



GENERAL PUBLIC SERVICE
SECTOR BARGAINING COUNCIL



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ARBITRATION AWARD

Panellist/s: P JAIRAJH
Case No.: GPBC487/2020
Date of Award: 27 NOVEMBER 2020

In the ARBITRATION between:

S S LAWSON

(Union / Applicant)

and

DEPARTMENT OF HOME AFFAIRS

(Respondent)

Union/Applicant's representative: MR A.S. MATHONSI

Union/Applicant's address:

Telephone: (031)337 3184

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Respondent's representative:

Respondent's address:

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ARBITRATION AWARD

DETAILS OF HEARING AND REPRESENTATION:

- [1] This matter was set down for arbitration hearing on 12 October 2020 at the Department of Home Affairs, 350 Umgeni Road, Durban.
- [2] The applicant was represented by Mr A.S. Mathonsi from PAWUSA. The respondent was in default of appearance. The commissioner contacted the GPSSBC and was forwarded proof of service of 4 emails and 2 faxes that were successfully sent to the respondent notifying them of the hearing. At 09h55 there was still no appearance from the respondent. In the circumstances, the commissioner was satisfied that the respondent was properly notified of the date, time and venue of the hearing and therefore proceeded with the arbitration in their absentia.

BACKGROUND TO THE DISPUTE

- [3] The applicant was employed by the Department of Home Affairs as a Level 5 Admin Clerk.
- [4] The applicant was charged with gross negligence in terms of the Public Service Coordinating Bargaining Council Resolution No. 1 of 2003 as amended (Disciplinary Code and Procedures for the Public Service).
- [5] Her disciplinary hearing was scheduled in 2016, and she was dismissed on 3 December 2019. The applicant filed an appeal, however the Appeals Committee upheld the decision of the Presiding Officer. The applicant received the outcome of the appeal on 4 March 2020 and thereafter referred a dispute to the Council on 10 March 2020.

ISSUE TO BE DECIDED

- [6] I am required to determine whether the dismissal of the applicant was substantively and procedurally fair. In the event that I find the dismissal to be unfair, I must decide upon an appropriate relief.

SURVEY OF EVIDENCE AND ARGUMENT

DOCUMENTARY

- [7] The applicant submitted a bundle of documents which was marked as bundle "A".

APPLICANT'S SUBMISSIONS

SHARON SUZANNE LAWSON

The salient aspects of the applicant's submissions are recorded below.

- [8] She commenced employment as an Admin Clerk Level 1 on 17 April 1989 and at the time of her dismissal she was on level 5. She was working full time in the Birth Section, registering the births of newborn babies.
- [9] She was initially holding a permanent position in the birth registration section. All of a sudden she was instructed to assist in the marriage section and she never received any training in the marriage section.
- [10] She was assisting Mrs Elizabeth Wessels who was working full time with marriages. Unfortunately, both she and Mrs Wessels did not receive the training that they had requested.
- [11] Bundle A was provided to her by the respondent in respect of her disciplinary hearing.
- [12] She referred to the Charge¹ and stated that she was authorised, and requested by Mr Dlamini, the Office Manager at that time, to capture marriages from that time period. She consulted with the Marriage Supervisor, Ms Farzana Haniff about problems that she had encountered and together with her colleague, Mrs Wessels requested for training and for more information because the marriage register procedure had changed as per Circular 12 of 2010².
- [13] Previously the Marriage Register was just the BI-30 with no supporting documents. The Circular indicated changes to the marriage register from BI-30 to DHA-30 and supporting documents were required but it did not indicate what supporting documents were to be included, which was a problem.
- [14] External Marriage Officers that were appointed by the Department of Home Affairs has received training and information required for these changes.
- [15] She encountered a lot of problems trying to get answers from Head Office regarding the requirements for the supporting documents. There was a lot of uncertainty about it and even the marriage supervisor had problems in getting answers from them on the DHA-30.
- [16] The DHA-30 indicated documents that had to be submitted and to tick off what was applicable. They were not sure if the person had to just complete the passport page itself

¹ Bundle A, page 1

² Bundle A, page 81

where the person's photo details are or complete the copy for a visa so they assumed it was supposed to be both.

