



IN THE GENERAL PUBLIC SERVICE SECTORAL BARGAINING COUNCIL

Held in PRETORIA

Commissioner: P M NGAKO

Case No.: GPBC1388/2021

Date of Award: 16 AUGUST 2022

In the Dispute between:

PSA OBO SE SESOKO

(Union/Applicant)

And

DEPARTMENT OF EMPLOYMENT AND LABOUR-COMPENSATION FUND

(Respondent)

Applicant's representative: **ARCHIE SIGUDLA**

Respondent's representative: **NANCY PHETLA**

ARBITRATION AWARD



PARTICULARS OF PROCEEDINGS AND REPRESENTATION

- [1]. This matter was set down before me on the 2nd of June 2022, the 21st and 22nd of July 2022 at Department of Labour Delta heights Building 167 Thabo Sehume Street. Appearing before me was the applicant who was represented by Archie Sigudla a Labour Relations Officer from the trade union PSA. The respondent was represented by Nancy Phetla an employee in the employment of the respondent. after conclusion of oral evidence parties agreed to submit written heads arguments on the 2nd of August 2022. The respondent applied for an extension to submit its heads of arguments on the 4th of August 2022 which I granted.

THE ISSUE IN DISPUTE

- [2]. I am required to determine whether the dismissal of the applicant was substantively fair

BACKGROUND TO THE DISPUTE

- [3.1] Applicant was employed by the respondent on the 1st of December 2004
- [3.2] Applicant was employed as Senior Amin Clerk at salary level 6 within Employer Assessment Section
- [3.3] Applicant attended a disciplinary hearing consequent to the disciplinary hearing, a sanction of dismissal was imposed on the applicant
- [3.4] Applicant lodged an appeal, and his appeal was dismissed, and sanction of dismissal was confirmed
- [3.5] Applicant's date of dismissal is the 13th of August 2021
- [3.6] Applicant was charged and found guilty on the following allegations:

ALLEGATION 1

It is alleged that on 13, 25 and 26 of October 2017 without authority you wrongfully, unlawfully deleted amounts of R791 000, R690 000 and R450 000 from the profile of Malose Mining Group which is client of the fund in order for it to receive a letter of good standing.

ALLEGATION 2



It is alleged that on numerous occasions you failed to obey a lawful and reasonable instruction to furnish officials from Anti-Corruption an integrity Management with a sworn statement regarding your version of events that led to the deletion of money in Malose Mining Group's profile.

SUMMARY OF EVIDENCE AND ARGUMENT

The respondent's evidence

- 4.1 The first witness called by the respondent was **TSHILO RADAMBA** who after being duly sworn in testified as follows he is presently employed by SIU as an investigator. At time of the alleged incident against the applicant he was employed by the respondent as forensic investigator and was part of the team that investigated allegation of bribery that eventually led to recommendation that the applicant be charged with allegations of misconduct. It was his evidence that the investigation was triggered by the complaint by James Rathagane he came at their offices lodged a complaint of bribery, he told them that he called call centre as he needed a letter of good standing. The phone was answered by George Ratswana whom after he explained to him what he was looking for. George told him his account was blocked but offered to assist with the assistance of his guys at R3 000.00 he gave George R1 000.00 at Compensation Fund parking and told him had two weeks to submit the letter of good standing
- 4.2 They started with their investigation; they interviewed the applicant after it was brought to their attention that applicant's Persal Number deleted amounts on the profile of the complainant. Applicant refused to provide them with sworn statement after being interviewed even after number of emails were sent to him, he told them they must use their notes and their recording they were taking during his interviews; his refusal was in contravention of the COIDA Act. Their investigation managed to uncover that indeed Ratswana accepted a bribe from the complainant after the complainant provided them with what sup communication between him and George Ratswana. The applicant was linked with his Persal number that made deletions on the profile of Malose Group on the 13th, 25th and 26th of October 2017 from the audit trail that was provided to them by the IT specialist Gokhan. The immediate supervisor of the applicant confirmed that he was not allocated the file of Malose Group during the 13th and 25th and 26th October 2017.
- 4.3 Under cross examination he conceded that the complainant did not mention the applicant and also in his correspondence via cellphone there was no mention of the applicant. it was his evidence that the applicant was linked with the bribery based on the date of the bribery and the dates when the deletion



