



ARBITRATION AWARD

Case No: **PSHS591-19/20**

Commissioner: **T Erasmus**

Date of award: **25 August 2020**

In the matter between:

PSA obo PIETER WILLIAM JOHAN STEPHAN APRIL

Union/ Applicant

and

DEPARTMENT OF HEALTH- WESTERN CAPE

Respondent

Details of hearing and representation

1. This matter was set down virtually for Arbitration at the Public Health and Social Development Sectoral Bargaining Council in terms of section 191(5)(a) of the Labour Relations Act 66 of 1995 ("the LRA") and was heard virtually on 17 August 2020. The applicant was represented by Mr. Johann Munro from PSA, whilst the respondent was represented by Mr. A Solomon, Labour Relations Officer at Respondent.

Issue to be decided

2. I must decide whether the applicant's dismissal was both procedurally and substantively fair.

The applicant's opening statement

3. The applicant was charged in respect of an incident that took place on 8 September 2017 together with three (3) other people. The applicant pleaded guilty, the applicant and one other accused were the only employees that were dismissed. The Assistant-Director received a suspension and a final written warning, and the other employee received a written warning. The applicant disputes the long time-frame that the matter took to reach its completion and inconsistency. The applicant's manager testified that the trust relationship is still intact. The applicant believes that the sanction of dismissal was too harsh.

The respondent's opening statement

4. The applicant was charged with four (4) charges related to fraud and colluding with a company for a tender. The applicant pleaded guilty to all charges levelled against him. The charges are viewed in a very serious light. The applicant's colleague, Kleynhans, was also dismissed and his dismissal was confirmed at Arbitration. Mr Francis was also charged, but only received a final written warning, as he was manipulated by the applicant. Francis was not part of the collusion; he was asked to complete the brackets. Francis was not aware of how they obtained the tender.
5. Mrs Odendaal, who worked in the supply chain section, received a final written warning. Odendaal was part of the team that secured the tender, as evidenced through the e-mail communication between herself and the applicant. The applicant played a major part in the tender by colluding with a private company to obtain a tender and the money was split between Kleynhans, Pretorius and the applicant. The applicant was the major role player in obtaining the tender and ensuring that the money (R34 194.30) went to their own pockets. The respondent seeks an order confirming the dismissal.

SURVEY OF EVIDENCE AND ARGUMENTS

The respondent's case

6. **NINO ALBERTO GRIEBELAAR testified on behalf of the respondent (hereinafter referred to as "Griebelaar")**
7. Griebelaar testified that he was a Deputy-Director at the Department of the Premier, Provincial Forensic Services at the time. He was appointed to investigate the matter, after the matter was reported by a whistle blower. He concluded that four (4) people had to be disciplined. Griebelaar described the normal standard procedure. He would review documentation, including payment packs. He consulted with people involved, including those implicated, he reviewed e-mail activities of the government employees and all other government tools the officials would use to do their daily jobs, such as telephone records.
8. Griebelaar confirmed that the applicant's involvement is highlighted on page 20 of bundle R. The applicant was a Senior Administration Officer, Information Systems at the Riversdale Hospital at the time and responsible for the site meetings held. Griebelaar picked up various e-mail correspondence between the applicant and Odendaal, Kleynhans and Pretorius, regarding manufacturing and installation of the brackets, as well as with Mr Norman Wait, the owner of Garage Services, who previously provided services to the Riversdale Hospital.
9. Griebelaar confirmed that prior to the actual quotation being advertised, he picked up e-mail correspondence between the applicant and his colleagues regarding pictures and drawings of the brackets, the installation costs and the profit they would gain out of this process.
10. There was e-mail communication between Ms. Odendaal, the Assistant-Director of Finance and the applicant, about a budget report and the allocation for the specific brackets. There were regular e-mails to Mr. Norman Wait about when the brackets would be finished. The e-mails were an incrimination of the unlawful conduct, as they colluded and benefitted in the process.

