

**IN THE DISPUTE PROCEEDINGS BEFORE THE SAFETY AND SECURITY  
SECTORAL BARGAINING COUNCIL**

**CASE NO: PSSS 1999**

In the matter between:

**G T KOSHANE**

**APPLICANT**

and

**SOUTH AFRICAN POLICE SERVICE**

**RESPONDENT**

**PROCESS REPORT AND ARBITRATION AWARD**

**Details of hearing and representation**

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- 1 The con-arb proceedings took place at Pretoria on 9 March 2004.
  - 2 The applicant was represented by Mr S Makaneta, a trade union representative, and the respondent by Mr T Phefo, from its legal department.
  - 3 I reminded the parties that the matter had been postponed once before, and that both conciliation and arbitration would have to be dealt with. The parties confirmed that they were familiar with the nature and purpose of the proceedings.
  - 4 After a process of conciliation, the dispute could not be resolved.
  - 5 Arbitration then commenced. The respondent handed up a bundle of documents. The parties indicated that the documents contained in the bundle were what they purported to be and need not be formally proven. The applicant requested to start.
  - 6 Evidence on behalf of the applicant was given by himself. Evidence on behalf of the respondent was given by Ms N L Mtsweni and Mr M B Nkuna. In respect of each witness, opportunity was given for examination in chief, cross-examination, and re-examination, under oath. Both representatives were given an opportunity to present a brief opening statement, and closing arguments.

### **Issue to be determined**

- 7 The applicant was dismissed on or about 3 March 2003 after being found guilty of misconduct in the following form:

*"Contravention of Regulation 18(3), in that at or near Pretoria on 4 June 2002 you performed an act which constituted an offence to wit corruption in that you offered a benefit to a person that is not legally due, with the intention to influence that person to commit an act, namely withdrawal of charges against you".*

- 8 The applicant's case is that he did not commit the misconduct in question, alternatively, if it is found that he did, that the penalty was too severe.
- 9 The respondent's case is that the misconduct did take place and that it was sufficiently serious to warrant dismissal.

### **Analysis of evidence and reasoning**

- 10 It is not my intention to repeat the evidence presented. Evidence was mechanically recorded and comprehensive written notes were taken by myself.
- 11 The deed of handing over money, to a total amount of R350,00, to Ms Mtsweni on or about 4 June 2002, was admitted by the applicant.
- 12 His explanation for handing the money over to her was a romantic interest and wanting to impress her, *inter alia* for purposes of buying her a meal.
- 13 The respondent's version is that the R350,00 had been paid over together with promises of more money and gifts, in an attempt to convince Mtsweni to in an improper manner assist the applicant with a disciplinary case against him at the time.
- 14 In evidence the applicant explained that he had formed a romantic interest in Mtsweni even before he realised that she was involved in the case against him and that he returned to her office to follow up on a lunch invitation and also to discuss the possibility of a plea bargain with her.
- 15 With regard to the important aspects of the applicant's intentions and his words at the time, the evidence of Mtsweni and Nkuna were mutually corroborative.
- 16 As a first prize, the applicant wants me to reject the versions of the respondent's witnesses. This I am not willing to do. I found the respondent's witnesses certain and credible. There was no suggestion of one or other ulterior motive or other reason to lie.

- 17 Having accepted the respondent's version, it is clear that the applicant had in no uncertain terms paid an amount of R350,00 over to Mtsweni and had offered an additional R 1 500,00 and a cellphone and computer in exchange for her withdrawing the case against him, put differently, for purposes of assisting him.
- 18 My conclusion that I should reject the applicant's version, on a balance of probabilities, is informed *inter alia* by the following:
- If the intention had really been paying for a meal, why increase the amount from R50,00 to R350,00?
  - The applicant could not satisfactorily explain what he meant with the allegation that Mtsweni had driven him in the direction of a bribe.
  - The applicant was not certain about what exactly Mtsweni had said to him in her office on 4 June 2002.
  - The applicant had pleaded guilty at the criminal proceedings based on the same incident.
  - A person of the applicant's experience and status should have known better and should not have attempted to become involved with a person that was prosecuting him.
  - Inviting Mtsweni out to lunch immediately after finding out that she was prosecuting him, is very strange and suspicious indeed.
  - The applicant admitted at one stage that he realised that Mtsweni was not really interested in him, and his persistence, had he really only romantic intentions, is suspect.
  - According to Mtsweni and Nkuna the applicant had clearly coupled the payment and promise of more money and gifts to her involvement in his case.
- 19 For the above reasons I am on a balance of probabilities satisfied that the applicant had dishonourable intentions and that he was guilty of the misconduct complained of. I am satisfied that the money was handed over, and promises made, not for purposes of impressing the lady, ie not for romantic purposes, but for purposes of bribery.
- 20 In the alternative, the applicant has argued that a lesser penalty should be imposed, particularly in view of the following mitigating circumstances: The misconduct in question is a first incident of workplace misconduct; the applicant's personal circumstances inclusive of having 2 children and an unemployed wife; and other circumstances around the misconduct.

- 21 In my view it cannot be denied that misconduct of this nature is serious. Not only is dishonesty clearly involved, but also is it generally known that corruption, more so even in the South African Police Service, is abhorrent. A member of the South African Police Service is to a large extent a custodian of upholding laws and positive values, and misconduct of this nature is simply completely unacceptable. I agree with the respondent that this misconduct went to the core of the employment relationship and that there is subsequently an irretrievable breakdown of trust.
- 22 In the circumstances I cannot fault the penalty of dismissal and I see no reason whatsoever to interfere in this regard.
- 23 Although the applicant did not attack the technicalities or otherwise around the entrapment itself, I wish to add that there is in any event no evidence before me which could reasonably lead to an inference that the respondent had acted unlawfully or unfairly in the manner in which the transaction in Mtsweni office was surveyed/recorded.

Award

- 24 The applicant's dismissal by the respondent was substantively fair.
- 25 There is no order as to costs.

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PREPARED AND SIGNED AT JOHANNESBURG ON 10 MARCH 2004

**F J VAN DER MERWE: ARBITRATOR**