took place on system by the applicants, he conceded that applicant in his position was not working with letters of good standing. He maintained that according to applicant's supervisor Peggy every work must be allocated by the supervisor. It was his evidence that he did not investigate the 1st of November deletions that took place as it was not within his mandate, it was his evidence that the officer was given a mandate to recapture the amount deleted after the complainant resubmitted his assessment on the 27th of October 2017. It was his evidence that the applicant was obliged to provide them with the sworn statement because they were empowered by COIDA Act. It was his evidence that approval for Philippine to delete information was with the section manager

- 4.4. Under re-examination it was his evidence that Philippine was allocated the file by her supervisor and the file was captured after the deletion was made by the applicant.

DITSHEGO MOLOTO

- 5.1 The second witness called by the respondent was **DITSHEGO MOLOTO** who after being duly sworn testified as follows: she is employed by the respondent in the assessment directorate as Assistant Director and had been in the position for seven years. It was her evidence that she wrote an email to Risk requesting information from the system and wrote the email to Gokhan Elpe at ICT the information she received was that information captured on item 10 was deleted and item 20 and the Persal number of the applicant was used to delete the information from these items. It was her evidence that in the assessment section there is no submission that is compiled when deletions take place on the SAP system. It was her evidence that if assessment clerks are having challenges must communicate with the supervisor and the supervisor would take note of that and assist in resolving the challenge. If it is system problem, it will be reported to the supervisor and ICT. It was her evidence that she did not receive any report from the applicant that he was experiencing challenges on the 13th, 25th and 26th of October 2017; and if there are no challenges in raising an assessment a day is possible. It was also the evidence of the witness that assessment of Malose Group was finalised by Philippine
- 5.2 Under cross examination she conceded that she was the immediate supervisor of the applicant and was not allocating them work their supervisor was Peggy Mtswene. She confirmed that her section is not responsible to write submission for approval

PEGGY MOTSWENE



- 6.1 The third witness called by the respondent was **PEGGY MOTSWENE** who after being duly sworn in testified as follows: she was employed by the respondent as Admin Officer among her duties was to allocate and approve work done by the clerks and record work she has allocated to clerks. It was her evidence that she knows the applicant she found her in Assessment Section and was reporting to her. She identified page 25-30 of bundle A as stats of work attended by the clerks, and from page 31 is record of work allocated to clerks and is the one who captured the information. She confirmed that on the allocation sheets it does not show that the applicant was allocated the file of Malose Group. It was her evidence that when this incident took place was still new in the section and does not know whether clerks at that time could work on the file without informing their supervisor. It was her evidence that two people worked on the file of Malose Group that she is the one who allocated the file to Ms Letsoalo after it was resubmitted
- 6.2 Under cross examination it was her evidence that she was asked by risk to provide them with the daily production sheet for 3 days. It was his evidence that he does not know what was deleted by the applicant at page 45 of bundle "A". It was her evidence that she does not know who brought the resubmission of Malose Group to her; and is not aware whether Ms Letsoalo was charged or not. It was her evidence that even if you have not completed to raise the file of the client you are required to register it in the production sheet that you worked on the file even if you have not completed to raise the file. According to her this is in terms of the SOP but does not know for the fact