11. Griebelaar referred to page 34 of bundle R, the interview that he had with the applicant. Griebelaar testified that the applicant and his colleagues were straight forward and honest in their response. They admitted that the brackets were made at one of their colleague's premises and stored in the workshop at the hospital. They admitted that one of the brackets were not installed due to the thickness of the wall. Only eight (8) brackets were installed. Griebelaar confirmed that the applicant had to find a service provider who was already on the hospital system. They at first approached Garden Services, who was not prepared to get involved, where after they approached Norman Wait who agreed to participate in the scheme.
12. Griebelaar confirmed that the applicant played a prominent role in obtaining the tender, as the applicant approached, Garage Man, that was already a service provider on the respondent's data base. Griebelaar established that the money was for CCC Gunner, private cricket club, in which the applicant and his colleagues participated and would have benefitted from the money. The applicant admitted that it is a private cricket club in which all of the accused participate, although they play for the hospital as well.
13. There were various e-mails between the applicant and Odendaal, regarding site meetings. Odendaal wanted to know how far the process was. They would have to get a sample approval from Wait, before the tender process began, the applicant and his colleagues would profit. Wait wanted to know when it would be complete, as he needed to submit an invoice. CCC Gunners submitted an invoice to Garage Man, even before Garage Man could submit an invoice. The applicant sent the invoice to Garage Man on behalf of CCC Gunners cricket club and Garage Man added an amount to the invoice which was then submitted to the hospital. The service was actually rendered by the officials of the hospital.
14. Reference was made to an attendance register evidenced on page 146 of bundle R. Griebelaar established from Norman Wait that he did not attend the site meeting as he was not in Riversdale at the time.

15. Reference was made to page 93, an e-mail from the applicant to Wait, dated 13 September 2017 with an attachment, being the site meeting register. Wait confirmed that he received this document and signed it, although he was not on the site meeting, the document was backdated to the date when the site meeting occurred, as if Wait was present. There are three (3) registers, one of which is blank. Griebelaar established that the site meeting was not signed on the same day. Wait indicated that he was not actually present at the hospital on 8 September 2017. There was also a document signed by Kleynhans, on behalf of Wait. Wait told the applicant that he would not be present at the site meeting and they must get someone to sign on behalf of Garage Man. Kleynhans admitted to signing the document on behalf of Garage Man on the applicant's request. This document is a compulsory step in the tender process. The document was however not presented to the quotation committee. Odendaal informed the quotation committee that all the documentation was in place and above board. However, the documentation she had was signed by Kleynhans and it was picked up by the finance team when they wanted to make payment to Garage Man. The finance official informed Odendaal that it was problematic if they paid on grounds of the documentation filed. Norman Wait was then requested to sign a new document, which was back dated.
16. The register evidenced on page 97 did not exist at the time, it was created after the fact. No money would have been paid out if this document had not been presented to the quotation committee.
17. Reference was made to page 122, being an invoice from CCC Gunners Cricket Club for the manufacturing and installation of eight (8) wall brackets in the amount of R28 000.00. The bank account number is that of Pretorius who was also involved in the process, the e-mail emanated from the applicant's official e-mail address at the Western Cape government. There were also e-mails between the applicant, Pretorius and Kleynhans, where the applicant thanked them for the project and that he was awaiting ideas for the next business plan. Francis is employed as the groundsman and does not have e-mail access. Page 150 of bundle R contains confirmation of the EFT payment.

18. Reference was made to page 151, being declarations of remuneration received outside the public services. The applicant declared "*I do not participate in work outside the public service*". It is an annual document that has to be completed and declared by all employees in the public service and it was still in place and applicable at the time of the tender process. Griebelaar confirmed that the evidence he rendered at Kleynhans's arbitration as per page 152 is similar to that of the applicant's case.

The following ensued from cross-examination:

19. The applicant pleaded guilty. Griebelaar was instructed to investigate the matter late 2017 / early 2018 and he completed the investigation in October 2018. The respondent received a tip off during February 2018 and the report was issued in October 2018. He confirms that the finance official picked up a problem on 24 November 2017. The applicant and his colleagues did work on behalf of Garage Man. Kleynhans confirmed that the payment went into the FNB account belonging to Pretorius and the money was then paid over to Kleynhans and the applicant.
20. **FAIZEL CHAMPION testified on behalf of the respondent (hereinafter referred to as "Champion")**
21. Champion testified with regards to the HR circular, dealing with the Supply Chain Policy linked to fraud and corruption. Champion testified that when an employee of the state, does business outside the government whilst employed by the state, they have to declare on a certain annexure. They may elect to go ahead and do business with the state and resign or not to do business with the state and remain in the government's employment. In the applicant's case he should have resigned and then he could go ahead and do business with the state. In terms of the applicant's declaration, he did not participate in RWOPS, therefore any work done by him with the government was in conflict with the HR policy. Normally when a tender is obtained, government should enter into a contract with the service providers. The service provider will receive an invitation from the respondent's

system and if they indicate that they want to participate, they can accept the offer and they must provide their quote by the due date.