- [17] In respect of the declaration for the purpose of marriage (DHA-31), they assumed that they had to do both. The DHA-31 is when the one spouse does not have an ID number and that person is a foreigner marrying a South African.
- [18] The problem that Ms Haniff, Mrs Wessels and she faced was that the Home Affairs Head Office had decided that they should conduct an interview, not necessarily them, but their Immigration Department had to conduct an interview with the clients especially if a South African was marrying a foreigner. The Immigration Section had to make an appointment to interview the couple separately and would then give the couple a written report to give to their marriage officer because that document had to be included in the marriage register.
- [19] There was some confusion as it indicated a letter of no impediment. This document is normally received from a person who has no ID number. The embassy provides this letter or an affidavit to state that the person is single. It was not stated in the marriage register that an interview was required with the Immigration Section. She was not disputing what they were requesting but it was not included in the DHA-32. Home Affairs Head Office found that it best to do an interview with couples where a South African was marrying a foreigner because it was found that a lot of couples were marrying under false pretenses.
- [20] The interviews conducted by her office was only put in place late 2013 by Ms Haniff for the couples to do interviews with the Immigration Section.
- [21] She was instructed to capture the marriages. Sometimes supporting documents were missing from the marriage register and she requested the marriage officer to include those documents. She could not contact some marriage officers and they also did not have proper addresses. She asked Ms Haniff what she should do with those documents and was told to send it to Head Office. There were instances when the marriage officer sent a letter stating that they could not contact the couple and she informed Ms Haniff of the situation and was told to send it to Head Office for their referral.
- [22] She was unhappy that the respondent brought a disciplinary hearing against her because their Head Office never contacted her and informed her that they had problems with any of the marriage registers that she had captured. Their Head Office was always contacting people regarding other applications but they did not contact her for these applications which was very unfair.
- [23] She referred to page 13, the marriage register for Hlakotsa and stated that she was charged for unlawfully capturing the marriage for Hlakotsa. She received this document

from the marriage officer which was basically a copy from his book. It was very faint so she wrote over certain faint parts which she felt was important and submitted the documents to Head Office.

- [24] This marriage was solemnized on the 1st of January 2014 which was the BI-30 marriage register. She was charged for capturing this marriage without sufficient documents as prescribed in the Circular but she stated that she submitted everything.
- [25] She referred to marks at the top left hand side of the page and stated that these are the staple marks for the documents that she had attached to the marriage register, which is an indication that documents were attached to this marriage register.
- [26] She did not know where these documents were and stated that the respondent made copies of certain pages and not everything. After she captured the documents it was sent to their Head Office in Pretoria, so it was in the possession of the respondent.
- [27] She referred to page 17 and pointed out the staple marks on the page and stated that she submitted the supporting documents for this marriage. This marriage was solemnized on 6 February 2014. She further stated that some of the documents were after 2010 and she was informed by Ms Haniff that the marriage officers were allowed to finish their old marriage register books and thereafter they would receive the new DHA-30 marriage register books.
- [28] She referred to pages 18, 19, 21, 23, 31, 38, 40, 42, 45, 47, 49, 50, 53, 56, 58, 61 and stated that all these pages had staple marks but only one page was provided by the respondent.
- [29] Page 25 had staples marks and two pages were provided. Page 27 had staple marks but was a duplicate of page 19. The respondent did not inform her where the attached documents were and she was adamant that documents were attached to these pages.
- [30] Page 33 had two staple marks at the top of the page but only one page was provided to her. She further stated that the BI-30 was only one page and the DHA-30 was two pages but she did not know why the respondent only submitted one page of the DHA-30 when it should have been two pages. She had submitted both pages of the DHA-30 together with the supporting documents but the respondent had chosen to exclude the second page and supporting documents.
- [31] She referred to page 64 and stated that there were staples marks and the second page of the DHA-30 was provided. She further stated that there was about 4 staple marks and she had provided the supporting documents.

- [32] She referred to page 66 and stated that both pages of the DHA-30 were attached, there were staple marks and she had submitted the supporting documents. She further referred to the right side of page 66 and stated that the writing there was for the DHA-31 which indicates that not just the BR-31 was there but the supporting documents were attached for this marriage but respondent chose to leave it out. These pages overlapped when copies were made. This means that when the respondent made a copy, the BR-31 that was underneath which would have been the third page in the supporting document. It would have been the marriage register, DHA-30, the BR-31 and then the supporting documents which were indicated at the bottom of the second page of the marriage register.
- [33] She referred to the right hand side of page 72 and stated that the BR-31 was attached but was not provided by the respondent. The page had staple marks and she stated that she submitted the supporting documents.
- [34] She referred to page 78, the top left and the right side of the page, she stated that the document had staple marks and she submitted both pages of the DHA-30 but the BR-31 was attached with the supporting documents.
- [35] The Circular³ was a department circular informing all Home Affairs Officials that they had amended the procedure for the solemnization of marriages and were changing the marriage register from a BI-30 to a DHA-30 form. The BI-30 did not have supporting documents and they were changing it to DHA-30 with supporting documents. She was provided with the Circular but was not trained on this document.
- [36] She was charged for capturing the marriages without considering the requirements in the Circular. She was not trained therefore it was not correct for the department to charge her.
- [37] She referred to clause 8 and 10 of the Circular⁴ and stated that she had not received any training and in respect of what documents needed to be attached.
- [38] Referring to clause 11 of the Circular she stated that she did not receive documents the same day as the marriage and no information was given to her on what to do.
- [39] It was very unfair for the respondent to charge her. If the department had a problem with her capturing the marriages at that time period, they should have timeously sent her a letter to inform her that they had a problem with those particular marriages and to rectify or resolve the issue. They never sent her any letters regarding any of the marriages that she had captured and only dumped this on her in 2015. It was a long time and she could not remember everything but she knew that she did her job to the best of her ability.