The applicant's evidence

- 7.1 Applicant **SEBOGODI ERNEST SESOKO** after being duly sworn in testified on his own behalf as follows: he was employed by the respondent as senior admin clerk Level 6, and he joined the respondent in December 2004; his duty was to raise assessments. It was his evidence that during 2017 they received files to work with in different methods, they will receive them from their supervisor, or registry will park a trolley with file and pick a file work on the file without taking the file to their supervisor. It was his evidence in relation to allegation 1 that he does not remember working on this profile of Malose Group. It was his that one can work on a file on several days if the system was not working, as result of network connection, to having personal urgent case. As result the file would lay on the table and such work not completed does not form part of the daily production sheet applicant denied that he deleted the amounts in the charge sheet. it was further his evidence that his knows George Ratswana who used to work for the respondent at call centre and was dismissed and the reason he was dismissed it was said he took money



from a client, and they are not friends but knew him as colleague, and does not know whether employees are able to generate letter of good standing

- 7.2 It was his evidence in relation to allegation 2 that Radamba and two officials from Risk came to their section requested a room and started asking him what he has deleted, he told them he does know after being shown SAP screen which shows that items were deleted. It was his evidence that you are allowed to change amounts when you are allocated the file and you don't need any permission. The meeting took almost 20 minutes, and the second meeting took longer more than two hours. It was his evidence that he was not told he has right to be represented. He informed his trade union presentative after the 1st meeting that he was subjected to questioning by risk and will keep him up to date with developments. He confirmed that he received an email from Radamba requesting that he provide risk with a sworn statements and informed them that he was subjected to two interviews they should use the audio recordings and the notes they took during the two meetings. He is aware that Philippine raised the assessment of the file of Malose Group, and nothing happened to her, and she is still employed by the respondent
- 7.2 Under cross examination it was his evidence that he was does not recall working on the ROE of Malose Group, but they received files via couriers, trolleys or get them from their supervisor. It was his evidence what would lead him to return to the same file is if he has not finalised raising the assessment, and what will inform him to return to the file on the 25th will be if something was not done correctly or prevented him from completing raising the assessment applicant reiterated that he does not remember working on the file of Malose Group, but he conceded that the Persal number belonged to him. The applicant conceded that risk was provided with sworn statements from other employees who were interviewed, and the reason he did not provide them with the sworn statement was because they recorded the interview with him, and he did not know that it was wrong not to provide risk with sworn statement. He also conceded that he did not ask to be accompanied by a trade union representative during his interviews.
- 7.3 Under re-examination it was his evidence that he does not know any law that compels him to provide a sworn statement



ANALYSIS OF EVIDENCE AND ARGUMENTS

- 8.1 Allegation 1: It is common cause that according to SAP screen print at page 45 of bundle "A" applicant went into the system and deleted information on Malose Group in the system on the 13th of October 2017, 25th October 2017 and 26th of October 2017. According to the applicant during the interview by Risk and during the proceedings before me said he does not remember working on the file. Applicant contention that for one to delete information of client there is no need for a submission is correct, this was confirmed by the respondent's witnesses applicant's supervisor, Peggy Mtswene and Ditshego Moloto who is an ASD in the Assessment Directorate. The question is when applicant deleted the amounts on the 13th, 25th and 26th did he do it with or without authority. According to the evidence of the applicant during that period Registry will bring files on a trolley, and they were allowed to pick a file and raise the assessment of the file this version was not disputed by the applicant supervisor because she was still new in the section and was being taught the ropes by her seniors.
- 8.2. However even if clerks were allowed to work on files of clients without recording it with their supervisor, her supervisor insisted that if you were working on a file, if for any reason you fail to complete raising the assessment, you are required to record that in your daily stats. On balance of probabilities, I agree with her version than the version of the applicant that you only capture daily statistics for files that you have completed for the following reason. The policy of the respondent is that if you are having problems with the system, you are required to bring it to the attention of your supervisor, such evidence is not before me that he had problems with the system, there is further no evidence before me that he had personal problems that would have led him not to complete raising the assessment. There is also circumstantial evidence that the applicant deleted the information on the profile of Malose Group after George promised to assist James Rathagane with a letter of good standing with the assistance of his guys. As result a reasonable conclusion that I could reach is that he did record working on this file because he had no authority to work on the file and as result, he unlawfully deleted amounts from the profile of the Malose Group. The applicant is guilty on balance of probabilities on this allegation even though Philippine Letsoalo does not recall the amounts that she deleted when she recaptured the ROE of Malose Group. As employers are not required to draft allegations in the same precision as in the criminal court see in this regard the LAC in Woolworths (Pty) Ltd v