22. Garage Man was already a service provider on the respondent's data base. The general supply chain process would start with a demand, emanating from the chief user, supplied to the supply chain. The service provider is given an opportunity to ask questions. A site meeting is compulsory, and this would happen between the date of advertising and the date of closure, during which time the service provider may ask questions. The verification process will follow to ensure the service provider is compliant and the successful service provider will be appointed. The delivery note is proof that the service has been delivered.
23. The chief user, in this case information management, was responsible for the specifications. Brackets were required for various wards in the clinics, but it was organised by a few officials. The applicant and Robert Swart, the main technician, were the people whose names were given through to him. The supply chain officials must ensure that the policies for advertising are followed correctly.
24. Champion was informed by one of the officials at the Riversdale Hospital that there was a concern about the actions of certain officials, the union was involved. He then requested further information from the person who informed him where after he investigated the matter. Two things stood out: the services were rendered by government officials and full payment was made to the service provider, whilst services were not rendered in full. He then handed the matter over to the forensic information services. There were certain irregularities and he asked for the RWOPS, as employees were not supposed to do business with the state. The manufacturing of the brackets took place in the workshop. He looked at who received payment and who took responsibility. The invoice must emanate from the service provider. The invoice was received in respect of Garage Man, and not for CCC Gunners Cricket Club. According to e-mails it was indicated that the cricket club was involved to make the brackets. There were definitely things that were not supposed to happen, from the advertising stage up to the payment. The advertising was an unfair process to other suppliers, they did not get an opportunity

to tender. The meeting took place before the advertising. The brackets were manufactured by employees of the state in the workshop with government workshop tools. Two (2) of the brackets were not installed, therefore the payment should have been partial, not in full.

The following ensued from cross-examination:

25. Champion was not involved in drafting the charge sheet. The employer became aware of the incident on 28 December 2017.

The applicant's case

26. **PIETER WILLIAM JOHAN STEPHAN APRIL testified in support of his own case (hereinafter referred to as "the applicant")**

27. The applicant confirmed that he has been employed by the respondent since 1 September 2005. He pleaded guilty to all the charges against him. The following charges were levelled against him:

"CHARGE 1

It is alleged that you made yourself guilty of an act of misconduct as contained in the PSCBC Collective Agreement: 1 of 2003: Disciplinary Code and Procedures for the Public Service, Annexure A, read with Regulation 13 (d) of Chapter 2 of the Public Service Regulations, 2016, in that during the month of September 2017, you colluded with Mr. R Kleynhans, Mr. T Pretorius and Mr. Francis and in turn with Ms L Odendaal, ASD: Finance to secure the appointment of Garage Man to fit and supply bracket of Riverside Hospital, with the intent to unlawfully enrich the Cricket Clun to which you a member of.

CHARGE 2

It is alleged that you made yourself guilty of an act of misconduct as contained in the PSCBC Collective Agreement: 1 of 2003: Disciplinary Code and Procedures

for the Public Service, Annexure A, in that during September 2017, you committed an act of dishonesty by falsely confirming to the employer that the compulsory sight meeting with Mr. N Wait of Garage Man had taken place.

CHARGE 3

It is alleged that you made yourself guilty of an act of misconduct as contained in the PSCBC Collective Agreement: 1 of 2003: Disciplinary Code and Procedures for the Public Service, Annexure A, read with Regulation 13 (d) of Chapter 2 of the Public Service Regulations, 2016, in that during November 2017, you collude with Ms L Odendaal who authorised a payment of R34 194.30 to Garage Man for the fit and supply of brackets at Riversdale Hospital, with a false compulsory site meeting register.

CHARGE 4

It is alleged that you made yourself guilty of an act of misconduct as contained in the PSCBC Collective Agreement: 1 of 2003: Disciplinary Code and Procedures for the Public Service, Annexure A, in that during the month of November 2017, you unlawfully performed work for a company called Garage Man by supplying and fitting brackets at Riversdale Hospital."

28. The applicant was on leave in December 2017 when he received a telephone call from Delia Odendaal somewhere between Christmas and New year, informing him that the employer had become aware of the incident. The applicant maintained his position right throughout the investigation as senior administration officer at the Riversdale Hospital until the date of dismissal in July 2019. The applicant pleaded guilty on all four charges against him held in March 2019. The applicant appealed as per page 6 of bundle A.
29. The applicant stated in his appeal that the chairperson was inconsistent in applying the rule, as she dismissed the applicant for the same transgressions for which Ms Odendaal was not dismissed.

