

IN THE ARBITRATION HEARING BETWEEN

PSSS 1060

POPCRU obo SHONGWE

("the Union")

and

SAPS

("the Employer")

ARBITRATION AWARD

1. HEARING AND REPRESENTATION.

The arbitration hearing took place on 7 October 2002 at the First Floor, Legal Services Library, SAPS Provincial Offices, 100 Jorissen Street, Braamfontein, and Johannesburg in the Gauteng Province. The Union was represented by Mr. V Nhlapho and the Employer by Mr L Malatji.

2. ISSUE AND POWERS.

The issue concerns the fairness of the dismissal on 12 December 2001 of Mr MC Shongwe ("the Employee") by the Employer for misconduct. I have powers, in terms of the Labour Relations Act 66,1995 ("the ACT"), to determine the issue and make an appropriate award.

3. BACKGROUND TO THE DISPUTE.

The Employee was employed by the Employer as an inspector. He had been in the police service for approximately eighteen (18) years. The Employer submitted that the Employee failed to follow regulations relating to a cellular phone ("the phone") confiscated from a member of public. His conduct, therefore, constituted theft of the item. Dismissal was the most suitable penalty.

The Union submitted that there was a practice to not record confiscated items as required in terms of regulations. The Employee had waited for proof of purchase of the phone before he could record it. Therefore, he had no intention to steal.

4. THE EMPLOYER'S EVIDENCE.

The Employer led the evidence of Mr BJ Mouton ("Mouton") and Mr A Mahlangu ("Mahlangu").

A few days later, Mahlangu went back to look for his phone. The Employee informed him that the matter was still under investigation. Mahlangu left and came back again. On this occasion, the Employee told him that he had sent the phone to the Protea Police Station for recording in terms of the SAP 13 and did not know the officer who was handling the matter. In addition, the Employee told him to forget about the matter and look for a cheap phone in the classified section of the Star newspaper.

Thereupon, Mahlangu went to the Kliptown Police Station to report the matter to the ACU. An ACU officer arranged with him to set a trap for the Employee by giving him five hundred rand to offer as a bribe to get his phone back. Mahlangu approached the Employee and told him that he had the money. The Employee informed him that he had sent the phone to the Protea Police Station. On his way out, he met Ramusi who told him that the Employee had the phone in his possession, but the Employee denied that he had it.

Mahlangu went back to the ACU. An ACU officer accompanied him to look for the Employee. When approached, the Employee denied that the phone was at the Protea Police Station. He maintained that Ramusi had it in his possession. An ACU officer asked him to produce his phone. Mahlangu identified it as his own phone by pointing out specific features and marks, although the face had been changed.

5. THE UNION'S EVIDENCE.

The Union led the evidence of the Employee. He testified that Ramusi informed him that he had information concerning a stolen phone. Thereupon, he drove to a house in Mofolo, Soweto. Ramusi got into the house and returned with Mahlangu. Ramusi had a phone, that he had confiscated from Mahlangu, in his possession. Mahlangu was put into the police vehicle and they drove to the Jabulani Police Station.

Mahlangu was asked for the proof of purchase. He gave Ramusi the seller's telephone number. Ramusi called the seller, but he was told the seller would call back as he was busy. The seller did not call back. As a result, the phone could not be handed in because Ramusi did not get feedback from the seller. He undertook to call the seller the following day. He tried but was unsuccessful.

The Employee kept the phone in his possession until he and Ramusi went to rest for four (4) days. Thereafter, Ramusi did not report for duty because he was sick. The Employee tried unsuccessfully to get hold of him.

Later, an ACU officer approached the Employee, while he was driving to Ramusi's house, and enquired about the phone. He told him he had it. Mahlangu identified the phone as his. Thereafter, they drove to Ramusi's house, but he was not there. On that day the Employee was going to hand the phone over. Thereupon, the Employee was arrested.

The Employee denied that he told Mahlangu that he had sent the phone to the Protea Police Station for registration in terms of SAP 13 and that he had demanded money from him.

Under cross-examination, the Employee conceded that he knew the procedure regarding the handling of confiscated items. He could not register the phone because he waited for Ramusi to give him feedback regarding the ownership of the phone.

6. THE EMPLOYER'S ARGUMENT

The Employer contended that the regulations relating to the registration of confiscated items are well known, but the Employee failed to conform thereto. The Employee, an experienced officer, should have registered the phone. He had an intention to steal the phone. Therefore, dismissal was a suitable penalty.

7. THE UNION'S ARGUMENT.

The Union argued that Ramusi was responsible for the delay in registering the phone, for he could not be found to give feedback. The Employee had an explanation for keeping the phone in his possession. Therefore, in the circumstances, dismissal was too harsh.

8. ANALYSIS OF EVIDENCE AND ARGUMENT.

It is common cause that a phone was confiscated from Mahlangu by the Employee and Ramusi. It is; however, in dispute whether the Employee had kept the phone in his possession with the intention to deprive Mahlangu of his phone permanently.

It is also common cause that, in terms of regulations, confiscated items should be registered in terms of SAP 13. However; it is dispute whether the Employee was not responsible for registering the phone as required by the regulations.

I am faced with two contrasting versions of the facts. I must, therefore, determine the credibility of the witnesses by reference to their evidence shall exclude Mouton from this analysis because his role was merely to determine guilt on the part of the Employee.

I am satisfied that it was unreasonable for the Employee to keep the phone in his possession for a long time without registering it as required cannot find that Ramusi was responsible for the delay because the Employee was aware of the regulations. The Employee cannot use Ramusi as a scapegoat in this regard.

Mahlangu approached the ACU because the Employee had sent him from pillar to post. I cannot find any other reason for Mahlangu to do so. On a balance of probabilities, I find that the Employee intended to deprive Mahlangu of his phone permanently. Therefore, I reject the Employee's version.

The police are custodians of law and order. It is, therefore, expected of them to protect the public from any form of unlawful deprivation of their property. The Employer was, by virtue of his position as a police officer, placed in a position of trust. He had abused this trust by stealing from a member of the public whom he was expected, by virtue of his occupation, obligated to protect.

The Employee's conduct in this regard goes to the heart of the employment relationship. He has irreparably damaged the trust the employer had in him. Dismissal was, therefore, the most suitable sanction in the circumstances.

9. DETERMINATION.

In the light of the above reasons, I find that the dismissal of the Employee by the Employer was fair.

Dated at Johannesburg on this the 19 day of October 2002.

M.MTHOMBENI.

PANELLIST: SAFETY AND SECURITY SECTORAL BARGAINING COUNCIL
(SSSBC).