more than ten years' experience.

Analysis of the Evidence and Argument

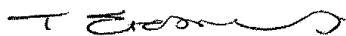
24. The Applicant received instructions from Ms Vosloo to refer patients to Tygerberg Hospital which instructions he followed according to him when he contacted, the Head of Tygerberg Hospital.
25. The Applicant had a clean disciplinary record as a previous warnings against him had expired. The nurse at Tygerberg Hospital informed that Applicant that they were full until November 2023, yet he proceeded to engage Professor Grobbelaar, in spite of instructions from Ms Vosloo not to engage individual doctors. He had to refer the matter to her instead, as she would in turn escalate the matter to Dr Philips, Chief Director for Rural Health
26. Engaging with Dr Grobbelaar does not amount to following a clear line of communication, as previously pointed out to the Applicant in the meeting held by Ms Vosloo on the 7th of June 2022, where he was instructed to follow instructions. Ms Vosloo most certainly did not instruct the Applicant to refer 100 patients to Tygerberg Hospital at once. Ms Vosloo made it clear to the Applicant that if he should

encounter any problems when referring patients to Tygerberg Hospital, he must refer these problems to her via his line manager, Ms Jafta, as she would then escalate the matter to Dr Phillips.

27. The instruction was therefore clearly communicated to the Applicant, being a reasonable instruction, which was disregarded by the Applicant. The Applicant's conduct had a negative impact on the working relationship between Worcester Hospital and Tygerberg Hospital.
28. I therefore find that the Applicant was guilty of the transgression with which he was charged: "*Failing to adhere to a reasonable instruction regarding communication with Tygerberg Hospital ENT services.*"
29. The sanction of a Final Written Warning, given the seriousness of the transgression and the Respondent's Code of Conduct, regarding such transgressions, is a fair sanction under the circumstances.
30. I find that the Applicant was not subjected to an unfair labour practice.

Award

31. The Applicant was not subjected to an unfair labour practice; therefore, the Applicant is not entitled to any relief.



TERESA ERASMUS