

**PHSDSBC**PUBLIC HEALTH AND SOCIAL DEVELOPMENT
SECTORAL BARGAINING COUNCIL

ARBITRATION AWARD

Case No: **PSHS825-19/20**Commissioner: **Mr. Anand Dorasamy**Date of award: **5 February 2020**

In the matter between:

PSA OBO NONHLANHLA ENFREDA NGUBANE

(Union/ Applicant)

and

DEPARTMENT OF SOCIAL DEVELOPMENT-KWAZULU NATAL

(Respondent)

DETAILS OF HEARING AND REPRESENTATION

1. The arbitration proceedings commenced at 10H00 on the 21 January 2020 at the Department of Social Development Greytown Service office in Greytown. After the evidence was completed the parties were to submit written closing arguments on the 27 January 2020. The parties submitted their arguments late with the applicant advised to do so on the 31 January 2020.
2. The applicant lodged a dispute in terms of section 186(2) (b) of the Labour Relations Act (LRA) challenging the sanction arising from the disciplinary action taken against her.

ISSUE TO BE DECIDED

3. I am required to determine whether the respondent had perpetrated an act of unfair labour practice against the applicant in respect of her disciplinary sanction. Should I find in favour of the applicant, I am to determine what relief should be granted to her.

BACKGROUND TO THE DISPUTE

4. The applicant was disciplined for misconduct and the disciplinary hearing chairperson found her guilty and recommended a sanction of one-month suspension without pay and a final written warning and in November 2019 she was transferred to Princess Mkabayi while the respondent was considering the sanction.
5. The applicant contends that she has been treated unfairly by the respondent. Firstly, she was subjected to a precautionary suspension for close to three years. This was not in terms of Resolution 1 of 2003 and she was prejudiced in that she could not claim Substance & Travelling (S&T) during her suspension.
6. The disciplinary hearing was finalised in May 2018 and it took almost 6 months to receive the sanction and this was not in terms of the Disciplinary Code.
7. The chairperson issued a sanction that the applicant receives a one-month suspension without pay and a final written warning and a transfer to another work station. There is no provision in terms of clause 7.4 of Resolution 1 of 2003 for transfer of an employee as a sanction.
8. The respondent indicated that it was in the process of reviewing the decision of the presiding officer Ms, Xaba. There is no evidence that the decision was being reviewed.
9. The applicant is experiencing financial difficulties.
10. The applicant seeks to come back to the office that she was appointed that is the Greytown Service office immediately.
11. The respondent contends that the investigation was complex and that the sanction was being considered as the misconduct was serious.
12. She was transferred to Princess Mkabayi in Nquthu while the respondent was considering the sanction. It is impractical for the respondent to return the applicant to Greytown.
13. The respondent wants her to stay at Princess Mkabayi until the respondent finalises the sanction.

SUMMARY OF EVIDENCE

APPLICANT'S CASE

NONHLANHLA ENFREDA NGUBANE

14. The salient aspects of the witness' testimony are recorded below:
15. She was on precautionary suspension on the 3 May 2017 after the Head of Department received an anonymous letter.
16. She hoped the matter be finalized between 60 and 90 days in terms of the Resolution but it dragged on for 2 years and 7 months. During the period the employer did not write a letter until she received the notice of the hearing in July 2018 and the hearing was finalized in 2019.
17. She faced four charges and was found guilty of two that of community mobilization and lack of supervision.
18. While on suspension she was paid but because she did not claim S & T she had to pay SARS R45 000.00 because she did not submit the log returns.
19. She still wants to go to the Greytown Service office as she believes her transfer from Greytown to Nquthu was not fair.
20. The respondent has shown no evidence that it is reviewing the chairperson's decision.
21. Under cross examination she stated as follows.
22. She was not trained about supervision.

RESPONDENT'S CASE

23. The respondent elected not to call any witnesses.

CLOSING ARGUMENTS

24. The parties agreed to submit written closing arguments on or before the 27 January 2020. The arguments submitted were considered when I made my determination.

ANALYSIS OF EVIDENCE AND ARGUMENT

25. This matter was cited as an unfair labour practice dispute in terms of Section 186 (2) (b) of the LRA.
26. The issues to be decided was whether the respondent (employer) perpetrated an act of unfair labour practice against the applicant in respect of the sanction meted out to the applicant that of being transferred to Nquthu and if my finding be in the affirmative, what would the appropriate relief be to her.

27. I have taken cognizance of the decision in Sweeney/ Transcash [2000] 6 BALR 712 (CCMA) where the commissioner held that arbitration hearings constitutes a rehearing de novo on the merits. The award must accordingly be based on evidence led at the arbitration.
28. The issues in dispute in this matter are fairly straightforward.
29. The applicant faced four charges and was found guilty of two and received a sanction of one-month suspension without pay, a final written warning and a transfer from Greytown to Nquthu.
30. In order not to protract my determination I dealt with the matter on the submissions.
31. The chairperson of the disciplinary hearing considered the evidence and had to hand down a sanction as recorded in clause 7.4 of Resolution 1 of 2003. There is no provision in the Resolution for an employee to be transferred as a sanction.
32. I now turn to the applicant's prayer of having the transfer to be set aside and that she returns to the Greytown Service office.
33. There is a considerable distance between Greytown and Nquthu and the applicant has to leave her family and go to Nquthu and remain there for the week and then return to her family for the weekend.
34. As a consequence of the above, I find the respondent (employer) had perpetrated an act of unfair labour practice against the applicant in respect of her transfer.
35. I make the following award:

AWARD

36. The respondent perpetrated an act of unfair labour practice against the applicant.
37. The respondent is ordered to place the applicant at the Greytown Service office on or before 14 February 2020.



Anand Dorasamy