30. According to the applicant, the employer suggested that the trust relationship was broken, however, Dr Van Tonder, the direct line manager, testified in support of the applicant's case that the trust relationship has not been breached and that he could continue working with the applicant. The chairperson did not even make mention of Dr Van Tonder's testimony in her report. The incident occurred during September 2017, yet the applicant was only subjected to a disciplinary hearing during March 2019, one year and six months later, supporting the applicant's argument that the trust relationship could not have been broken. The applicant was not suspended, as he continued working in the same position at Riversdale Hospital. The cricket club is the wellness club of the hospital and the applicant did not gain financially. The project was done with the knowledge of the hospital management and the hospital saved money with the project. The applicant has 13 years of service with no past transgressions, which was not considered by the chairperson. The chairperson did not specify in respect of which charges the applicant was dismissed. Therefore, it is unclear whether there was a sanction for each charge. The applicant worked in Information management and was not aware of the rule and supply chain procedure. The applicant seeks a lesser sanction than dismissal such as a final written warning.
31. The dismissal was confirmed on appeal. The appeal chairperson found that the aggravating factors outweighed the mitigating factors, justifying the sanction of dismissal. The applicant maintained a normal working relationship with his manager. His manager, Dr Van Tonder, his direct supervisor at the time, testified at the disciplinary hearing.
32. The respondent became aware of the allegations against him during December 2017, whilst the hearing was only held in March 2019. He could not establish the reason for the delay, although he questioned Odendaal about the delay. The applicant confirmed that he pleaded guilty at the hearing. There was no reason for him to believe that he misled or harmed anyone. The applicant admits that he made a costly mistake, which he regrets it. He did not mislead anyone to do work on his behalf or on behalf of CCC Gunners or gain financially.

33. The applicant confirmed that Odendaal received a final written warning, Kleynhans was dismissed, Pretorius resigned, and Francis got a final written warning and suspension.
34. The applicant believes that everybody had an involvement and the sanction of the dismissal imposed on the applicant was unfair. The long-time frame and inconsistency were also unfair. He waited a long time for the forensic investigation to be finalized. He was not suspended or demoted or refused access to his computer or his office. They all received their sanctions at the same time.

The following ensued from cross-examination:

35. According to the applicant, he did not ask any of the other accused to get involved with the cricket club. It was Francis and Pretorius's own decision to get involved. Reference was made to page 35 of bundle R where the applicant explained to the investigator "he however explained that he became aware that he had to use a service provider already listed on WCSD in order to subcontract for them." The applicant conceded that this emanated from a meeting he had with Ms Purdy as is seen in the next paragraph *"At a follow up pax meeting also held at the hospital he asked Ms Purdy if she was serious about them manufacturing the brackets. Ms Purdy told him that she could not give them permission to do so as they had to follow the SCM process."*
36. It was put to the applicant that Kleynhans was not involved in this meeting, according to the attendance register, to which the applicant conceded. It was put to the applicant that he involved Kleynhans, and that he was the one who initiated the project and pulled Kleynhans into the project. The applicant responded that although there was a discussion with Kleynhans and Pretorius, he did not recruit them. The applicant conceded that he would not have had a discussion with Kleynhans and Pretorius if this project had not been initiated. According to the applicant, it was Pretorius who first made contact with Norman Wait from the garage and not himself.

37. Reference was made to bullet 5 on page 35 where the following is stated: *"Following a discussion with Mr Kleynhans and Pretorius they decided to approach the garden service provider to assist with the quote as they needed someone that was one the WSCD to submit the bid. Mr Pretorius informed them that the garden service provider declined. He then contacted Mr Wait who agreed that they could do the work as a sub-contractor on behalf of Garage Man. He phoned Mr Wait before the event was published (we confirmed a call to Mr Wait on 07/08/27 at 09:41)." From this the applicant confirms that it was Pretorius who initially approached Mr Wait.*
38. According to the applicant, he was not the middleman, but they discussed roles and his role was to send out e-mails. He is unaware as to the reason why Pretorius resigned. He told the applicant that he was to further his studies in computer science. Pretorius resigned on 28 February 2019, whilst the initial disciplinary hearing commenced in March 2019. Kleynhans was also dismissed, and his dismissal was confirmed at arbitration. The applicant is unaware as to what Kleynhans's role was at the time. All he can remember is that his skills were that of welding. The applicant conceded that he was part of the manufacturing team.
39. According to the applicant, Mr. Francis was part of everything, he cannot remember what his specific role was. The applicant denies that the instruction came from him, the instructions came via e-mail from Pretorius.
40. Reference was made to page 99 of part 2 of bundle R, being the specifications for wall mounted brackets for 32 inches with small form factors. The applicant confirmed that the e-mail viewed on page 91 of bundle R came from his official working e-mail account, as well as that on page 92. It is an e-mail to Mr. Norman Wait with regards to further information required. The attendance register for the site meeting was attached to this e-mail. Odendaal's name does not appear on this document. According to the applicant there was an e-mail dated either the 5th or 6th of September 2017 from Elana Pienaar to Odendaal, where she states: *"Môre julle, ok en dankie, Pieter sal jy die site meeting kan hou en spesifikasies*

vir die site meeting – weet julle van moontlike suppliers wat ek kan link, dankie - Elana.” According to the applicant, this task was delegated to him.

