



ARBITRATION AWARD

Panellist/s: Mandla Nkabinde.
Case No.: GPBC151/2020
Date of Award: 28 February 2021.

In the ARBITRATION between:

PSA OBO NW Mashego.

(Union / Applicant)

And

Department of Co-operative Governance and Traditional Affairs.

(Respondent)

Union/Applicant's representative: PSA OBO NW Mashego

Union/Applicant's address: P.O. Box 282 SonPark.

Nelspruit

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Respondent's representative: MG Malatjie

Respondent's address: Privatebag X 11304

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DETAILS OF HEARING AND REPRESENTATION:

1. This matter was arbitrated on 01 September 2020 via virtual platform and continued on 14 and 15 October 2020 in a face-to-face meeting, at Mbombela. The matter is about section 182(2), namely disciplinary action short of dismissal.
- 2.. The Applicant appeared and was represented by Ms Asnath Sedibane, a union representative from PSA. The Respondent, the Department of Co-Operative and Traditional Affairs, was represented by Mr M.G Malatjie, an acting deputy director. An interpreter, Queenie Braun joined on the last day.

ISSUE TO BE DECIDED:

3. I am required to decide whether or not the Respondent acted fairly, as it relates to substantive and procedural in its finding and subsequent deduction against the Applicant on the loss of the laptop.

BACKGROUND TO THE MATTER:

4. The Applicant is an assistant director in the Department. He uses the Department's car to work outside office.
5. He came to work on 13 December 2017. He used one of the five entrances into the office blocks shared with another Department.
6. The parking was open with no security to control entrance and exit. There were a few other cars in the parking and some unknown people doing maintenance on air conditioners.
7. There was a shortage of securities at the time, some entrances were not manned as a result.

SURVEY OF EVIDENCE AND ARGUMENT:

8. The Applicant's representative called one witness, who is the Applicant. The Respondent called two witnesses. There was oral evidence as well as paginated, labelled and indexed documents named A1, A2 and B. The witnesses were sworn in, testified, cross-examined and re-examined, both parties closed their cases.

APPLICANT:

9. On 13 December around 15H00, he was leaving the office to work outside, whilst at the car, he remembered a document in the office.

10. He decided to put the laptop on the back seat, he locked the car and quickly went back to the office.
11. He returned in about 10 minutes. The rear window of the Ford Figo he was driving, was broken and the laptop was gone. He called security on site, spoke to the security manager on the phone, wrote a report on 14 December 2017 and police were called, arrived, took a statement and finger prints.
12. The laptop was later replaced by the Department, without saying anything.
13. An appeal was lodged by the Applicant, to the very CFO, and verdict was upheld. Through PSA an appeal to the member of the executive was lodged.
14. There was no response, till two deductions were made from the Applicant's salary. After the two deductions, another follow up was made on the progress of the appeal as per the timeframe stipulated, there was however no response.
15. Then the Applicant through PSA approached the Council.
16. Only after the notice of the arbitration he went to the state attorney, he was given the feedback that upheld the negligence verdict but said nothing about the deductions made , though the appeal was about both.

RESPONDENT:

17. First witness was Martha Mabenga. She is the security who was on duty at one of the five entrances but not the one entrance the applicant used that day.
18. The parkings were opened by security in the morning, though no guards were placed at those parkings as the guards were not sufficient at that time.
19. Parking at unguarded parkings was at the parker's own risk. She was called by her colleague to the scene of the break in.
20. She called the supervisor on the phone. She told him what she was told by the Applicant.
21. The supervisor wrote a report out of that telephonic conversation.
22. That report presented at arbitration was not hers.

SECOND WITNESS MS MAPUTI:

23. She is the manager of securities employed by the Respondent. She looks after the property/assets of the Department.
24. She is the chairperson of the loss and theft committee. On hearing of this loss of assets, she told her colleague at security. They got together as three, with Mr Msibi.
25. They talked about this matter. They concluded the Applicant was negligent.
26. They would discuss the issue at the loss and theft committee meeting, which managed to sit after 460 days since the incident due to non-formation of quorum and other reasons.
27. The committee through the CFO who is not part of the committee, communicated with the Applicant by sending him a debt acknowledgement form.
28. The Applicant did not acknowledge the debt, another acknowledgement forms was sent, with no feedback from Applicant. Till he was told of the date of effecting deduction.
29. These acknowledgement forms serve as reminders.
30. The security notice was used as an investigation report by the loss and theft.
31. The smashed window was not investigated by loss and theft committee but by transport.
32. She did not inform other structures as directed by policy because she also sit in loss and theft committee.