³ Circular 12/2010, page 82

⁴ Bundle A, page 82

ANALYSIS OF EVIDENCE AND ARGUMENT

In the absence of any evidence to prove contrary from the respondent I have to rely on the evidence of the applicant.

[40] The applicant contended that she was unfairly dismissed by the respondent and sought retrospective re-instatement.

[41] During or about July 2015 the Respondent served a Notice of Disciplinary Hearing in terms of the Disciplinary Code and Procedures for the Public Service. The charge/s in the notice referred to the following allegations: -

Allegation 1

It is alleged that you committed an act of gross negligence in that during the period November 2012 to March 2014 at or near the Large Office: EThekweni, you captured the attached list of marriages in the National Population Register that did not meet the requirements as prescribed in terms of Circular 12 of 2010. By doing so you contravened the Marriages Act 25 of 1961 as amended.

[42] At the conclusion of the disciplinary hearing the applicant was dismissed by the respondent. She appealed, however the Appeals Authority upheld the decision of the presiding officer.

[43] When the commissioner enquired from the applicant as to when her disciplinary hearing was held, she stated that it was scheduled for the 8th and 9th October 2015 but the respondent postponed it twice until May 2016. The chairperson at that time then lost the recordings and documents. In 2018, a second disciplinary hearing was held for the same matter with a different chairperson. The chairperson submitted a report but he did not sign it so it was declared invalid and then they proceeded with a third disciplinary hearing on the same matter with a different chairperson and the hearing was finalized in 2019.

[44] The applicant averred that she was charged for capturing the marriages without considering the requirements in the Circular. She testified that she consulted with her supervisor about the problems she faced and both she and her colleague requested training and further information in respect of the new marriage register. She further testified that she encountered problems in ascertaining from Head Office what the requirements were for the DHA-30. She contended that she was not trained therefore it was unfair for the respondent to charge her four years down the line.

[45] It was argued that the applicant was invited to assist in the marriage section and after she left that section she went back to her original position. She was not part and parcel of the

marriage or solemnizing of the couple, she only received the documents to capture on the computer.

- [46] The applicant argued that she was charged for capturing the marriages without supportive documents. The applicant contended that the staple marks on the documents in the bundle was proof that documents were attached to the marriage register. The applicant further argued that the writing towards the right of the page is overlapping which indicates that the respondent copied and only selected what suits them in order to discipline her.
- [47] The Respondent bears the onus to justify the dismissal on both substantive and procedural grounds. As the respondent is in default, I do not have any evidence to rebut the presumption of unfair dismissal. On the evidence of the applicant I cannot find any reason to doubt the version of the applicant. Accordingly, I find that the dismissal of the applicant was unfair.
- [48] In terms of Section 193, a commissioner may order compensation, re-employment or reinstatement should the dismissal of an employee be found to have been unfair. I accordingly find that retrospective reinstatement is appropriate.

AWARD

- [49] The dismissal of the applicant was unfair;
- [50] The respondent, the Department of Home Affairs, is ordered to reinstate the applicant, S.S. Lawson with full retrospective effect as from the 3rd December 2019 to her previous position as Admin Clerk Level 5 on conditions no less favourable than those she enjoyed prior to her dismissal;
- [51] The applicant must return to work on the working day following the date on which this award is served on her representative;
- [52] The respondent is further ordered to pay the applicant, S.S. Lawson, back pay of R220 642, 65 (calculated at R24 515, 85 per month x 9 months = R220 642, 65) less statutory deductions by no later than 31 January 2021.
- [53] There is no order as to costs.



GPSSBC Commissioner: P. Jairajh