41. The applicant confirmed that the document evidenced on page 99 titled “*Specifications for wall mounted brackets for 32 inches and 34 inches for small form practice*” was drafted by him. According to the applicant, Pretorius drafted the spread sheet as the applicant received the information via memory stick and sent it out. The applicant however maintained that he was not the leader and that a mutual decision was taken, but only he communicated with Garage Man. It was put to the applicant that he acted as CCC Gunners when he made out the invoice and that he was the treasurer. The applicant responded that Pretorius was the treasurer. The applicant was challenged as to why he involved himself with the cricket club if he was not the treasurer. The applicant responded that Pretorius did not have a template, therefore the applicant went online, completed the template and sent it to Norman Wait.
42. The applicant conceded that he was part of the management of the CCC Gunners cricket club. He was an additional member. He was challenged as to why he wrote a letter on behalf of the group if he was not the leader. The applicant responded that he did it out of appreciation as nobody else did it. Reference was made to page 149 of bundle R where the applicant addressed an e-mail to Tinus Pretorius and Reginald Kleynhans where he stated as follows: “*Dankie Menere vir afhandeling van hierdie projek. Ek wag vir die volgende idee en besigheidsplan. Vriendelike groete. Pieter April.*” Payment was done on the 6th of December 2017 to a First National Bank account.
43. It was put to the applicant that at the time of writing the e-mail he was the first to know that the payment went through. The applicant responded that he did not have access to that bank account. It was put to the applicant that the very next morning he said to Pretorius, we are awaiting on the next project. The applicant stated that he could not remember sending this e-mail.

44. It was put to the applicant that he put the employer under false pretences that the site meeting took place. This was denied by the applicant. The applicant conceded that Norman Wait was not present at the site meeting on 8 September 2017.
45. According to the applicant, Elana Pienaar informed him that Wait was the only service provider that responded to the advertisement. He called Wait and he said he was on his way out of town, he asked who was present at the meeting and when the applicant told him, Wait asked him if Kleynhans would be willing to sign on his behalf, Kleynhans agreed to sign on behalf of Wait. It was put to the applicant that there was no service provider present at the meeting, therefore the meeting could not have taken place, which was denied by the applicant.

The following ensued from re-examination:

46. The applicant confirmed that the meeting did indeed take place.
47. **DR GIDEON JACOBUS VAN TONDER testified in support of the applicant's case (hereinafter referred to as "Van Tonder")**
48. Van Tonder testified that at the time of the incident, he was the medical manager of the Hessequa Sub-District for the Western Cape and the applicant's manager at the time. Van Tonder confirmed that the applicant was never suspended or placed in an alternative position until his dismissal. Van Tonder confirmed that he believes that the trust relationship between himself and the applicant has not been jeopardized. Reference was made to page 8 of the applicant's bundle, being a letter by Van Tonder to Joey Roman in support of the applicant's appeal against the sanction of dismissal, where Van Tonder stated as follows: *"Mr April is well known to us as an employee and has been regarded by all of us as one of this institution's most valuable employees. His work ethic, sense of responsibility, loyalty, work knowledge, technical skills and commitment has always stood out as superior effective. Mr April has an exceptional code of conduct and has always been able to be an example to many in our institution. We are convinced that his contribution will still be of immense value to the department in future. As I*

mentioned in the hearing, I still fully trust Mr April and am convinced that he will stay a big asset to this institution. I must also mention my concern about the absence of some mitigating factors in the sanction letter, my evidence in the hearing, clearly stating that that trust relationship is not tarnished is not even mentioned as a mitigating factor. I do trust that this appeal will be seriously considered, and that sanity will prevail."

49. Van Tonder confirmed that the management team supported the appeal as they were informed after the presiding officer's decision, the management team decided that Van Tonder would write this letter. Van Tonder confirmed that they do not support the incident of what might have happened, but they are supporting the applicant's character. The evidence was given at that stage with the information available to him at the time and the trust relationship was not irreparable at the time. Van Tonder confirmed that the summary of the whole case came to his attention afterwards, facts that were not always known to him at that stage when he testified, but it still does not influence his opinion of the applicant's character.
50. Van Tonder confirmed that Odendaal no longer reports to Van Tonder and Francis is not under his direct supervision, although he is still working to the satisfaction of his line manager. Van Tonder confirmed that he is aware of the fact that the applicant was short listed for an assistant-director post after his dismissal. It was a next level seniority post for which he was short listed, but he is unaware as to whether the applicant was appointed.

