



ARBITRATION AWARD

Panellist/s: Bernard van Eck
Case No.: PSSS209-05/06
Date of Award: 9-Feb-2006

In the ARBITRATION between:

RAMAKOBYA obo MOSOEU P.M
(Union / Applicant)

and

SAPS
(Respondent)

ARBITRATION AWARD

1. DETAILS OF HEARING AND REPRESENTATION

[1.1] Mr M Mosoeu, the employee party (Applicant party), referred a dispute to the SSSBC concerning his alleged unfair dismissal by the South African police Services, his erstwhile employer (the Respondent party). An arbitration hearing was held at the Respondent's offices in Krugersdorp on 15 November 2005 in order to resolve the dispute.

2 BACKGROUND AND ISSUE IN DISPUTE

[2.1] The Applicant was employed with the Respondent for some 16 years and at the time of his dismissal on 24 November 2004 he was stationed in Krugersdorp as an inspector.

[2.2] The Applicant was dismissed, following an incident on 22 July 2004 where he confiscated a member of the public's cellular phone and exchanged parts thereof with his own phone. Some criminal charges were also brought against the Applicant, to which he pleaded guilty and paid a fine.

[2.3] The Applicant is claiming his dismissal to be substantively unfair.

[3] SURVEY AND ANALYSIS OF EVIDENCE AND ARGUMENT

[3.1] Supt. AR Thompson, the chairperson of the Applicant's disciplinary enquiry, testified as the only witness for the Respondent. He stated that he had considered the Applicant's personal circumstances, including that he was a first time offender, but could not find any evidence to justify a sanction lesser than that of dismissal. He further stated that the interest of the Respondent and the public outweighed the Applicant's personal circumstance, since he has made himself guilty of an act of dishonesty. As such, the Applicant has destroyed the trust relationship that existed between him and the Respondent and a sanctioned of dismissal was thus the only appropriate penalty to impose under the prevailing circumstances

[3.2] The concluded the case for the Respondent.

[3.3] Next Mr M. Mosoeu testified as the only witness in his case. He stated that he had been in the Respondent's employ for some 16 years, as well as the fact that he had a clean disciplinary records and had just completed his degree of policing on Public justified a lesser sanction. Had also received various awards in the past for outstanding service. Lastly, he stated that he did not know that an act of theft could lead to his dismissal and also, the reservist officer who was in his company at the time of the incident was not dismissed, despite the fact that he was charged with a similar offence.

[3.4] This concluded the case for the Applicant.

[3.5] Next I shall consider the merits of the matter in relation to the evidence presented to me on the day.

[3.6] For a dismissal to be substantively fair, an employer must have both a valid and fair reason for dismissing an employee.

[3.7] Upon consideration of the evidence, I have to state that I agree wholeheartedly with the Respondent's view in that I find the sanction of dismissal to be the only appropriate penalty to have been imposed under the circumstance. Mr Mosoeu has himself admitted

that he has not set a worthy example for his subordinates. Furthermore, he has not displayed any remorse for his actions and instead he stated on more than one occasion that he is in actual fact innocent of all charge brought against him.

[3.8] As regards the Applicant's long service history and his clean disciplinary record, just the following. In the matter of Rustenburg Platinum Mine Ltd (Rustenburg Section) v National union of Mineworkers & Other (2001) 12 (2) SALLR (LC), the Labour Appeal Court stated that they would give short shrift to employees who made themselves guilty of dishonesty at the workplace. This despite factors such as lengthy service and a clean disciplinary record. I submit that this is even more true for members of the South African Police Service, who are supposed to protect members of the public from the very same type of evil that the Applicant has committed. The Respondent has further also referred to numerous reported cases for my consideration, which I do not care to deal with at this stage save to state that I concur with each and every one of them.

[3.9] Furthermore, and quite to the contrary, I believe that the Applicant's long service period rather aggravates the severity of the matter. As such I do not find the Applicant to be trustworthy when he stated that he did not know the contents of code of conduct and that act of theft would lead to his dismissal. One of the Applicant's duties was to train new recruits. Certainly the applicant also knew that theft is a very serious matter since he arrested people for this very same offence (or was supposed to) on almost a daily basis. The public must have the utmost of faith in the Police Service to serve and protect them all times. This is an undertaking each member of the Public Service makes when s/he chooses to follow a career as a Police Officer. The Applicant has breached this contract he entered into with the public the very moment he committed that offence.

[3.10] Lastly, I shall deal with the allegation that Mr Tsatsimpe (the reservist officer who was in the Applicant's company at the time that the offence was committed) was not dismissed, dispute the fact that he was also charged with theft. In this regard the Respondent has shown very clearly that Mr Tsatsimpe was in actual fact not charged with theft, but only for having neglected his duty by allowing the Applicant to exchange the part of his phone with that of Mr Shiri and for failing to report this crime. It was further shown that Mr Tsatsimpe originally was dismissed, but that this sanction was overturned on appeal.

[3.11] The thing about an allegation of inconsistency is that like cases should be treated alike. The employee party is also required to present a prima facie case of inconsistency, where after the employer would then be required to answer thereto. From the above it is clear that Mr Tsatsimpe's matter differs quite substantially from Mr Mosoeu's. As such, Mr Tsatsimpe's subsequent reinstatement does not aid the Applicant in his cause and I thus find the Applicant has failed to present me with a prima facie of inconsistent treatment.

[3.12] With all this having said, I then find the dismissal of Mr Mosoeu to be substantively fair.

AWARD

Thus in the instance I award that –

[4.1] This application is dismissed; and

[4.2] There no order as to costs.