



# Arbitration Award Rendered

Case Number: KNPM475-14Commissioner: Nicci Whitear-NelDate of Award: 6-Jan-2020In the **ARBITRATION** betweenPSA obo Ngubane, Dolly

(Union/Applicant)

and

SASSA

(Respondent)

Union/Employee's representative: Mr Charles NgubaneUnion/Applicant's address: PO Box 4011Durban4000Telephone: 0333927600Telefax: 0866152466,0333927615

E-mail: \_\_\_\_\_

Employer's representative: Mr LT MolekoRespondent's address: Private Bag X9146Pietermaritzburg3200Telephone: 0338463315Telefax: 0866998709E-mail: sizwek@sassa.gov.za

## **1. DETAILS OF HEARING AND REPRESENTATION**

1.1 The applicant was represented by Mr Charles Ngubane, a PSA official. The respondent was represented by Mr Moleko, a SASSA official.

## **2. ISSUE TO BE DECIDED**

2.1 The issue referred was an alleged unfair dismissal relating to misconduct. Both procedural and substantive fairness was in issue.

## **3. BACKGROUND TO THE ISSUE**

3.1 The applicant, Ms Dolly Ngubane was employed by the respondent as a Grant Admin Clerk level 5 situated at the Vulindlela SASSA office in 2006. She was dismissed on 24 October 2013. She was earning R11108.00 per month gross at the time of her dismissal.

3.2 This matter has a long history, which saw the applicant having to approach the Labour Court to set aside a CCMA decision adverse to her. The Labour Court ruling resulted in the matter being scheduled for arbitration before myself. The arbitration was heard over a number of days, culminating in late December 2019.

## **4. SURVEY OF EVIDENCE AND ARGUMENT**

4.1 The applicant was charged with two serious allegations of misconduct being soliciting a bribe of R500, and then R50, from a Ms Madlala to deregister her deceased child on the SOCPEN system. This allegedly took place at the Vulindlela office on 5 April 2013.

4.2 The respondent called Mr Mdima, the office manager on the day, to testify. The respondent also called Ms Madlala, the client from whom a bribe was allegedly taken, to testify.

4.3 The applicant testified on her own behalf, and called her supervisor, Mr Nhlaa Ndaba to testify on her behalf.

## **5. ANALYSIS OF EVIDENCE AND ARGUMENT**

5.1 This is simply a brief overview of the material evidence.

5.2 Ms Madlala testified that she was in a pickle because the respondent required all child recipients of grants to come in and have their fingerprints taken. One of her children had died, and she had been continuing to collect grants for the child. She testified that she was told by her neighbour that the applicant might be able to help her. She said she knew who Dolly/applicant was because she had been a long-time client of Vulindlela SASSA and because the applicant was distinctive. The applicant agreed that she was distinctive because she chose to wear mens' clothing. Ms Madlala testified that she approached the applicant and was told it would cost R500 to help her. She left and returned later when she had the money. She approached the Applicant and gave her R500 in her id book. She testified that her child was deregistered. The applicant was not with her at that time, the cancellation was done by another lady who also calculated the amount that she had received for the child after the child's death. Ms Madlala is still indebted to SASSA for this amount and is slowly paying it off. It transpired during the evidence that the witness was probably incorrectly using the word deregistered instead of cancelled. Likewise in the

charge sheet. SASSA does not do deregistrations, but they may cancel a grant. Ms Madlala testified that she also had other children who needed to give their fingerprints and get cards. She said she gave the applicant a further R50 to expedite this. She initially said it was at about 4, but later said it was before the applicant left to go to the doctor. When she received no assistance, she reported the matter, and Mr Mdimba took her to the police station to depose to an affidavit. The affidavit only refers to the R50, not the R 500. The applicant said this was because she knew she was in the wrong about the R500 because she had initiated the transaction, whereas the applicant had initiated the request for the R50.

5.3 The applicant denied Ms Madlala's evidence. She said she made never met the witness before the disciplinary enquiry. She said that she did not have the function (power/ability) to cancel grants. She testified that she left work at 10 am on that day because she had a doctor's appointment at 11. Her supervisor confirmed this. Mr Mdimba and Ms Madlala said that the applicant had only left at midday, but they were not sure of this. The applicant indicated that she was seeking retrospective reinstatement.

5.4 The respondent's case against the applicant rested entirely on the testimony of Ms Madlala.

5.5 It was the evidence of the respondent that they battled with allegations of bribery but where witnesses were unwilling to come forward. It was admirable of the respondent to deal with the allegation of bribery on this occasion as it did, and to have taken it seriously, and to have kept track of their witness from 2013 to date. I am mindful of the inconvenience and trouble that Ms Madlala went to to make herself available to testify at the disciplinary enquiry, and then at the arbitration some 6 years later. At the arbitration she had to appear on two separate dates and was subject to gruelling cross examination.

5.6. It is extremely unfortunate that there was such an inordinate delay in the finalisation of this matter. [It was neither party's fault. The delay was due to an adverse jurisdictional ruling against the applicant by the CCMA (dated 26 May 2014), which was successfully set aside by the Labour Court (by way of an order dated 12 June 2019).]

5.7. However, the reality is that the applicant's memory of events remained clear, while Ms Madlala's was vague, and beset with contradictions – both internal and external. Most notable are the contradictions between her statements and her testimony; as well as the contradiction between her evidence where she says her deceased child was cancelled on 13 April 2013, and the Document C, being the acknowledgement of debt, which shows that the date of the cancellation of the deceased child was September 2013. But these are not the only contradictions/difficulties with the witnesses testimony – there are many, which are all referred to in the applicant's closing argument. Then there is the question of probability. I accept the applicant's evidence that while she may have been trained in the 30:30 function (allegedly required to cancel a grant) she was not allocated that function. This is supported by Ms Madlala's testimony that it was not the applicant herself who cancelled her deceased child. It is improbable that someone would take a bribe to perform a function not within her powers. The risk of being exposed by accepting the bribe and then relying on someone else to perform the function is too great. Then there is the fact (which I accept) that the applicant left the workplace at 10 am on the day in question. I find it improbable that the applicant would have taken two bribes (as alleged) when she was not even going to be at the workplace to see that she delivered her side of the bargain. Again, the risk of exposure is simply too great. Then there is the fact that Ms Madlala actually received no assistance at all, despite allegedly paying the bribe. She remains