The following ensued from cross-examination:

51. As far as he knows he does not know whether the applicant was successful. He is not in agreement with the incident that happened, he can never support the incident.

The respondent's closing arguments

52. The applicant pleaded guilty on four very serious charges. There was an unlawful enrichment of the cricket club and a false pretences of site meeting with Wait. He

drew up a register with the intention to make it look like a site meeting took place, whilst Garage Man was not even present on 8 September 2017. The applicant worked outside the public service without permission, which is not allowed. The applicant played a leading role in the communication with Garage Man, he was part of the whole decision making to provide the hospital with the quote. He was the master brain behind the whole tender process. The applicant knew there had to be a register and he had to make it look as if a meeting took place, he created the impression that a meeting took place. The exact meeting is for the service provider and cannot take place without a service provider. All e-mail communication is contained in the bundles. He would not have drawn up the e-mails and he would not have said thank you to the rest of the team.

53. The applicant was part of the group that defrauded the respondent from R34 194.30. The incident happened at the end of December 2017, the forensic investigation carried on for almost the whole of 2018 and the disciplinary hearing was initially scheduled for 26 February 2019 and took place on 14 March 2019 where the applicant pleaded guilty. The applicant's view is that he should not have been dismissed, Kleynhans was also dismissed. There was no evidence by the applicant of what the charges levelled against Odendaal was. There cannot be any comparison made between his charges or Odendaal or Francis's charges. The respondent was consistent in imposing sanctions in case of serious charges of misconduct. The dismissal was the appropriate sanction. Kleynhans's dismissal was upheld, and he did not even play a leading role. The incident was very serious. Van Tonder said he is not in agreement with the incident that took place, but he supports the character of the applicant.

The applicant's closing argument

54. In terms of Resolution 1 of 2003 paragraph 2,2 discipline must be exercised in a prompt consistent and manner. The disciplinary hearing took place in March 2019, there was an excessive delay. The LRA or disciplinary code does not state, if we come up with reasons, it justifies the delay. The applicant was never informed of the reason for the delay. Griebelaar testified that the people he interviewed were

straight forward and honest. The applicant pleaded guilty and did not waste anyone's time. There was no proof that he had anymore guilt that anyone else involved. Senior manager, Ms Odendaal, did not dispute that the first 2 charges were the same and she was never dismissed. The applicant has a 14-year clean record.

55. "Defrauding": the applicant never defrauded anyone and did not bring the department's reputation into disrepute. The applicant did not gain from it. Dr van Tonder testified about the character of the applicant. The trust relationship is still intact. The applicant has a good work ethic, that always stood out and the whole management team agreed that the applicant should not be dismissed. The respondent was not consistent in applying the sanction. The applicant should be reinstated retrospectively. The applicant earned R28 000.00 per month at the time of his dismissal.

Replication

56. Dr van Tonder testified that he wrote the letter on the available information at that time.

Analysis of the evidence and argument

57. The charges against the applicant were all of a serious nature, relating to fraud and colluding with a private company to secure a tender. The applicant together with the three (3) other accused pleaded guilty to all four (4) charges. According to the evidence before me, Mr Francis was manipulated by the applicant and did not form part of the collusion. Mr Francis did not have access to e-mail. According to the evidence before me the applicant played a major part in securing the tender and colluding with a private company. The applicant had a senior position at the respondent at the time of the transgressions. The applicant and his colleagues colluded with Garage Man to do private work for the hospital and channel it through Garage Services. Other service providers were not given an opportunity to tender, rendering the tender process unfair.

58. The applicant and his colleagues profited from work they did for the government. Griebelaar confirmed that the applicant and his colleagues were straight forward and honest and responsive in that they did not deny their involvement. They also admitted that not all the brackets were installed, although full payment was made by the respondent. The transgressions were planned by the accused as they first approached Garden Services knowing that they had to negotiate with the service providers that were already on the respondent's data base. They were unsuccessful with Garden Services where after they approached Norman Wait from Garage Man. The cricket club of which the accused were members benefitted from the transaction with Garage Man. The invoice rendered by Garage Man included an earlier invoice rendered to Garage Man by CCC Gunners, which invoice was then increased in value by Garage Man before submitting it to the respondent. The service was indeed rendered by officials of the hospital.
59. Griebelaar confirmed that the attendance register evidenced on page of bundle R was a prerequisite in the tender process. Norman Wait was not even at the site on the day in question at Riversdale. This can be confirmed with reference to the e-mail on page 93, dated 13 September 2017, together with an attachment, being the site meeting register. Wait confirmed that he received this document after the fact, which he signed, and it was back dated to the date when the site meeting occurred as if Wait had been present. There were three (3) registers attached of which one (1) was blank. Griebelaar established that the site meeting was not signed on the same day as Wait was not even in Riversdale on 8 September 2017. There was also another register signed by Kleynhans on behalf of Wait. Wait informed the applicant that he would not be present at the site meeting and established from the applicant who was present and asked the applicant to arrange for Kleynhans to sign on behalf of Garage Man, to which Kleynhans agreed.
60. Odendaal confirmed to the quotation committee that all documentation was in place, yet the finance team picked up that the documentation was not in order and informed Odendaal that they could not pay out on the documentation where after Norman Wait was requested to sign a new document which was back dated by the accused. The quotation committee would not have paid out on the site register,