ARGUMENTS:

33. The arguments are more on policies' interpretation than the facts of what transpired that fateful day.
34. There is a management of assets policy (this was quoted but not availed for my perusal), procedure manual for theft and losses and the debt management policy.
35. The second point of argument is on the method employed in investigating the incident by the loss and theft committee including other structures that are mentioned in those policies.
36. I will deal with those policies in no specific order.
37. The management of assets was quoted as saying officials will be held personally liable for all losses, damages or theft of departmental assets in case of negligence."
38. This would be done by the delegated structure in this case the loss and theft committee. This committee is argued to have responded after 460 odd days post the incident. The chairperson conceded to this.
39. The policy dictates that the investigation and conclusion of a loss or theft case shall be concluded in three months. But this took nearly a year and half.
40. The security management conceded that there were three entrances and parking/s that were not manned by security as they were not enough due to the service level agreement at the time.
41. The security and the loss and theft committee got the report the same day and a written report the following day.
42. The Respondent conceded in cross examination that the security manager was tasked to investigate and the security manager used the on the spot security report from the supervisor as an investigation report.
43. The report was written by the supervisor from a telephonic discussion from the security (Martha Mabunga) who was called by another security (not mentioned by name) to attend the scene.
44. This report was not shared with applicant till he saw it in the bundle.
45. The Respondent conceded that the witness was not the writer of the report.
46. When the committee sat after a year, the respondent had already replaced the lost laptop.
47. The discussion between the three officials soon after the incident already concluded on guilty due to negligence a year before the committee meeting.
48. On the smashed car window the Respondent indicated it to be an issue of transport management only, but the damage is security related, only a proper investigation would unearth all these elements.

49. The Applicant did leave the laptop on the back seat of the car. He did not know the people in the parking. He only knew they were working on air conditioners.
50. He did not suspect them in the report to the police as he gave a red car as a suspect.
51. He also did not register the laptop in and out of office area, though no version or evidence to suggest the laptop was not with the applicant that day.
52. The shortage of security personnel is concerning in this case, especially if the present security officer opens all parkings without guards.
53. The time the applicant was away from the car is said to be about 10 minutes.
54. There was an argument on the time frame of lodging a grievance. Strangely the Respondent entertained the grievance that it alleges was out of referral time.
55. The Applicant was supposed to be heard in person or invited to write a report to the loss and theft committee.
56. A report was to be generated by loss and theft committee to the Applicant, with an appealable sanction approved by accounting officer.
57. There is a letter from Mr TP Nyoni who is said to be Head of Cogta, this letter is saying the laptop is giving the date of loss of the asset as 11 February 2019, this is misleading.
58. The Applicant appealed, it took three months, after the dead line by PSA still no response, approached Council he got arbitration notice before his appeal response.
59. Applicant did not acknowledge the debt because of all the procedural floors.
60. The State Attorney was to recover the debt, instant of CFO and or accounting.
61. The value was finally deducted, I note it differs with the value on the provided record, nonetheless it is anyway disputed. The delay might have also contributed to this value.

ANALYSIS OF EVIDENCE AND ARGUMENT:

62. The Respondent on the policies' compliance issues was found wanting almost if not all the time.
63. To name but a few areas without details, provision of safety at workplace you have security, after the incident respondent correct security at entrances, the investigation of this reported incident was not done, tabling the report before the relevant committee/s in prescribed time frame was, affording the Applicant a hearing orally or in a report format (which is crucial and fair in any inquiry), giving feedback and doing so on time, reporting the same incident to other structures as per the policies, involving the accounting officer (giving correct report and sequence of events), if he delegates let that be open and clear, involve the legal of the department where the policies dictate so. All these policies' deviations cannot pass the procedural test.

64. The Applicant has some blame to take as well, in leaving the laptop on the seat and he conceded that when he came from home the laptop was in the boot. Though this was in my mind mitigated by the environment as not normally open to the public and the time it took him to return, those were not challenged.
65. The lateness of the Applicant's appeal is not comparable with the lateness of the meeting to discuss lost assets, the very reason for the existence of loss and theft committee and management revived this appeal by entertaining it.
66. On substance, the respondent conceded that the applicant was not interviewed or requested to submit his side of the story to the investigating loss and theft committee or any investigative official. This conduct deprived the applicant of an opportunity to substantively give reasons for his actions, it also deprived the committee of arriving at a reasoned and a substantively fair verdict.
67. I on the balance of probability find in favour of the Applicant, the Respondent was unfair both procedurally and substantively in its finding on the loss of laptop and the subsequent deduction.

AWARD:

68. The Respondent has committed an unfair labour practice.
69. The deducted amount must be refunded into the bank account of the Applicant.
70. The amount must be paid on or before 31 March 2021

Mandla Nkabinde
Name:

Date: 28 February 2021

GPSSBC

(Council name) Arbitrator