Commission for Conciliation Mediation and Arbitration and Others (LAC) [2011] ZALAC 15 2011 which provides:

"Unlike in criminal proceedings where it is said that "the description of any statutory offence in the words of the law creating the offence, or in similar words, shall be sufficient", the misconduct charge on and for which the employee was arraigned and convicted at the disciplinary enquiry did not necessarily have to be strictly framed in accordance with the wording of the relevant acts of misconduct as listed in the appellant's disciplinary codes, referred to above. It was sufficient that the wording of the misconduct alleged in the charge sheet conformed, with sufficient clarity so as to be understood by the employee, to the substance and import of any one or more of the listed offences. After all, it is to be borne in mind that misconduct charges in the workplace are generally drafted by people who are not legally qualified and trained. In this regard I refer to the work of Le Roux and Van Niekerk where the learned authors offer a suitable example, with which I agree:

*"Employers embarking on disciplinary proceedings occasionally define the alleged misconduct incorrectly. For example, an employee is charged with theft and the evidence either at the disciplinary enquiry or during the industrial court proceedings, establishes unauthorised possession of company property. **Here the rule appears to be that, provided a disciplinary rule has been contravened, that the employee knew that such conduct could be the subject of disciplinary proceedings, and that he was not significantly prejudiced by the incorrect characterization, discipline appropriate to the offence found to have been committed may be imposed.**"*

- 8.3 Consistency: I do not agree with the applicant there is inconsistent application of the rule in that Philippine Letsoalo when he raised the assessment on the file of Malose Group the file was allocated to her by her supervisor after the ROE was resubmitted by the Malose Group as result the deletion and capturing of the information that was in the resubmitted ROE was authorised and lawful.



9.1 Allegation 2: According to the evidence of the applicant which was not disputed by the respondent is that applicant was interviewed twice by officials from risk the 1st interview took at least twenty minutes, and second interview took more than two hours, and the proceedings were recorded by officials from Risk. It is also not in dispute that an email was written to the applicant requesting that he provide Risk with a sworn statement and failed to provide them with such sworn statement and told them that they must use the recordings and the minutes they took during the two interviews with him. The question is whether the applicant is guilty of this allegation in contravention of the COIDA Act section 6 and 7. It is the contention of the applicant that he had complied with the request to be interviewed despite not having accompanied by a trade union representative. It is my view that the applicant is not guilty on this allegation as he participated in the interview with risk officials there is nothing in the COIDA act that compels him to provide a sworn statements after cooperating with the Risk officials in an interview that took place twice and was for more than two hours.

10.1 I have found the applicant guilty on allegation 1 and not guilty of allegation 2. Although there is no evidence before me that the relationship between the applicant and the respondent has broken down the allegation, I have found the applicant guilty on is of dishonesty nature and if you are found guilty of such allegation it results in the breakdown of relationship between the employer and the employee. As result the sanction of dismissal imposed on the applicant by the respondent is hereby confirmed as result, I find as follows:

AWARD

11.1 I find the dismissal of the applicant by the respondent substantively fair for unlawfully deleting amounts from the profile of Malose Group without authorisation.



- 11.2 As result the sanction of dismissal imposed on the applicant during the disciplinary hearing on allegation one is hereby confirmed.
- 11.3 As result the applicant's application that he was unfairly dismissed, is hereby dismissed as it is found not to have to merits.
- 11.4 There is no order as to costs.

GPSSBC Commissioner: P M NGAKO

Signature: _____