which was signed by Kleynhans on behalf of Wait, therefore the register signed by Wait was a prerequisite in the tender process.

61. The applicant denied that he took a leading role in the negotiations, yet he was the one who thanked the other three (3) accused after conclusion of the transaction. His explanation was that they were given roles and his role was that of sending out e-mails, although he was unable to confirm the roles of the other three (3) accused. The applicant also explained that the bank account used for payment of Garage Man was that of Pretorius and that he did not have access to the said bank account, yet the applicant was aware of the payment, as per correspondence on the day of payment.
62. The applicant furthermore declared on page 151 that he did not receive remuneration outside of the Public Service, by stating "*I do not participate in work outside the public service.*" It is an annual document which has to be completed and declared by all employees in the Public Service and his declaration was still in place at the time of the tender process.
63. Griebelaar confirmed that he also testified in Kleynhans's hearing and his evidence was similar to that at the applicant's hearing. Kleynhans was found guilty and dismissed and his dismissal was upheld at Arbitration. Griebelaar explained the delay in the finalization of the discipline against the applicant in that he was instructed to investigate the matter late in 2017 / early 2018. He only completed the investigation in October 2018. The respondent received a tip-off during February 2018. The finance committee picked up a problem on 24 November 2017. Griebelaar confirmed that the applicant and his colleagues did work on behalf of Garage Man. Kleynhans confirmed that the payment went into the FNB account belonging to Pretorius and the money was then paid over to Kleynhans and the applicant. Griebelaar explained that the investigation took a long time to reach its conclusion.
64. It is common cause as testified by Champion, that the HR circular dealing with the Supply Chain Policy linked to fraud and corruption, clearly states that an employee

who does business outside the government whilst employed by the State, has to declare such business on a certain annexure. They may elect to either go ahead and do business with the state and resign or choose not to do business with the state and remain in government employment. The applicant should therefore have resigned if he wanted to do business with the state, which he did not do. The applicant declared that he did not participate in RWOPS, therefore any work done by him with the government was in conflict with HR Policy. If the tender is obtained, such as is this case with Garage Man, the respondent should enter into a contract with the service provider. The service provider will then receive an invitation from the respondent and if they indicate that they want to participate, they accept the offer and must provide their quotes by the due date.

65. Champion explained the normal process namely that in the general supply chain, the process will start with the demand emanating from the chief user supplied to the supply chain. The service provider is then given an opportunity to ask questions. The site meeting is compulsory, and this must happen between the date of advertising and the date of closure of the quotations, during which period the service provider may ask questions. The verification process will follow to ensure that the service provider is compliant, and the successful service provider will then be appointed. A delivery note is proof that the service has been delivered. In this instant, information management was responsible for the specifications. Brackets were required for various wards, but it was organised by a few officials. The supply chain must ensure that the policies for advertising are followed correctly. This process was clearly not complied with in the instant matter.
66. When Champion was informed by one of the officials at the Riversdale Hospital that there was a concern about the actions of certain officials (the union was involved in the process), he requested further information where after the matter was investigated. It became clear: that services were rendered by government officials and full payment was made to the service provider, whilst not all the services were rendered. He handed the matter over to the forensic information services and he found that there were certain irregularities and he asked for the RWOPS, as public servants are not supposed to do business with the state. He

established that the manufacturing of the brackets took place in the workshop. He investigated who received payment and who took responsibility. The invoice must emanate from the service provider.

67. According to the e-mails it became clear that CCC Gunners cricket club was involved in making the brackets. There were definitely things that were not supposed to happen, from the advertising stage up to the payment. It was an unfair process towards the other suppliers, they did not get an opportunity to tender. The meeting took place before the advertising. The brackets were manufactured by employees of the state in the government workshop with government tools. Besides, two (2) of the brackets were not even installed, therefore only partial payment should have been made.
68. The applicant admitted all the evidence rendered on behalf of the respondent as to how the transaction was concluded with Norman Wait, although he denies that he first approached Wait. According to the applicant it was Pretorius who at first approached Wait. The applicant pleaded guilty to all the charges. He appealed as he believed that the sanction of dismissal was inconsistent and too harsh, and the time period taken to conclude his disciplinary hearing was unduly long.
69. The applicant also referred to Dr Van Tonder's evidence, that was not included in the disciplinary chairperson's outcome report, namely that the trust relationship had not broken down between Van Tonder who was his direct manager and the applicant.
70. The applicant testified that although the incident occurred in September 2017, the disciplinary hearing only took place during March 2019, one year and six months later, which supports the applicant's argument that the trust relationship could not have broken down. The applicant was not suspended from his duties. He carried on working in the exact same position at Riversdale Hospital. According to the applicant, the cricket club is the wellness club of the hospital and the applicant himself did not gain financially. According to the applicant, the project was done

with the knowledge of the hospital management and the hospital saved money with the project.

71. The applicant had been employed by the respondent for the past 13 years and has a clean disciplinary record, which was not considered by the disciplinary chairperson. Furthermore, the disciplinary chairperson did not specify on which charges she dismissed him. According to the applicant he was not aware of the rule and supply chain procedure. The applicant seeks a lesser sanction than dismissal such as a final written warning. Odendaal and Francis were not dismissed, only the applicant and Kleynhans were dismissed. Pretorius resigned before the disciplinary hearing could take place. The applicant denies that he misled, or harmed anybody, he however regrets this costly mistake he made. The applicant furthermore maintained that he did not influence any of the other accused, it was their own decision to get involved.
72. It was clear as from page 35 where the following is stated "*At a follow up pax meeting also held at the hospital he asked Ms Purdy if she was serious about them manufacturing the brackets. Ms Purdy told him that she could not give them permission to do so as they had to follow the SCM process.*" Therefore, the applicant cannot state that he was not aware of the correct process to be followed in obtaining a tender. The applicant however confirmed that the specifications for wall mounted brackets for 32 inches and 34 inches as evidenced on page 99 of the bundle, was drafted by him.
73. The applicant explained that although Pretorius drafted the spread sheet, the applicant received information via a memory stick and sent it out, although he maintains that he was not the leader and that a mutual decision was made that only he would communicate with Garage Man. The applicant denies that he acted as treasurer when he issued the invoice to Garage Man on behalf of CCC Gunners. The applicant stated that Pretorius was the treasurer, but he stepped in as Pretorius did not have the correct template. Therefore. the applicant went online, completed the template and sent it to Norman Wait.

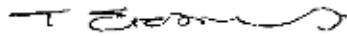
74. The applicant confirmed that he was part of the management of CCC Gunners cricket club in the capacity as an additional member. The applicant conceded that Norman Wait was not present at the site meeting on 8 September 2017, although he was required to sign the site meeting attendance register. The applicant at first arranged for Kleynhans to sign on behalf of Garage Man and when the finance committee refused to make payment on grounds of the initial "Attendance / Site Register", signed by Kleynhans, the applicant requested Wait to sign a fresh attendance register, which was backdated to create the impression that Wait was present at the site meeting on 8 September 2017. This clearly was dishonest conduct on the part of the applicant and most certainly not the kind of behaviour expected from a colleague who had allegedly displayed good work ethic, as testified by Dr Van Tonder.
75. Although Dr Van Tonder testified with regards to the applicant's character and the trust relationship, as well as his work ethic, sense of responsibility, loyalty, work knowledge, technical skills and commitment, he also testified that he was not aware of all the facts at the time. The information became available to him after the fact and he made it very clear that his testimony is only with regards to the applicant's character and not with regards to the incident, something which he can never condone.
76. It is common cause that the applicant together with his three (3) co-accused were all guilty of serious transgressions of fraud and corruption. The applicant cannot possibly argue that he was not aware of the rules against his actions. The applicant was employed as a senior administrative officer for a period of 13 years and he should lead by example.
77. I was not privy to the charges against Odendaal and Francis however the Arbitration award of Kleynhans was made available to me, in which instance Kleynhans was also dismissed for a similar transgression and which was upheld at arbitration. I therefore cannot find that the respondent was inconsistent as the applicant clearly played a leading role in the transaction. The applicant did not

declare his business with a private company as he was required to do in terms of the HR Policy.

78. There was no evidence of procedural unfairness before me.

Award

79. I find that the applicant's dismissal was both procedurally and substantively fair and the applicant is therefore not entitled to any relief.



COMMISSIONER: T ERASMUS